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Introduced by M. of A. PAULIN, STECK, GOTTFRIED, ROSENTHAL, SIMOTAS, ZEBROWSKI -- Multi-Sponsored by -- M. of A. COOK, PERRY, TITONE, WALKER -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to mandating insurance companies to provide coverage for non-experimental infertility treatments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph 13 of subsection (i) of section 3216 of the
2 insurance law, as added by chapter 897 of the laws of 1990 and renum-
3 bered by chapter 131 of the laws of 1992, is amended to read as follows:

4 (13) (A) Every policy which provides coverage for hospital care shall
5 not exclude coverage for hospital care for diagnosis and treatment of
6 correctable medical conditions otherwise covered by the policy solely
7 because the medical condition results in infertility[-]; provided howev-
8 er that:

9 (i) Subject to the provisions of subparagraph (C) of this paragraph,
10 in no case shall such coverage exclude surgical or medical procedures
11 provided as part of such hospital care which would correct malformation,
12 disease or dysfunction resulting in infertility; and

13 (ii) Provided, further however, that subject to the provisions of
14 subparagraph (C) of this paragraph, in no case shall such coverage
15 exclude diagnostic tests and procedures provided as part of such hospi-
16 tal care that are necessary to determine infertility or that are neces-
17 sary in connection with any surgical or medical treatments or
18 prescription drug coverage provided pursuant to this paragraph, includ-
19 ing such diagnostic tests and procedures as hysterosalpingogram, hyster-
20 oscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital
21 tests, testis biopsy, semen analysis, blood tests, ultrasound, ovulation
22 induction, intrauterine insemination, in-vitro fertilization, intracyto-
23 plasmic sperm injection, uterine embryo lavage, embryo transfer, gamete

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 intra-fallopian transfer, zygote intra-fallopian transfer, low tubal
2 ovum transfer, donor eggs, and donor sperm; and

3 (iii) Provided, further however, every such policy which provides
4 coverage for prescription drugs shall include, within such coverage,
5 coverage for prescription drugs approved by the federal Food and Drug
6 Administration for use in the diagnosis and treatment of infertility in
7 accordance with subparagraph (C) of this paragraph.

8 (B) Every policy which provides coverage for surgical and medical care
9 shall not exclude coverage for surgical and medical care for diagnosis
10 and treatment of correctable medical conditions otherwise covered by the
11 policy solely because the medical condition results in infertility[+];
12 provided, however that:

13 (i) Subject to the provisions of subparagraph (C) of this paragraph,
14 in no case shall such coverage exclude surgical or medical procedures
15 provided as part of such hospital care which would correct malformation,
16 disease or dysfunction resulting in infertility; and

17 (ii) Provided, further however, that subject to the provisions of
18 subparagraph (C) of this paragraph, in no case shall such coverage
19 exclude diagnostic tests and procedures provided as part of such hospi-
20 tal care that are necessary to determine infertility or that are neces-
21 sary in connection with any surgical or medical treatments or
22 prescription drug coverage provided pursuant to this paragraph, includ-
23 ing such diagnostic tests and procedures as hysterosalpingogram, hyster-
24 oscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital
25 tests, testis biopsy, semen analysis, blood tests, ultrasound, ovulation
26 induction, intrauterine insemination, in-vitro fertilization, intracyto-
27 plasmic sperm injection, uterine embryo lavage, embryo transfer, gamete
28 intra-fallopian transfer, zygote intra-fallopian transfer, low tubal
29 ovum transfer, donor eggs, and donor sperm; and

30 (iii) Provided, further however, every such policy which provides
31 coverage for prescription drugs shall include, within such coverage,
32 coverage for prescription drugs approved by the federal Food and Drug
33 Administration for use in the diagnosis and treatment of infertility in
34 accordance with subparagraph (C) of this paragraph.

