

# STATE OF NEW YORK

9535

## IN SENATE

May 16, 2024

Introduced by Sen. SCARCELLA-SPANTON -- read twice and ordered printed,  
and when printed to be committed to the Committee on Women's Issues

AN ACT to amend the insurance law, in relation to expanding insurance  
coverage of in vitro fertilization, including individual health insur-  
ance policy coverage

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

1 Section 1. Item (vii) of subparagraph (C) of paragraph 6 of subsection  
2 (k) of section 3221 of the insurance law, as amended by section 1 of  
3 part L of chapter 57 of the laws of 2019, is amended to read as follows:

4 (vii) Every large group policy delivered or issued for delivery in  
5 this state that provides medical, major medical or similar compre-  
6 hensive-type coverage shall provide coverage for three [~~cycles of in vitro~~  
7 complete oocyte retrievals and in vitro fertilization used in the treat-  
8 ment of infertility with unlimited embryo transfers from fresh or frozen  
9 oocytes or embryos from a covered retrieval. Coverage may be subject to  
10 annual deductibles and coinsurance, including copayments, as may be  
11 deemed appropriate by the superintendent and as are consistent with  
12 those established for other benefits within a given policy. [~~For~~  
13 ~~purposes of this item, a "cycle" is defined as either all treatment that~~  
14 ~~starts when: preparatory medications are administered for ovarian stimu-~~  
15 ~~lation for oocyte retrieval with the intent of undergoing in vitro~~  
16 ~~fertilization using a fresh embryo transfer, or medications are adminis-~~  
17 ~~tered for endometrial preparation with the intent of undergoing in vitro~~  
18 ~~fertilization using a frozen embryo transfer.]~~

19 § 2. Subparagraph (G) of paragraph 3 of subsection (s) of section 4303  
20 of the insurance law, as amended by section 2 of part L of chapter 57 of  
21 the laws of 2019, is amended to read as follows:

22 (G) Every large group contract that provides medical, major medical or  
23 similar comprehensive-type coverage shall provide coverage for three  
24 [~~cycles of in vitro~~ complete oocyte retrievals and in vitro fertiliza-  
25 tion used in the treatment of infertility with unlimited embryo trans-  
26 fers from fresh or frozen oocytes or embryos from a covered retrieval.  
27 Coverage may be subject to annual deductibles and coinsurance, including

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

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1 copayments, as may be deemed appropriate by the superintendent and as  
2 are consistent with those established for other benefits within a given  
3 contract. [~~For purposes of this subparagraph, a "cycle" is defined as~~  
4 ~~either all treatment that starts when: preparatory medications are~~  
5 ~~administered for ovarian stimulation for oocyte retrieval with the~~  
6 ~~intent of undergoing in vitro fertilization using a fresh embryo trans-~~  
7 ~~fer, or medications are administered for endometrial preparation with~~  
8 ~~the intent of undergoing in vitro fertilization using a frozen embryo~~  
9 ~~transfer.~~]

10 § 3. Paragraph 13 of subsection (i) of section 3216 of the insurance  
11 law, as added by chapter 897 of the laws of 1990 and renumbered by chap-  
12 ter 131 of the laws of 1992 and subparagraph (C) as added by section 3  
13 of part L of chapter 57 of the laws of 2019, is amended to read as  
14 follows:

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

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

24 (ii) provided, further however, that subject to the provisions of  
25 subparagraph (C) of this paragraph, in no case shall such coverage  
26 exclude diagnostic tests and procedures provided as part of such hospi-  
27 tal care that are necessary to determine infertility or that are neces-  
28 sary in connection with any surgical or medical treatments or  
29 prescription drug coverage provided pursuant to this paragraph, includ-  
30 ing such diagnostic tests and procedures as hysterosalpingogram, hyster-  
31 oscopy, endometrial biopsy, laparoscopy, sono-hysterogram, post coital  
32 tests, testis biopsy, semen analysis, blood tests and ultrasound; and

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

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

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

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

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

6 ~~(C) [Every policy that provides medical, major medical or similar~~  
7 ~~comprehensive-type coverage shall provide coverage for]~~ Coverage of  
8 diagnostic and treatment procedures, including prescription drugs, used  
9 in the diagnosis and treatment of infertility as required by subpara-  
10 graphs (A) and (B) of this paragraph shall be provided in accordance  
11 with the provisions of this subparagraph.

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

15 (ii) Coverage may be subject to co-payments, coinsurance and deduct-  
16 ibles as may be deemed appropriate by the superintendent and as are  
17 consistent with those established for other benefits within a given  
18 policy.

