A STUDY OF NEW JERSEY ASSEMBLY BILL 5235

REVISES HEALTH INSURANCE COVERAGE REQUIREMENTS FOR TREATMENT OF INFERTILITY

Report to the New Jersey Assembly

February 29, 2024

Mandated Health Benefits Advisory Commission

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INTRODUCTION

The Mandated Health Benefits Advisory Commission (MHBAC) has been asked to review A5235 (see Appendix I for a copy of the legislation), a bill that revises and expands health insurance coverage for treatment of infertility for health insurers (health, hospital, and medical service corporations, commercial individual, small group, and large group employer health insurers, health maintenance organizations, the State Health Benefits Program (SHBP), and the School Employees' Health Benefits Program (SEHBP)).

Specifically, A5235 amends P.L. 2001, c.236 (C.17:48-6x et al.) and P.L. 2017, c.48 (C.52:14-17.29y et al.) to expand coverage for medically necessary expenses, as determined by a physician,[i] incurred in the diagnosis and treatment of infertility. A5235 also expands insurance coverage for infertility services to partners of persons who have successfully reversed a voluntary sterilization.

The Mandated Health Benefits Advisory Commission Act (N.J.S.A. 17B:27D-1 et seq.) tasks the Commission with providing an independent analysis of the social, medical, and financial impact of proposed legislation referred to it for review. The Act does not ask the Commission to recommend whether to enact the legislation, and the Commission does not do so here. The MHBAC prepared this report using its own resources, including staff from the New Jersey Department of Banking and Insurance. Commission members contributed their professional expertise, on a voluntary basis, in helping to shape the presentation of this report, analyzing published research, and drafting and editing its various sections. The MHBAC has sought to include information from a number of reputable sources that it found credible but recognizes that opinions and analyses may differ.

LEGISLATIVE HISTORY

In the Assembly, A5235 was introduced on February 23, 2023, and was referred to the Assembly Financial Institutions and Insurance Committee. The bill would apply to hospital, medical and health service corporations, health maintenance organizations, commercial individual, small, and large employer health benefits plans, and the SHBP and the SEHBP. The bill expands existing mandated infertility coverage to include intrauterine insemination, genetic testing, and unlimited embryo transfers, and expands that required coverage to the individual and small group markets.

A counterpart bill, S3627, was also introduced in the Senate on February 23, 2023, and was referred to the Senate Commerce Committee.

SOCIAL IMPACT

According to the Centers for Disease Control and Prevention (CDC), about 19% of married women aged 15 to 49 years with no prior births are unable to become pregnant after one year of unprotected sexual intercourse, a common definition of infertility.[ii] About 6% of married women of the same ages who have ever given birth are also unable to become pregnant after one year of unprotected sexual intercourse. A study of married and cohabiting women aged 15 to 44 years for the period 2017-2019 had similar findings; for women who had never given birth, roughly 13% had not become pregnant after one year of trying, while for women of the same ages who had ever given birth, 6% had not become pregnant after one year of unprotected sexual intercourse.[iii] The lower rate of infertility in the slightly younger cohort of women demonstrates that female infertility rates increase significantly with age.

Another study of American women found that, while overall infertility rates had plateaued in the period 1995 to 2019, the overall rate obscured some significant differences among specific subgroups. "Women age 40 to 44 were about 11 times more likely to be infertile than younger women, women who did not complete high school were twice as likely to be infertile as those with higher levels of education, non-Hispanic Black women were 44% more likely to be infertile than women of other races and women who had not recently received sexual health care were 61% more likely to be infertile." The authors cited rising rates of sexually transmitted infections, falling numbers of women receiving preventive gynecological care, and delayed childbearing leading to a rising age of first-time mothers as contributing factors to rising infertility rates in these subgroups.[iv]

The American Society for Reproductive Medicine provides more concrete information on the connection between a woman's age and her chances of becoming pregnant. A healthy 30 year old women has a 20% chance of getting pregnant any month she tries. By age 40, a healthy woman has less than a 5% chance of getting pregnant any month she tries. Most women become unable to have a successful pregnancy sometime in their mid-40s.[v]

An estimated 9% of American males aged 15 to 44 are infertile.[vi] Male infertility can be caused by anatomical problems, trauma to the testes, cancer treatment (chemotherapy, radiation, or surgery), medical conditions (diabetes, certain autoimmune disorders), hormonal and genetic disorders, being overweight, heavy alcohol use, smoking, anabolic steroid use, and illicit drug use.[vii] Endocrine-disrupting chemicals are another cause of both male and female infertility.[viii] Among heterosexual couples experiencing infertility, about 30% of the cases are attributable to the male partner alone, about 30% of the cases are attributable to the female partner alone, approximately 30% of cases can be attributed to a combination of both partners, and, in roughly 10% of cases, the cause of the infertility is unexplained.[ix] [x]

