

STATE OF NEW YORK

8441--B

IN SENATE

May 7, 2018

Introduced by Sens. PHILLIPS, HELMING, AKSHAR, BONACIC, LITTLE, MARCHIONE, O'MARA, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to insurance coverage of in vitro fertilization and other fertility preservation treatments; and to amend part K of chapter 82 of the laws of 2002 amending the insurance law and the public health law relating to coverage for the diagnosis and treatment of infertility, in relation to grants for infertility services

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

Section 1. Paragraph 13 of subsection (i) of section 3216 of the insurance law is amended by adding three new subparagraphs (C), (D) and (E) to read as follows:

(C) Every policy delivered or issued for delivery in this state that provides coverage for hospital, surgical or medical care shall provide a maximum lifetime limit of fifty thousand dollars coverage for:

(i) in vitro fertilization used in the treatment of infertility; and

(ii) standard fertility preservation services when a necessary medical treatment may directly or indirectly cause iatrogenic infertility to a covered person.

(D) For the purposes of subparagraph (C) of this paragraph:

(i) "Infertility" means a condition or disease characterized by the incapacity to impregnate another person or to conceive, as diagnosed or determined (I) by a physician licensed to practice medicine in this state, or (II) by the failure to establish a clinical pregnancy after twelve months of regular, unprotected sexual intercourse, or after six months of regular, unprotected sexual intercourse in the case of a female over age thirty-five.

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

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1 (ii) "Iatrogenic infertility" means an impairment of fertility by
2 surgery, radiation, chemotherapy or other medical treatment affecting
3 reproductive organs or processes.

4 (iii) Coverage for prescription drugs necessary as part of in vitro
5 fertilization or standard fertility preservation services is only avail-
6 able where the policy otherwise provides coverage for prescription
7 drugs.

8 (iv) Notwithstanding any other provision of law, a policy may impose
9 cost sharing, deductibles or coinsurance obligations that exceed the
10 dollar amount of cost sharing, deductibles or coinsurance obligations
11 for non-preferred brand name drugs or their equivalent.

12 (E) For services provided pursuant to subparagraph (C) of this para-
13 graph, policies may:

14 (i) Require that services be performed by clinics or medical centers
15 that conform to guidelines issued by the American Society for Reproduc-
16 tive Medicine or the American College of Obstetricians and Gynecologists
17 (ACOG);

18 (ii) Require, notwithstanding network adequacy requirements, that all
19 services be performed at designated providers identified by the insurer
20 as meeting specified credentialing and quality standards and which
21 participate in the insurer's provider network;

22 (iii) Limit coverage for in vitro fertilization to those individuals
23 who have been unable to conceive or produce conception through less
24 expensive and medically viable infertility treatment or procedures
25 covered under such policy. Nothing in this subsection shall be construed
26 to deny the coverage required by this section to any individual who
27 foregoes a particular infertility treatment or procedure if the individ-
28 ual's physician determines that such treatment or procedure is likely to
29 be unsuccessful;

30 (iv) For purposes of calculating the lifetime limit, require disclo-
31 sure by the individual seeking such coverage to such individual's exist-
32 ing health insurance carrier of any previous infertility treatment or
33 procedures for which such individual received coverage under a different
34 health insurance policy issued by the same insurer or by another insur-
35 er; or

36 (v) Limit coverage related to in vitro fertilization services to
37 persons whose ages range from twenty-one through forty-four years.

38 § 2. Paragraph 6 of subsection (k) of section 3221 of the insurance
39 law is amended by adding four new subparagraphs (E), (F), (G) and (H) to
40 read as follows:

41 (E) Every group policy delivered or issued for delivery in this state
42 that provides hospital, surgical or medical coverage shall provide a
43 maximum lifetime limit of fifty thousand dollars of coverage for:

44 (i) in vitro fertilization used in the treatment of infertility; and

45 (ii) standard fertility preservation services when a necessary medical
46 treatment may directly or indirectly cause iatrogenic infertility to a
47 covered person.

48 (F) For the purposes of subparagraph (E) of this paragraph:

49 (i) "Infertility" means a condition or disease characterized by the
50 incapacity to impregnate another person or to conceive, as diagnosed or
51 determined (I) by a physician licensed to practice medicine in this
52 state, or (II) by the failure to establish a clinical pregnancy after
53 twelve months of regular, unprotected sexual intercourse, or after six
54 months of regular, unprotected sexual intercourse in the case of a
55 female over age thirty-five.

1 (ii) "Iatrogenic infertility" means an impairment of fertility by
2 surgery, radiation, chemotherapy or other medical treatment affecting
3 reproductive organs or processes.