19 (iii) Except as provided in items (vi) and (vii) of this subparagraph,  
20 coverage shall not be required to include the diagnosis and treatment of  
21 infertility in connection with: (I) in vitro fertilization, gamete  
22 intrafallopian tube transfers or zygote intrafallopian tube transfers;  
23 (II) the reversal of elective sterilizations; (III) sex change proce-  
24 dures; (IV) cloning; or (V) medical or surgical services or procedures  
25 that are deemed to be experimental in accordance with clinical guide-  
26 lines referenced in item (iv) of this subparagraph.

27 (iv) The superintendent, in consultation with the commissioner of  
28 health, shall promulgate regulations which shall stipulate the guide-  
29 lines and standards which shall be used in carrying out the provisions  
30 of this subparagraph, which shall include:

31 (I) The identification of experimental procedures and treatments not  
32 covered for the diagnosis and treatment of infertility determined in  
33 accordance with the standards and guidelines established and adopted by  
34 the American College of Obstetricians and Gynecologists and the American  
35 Society for Reproductive Medicine;

36 (II) The identification of the required training, experience and other  
37 standards for health care providers for the provision of procedures and  
38 treatments for the diagnosis and treatment of infertility determined in  
39 accordance with the standards and guidelines established and adopted by  
40 the American College of Obstetricians and Gynecologists and the American  
41 Society for Reproductive Medicine; and

42 (III) The determination of appropriate medical candidates by the  
43 treating physician in accordance with the standards and guidelines  
44 established and adopted by the American College of Obstetricians and  
45 Gynecologists and/or the American Society for Reproductive Medicine.

46 (v) Coverage shall also include standard fertility preservation  
47 services when a medical treatment may directly or indirectly cause  
48 iatrogenic infertility to an insured. Coverage may be subject to annual  
49 deductibles and coinsurance, including copayments, as may be deemed  
50 appropriate by the superintendent and as are consistent with those  
51 established for other benefits within a given policy.

52 (vi) Every policy which provides coverage for hospital care shall  
53 provide coverage for three complete oocyte retrievals and in vitro  
54 fertilization used in the treatment of infertility with unlimited embryo  
55 transfers from fresh or frozen oocytes or embryos from a covered  
56 retrieval. Coverage may be subject to annual deductibles and coinsu-

1 rance, including copayments, as may be deemed appropriate by the super-  
2 intendent and as are consistent with those established for other bene-  
3 fits within a given policy.

4 (vii) (I) For the purposes of this paragraph, "infertility" means a  
5 disease or condition characterized by the incapacity to impregnate  
6 another person or to conceive, defined by the failure to establish a  
7 clinical pregnancy after twelve months of regular, unprotected sexual  
8 intercourse or therapeutic donor insemination, or after six months of  
9 regular, unprotected sexual intercourse or therapeutic donor insemina-  
10 tion for a female thirty-five years of age or older. Earlier evaluation  
11 and treatment may be warranted based on an individual's medical history  
12 or physical findings.

13 [~~(i)~~] (II) For purposes of this [subparagraph] paragraph, "iatrogenic  
14 infertility" means an impairment of fertility by surgery, radiation,  
15 chemotherapy or other medical treatment affecting reproductive organs or  
16 processes.

17 [~~(ii)~~] (viii) No insurer providing coverage under this paragraph shall  
18 discriminate based on an insured's expected length of life, present or  
19 predicted disability, degree of medical dependency, perceived quality of  
20 life, or other health conditions, nor based on personal characteristics,  
21 including age, sex, sexual orientation, marital status or gender identi-  
22 ty.

23 (D) Every policy that provides coverage for prescription fertility  
24 drugs and requires or permits prescription drugs to be purchased through  
25 a network participating mail order or other non-retail pharmacy shall  
26 provide the same coverage for prescription fertility drugs when such  
27 drugs are purchased from a network participating non-mail order retail  
28 pharmacy provided that the network participating non-mail order retail  
29 pharmacy agrees in advance through a contractual network agreement, to  
30 the same reimbursement amount, as well as the same applicable terms and  
31 conditions, that the insurer has established for a network participating  
32 mail order or other non-retail pharmacy. In such case, the policy shall  
33 not impose any fee, co-payment, coinsurance, deductible or other condi-  
34 tion on any covered person who elects to purchase prescription fertility  
35 drugs through a network participating non-mail order retail pharmacy  
36 that it does not impose on any covered person who purchases prescription  
37 fertility drugs through a network participating mail order or other  
38 non-retail pharmacy; provided, however, that the provisions of this  
39 section shall not supersede the terms of a collective bargaining agree-  
40 ment or apply to a policy that is the result of a collective bargaining  
41 agreement between an employer and a recognized or certified employee  
42 organization.

43 § 4. This act shall take effect January 1, 2025, and shall apply to  
44 policies and contracts issued, renewed, modified, altered or amended on  
45 or after such date.