Access to medical care for infertility is unevenly distributed in the US, both by socioeconomic characteristics and geographically. One study of women seeking infertility care found that Black

and Hispanic women traveled twice as far for treatment and were approximately twice as likely to report that income was a barrier to treatment as White and Asian women.[xi] Fewer Black and Hispanic women also reported ever having used medical services to attempt to become pregnant, as compared with White women. Another article focused on access to infertility treatment from the perspectives of cost and location. The author found that infertility clinics were heavily concentrated in "high net-worth areas," where patients could afford expensive, specialized care. He reported that 80% of all infertility clinics in the US were concentrated in New York City, leading one fertility specialist to term vast areas of the country "fertility deserts."[xii] This article also warned that about 45 new doctors trained in reproductive endocrinology were joining the medical field annually, just enough to replace the number of specialists retiring each year, while demand for specialized services, like intrauterine insemination (IUI) and in-vitro fertilization (IVF), increases.[xiii]

Most states offer no coverage for infertility services and treatment in their Medicaid programs. According to a study by KFF, eight states cover some or all of the costs of diagnosing infertility (Georgia, Hawaii, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, and New York),[xiv] while New York's Medicaid program covers 3 cycles of oral medication to increase the chances of infertile patients becoming pregnant.[xv] In September 2023, the District of Columbia passed a law mandating Medicaid coverage for fertility diagnosis and oral medication, similar to New York's Medicaid coverage, as well as a broader measure requiring health benefits plans to provide coverage for up to three cycles of IVF and, if needed, an embryo transfer to a gestational carrier, which is a third party who carries a pregnancy to term for an individual who cannot carry the pregnancy.[xvi] [xvii] Connecticut and Washington State considered bills in 2023 to add IVF coverage their Medicaid programs, but neither became law.[xviii]

The KFF study explained the impact of the dearth of Medicaid infertility services on racial and ethnic disparities:

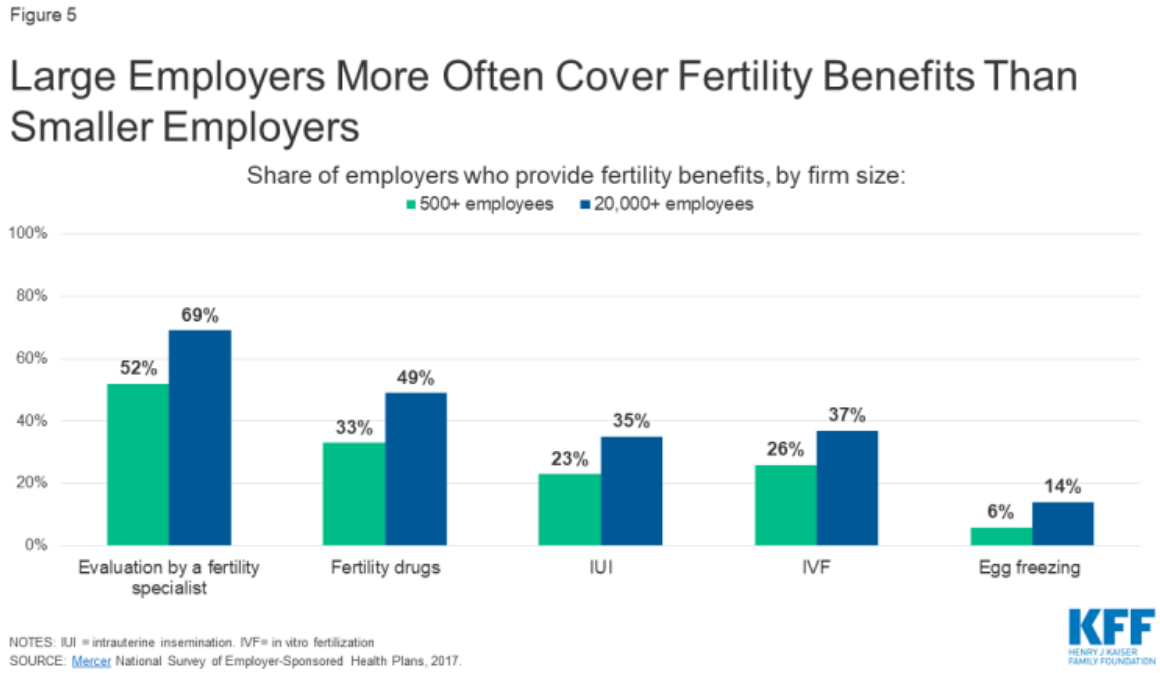
> The Medicaid program's lack of coverage of fertility assistance has a disproportionate impact on women of color. Among reproductive age women, the program covers…30%...who are Black and one quarter who are Hispanic (26%), compared to 15% who are White…. Nearly half of births in the U.S. are financed by Medicaid, and the program finances the majority of publicly-funded family planning services. Therefore, while there is broad coverage of many services for low-income people during pregnancy and to help prevent pregnancy, there is almost no access to help low-income people achieve pregnancy.[xix]