4 (iii) Coverage for prescription drugs necessary as part of in vitro
5 fertilization or standard fertility preservation services is only avail-
6 able where the policy otherwise provides coverage for prescription
7 drugs.

8 (iv) Notwithstanding any other provision of law, a policy may impose
9 cost sharing, deductibles or coinsurance obligations that exceed the
10 dollar amount of cost sharing, deductibles or coinsurance obligations
11 for non-preferred brand name drugs or their equivalent.

12 (G) Notwithstanding any other provision of this subsection, a reli-
13 gious employer may request a contract without coverage for in vitro
14 fertilization used in the treatment of infertility and standard fertili-
15 ty preservation services that are contrary to the religious employer's
16 religious tenets. If so requested, such contract shall be provided with-
17 out coverage for services.

18 (i) For purposes of this subsection, a "religious employer" is a group
19 or entity for which each of the following is true:

20 (I) The inculcation of religious values is the purpose of the group or
21 entity.

22 (II) The group or entity primarily employs persons who share the reli-
23 gious tenets of the group or entity.

24 (III) The group or entity serves primarily persons who share the reli-
25 gious tenets of the group or entity.

26 (IV) The group or entity is a nonprofit organization as described in
27 Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as
28 amended.

29 (ii) Every religious employer that invokes the exemption provided
30 under this subparagraph shall provide written notice to prospective
31 enrollees prior to enrollment with the plan, listing the treatment of
32 infertility and standard fertility preservation services the employer
33 refuses to cover for religious reasons.

34 (H) For services provided pursuant to subparagraph (E) of this para-
35 graph, policies may:

36 (i) Require that services be performed by clinics or medical centers
37 that conform to guidelines issued by the American Society for Reproduc-
38 tive Medicine or the American College of Obstetricians and Gynecologists
39 (ACOG);

40 (ii) Require, notwithstanding network adequacy requirements, that all
41 services be performed at designated providers identified by the insurer
42 as meeting specified credentialing and quality standards and which
43 participate in the insurer's provider network;

44 (iii) Limit coverage for in vitro fertilization to those individuals
45 who have been unable to conceive or produce conception through less
46 expensive and medically viable infertility treatment or procedures
47 covered under such policy. Nothing in this subsection shall be construed
48 to deny the coverage required by this section to any individual who
49 foregoes a particular infertility treatment or procedure if the individ-
50 ual's physician determines that such treatment or procedure is likely to
51 be unsuccessful;

52 (iv) For purposes of calculating the lifetime limit, require disclo-
53 sure by the individual seeking such coverage to such individual's exist-
54 ing health insurance carrier of any previous infertility treatment or
55 procedures for which such individual received coverage under a different

1 health insurance policy issued by the same insurer or by another insurer; or
2

3 (v) Limit coverage related to in vitro fertilization services to
4 persons whose ages range from twenty-one through forty-four years.

5 § 3. Subsection (s) of section 4303 of the insurance law, as amended
6 by section 2 of part F of chapter 82 of the laws of 2002, is amended by
7 adding four new paragraphs 5, 6, 7 and 8 to read as follows:

8 (5) Every contract issued by a medical expense indemnity corporation,
9 hospital service corporation or health service corporation for delivery
10 in this state that provides hospital, surgical or medical coverage shall
11 provide a maximum lifetime limit of fifty thousand dollars of coverage
12 for:

13 (A) in vitro fertilization used in the treatment of infertility; and

14 (B) standard fertility preservation services when a necessary medical
15 treatment may directly or indirectly cause iatrogenic infertility to a
16 covered person.

17 (6) For the purposes of paragraph five of this subsection:

18 (A) "Infertility" means a condition or disease characterized by the
19 incapacity to impregnate another person or to conceive, as diagnosed or
20 determined (i) by a physician licensed to practice medicine in this
21 state, or (ii) by the failure to establish a clinical pregnancy after
22 twelve months of regular, unprotected sexual intercourse, or after six
23 months of regular, unprotected sexual intercourse in the case of a
24 female over age thirty-five.

25 (B) "Iatrogenic infertility" means an impairment of fertility by
26 surgery, radiation, chemotherapy or other medical treatment affecting
27 reproductive organs or processes.

28 (C) Coverage for prescription drugs necessary as part of in vitro
29 fertilization or standard fertility preservation services is only avail-
30 able where the policy otherwise provides coverage for prescription
31 drugs.

32 (D) Notwithstanding any other provision of law, a policy may impose
33 cost sharing, deductibles or coinsurance obligations that exceed the
34 dollar amount of cost sharing, deductibles or coinsurance obligations
35 for non-preferred brand name drugs or their equivalent.

