IFPC LEGAL CENTER

*Submitted electronically*
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

**RE: IFPC Legal Center's Comment on Excepted Fertility Benefits, 91 F.R. 27149 (file code 1210-AC40), IRS RIN 1545-BS02, EBSA RIN 1210-AC40, HHS RIN 0938-AV94**

## Introduction

It is good and wise public policy to encourage Americans to have babies. Scripture declares children to be a blessing and a heritage and reward from God (Psalm 127). And history bears this out. Indeed, cultures stagnate when birth rates fall below replacement level but flourish when couples have more children. It is not hyperbole to say that babies are every civilization's future. They promote innovation in industry, healthy risk-taking in economic endeavors, and patriotic pride in culture.

Even so, public policy must also recognize that babies are human beings. They are not a commodity to be created or destroyed on a whim, sold indiscriminately to any buyer for any purpose. Unfortunately, in vitro fertilization (IVF) and surrogacy commodify human babies in just this way. Although the IFPC Legal Center applauds this administration's desire to encourage Americans to have more babies, we also caution that such encouragement cannot come at the cost of the babies themselves. By prioritizing access to restorative reproductive medicine (RRM) instead of IVF and surrogacy, the Departments' Excepted Fertility Benefit proposed rule could make it easier for Americans to grow their families in a way that actually treats couples struggling with infertility and that protects the resulting babies from the moment they are conceived.

## I. The Proposed Rule Should Accurately Define "Infertility."

The proposed rule should address real, medical infertility—not subsidize the new marketplace for selling humans. Infertility is a symptom of an underlying disease or condition within a person's body that makes it difficult or impossible to successfully conceive and carry a live child to term where it should otherwise be possible through intercourse with a person of the other sex. An infertility diagnosis typically requires time—usually 12 months of targeted intercourse for women under 35, or six months of targeted intercourse for women 35 and older, without the use of a chemical, barrier, or other contraceptive method.

God's good design for bringing children into the world has always been one man and one woman engaging in sexual intercourse, causing an egg and a sperm to meet and a new life to begin. Until this century, there was no other way. And historically, only married heterosexual couples who were unable to conceive after conscious and targeted efforts could be diagnosed with infertility. Infertility does *not* include situations where a person, who is able to conceive naturally, chooses not to attempt natural conception. For example, a single person (male or female) who does not engage in sexual intercourse will never naturally have a child; that is not infertility. Similarly, same-sex couples cannot naturally conceive due to the choice not to attempt natural conception—not because of a medical issue.

Until IVF and surrogacy, it was unthinkable to imagine manufacturing human life in a petri dish. IVF and surrogacy are turning children into mere commodities to be sold to the wealthiest in society, warping our cultural and medical understanding of fertility itself.

Properly understood, infertility indicates an underlying health condition. Successfully reducing infertility rates requires encouraging and expanding access to treatments with the goal of actually addressing the physiological causes of infertility. Making it easier for Americans to buy babies through IVF bypasses the question of fertility entirely and misses a golden opportunity to truly make America healthy again.

The goal of IVF and other Assisted Reproductive Technologies (ART) is solely to deliver babies to those who want them—regardless of whether that person has chosen a lifestyle that excludes natural conception. RRM, on the other hand, is concerned entirely with treating the root causes of a couple's infertility by healing them of whatever medical condition is preventing them from being able to conceive a baby.

The proposed regulation should prioritize expanded access to RRM, the fertility benefit that actually treats infertility, instead of IVF and other ART methods of unnaturally and immorally producing children for money. But if the proposed regulation does include coverage for IVF, it should cover adoption as well. Like IVF, adoption is a financially taxing process that provides a couple with a child outside of the couple's own ability to conceive naturally. But adoption does not suffer from the same grave moral concerns that IVF carries. Adoption treats every child as precious and deserving of a family. IVF reduces human lives to groceries—commodities to be purchased, frozen, and thawed or discarded whenever convenient. Our children are infinitely more valuable than mere commodities—and they deserve to be treated with dignity..

## II. Promoting the Mass Destruction of Human Life Undermines the Very Point of Fertility Benefits.

Expanding access to fertility benefits should serve the laudable goals of improving the national birthrate and allowing more children to experience the joy of happy, loving homes. But any procedure that destroys living babies by the thousands ceases to serve those goals.

IVF is ethically problematic at every stage of human development. It begins with the mass creation of human embryos. The buyer then chooses which embryos should be implanted. The siblings of the lucky few are either frozen indefinitely at great cost to the buyer or simply and literally destroyed. Every year, millions of children deemed too undesirable to be implanted are eradicated. "Tragic" does not begin to describe such genocide. Even if expanded IVF access were to increase the number of babies born to Americans, the benefits could not justify the required sacrifice of the millions who never had the chance to be born.

The problems do not stop there. Far too often, buyers use IVF to bring babies into unhealthy or even harmful living arrangements. Human traffickers and pedophiles use IVF and surrogacy to purchase children they would otherwise be unable to access.[1] Even buyers without criminal intentions often cannot give these children a functional family. Social science and human experience are clear: All children need a mother and a father, and all children grow best in a stable environment. While natural conception requires the mother and father to be together at least for the moment of conception, IVF bypasses even that natural requirement. This should discourage the Departments from adopting a proposal that would expand IVF coverage altogether. But at a minimum, the Department's rule should offer IVF as an excepted fertility benefit only to couples who are married, demonstrating a baseline level of commitment to each other that is essential for the wellbeing of the child.

## III. Conclusion

The Department should reject any rule that encourages procedures that mindlessly destroy American children for the sake of inflating the marketplace for human lives. IVF should be roundly rejected as a fertility treatment, because it does not treat medical infertility.

If IVF is included in a regulation for excepted fertility benefits, it should be accompanied by guardrails:

1. Excepted benefits should not cover procedures that involve either selective reduction or destruction of undesired embryos. The Department should require that all embryos be implanted to receive coverage.
2. Excepted benefits should cover IVF only for married couples who have attempted natural conception, received an infertility diagnosis, and undergone RRM treatments without success. That limits these benefits to households that have shown a commitment to creating a loving

[1] *See, e.g.*, Sarah A. Topol, *The Dark Side of the Global Surrogacy and Fertility Industry*, N.Y. TIMES (Dec. 14, 2025), https://www.nytimes.com/2025/12/14/magazine/fertility-surrogates-trafficking.html.

home to receive a child and who actually need such a procedure to have a child.

3. Adoption should be included alongside (or instead of) IVF as a morally acceptable alternative to providing an infertile couple with a child.

Respectfully submitted,

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