35 (C) Coverage of diagnostic and treatment procedures, including
36 prescription drugs, used in the diagnosis and treatment of infertility
37 as required by subparagraphs (A) and (B) of this paragraph shall be
38 provided in accordance with the provisions of this subparagraph.

39 (i) Coverage shall be provided for persons whose ages range from twen-
40 ty-one through forty-four years of age, provided that nothing in this
41 subparagraph shall preclude the provision of coverage to persons whose
42 age is below or above such range.

43 (ii) Diagnosis and treatment of infertility shall be prescribed as
44 part of a physician's overall plan of care and consistent with the
45 guidelines for coverage as referenced in this subparagraph.

46 (iii) Coverage may be subject to co-payments, coinsurance and deduct-
47 ibles as may be deemed appropriate by the superintendent and as are
48 consistent with those established for other benefits within a given
49 policy.

50 (iv) Coverage shall be limited to those individuals who have been
51 previously covered under the policy for a period of not less than twelve
52 months, provided that for the purposes of this subparagraph "period of
53 not less than twelve months" shall be determined by calculating such
54 time from either the date the insured was first covered under the exist-
55 ing policy or from the date the insured was first covered by a previous-
56 ly in-force converted policy, whichever is earlier.

(v) Coverage shall not be required to include the diagnosis and treatment of infertility in connection with:

(I) The reversal of elective sterilizations;

(II) Sex change procedures;

(III) cloning; or

(IV) Medical or surgical services or procedures that are deemed to be experimental in accordance with clinical guidelines referenced in clause (vi) of this subparagraph.

(vi) The superintendent, in consultation with the commissioner of health, shall promulgate regulations which shall stipulate the guidelines and standards which shall be used in carrying out the provisions of this subparagraph, which shall include:

(I) The determination of "infertility" in accordance with the standards and guidelines established and adopted by the American College of Obstetricians and Gynecologists and the American Society for Reproductive Medicine;

(II) The identification of experimental procedures and treatments not covered for the diagnosis and treatment of infertility determined in accordance with the standards and guidelines established and adopted by the American College of Obstetricians and Gynecologists and the American Society for Reproductive Medicine;

(III) The identification of the required training, experience and other standards for health care providers for the provision of procedures and treatments for the diagnosis and treatment of infertility determined in accordance with the standards and guidelines established and adopted by the American College of Obstetricians and Gynecologists and the American Society for Reproductive Medicine; and

(IV) The determination of appropriate medical candidates by the treating physician in accordance with the standards and guidelines established and adopted by the American College of Obstetricians and Gynecologists and/or the American Society for Reproductive Medicine.

(vii) A policy providing coverage under this paragraph may have the following requirements and limitations:

(I) Limit coverage for in-vitro fertilization, gamete intra-fallopian transfer, zygote intra-fallopian transfer and low tubal ovum transfer to those individuals who have been unable to conceive or produce conception or sustain a successful pregnancy through less expensive and medically viable infertility treatment or procedures covered under such a policy;

(II) Nothing in this subsection shall be construed to deny the coverage required by this section to any individual who forgoes a particular infertility treatment or procedure if the individual's physician determines that such a treatment or procedure is likely to be unsuccessful;

(III) Limit coverage to a lifetime cap of one hundred thousand dollars for ovulation induction, intrauterine insemination, in-vitro fertilization, intracytoplasmic sperm injection, uterine embryo lavage, embryo transfer, gamete intra-fallopian transfer, zygote intra-fallopian transfer, low tubal ovum transfer, donor eggs, and donor sperm;

(IV) Require disclosure by the individual seeking such coverage to such individual's existing health insurance carrier of any previous infertility treatment or procedures for which such individual received coverage under a different health insurance policy. Such disclosure shall be made on a form and in the manner prescribed by the commissioner of the department of financial services.

