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I N S E N A T E

April 7, 2016

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to insurance coverage of in vitro fertilization and other fertility preservation treatments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The insurance law is amended by adding a new section 3242  
2 to read as follows:

3 S 3242. IN VITRO FERTILIZATION AND FERTILITY-RELATED PROVISIONS IN  
4 POLICIES. (A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, NO  
5 POLICY OF GROUP OR BLANKET ACCIDENT AND HEALTH INSURANCE SHALL BE DELIV-  
6 ERED OR ISSUED FOR DELIVERY IN THIS STATE TO A GROUP UNLESS IT CONTAINS  
7 IN SUBSTANCE THE FOLLOWING PROVISIONS OR PROVISIONS WHICH IN THE OPINION  
8 OF THE SUPERINTENDENT ARE MORE FAVORABLE TO THE HOLDERS OF SUCH CERTIF-  
9 ICATES OR NOT LESS FAVORABLE TO THE HOLDERS OF SUCH CERTIFICATES AND  
10 MORE FAVORABLE TO POLICYHOLDERS:

11 (1) COVERAGE OF DIAGNOSTIC AND TREATMENT PROCEDURES, INCLUDING  
12 PRESCRIPTION DRUGS AND IN VITRO FERTILIZATION, USED IN THE DIAGNOSIS AND  
13 TREATMENT OF INFERTILITY. AS USED IN THIS SECTION, "INFERTILITY" MEANS A  
14 DISEASE CHARACTERIZED BY THE INCAPACITY TO IMPREGNATE ANOTHER PERSON OR  
15 TO CONCEIVE, AS DIAGNOSED (A) BY A PHYSICIAN LICENSED TO PRACTICE MEDI-  
16 CINE IN THE STATE, OR (B) BY THE FAILURE TO ESTABLISH A CLINICAL PREG-  
17 NANCY AFTER TWELVE MONTHS OF REGULAR, UNPROTECTED SEXUAL INTERCOURSE.

18 (2) COVERAGE OF MEDICALLY NECESSARY EXPENSES FOR STANDARD FERTILITY  
19 PRESERVATION SERVICES WHEN A NECESSARY MEDICAL TREATMENT MAY DIRECTLY OR  
20 INDIRECTLY CAUSE IATROGENIC INFERTILITY TO A COVERED PERSON. AS USED IN  
21 THIS SECTION, "IATROGENIC INFERTILITY" MEANS AN IMPAIRMENT OF FERTILITY  
22 BY SURGERY, RADIATION, CHEMOTHERAPY OR OTHER MEDICAL TREATMENT AFFECTING  
23 REPRODUCTIVE ORGANS OR PROCESSES.

24 POLICIES WHICH COVER HOSPITAL SERVICES ONLY, MEDICAL OR SURGICAL  
25 SERVICES ONLY, OR PRESCRIPTION DRUGS ONLY, SHALL PROVIDE FERTILITY-RE-  
26 LATED COVERAGE TO THE EXTENT THEY FALL WITHIN THE CATEGORIES OF SERVICES  
27 OTHERWISE COVERED.

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

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1 (B) IN DETERMINING COVERAGE PURSUANT TO THIS SECTION, AN INSURER SHALL  
2 NOT DISCRIMINATE BASED ON AN INDIVIDUAL'S EXPECTED LENGTH OF LIFE, PRES-  
3 ENT OR PREDICTED DISABILITY, DEGREE OF MEDICAL DEPENDENCY, QUALITY OF  
4 LIFE, OR OTHER HEALTH CONDITIONS, NOR BASED ON PERSONAL CHARACTERISTICS,  
5 INCLUDING AGE, SEX, SEXUAL ORIENTATION OR MARITAL STATUS.

6 (C) THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO GROUP OR BLAN-  
7 KET ACCIDENT AND HEALTH INSURANCE POLICIES ISSUED IN THE SMALL GROUP  
8 MARKET.

9 S 2. Subparagraph (C) of paragraph 6 of subsection (k) of section  
10 3221 of the insurance law, as amended by section 1 of part K of chapter  
11 82 of the laws of 2002, is amended to read as follows:

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

16 (i) [Coverage shall be provided for persons whose ages range from  
17 twenty-one through forty-four years, provided that nothing herein shall  
18 preclude the provision of coverage to persons whose age is below or  
19 above such range.

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

23 [(iii)] (II) Coverage may be subject to co-payments, coinsurance and  
24 deductibles as may be deemed appropriate by the superintendent and as  
25 are consistent with those established for other benefits within a given  
26 policy.

27 [(iv)] (III) Coverage shall be limited to those individuals who have  
28 been previously covered under the policy for a period of not less than  
29 twelve months, provided that for the purposes of this subparagraph  
30 "period of not less than twelve months" shall be determined by calculat-  
31 ing such time from either the date the insured was first covered under  
32 the existing policy or from the date the insured was first covered by a  
33 previously in-force converted policy, whichever is earlier.

