STATE OF NEW YORK

2415

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

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:

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

(13) (A) Every policy which provides coverage for hospital care shall not exclude coverage for hospital care for diagnosis and treatment of correctable medical conditions otherwise covered by the policy solely because the medical condition results in infertility[~~.~~]**; provided however that:**

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

(ii) Provided, further however, that subject to the provisions of subparagraph (C) of this paragraph, in no case shall such coverage exclude diagnostic tests and procedures provided as part of such hospital care that are necessary to determine infertility or that are necessary in connection with any surgical or medical treatments or prescription drug coverage provided pursuant to this paragraph, including such diagnostic tests and procedures as hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy, semen analysis, blood tests, ultrasound, ovulation induction, intrauterine insemination, in-vitro fertilization, intracytoplasmic sperm injection, uterine embryo lavage, embryo transfer, gamete

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

LBD06452-01-7

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

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

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

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

(ii) Provided, further however, that subject to the provisions of subparagraph (C) of this paragraph, in no case shall such coverage exclude diagnostic tests and procedures provided as part of such hospital care that are necessary to determine infertility or that are necessary in connection with any surgical or medical treatments or prescription drug coverage provided pursuant to this paragraph, including such diagnostic tests and procedures as hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy, semen analysis, blood tests, ultrasound, 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; and

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

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

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

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

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

(iv) Coverage shall be limited to those individuals who have been previously covered under the policy for a period of not less than twelve months, provided that for the purposes of this subparagraph "period of not less than twelve months" shall be determined by calculating such time from either the date the insured was first covered under the existing policy or from the date the insured was first covered by a previously 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:

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

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

(ii) provided, further however, that subject to the provisions of subparagraph (C) of this paragraph, in no case shall such coverage exclude diagnostic tests and procedures provided as part of such hospital care that are necessary to determine infertility or that are necessary in connection with any surgical or medical treatments or prescription drug coverage provided pursuant to this paragraph, including such diagnostic tests and procedures as hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy, semen analysis, blood tests [~~and~~], ultrasound**, 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**; and

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

(B) Every group policy issued or delivered in this state which provides coverage for surgical and medical care shall not exclude coverage for surgical and medical care for diagnosis and treatment of correctable medical conditions [~~otherwise covered by the policy~~] solely because the medical condition results in infertility; provided, however that:

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

(ii) provided, further however, that subject to the provisions of subparagraph (C) of this paragraph, in no case shall such coverage exclude diagnostic tests and procedures that are necessary to determine infertility or that are necessary in connection with any surgical or medical treatments or prescription drug coverage provided pursuant to this paragraph, including such diagnostic tests and procedures as hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy, semen analysis, blood tests [~~and~~], ultrasound**, 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**; and

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

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

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

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

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

(iv) Coverage shall be limited to those individuals who have been previously covered under the policy for a period of not less than twelve months, provided that for the purposes of this subparagraph "period of not less than twelve months" shall be determined by calculating such time from either the date the insured was first covered under the existing policy or from the date the insured was first covered by a previously 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) [~~in vitro fertilization, gamete intrafallopian tube transfers or zygote intrafallopian tube transfers; (II)~~] the reversal of elective sterilizations; [~~(III)~~] **(II)** sex change procedures; [~~(IV)~~] **(III)** cloning; or [~~(V)~~] **(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.

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

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

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

(B) provided, further however, that subject to the provisions of paragraph three of this subsection, in no case shall such coverage exclude diagnostic tests and procedures provided as part of such hospital care that are necessary to determine infertility or that are necessary in connection with any surgical or medical treatments or prescription drug coverage provided pursuant to this subsection, including such diagnostic tests and procedures as hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy, semen analysis, blood tests [~~and~~], ultrasound, 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; and

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

(2) A medical expense indemnity or health service corporation which provides coverage for surgical and medical care shall not exclude coverage for surgical and medical care for diagnosis and treatment of correctable medical conditions otherwise covered by the policy solely because the medical condition results in infertility; provided, however that:

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

(B) provided, further however, that subject to the provisions of paragraph three of this subsection, in no case shall such coverage exclude diagnostic tests and procedures that are necessary to determine infertility or that are necessary in connection with any surgical or medical treatments or prescription drug coverage provided pursuant to this subsection, including such diagnostic tests and procedures as hysterosalpingogram, hysteroscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital tests, testis biopsy, semen analysis, blood tests [~~and~~], ultrasound**, 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**; and

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

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

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

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

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

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

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

(F) 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 paragraph, 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.

(G) A policy providing coverage under this subsection 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.

§ 4. This act shall take effect immediately.