36 (7) Notwithstanding any other provision of this subsection, a reli-
37 gious employer may request a contract without coverage for in vitro
38 fertilization used in the treatment of infertility and standard fertili-
39 ty preservation services that are contrary to the religious employer's
40 religious tenets. If so requested, such contract shall be provided with-
41 out coverage for services.

42 (A) For purposes of this subsection, a "religious employer" is a group
43 or entity for which each of the following is true:

44 (i) The inculcation of religious values is the purpose of the group or
45 entity.

46 (ii) The group or entity primarily employs persons who share the reli-
47 gious tenets of the group or entity.

48 (iii) The group or entity serves primarily persons who share the reli-
49 gious tenets of the group or entity.

50 (iv) The group or entity is a nonprofit organization as described in
51 Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as
52 amended.

53 (B) Every religious employer that invokes the exemption provided under
54 this paragraph shall provide written notice to prospective enrollees
55 prior to enrollment with the plan, listing the treatment of infertility

1 and standard fertility preservation services the employer refuses to
2 cover for religious reasons.

3 (8) For services provided pursuant to paragraph five of this
4 subsection, policies may:

5 (A) Require that services be performed by clinics or medical centers
6 that conform to guidelines issued by the American Society for Reproduc-
7 tive Medicine or the American College of Obstetricians and Gynecologists
8 (ACOG);

9 (B) Require, notwithstanding network adequacy requirements, that all
10 services be performed at designated providers identified by the insurer
11 as meeting specified credentialing and quality standards and which
12 participate in the insurer's provider network;

13 (C) Limit coverage for in vitro fertilization to those individuals who
14 have been unable to conceive or produce conception through less expen-
15 sive and medically viable infertility treatment or procedures covered
16 under such policy. Nothing in this subsection shall be construed to deny
17 the coverage required by this section to any individual who foregoes a
18 particular infertility treatment or procedure if the individual's physi-
19 cian determines that such treatment or procedure is likely to be unsuc-
20 cessful;

21 (D) For purposes of calculating the lifetime limit, require disclosure
22 by the individual seeking such coverage to such individual's existing
23 health insurance carrier of any previous infertility treatment or proce-
24 dures for which such individual received coverage under a different
25 health insurance policy issued by the same insurer or by another insur-
26 er; or

27 (E) Limit coverage related to in vitro fertilization services to
28 persons whose ages range from twenty-one through forty-four years.

29 § 4. Subparagraph (C) of paragraph 6 of subsection (k) of section 3221
30 of the insurance law, as amended by section 1 of part K of chapter 82 of
31 the laws of 2002, is amended to read as follows:

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

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

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

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

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

54 ~~(v)]~~ Coverage shall not be required to include the diagnosis and
55 treatment of infertility in connection with: (I) ~~[in vitro fertiliza-~~
56 ~~tion]~~ gamete intrafallopian tube transfers or zygote intrafallopian

1 tube transfers; (II) the reversal of elective sterilizations; (III) sex
2 change procedures; (IV) cloning; or (V) medical or surgical services or
3 procedures that are deemed to be experimental in accordance with clinical
4 guidelines referenced in clause ~~[(vi)]~~ (v) of this subparagraph.

5 ~~[(vi)]~~ (v) The superintendent, in consultation with the commissioner
6 of health, shall promulgate regulations which shall stipulate the guidelines
7 and standards which shall be used in carrying out the provisions
8 of this subparagraph, which shall include:

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

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

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

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

28 § 5. Paragraph 3 of subsection (s) of section 4303 of the insurance
29 law, as amended by section 2 of part K of chapter 82 of the laws of
30 2002, is amended to read as follows:

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

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

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

42 (C) Coverage may be subject to co-payments, coinsurance and deductibles
43 as may be deemed appropriate by the superintendent and as are consistent
44 with those established for other benefits within a given policy.

46 ~~[(D)] Coverage shall be limited to those individuals who have been
47 previously covered under the policy for a period of not less than twelve
48 months, provided that for the purposes of this paragraph "period of not
49 less than twelve months" shall be determined by calculating such time
50 from either the date the insured was first covered under the existing
51 policy or from the date the insured was first covered by a previously
52 in-force converted policy, whichever is earlier.~~

53 ~~[(E)]~~ (D) Coverage shall not be required to include the diagnosis and
54 treatment of infertility in connection with: (i) ~~[in vitro fertiliza-~~
55 ~~tion]~~ gamete intrafallopian tube transfers or zygote intrafallopian
56 tube transfers; (ii) the reversal of elective sterilizations; (iii) sex

1 change procedures; (iv) cloning; or (v) medical or surgical services or
2 procedures that are deemed to be experimental in accordance with clin-
3 ical guidelines referenced in subparagraph [~~(F)~~] (E) of this paragraph.