34 [(v)] (IV) Coverage shall not be required to include the diagnosis and  
35 treatment of infertility in connection with: (I) [in vitro fertiliza-  
36 tion, gamete intrafallopian tube transfers or zygote intrafallopian tube  
37 transfers; (II)] the reversal of elective sterilizations; [(III)] (II)  
38 sex change procedures; [(IV)] (III) cloning; or [(V)] (IV) medical or  
39 surgical services or procedures that are deemed to be experimental in  
40 accordance with clinical guidelines referenced in clause [(vi)] (V) of  
41 this subparagraph.

42 [(vi)] (V) The superintendent, in consultation with the commissioner  
43 of health, shall promulgate regulations which shall stipulate the guide-  
44 lines and standards which shall be used in carrying out the provisions  
45 of this subparagraph, which shall include:

46 (I) The determination of "infertility" in accordance with the [stand-  
47 ards and guidelines established and adopted by the American College of  
48 Obstetricians and Gynecologists and the American Society for Reproduc-  
49 tive Medicine] DEFINITIONS OF INFERTILITY AND IATROGENIC INFERTILITY IN  
50 PARAGRAPHS ONE AND TWO OF SUBSECTION (A) OF SECTION THREE THOUSAND TWO  
51 HUNDRED FORTY-TWO OF THIS CHAPTER;

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

1 (III) The identification of the required training, experience and  
2 other standards for health care providers for the provision of proce-  
3 dures and treatments for the diagnosis and treatment of infertility  
4 determined in accordance with the standards and guidelines established  
5 and adopted by the American College of Obstetricians and Gynecologists  
6 and the American Society for Reproductive Medicine; and

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

11 S 3. Paragraph 3 of subsection (s) of section 4303 of the insurance  
12 law, as amended by section 2 of part K of chapter 82 of the laws of  
13 2002, is amended to read as follows:

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

18 (A) [Coverage shall be provided for persons whose ages range from  
19 twenty-one through forty-four years, provided that nothing herein shall  
20 preclude the provision of coverage to persons whose age is below or  
21 above such range.

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

25 [(C)] (B) Coverage may be subject to co-payments, coinsurance and  
26 deductibles as may be deemed appropriate by the superintendent and as  
27 are consistent with those established for other benefits within a given  
28 policy.

29 [(D)] (C) Coverage shall be limited to those individuals who have been  
30 previously covered under the policy for a period of not less than twelve  
31 months, provided that for the purposes of this paragraph "period of not  
32 less than twelve months" shall be determined by calculating such time  
33 from either the date the insured was first covered under the existing  
34 policy or from the date the insured was first covered by a previously  
35 in-force converted policy, whichever is earlier.

36 [(E)] (D) Coverage shall not be required to include the diagnosis and  
37 treatment of infertility in connection with: (i) [in vitro fertiliza-  
38 tion, gamete intrafallopian tube transfers or zygote intrafallopian tube  
39 transfers; (ii)] the reversal of elective sterilizations; [(iii)] (II)  
40 sex change procedures; [(iv)] (III) cloning; or [(v)] (IV) medical or  
41 surgical services or procedures that are deemed to be experimental in  
42 accordance with clinical guidelines referenced in subparagraph [(F)] (E)  
43 of this paragraph.

44 [(F)] (E) The superintendent, in consultation with the commissioner of  
45 health, shall promulgate regulations which shall stipulate the guide-  
46 lines and standards which shall be used in carrying out the provisions  
47 of this paragraph, which shall include:

48 (i) The determination of "infertility" in accordance with the [stand-  
49 ards and guidelines established and adopted by the American College of  
50 Obstetricians and Gynecologists and the American Society for Reproduc-  
51 tive Medicine] DEFINITIONS OF INFERTILITY AND IATROGENIC INFERTILITY IN  
52 PARAGRAPHS ONE AND TWO OF SUBSECTION (A) OF SECTION THREE THOUSAND TWO  
53 HUNDRED FORTY-TWO OF THIS CHAPTER;

54 (ii) The identification of experimental procedures and treatments not  
55 covered for the diagnosis and treatment of infertility determined in  
56 accordance with the standards and guidelines established and adopted by

1 the American College of Obstetricians and Gynecologists and the American  
2 Society for Reproductive Medicine;

3 (iii) The identification of the required training, experience and  
4 other standards for health care providers for the provision of proce-  
5 dures and treatments for the diagnosis and treatment of infertility  
6 determined in accordance with the standards and guidelines established  
7 and adopted by the American College of Obstetricians and Gynecologists  
8 and the American Society for Reproductive Medicine; and

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

13 S 4. This act shall take effect immediately.