

# STATE OF NEW YORK

3148

2017-2018 Regular Sessions

## IN SENATE

January 20, 2017

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 § 3242. In vitro fertilization and fertility-related provisions in  
4 policies. (a) Definitions. (1) As used in this section, "infertility"  
5 means a disease characterized by the incapacity to impregnate another  
6 person or to conceive, as diagnosed or determined (A) by a physician  
7 licensed to practice medicine in the state, or (B) by the failure to  
8 establish a clinical pregnancy after twelve months of regular, unpro-  
9 ected sexual intercourse.

10 (2) As used in this section, "iatrogenic infertility" means an impair-  
11 ment of fertility by surgery, radiation, chemotherapy or other medical  
12 treatment affecting reproductive organs or processes.

13 (b) Except as provided in subsection (d) of this section, no policy of  
14 group or blanket accident and health insurance shall be delivered or  
15 issued for delivery in this state to a group unless it contains in  
16 substance the following provisions or provisions which in the opinion of  
17 the superintendent are more favorable to the holders of such certif-  
18 icates or not less favorable to the holders of such certificates and  
19 more favorable to policyholders:

20 (1) Coverage of diagnostic and treatment procedures, including  
21 prescription drugs and in vitro fertilization, used in the diagnosis and  
22 treatment of infertility.

23 (2) Coverage of medically necessary expenses for standard fertility  
24 preservation services when a necessary medical treatment may directly or  
25 indirectly cause iatrogenic infertility to a covered person.

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

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Policies which cover hospital services only, medical or surgical services only, or prescription drugs only, shall provide fertility-related coverage to the extent they fall within the categories of services otherwise covered.

(c) In determining coverage pursuant to this section, an insurer shall not discriminate based on an individual's expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions, nor based on personal characteristics, including age, sex, sexual orientation or marital status.

(d) The requirements of this section shall not apply to group or blanket accident and health insurance policies issued in the small group market.

§ 2. Subparagraph (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, is amended to read as follows:

(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)]~~ (ii) 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)]~~ (iii) 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)]~~ (iv) 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)]~~ (v) of this subparagraph.

~~[(vi)]~~ (v) 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]~~ definitions of infertility and iatrogenic infertility in paragraphs one and two of subsection (a) of section three thousand two hundred forty-two of this chapter;

(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.

§ 3. Paragraph 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, is amended to read as follows:

(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)~~ (B) 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)~~ (C) 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)~~ (D) 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)]~~ (E) of this paragraph.

~~(F)~~ (E) 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]~~ definitions of infertility and iatrogenic infertility in

paragraphs one and two of subsection (a) of section three thousand two hundred forty-two of this chapter;

(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.

§ 4. This act shall take effect immediately.