§ 2. Subparagraphs (A), (B) and (C) of paragraph 6 of subsection (k) of section 3221 of the insurance law, as amended by section 1 of part K of chapter 82 of the laws of 2002, are amended to read as follows:

1 (A) Every group policy issued or delivered in this state which
2 provides coverage for hospital care shall not exclude coverage for
3 hospital care for diagnosis and treatment of correctable medical condi-
4 tions [~~otherwise covered by the policy~~] solely because the medical
5 condition results in infertility; provided, however that:

6 (i) subject to the provisions of subparagraph (C) of this paragraph,
7 in no case shall such coverage exclude surgical or medical procedures
8 provided as part of such hospital care which would correct malformation,
9 disease or dysfunction resulting in infertility; and

10 (ii) provided, further however, that subject to the provisions of
11 subparagraph (C) of this paragraph, in no case shall such coverage
12 exclude diagnostic tests and procedures provided as part of such hospi-
13 tal care that are necessary to determine infertility or that are neces-
14 sary in connection with any surgical or medical treatments or
15 prescription drug coverage provided pursuant to this paragraph, includ-
16 ing such diagnostic tests and procedures as hysterosalpingogram, hyster-
17 oscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital
18 tests, testis biopsy, semen analysis, blood tests [~~and~~], ultrasound,
19 ovulation induction, intrauterine insemination, in-vitro fertilization,
20 intracytoplasmic sperm injection, uterine embryo lavage, embryo trans-
21 fer, gamete intra-fallopian transfer, zygote intra-fallopian transfer,
22 low tubal ovum transfer, donor eggs, and donor sperm; and

23 (iii) provided, further however, every such policy which provides
24 coverage for prescription drugs shall include, within such coverage,
25 coverage for prescription drugs approved by the federal Food and Drug
26 Administration for use in the diagnosis and treatment of infertility in
27 accordance with subparagraph (C) of this paragraph.

28 (B) Every group policy issued or delivered in this state which
29 provides coverage for surgical and medical care shall not exclude cover-
30 age for surgical and medical care for diagnosis and treatment of correc-
31 table medical conditions [~~otherwise covered by the policy~~] solely
32 because the medical condition results in infertility; provided, however
33 that:

34 (i) subject to the provisions of subparagraph (C) of this paragraph,
35 in no case shall such coverage exclude surgical or medical procedures
36 which would correct malformation, disease or dysfunction resulting in
37 infertility; and

38 (ii) provided, further however, that subject to the provisions of
39 subparagraph (C) of this paragraph, in no case shall such coverage
40 exclude diagnostic tests and procedures that are necessary to determine
41 infertility or that are necessary in connection with any surgical or
42 medical treatments or prescription drug coverage provided pursuant to
43 this paragraph, including such diagnostic tests and procedures as
44 hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy,
45 sono-hysterogram, post coital tests, testis biopsy, semen analysis,
46 blood tests [~~and~~], ultrasound, ovulation induction, intrauterine insemi-
47 nation, in-vitro fertilization, intracytoplasmic sperm injection,
48 uterine embryo lavage, embryo transfer, gamete intra-fallopian transfer,
49 zygote intra-fallopian transfer, low tubal ovum transfer, donor eggs,
50 and donor sperm; and

51 (iii) provided, further however, every such policy which provides
52 coverage for prescription drugs shall include, within such coverage,
53 coverage for prescription drugs approved by the federal Food and Drug
54 Administration for use in the diagnosis and treatment of infertility in
55 accordance with subparagraph (C) of this paragraph.

1 (C) Coverage of diagnostic and treatment procedures, including
2 prescription drugs, used in the diagnosis and treatment of infertility
3 as required by subparagraphs (A) and (B) of this paragraph shall be
4 provided in accordance with the provisions of this subparagraph.

5 (i) Coverage shall be provided for persons whose ages range from twen-
6 ty-one through forty-four years, provided that nothing herein shall
7 preclude the provision of coverage to persons whose age is below or
8 above such range.

9 (ii) Diagnosis and treatment of infertility shall be prescribed as
10 part of a physician's overall plan of care and consistent with the
11 guidelines for coverage as referenced in this subparagraph.

