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 insurance policy coverage

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

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

(vii) Every large group policy delivered or issued for delivery in this state that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for three [~~cycles of in-vitro~~] **complete oocyte retrievals and in vitro** fertilization used in the treatment of infertility **with unlimited embryo transfers from fresh or frozen oocytes or embryos from a covered retrieval**. Coverage may be subject to annual deductibles and coinsurance, including copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. [~~For purposes of this item, a "cycle" is defined as either all treatment that starts when: preparatory medications are administered for ovarian stimulation for oocyte retrieval with the intent of undergoing in-vitro fertilization using a fresh embryo transfer; or medications are administered for endometrial preparation with the intent of undergoing in-vitro fertilization using a frozen embryo transfer.~~]

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

(G) Every large group contract that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for three [~~cycles of in-vitro~~] **complete oocyte retrievals and in vitro** fertilization used in the treatment of infertility **with unlimited embryo transfers from fresh or frozen oocytes or embryos from a covered retrieval**. 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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copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given contract. [~~For purposes of this subparagraph, a "cycle" is defined as either all treatment that starts when: preparatory medications are administered for ovarian stimulation for oocyte retrieval with the intent of undergoing in-vitro fertilization using a fresh embryo transfer; or medications are administered for endometrial preparation with the intent of undergoing in-vitro fertilization using a frozen embryo transfer.~~]

§ 3. 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 and subparagraph (C) as added by section 3 of part L of chapter 57 of the laws of 2019, 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 and ultrasound; 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 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; 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) [~~Every policy that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for~~] 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) 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.

(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.

(iii) Except as provided in items (vi) and (vii) of this subparagraph, 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) sex change procedures; (IV) cloning; or (V) medical or surgical services or procedures that are deemed to be experimental in accordance with clinical guidelines referenced in item (iv) of this subparagraph.

(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 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;

(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

(III) 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.

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

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

rance, including copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy.

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

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

[~~(ii)~~] (viii) No insurer providing coverage under this paragraph shall discriminate based on an insured'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.

(D) Every policy that provides coverage for prescription fertility drugs and requires or permits prescription drugs to be purchased through a network participating mail order or other non-retail pharmacy shall provide the same coverage for prescription fertility drugs when such drugs are purchased from a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy agrees in advance through a contractual network agreement, to the same reimbursement amount, as well as the same applicable terms and conditions, that the insurer has established for a network participating mail order or other non-retail pharmacy. In such case, the policy shall not impose any fee, co-payment, coinsurance, deductible or other condition on any covered person who elects to purchase prescription fertility drugs through a network participating non-mail order retail pharmacy that it does not impose on any covered person who purchases prescription fertility drugs through a network participating mail order or other non-retail pharmacy; provided, however, that the provisions of this section shall not supersede the terms of a collective bargaining agreement or apply to a policy that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization.

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