

# STATE OF NEW YORK

8441

## IN SENATE

May 7, 2018

Introduced by Sens. PHILLIPS, HELMING -- 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 Assem-  
bly, do enact as follows:

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

4 (C) Every policy delivered or issued for delivery in this state that  
5 provides coverage for hospital, surgical or medical care shall provide  
6 coverage for:

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

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

11 (D) (i) For the purposes of subparagraph (C) of this paragraph,  
12 "infertility" means a condition or disease characterized by the incapac-  
13 ity to impregnate another person or to conceive, as diagnosed or deter-  
14 mined (I) by a physician licensed to practice medicine in this state, or  
15 (II) by the failure to establish a clinical pregnancy after twelve  
16 months of regular, unprotected sexual intercourse, or after six months  
17 of regular, unprotected sexual intercourse in the case of a female thir-  
18 ty-five years of age or older.

19 (ii) For the purposes of subparagraph (C) of this paragraph, "iatro-  
20 genic infertility" means an impairment of fertility by surgery, radi-  
21 ation, chemotherapy or other medical treatment affecting reproductive  
22 organs or processes.

23 (E) No insurer providing coverage under this paragraph shall discrimi-  
24 nate based on a covered individual's expected length of life, present or  
25 predicted disability, degree of medical dependency, perceived quality of  
26 life, or other health conditions, nor based on personal characteristics,  
27 including age, sex, sexual orientation, marital status or gender identi-  
28 ty.

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

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

(E) Every group policy delivered or issued for delivery in this state that provides hospital, surgical or medical coverage shall provide 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.

(F) (i) For the purposes of subparagraph (E) of this paragraph, "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 thirty-five years of age or older.

(ii) For the purposes of subparagraph (E) of this paragraph, "iatrogenic infertility" means an impairment of fertility by surgery, radiation, chemotherapy or other medical treatment affecting reproductive organs or processes.

(G) No insurer providing coverage under this paragraph shall discriminate based on a covered individual's expected length of life, present or predicted disability, degree of medical dependency, perceived quality of life, or other health conditions, nor based on personal characteristics, including age, sex, sexual orientation, marital status or gender identity.

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

(5) Every contract issued by a medical expense indemnity corporation, hospital service corporation or health service corporation for delivery in this state that provides hospital, surgical or medical coverage shall provide coverage for:

(A) in vitro fertilization used in the treatment of infertility; and  
(B) standard fertility preservation services when a necessary medical treatment may directly or indirectly cause iatrogenic infertility to a covered person.

(6) (A) For the purposes of paragraph five of this subsection, "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 thirty-five years of age or older.

(B) For the purposes of paragraph five of this subsection, "iatrogenic infertility" means an impairment of fertility by surgery, radiation, chemotherapy or other medical treatment affecting reproductive organs or processes.

(7) No medical expense indemnity corporation, hospital service corporation or health service corporation providing coverage under this subsection shall discriminate based on a covered individual's expected length of life, present or predicted disability, degree of medical dependency, perceived quality of life, or other health conditions, nor

based on personal characteristics, including age, sex, sexual orientation, marital status or gender identity.

§ 4. 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) 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)]~~ (iii) 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)]~~ (iv) of this subparagraph.

~~[(vi)]~~ (iv) 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)]~~ (ii) 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)]~~ (iii) The determination of appropriate medical candidates by the treating physician in accordance with the standards and guidelines

1 established and adopted by the American College of Obstetricians and  
2 Gynecologists and/or the American Society for Reproductive Medicine.

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

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

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

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

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

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

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

36 ~~[(F)]~~ (D) The superintendent, in consultation with the commissioner of  
37 health, shall promulgate regulations which shall stipulate the guide-  
38 lines and standards which shall be used in carrying out the provisions  
39 of this paragraph, which shall include:

40 (i) ~~[The determination of "infertility" in accordance with the stand-~~  
41 ~~ards and guidelines established and adopted by the American College of~~  
42 ~~Obstetricians and Gynecologists and the American Society for Reproduc-~~  
43 ~~tive Medicine;]~~

44 ~~(ii)]~~ The identification of experimental procedures and treatments not  
45 covered for the diagnosis and treatment of infertility determined in  
46 accordance with the standards and guidelines established and adopted by  
47 the American College of Obstetricians and Gynecologists and the American  
48 Society for Reproductive Medicine;

49 ~~[(iii)]~~ (ii) The identification of the required training, experience  
50 and other standards for health care providers for the provision of  
51 procedures and treatments for the diagnosis and treatment of infertility  
52 determined in accordance with the standards and guidelines established  
53 and adopted by the American College of Obstetricians and Gynecologists  
54 and the American Society for Reproductive Medicine; and

55 ~~[(iv)]~~ (iii) The determination of appropriate medical candidates by  
56 the treating physician in accordance with the standards and guidelines

1 established and adopted by the American College of Obstetricians and  
2 Gynecologists and/or the American Society for Reproductive Medicine.  
3 § 6. This act shall take effect January 5, 2019 and shall apply to all  
4 policies issued, renewed, altered or modified on or after such date.