12 (iii) Coverage may be subject to co-payments, coinsurance and deduct-
13 ibles as may be deemed appropriate by the superintendent and as are
14 consistent with those established for other benefits within a given
15 policy.

16 (iv) Coverage shall be limited to those individuals who have been
17 previously covered under the policy for a period of not less than twelve
18 months, provided that for the purposes of this subparagraph "period of
19 not less than twelve months" shall be determined by calculating such
20 time from either the date the insured was first covered under the exist-
21 ing policy or from the date the insured was first covered by a previous-
22 ly in-force converted policy, whichever is earlier.

23 (v) Coverage shall not be required to include the diagnosis and treat-
24 ment of infertility in connection with: (I) ~~[in vitro fertilization,~~
25 ~~gamete intrafallopian tube transfers or zygote intrafallopian tube~~
26 ~~transfers; (II)]~~ the reversal of elective sterilizations; ~~[(III)]~~ (II)
27 sex change procedures; ~~[(IV)]~~ (III) cloning; or ~~[(V)]~~ (IV) medical or
28 surgical services or procedures that are deemed to be experimental in
29 accordance with clinical guidelines referenced in clause (vi) of this
30 subparagraph.

31 (vi) The superintendent, in consultation with the commissioner of
32 health, shall promulgate regulations which shall stipulate the guide-
33 lines and standards which shall be used in carrying out the provisions
34 of this subparagraph, which shall include:

35 (I) The determination of "infertility" in accordance with the stand-
36 ards and guidelines established and adopted by the American College of
37 Obstetricians and Gynecologists and the American Society for Reproduc-
38 tive Medicine;

39 (II) The identification of experimental procedures and treatments not
40 covered for the diagnosis and treatment of infertility determined in
41 accordance with the standards and guidelines established and adopted by
42 the American College of Obstetricians and Gynecologists and the American
43 Society for Reproductive Medicine;

44 (III) The identification of the required training, experience and
45 other standards for health care providers for the provision of proce-
46 dures and treatments for the diagnosis and treatment of infertility
47 determined in accordance with the standards and guidelines established
48 and adopted by the American College of Obstetricians and Gynecologists
49 and the American Society for Reproductive Medicine; and

50 (IV) The determination of appropriate medical candidates by the treat-
51 ing physician in accordance with the standards and guidelines estab-
52 lished and adopted by the American College of Obstetricians and Gynecol-
53 ogists and/or the American Society for Reproductive Medicine.

54 (vii) A policy providing coverage under this paragraph may have the
55 following requirements and limitations:

1 (I) Limit coverage for in-vitro fertilization, gamete intra-fallopian
2 transfer, zygote intra-fallopian transfer and low tubal ovum transfer to
3 those individuals who have been unable to conceive or produce conception
4 or sustain a successful pregnancy through less expensive and medically
5 viable infertility treatment or procedures covered under such a policy;

6 (II) Nothing in this subsection shall be construed to deny the cover-
7 age required by this section to any individual who forgoes a particular
8 infertility treatment or procedure if the individual's physician deter-
9 mines that such a treatment or procedure is likely to be unsuccessful;

10 (III) Limit coverage to a lifetime cap of one hundred thousand dollars
11 for ovulation induction, intrauterine insemination, in-vitro fertiliza-
12 tion, intracytoplasmic sperm injection, uterine embryo lavage, embryo
13 transfer, gamete intra-fallopian transfer, zygote intra-fallopian trans-
14 fer, low tubal ovum transfer, donor eggs, and donor sperm;

15 (IV) Require disclosure by the individual seeking such coverage to
16 such individual's existing health insurance carrier of any previous
17 infertility treatment or procedures for which such individual received
18 coverage under a different health insurance policy. Such disclosure
19 shall be made on a form and in the manner prescribed by the commissioner
20 of the department of financial services.

