

STATE OF NEW YORK

8973--A

IN SENATE

April 4, 2024

Introduced by Sen. SCARCELLA-SPANTON -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to expanded coverage of in vitro fertilization

The People of the State of New York, represented in Senate and Assembly, 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 comprehen-
6 sive-type coverage shall provide coverage for [~~three cycles of in vitro~~
7 in vitro fertilization used in the treatment of infertility. Coverage
8 may be subject to annual deductibles and coinsurance, including copay-
9 ments, as may be deemed appropriate by the superintendent and as are
10 consistent with those established for other benefits within a given
11 policy. [~~For purposes of this item, a "cycle" is defined as either all
12 treatment that starts when: preparatory medications are administered for
13 ovarian stimulation for oocyte retrieval with the intent of undergoing
14 in-vitro fertilization using a fresh embryo transfer, or medications are
15 administered for endometrial preparation with the intent of undergoing
16 in-vitro fertilization using a frozen embryo transfer.]~~

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

20 (G) Every large group contract that provides medical, major medical or
21 similar comprehensive-type coverage shall provide coverage for [~~three
22 cycles of in vitro~~ in vitro fertilization used in the treatment of
23 infertility. Coverage may be subject to annual deductibles and coinsu-
24 rance, including copayments, as may be deemed appropriate by the super-
25 intendent and as are consistent with those established for other bene-
26 fits within a given contract. [~~For purposes of this subparagraph, a~~

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

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~~1 "cycle" is defined as either all treatment that starts when: preparatory
2 medications are administered for ovarian stimulation for oocyte
3 retrieval with the intent of undergoing in-vitro fertilization using a
4 fresh embryo transfer; or medications are administered for endometrial
5 preparation with the intent of undergoing in-vitro fertilization using a
6 frozen embryo transfer.]~~

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

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

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

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

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

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

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

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

53 (iii) provided, further however, every such policy which provides
54 coverage for prescription drugs shall include, within such coverage,
55 coverage for prescription drugs approved by the federal Food and Drug

1 Administration for use in the diagnosis and treatment of infertility in
2 accordance with subparagraph (C) of this paragraph.

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

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

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

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

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

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

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

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

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

49 (vi) Every policy which provides coverage for hospital care shall
50 provide coverage for in vitro fertilization used in the treatment of
51 infertility. Coverage may be subject to annual deductibles and coinsu-
52 rance, including copayments, as may be deemed appropriate by the super-
53 intendent and as are consistent with those established for other bene-
54 fits within a given policy.

55 (vii) (I) For the purposes of this paragraph, "infertility" means a
56 disease or condition characterized by the incapacity to impregnate

1 another person or to conceive, defined by the failure to establish a
2 clinical pregnancy after twelve months of regular, unprotected sexual
3 intercourse or therapeutic donor insemination, or after six months of
4 regular, unprotected sexual intercourse or therapeutic donor insemina-
5 tion for a female thirty-five years of age or older. Earlier evaluation
6 and treatment may be warranted based on an individual's medical history
7 or physical findings.

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

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

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

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