4 [~~(F)~~] (E) The superintendent, in consultation with the commissioner of
5 health, shall promulgate regulations which shall stipulate the guide-
6 lines and standards which shall be used in carrying out the provisions
7 of this paragraph, which shall include:

8 (i) The determination of "infertility" in accordance with the stand-
9 ards and guidelines established and adopted by the American College of
10 Obstetricians and Gynecologists and the American Society for Reproduc-
11 tive Medicine;

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

17 (iii) The identification of the required training, experience and
18 other standards for health care providers for the provision of proce-
19 dures and treatments for the diagnosis and treatment of infertility
20 determined in accordance with the standards and guidelines established
21 and adopted by the American College of Obstetricians and Gynecologists
22 and the American Society for Reproductive Medicine; and

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

27 § 6. Section 4 of part K of chapter 82 of the laws of 2002, amending
28 the insurance law and the public health law relating to coverage for the
29 diagnosis and treatment of infertility, is amended to read as follows:

30 § 4. The commissioner of health, subject to the availability of funds
31 pursuant to section 2807-v of the public health law, shall establish a
32 program to provide grants to health care providers for the purpose of
33 improving access to infertility services, treatments and procedures. At
34 least one such provider shall be located in the city of New York and one
35 such provider shall be located in an upstate region.

36 Such program shall be targeted to assist individuals in meeting the
37 cost of infertility services not covered pursuant to sections 3221 and
38 4303 of the insurance law as such sections are amended by sections one
39 and two of this act relating to expanded coverage of infertility
40 services. Services, treatments and procedures paid for pursuant to the
41 grant program shall be limited to: (a) those who meet the criteria for
42 such expanded coverage provided pursuant to the insurance law but for
43 whom the covered services are not effective for treating infertility,
44 and those who are unable to access coverage for the expanded procedures
45 enacted pursuant to a chapter of the laws of 2018; and (b) those who are
46 not enrolled in a commercial health care plan but who would otherwise
47 meet the criteria of subdivision (a) of this section. Services, treat-
48 ments and procedures paid for pursuant to the grant program shall be
49 further limited to assisted reproductive technology utilizing in vitro
50 fertilization and gamete intrafallopian tube transfer, and shall be made
51 available only in accordance with standards, protocols and other param-
52 eters as shall be established by the commissioner, which shall include
53 but not be limited to ASRM and ACOG standards for the appropriateness of
54 individuals, providers and treatments, and standards relating to cost-
55 sharing based on income. Services, treatments and procedures under the
56 grant program, except for those specified herein, shall not include

1 those services, treatments and procedures explicitly excluded under the
2 expanded coverage provided for in the insurance law as amended by
3 sections one and two of this act. Notwithstanding sections 112 and 163
4 of the state finance law, grants provided pursuant to such program may
5 be made without competitive bid or request for proposal.

6 The commissioner of health shall promote public awareness of this
7 program.

8 § 7. The superintendent of financial services in consultation with
9 the commissioner of health, shall reassess the coverage requirements of
10 this act and regulations promulgated thereunder pursuant to a review of
11 the comprehensive report funded pursuant to appropriation by chapter 50
12 of the laws of 2018 and the request for quote number C000457.

13 § 8. This act shall take effect January 1, 2020 and shall apply to all
14 policies issued, renewed, altered or modified on or after such date;
15 provided, however, that should this act be determined to be a mandate
16 pursuant to section 1311 (d)(3)(B) of the Patient Protection and Afford-
17 able Care Act, then this act shall not apply to coverage offered in the
18 individual and small group market unless the state appropriates funds
19 sufficient to cover the full cost of such coverage, as determined by the
20 department of financial services and independently verified by an inde-
21 pendent actuarial firm certified by the American academy of actuaries.
22 In addition, the superintendent of financial services shall permit
23 insurers and other organizations subject to this act to establish a
24 minimum factor attributable to the services covered pursuant to this
25 chapter that may be incorporated into rates for large group policies
26 issued on or after January 1, 2020. Provided further, however, that
27 should this act be determined not to be a mandate pursuant to section
28 1311(d)(3)(B) of the Patient Protection and Affordable Care Act, then
29 the superintendent of financial services shall include in the approved
30 small group and individual rates a factor attributable to the cost of
31 services covered pursuant to this chapter and consistent with the actu-
32 arial cost, as projected by the applicant, of such coverage that shall
33 be incorporated into rates for policies issued on or after January 1,
34 2020.