21 § 3. Paragraphs 1, 2 and 3 of subsection (s) of section 4303 of the
22 insurance law, as amended by section 2 of part K of chapter 82 of the
23 laws of 2002, are amended to read as follows:

24 (1) A hospital service corporation or health service corporation which
25 provides coverage for hospital care shall not exclude coverage for
26 hospital care for diagnosis and treatment of correctable medical condi-
27 tions [~~otherwise covered by the policy~~] solely because the medical
28 condition results in infertility; provided, however that:

29 (A) subject to the provisions of paragraph three of this subsection,
30 in no case shall such coverage exclude surgical or medical procedures
31 provided as part of such hospital care which would correct malformation,
32 disease or dysfunction resulting in infertility; and

33 (B) provided, further however, that subject to the provisions of para-
34 graph three of this subsection, in no case shall such coverage exclude
35 diagnostic tests and procedures provided as part of such hospital care
36 that are necessary to determine infertility or that are necessary in
37 connection with any surgical or medical treatments or prescription drug
38 coverage provided pursuant to this subsection, including such diagnostic
39 tests and procedures as hysterosalpingogram, hysteroscopy, endometrial
40 biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy,
41 semen analysis, blood tests [~~and~~], ultrasound, ovulation induction,
42 intrauterine insemination, in-vitro fertilization, intracytoplasmic
43 sperm injection, uterine embryo lavage, embryo transfer, gamete intra-
44 fallopian transfer, zygote intra-fallopian transfer, low tubal ovum
45 transfer, donor eggs, and donor sperm; and

46 (C) provided, further however, every such policy which provides cover-
47 age for prescription drugs shall include, within such coverage, coverage
48 for prescription drugs approved by the federal Food and Drug Adminis-
49 tration for use in the diagnosis and treatment of infertility in accord-
50 ance with paragraph three of this subsection.

51 (2) A medical expense indemnity or health service corporation which
52 provides coverage for surgical and medical care shall not exclude cover-
53 age for surgical and medical care for diagnosis and treatment of correc-
54 table medical conditions otherwise covered by the policy solely because
55 the medical condition results in infertility; provided, however that:

1 (A) subject to the provisions of paragraph three of this subsection,
2 in no case shall such coverage exclude surgical or medical procedures
3 which would correct malformation, disease or dysfunction resulting in
4 infertility; and

5 (B) provided, further however, that subject to the provisions of para-
6 graph three of this subsection, in no case shall such coverage exclude
7 diagnostic tests and procedures that are necessary to determine infer-
8 tility or that are necessary in connection with any surgical or medical
9 treatments or prescription drug coverage provided pursuant to this
10 subsection, including such diagnostic tests and procedures as hystero-
11 salpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hyste-
12 rogram, post coital tests, testis biopsy, semen analysis, blood tests
13 ~~[and]~~, ultrasound, ovulation induction, intrauterine insemination,
14 in-vitro fertilization, intracytoplasmic sperm injection, uterine embryo
15 lavage, embryo transfer, gamete intra-fallopian transfer, zygote intra-
16 fallopian transfer, low tubal ovum transfer, donor eggs, and donor
17 sperm; and

18 (C) provided, further however, every such policy which provides cover-
19 age for prescription drugs shall include, within such coverage, coverage
20 for prescription drugs approved by the federal Food and Drug Adminis-
21 tration for use in the diagnosis and treatment of infertility in accord-
22 ance with paragraph three of this subsection.

23 (3) Coverage of diagnostic and treatment procedures, including
24 prescription drugs used in the diagnosis and treatment of infertility as
25 required by paragraphs one and two of this subsection shall be provided
26 in accordance with this paragraph.

27 (A) Coverage shall be provided for persons whose ages range from twen-
28 ty-one through forty-four years, provided that nothing herein shall
29 preclude the provision of coverage to persons whose age is below or
30 above such range.

31 (B) Diagnosis and treatment of infertility shall be prescribed as part
32 of a physician's overall plan of care and consistent with the guidelines
33 for coverage as referenced in this paragraph.

34 (C) Coverage may be subject to co-payments, coinsurance and deduct-
35 ibles as may be deemed appropriate by the superintendent and as are
36 consistent with those established for other benefits within a given
37 policy.

38 (D) Coverage shall be limited to those individuals who have been
39 previously covered under the policy for a period of not less than twelve
40 months, provided that for the purposes of this paragraph "period of not
41 less than twelve months" shall be determined by calculating such time
42 from either the date the insured was first covered under the existing
43 policy or from the date the insured was first covered by a previously
44 in-force converted policy, whichever is earlier.

45 (E) Coverage shall not be required to include the diagnosis and treat-
46 ment of infertility in connection with: (i) ~~[in vitro fertilization,~~
47 ~~gamete intrafallopian tube transfers or zygote intrafallopian tube~~
48 ~~transfers; (ii)]~~ the reversal of elective sterilizations; ~~[(iii)]~~ (ii)
49 sex change procedures; ~~[(iv)]~~ (iii) cloning; or ~~[(v)]~~ (iv) medical or
50 surgical services or procedures that are deemed to be experimental in
51 accordance with clinical guidelines referenced in subparagraph (F) of
52 this paragraph.

53 (F) The superintendent, in consultation with the commissioner of
54 health, shall promulgate regulations which shall stipulate the guide-
55 lines and standards which shall be used in carrying out the provisions
56 of this paragraph, which shall include:

1 (i) The determination of "infertility" in accordance with the stand-
2 ards and guidelines established and adopted by the American College of
3 Obstetricians and Gynecologists and the American Society for Reproduc-
4 tive Medicine;

5 (ii) The identification of experimental procedures and treatments not
6 covered for the diagnosis and treatment of infertility determined in
7 accordance with the standards and guidelines established and adopted by
8 the American College of Obstetricians and Gynecologists and the American
9 Society for Reproductive Medicine;

10 (iii) The identification of the required training, experience and
11 other standards for health care providers for the provision of proce-
12 dures and treatments for the diagnosis and treatment of infertility
13 determined in accordance with the standards and guidelines established
14 and adopted by the American College of Obstetricians and Gynecologists
15 and the American Society for Reproductive Medicine; and

16 (iv) The determination of appropriate medical candidates by the treat-
17 ing physician in accordance with the standards and guidelines estab-
18 lished and adopted by the American College of Obstetricians and Gynecol-
19 ogists and/or the American Society for Reproductive Medicine.

20 (G) A policy providing coverage under this subsection may have the
21 following requirements and limitations:

22 (I) Limit coverage for in-vitro fertilization, gamete intra-fallopian
23 transfer, zygote intra-fallopian transfer and low tubal ovum transfer to
24 those individuals who have been unable to conceive or produce conception
25 or sustain a successful pregnancy through less expensive and medically
26 viable infertility treatment or procedures covered under such a policy.

27 (II) Nothing in this subsection shall be construed to deny the cover-
28 age required by this section to any individual who forgoes a particular
29 infertility treatment or procedure if the individual's physician deter-
30 mines that such a treatment or procedure is likely to be unsuccessful;

31 (III) Limit coverage to a lifetime cap of one hundred thousand dollars
32 for ovulation induction, intrauterine insemination, in-vitro fertiliza-
33 tion, intracytoplasmic sperm injection, uterine embryo lavage, embryo
34 transfer, gamete intra-fallopian transfer, zygote intra-fallopian trans-
35 fer, low tubal ovum transfer, donor eggs, and donor sperm;

36 (IV) Require disclosure by the individual seeking such coverage to
37 such individual's existing health insurance carrier of any previous
38 infertility treatment or procedures for which such individual received
39 coverage under a different health insurance policy. Such disclosure
40 shall be made on a form and in the manner prescribed by the commissioner
41 of the department of financial services.

42 § 4. This act shall take effect immediately.