A recent analysis of data from 502 organizations representing nearly 20 industries and ranging in size from fewer than 50 to more than 10,000 employees, conducted by the International Foundation of Employee Benefit Plans (IFEBP), found that 40% of US employers offer fertility benefits to their workers, up from 30% in 2020.[xx] The employers reported that offering such

benefits was necessary to stay competitive in attracting and retaining key personnel, saving on health care costs, matching benefits to diversity, equity, and inclusion goals, and supporting the well-being of their employees. Of the group of employers that reported offering fertility benefits in 2022, 30% cover IVF treatments (compared with 13% in 2016), 28% cover fertility medications (compared with 8% in 2016), and 17% cover non-IVF fertility treatments (compared with 6% in 2016). In 2016, 2% of US employers reported covering egg harvesting and freezing services, while in 2022 14% report covering that benefit.[xxi] IFEBP reported that respondents indicated that fertility services were, "[A] highly valued benefit for employees, often with a low cost impact for employers." The availability of fertility services might lower overall health care costs, the respondents reported, because employees could make infertility diagnoses and treatment decisions with their doctors, based on best medical practices, rather than solely on individual financial circumstances.[xxii]

A recent Bloomberg article noted that big technology companies like Meta, Google, and Apple, as well as several prominent law firms, were adding coverage for infertility treatment to their employees' insurance plans to improve recruiting.[xxiii] As outlined below, and consistent with Mercer's 2017 National Survey of Employer-Sponsored Health Plans, the rate of coverage for fertility benefits is much higher among larger employers.

Figure 5



The text of New Hampshire's infertility bill, which became law in 2020, stated, "[I]t is in the public interest to make medical treatment for infertility and related conditions affordable for New Hampshire residents and employers, so as to attract and retain young families, expand the state's health care resources, reduce overall health care costs, and improve health outcomes for

the resulting children."[xxiv] The MHBAC will attempt to assess this statement in the next sections of this report on A5235.

MEDICAL EVIDENCE

One common definition of infertility is, "[T]he inability to achieve pregnancy after 1 year of regular, unprotected heterosexual intercourse."[xxv] The factors that influence infertility include difficulties with ovulation, problems with the structure of the uterus or fallopian tubes, problems with sperm quality or motility, and hormonal irregularities. It is estimated that 10-15% of heterosexual couples are affected by infertility.[xxvi]

Infertility treatment may require a series of services and procedures.

> Diagnostics typically include lab tests, a semen analysis and imaging studies…of the reproductive organs. If a probable cause of infertility is identified, treatment is often directed at addressing the source of the problem. For example, if someone has abnormal thyroid hormone levels, thyroid medications may help the patient achieve pregnancy. If a patient has large fibroids distorting the uterine cavity, surgical removal of these benign tumors may allow for future pregnancy. Other times, other interventions are needed to help the patient achieve pregnancy. For example, if a semen analysis reveals poor sperm motility or the fallopian tubes are blocked, the sperm will not be able to fertilize the egg, and intrauterine insemination (IUI) or in-vitro fertilization (IVF) may be necessary.[xxvii]

IVF treatment for infertility involves multiple steps. Diagnostic tests are used to determine appropriate candidates for the procedure. If a woman opts for IVF, she will receive synthetic hormones to stimulate her ovaries to produce multiple eggs. The eggs are then retrieved in an outpatient surgical procedure. Next, an embryologist will fertilize the eggs with the sperm of her partner or a donor to create embryos.[xxviii] After 3 to 5 days, an embryo or embryos can be implanted in the patient's uterus, another outpatient procedure known as embryo transfer. If the embryo transfer is done soon after fertilization, the procedure is called a fresh embryo transfer. The embryos can also be frozen and implanted at a later time, a procedure known as frozen embryo transfer (FET). Patients choose to freeze embryos for fertility preservation and to allow time for a laboratory to test the embryos for genetic abnormalities, among other reasons.[xxix]

Table 1 summarizes the stages of the IVF process, the procedures, steps, and component services within each stage, and an estimated cost range for each service (if it isn't included in the base fee).

Table 1. Stages and Estimated Costs, Procedures and Services of In-Vitro Fertilization

Stage	Procedure/Steps	Services Included	Cost Range
Before the Procedure	Base Fee	Monitoring appointments, egg retrieval, embryo creation, and fresh embryo transfer	$12,000- $14,000
	Fertility Assessment	Ultrasound of ovaries, blood test, physical exam	$250-$500
	Semen Analysis		$200-$250
	Injectable Medications	Gonadotropins	$3,000-$6,000
Embryo Creation and Fresh Embryo Transfer	Egg Retrieval		Included in base fee
	Anesthesia (during egg retrieval)		Included in base fee-$725
	Donor Sperm (if needed)		$300-$1600
	Intracytoplasmic Sperm Injection (ICSI)	Embryologist injects a single sperm into each egg using a small needle.	Included in base fee-$2,000
	Mock Embryo Transfer	Doctor mimics embryo transfer to determine best catheter to use and where to steer it when actual embryo transfer occurs	$240-$500
	Fresh Embryo Transfer		Included in base fee
Frozen Embryo Transfer (FET)	Embryo Cryopreservation	Embryos are exposed to a cryoprotectant agent and then undergo vitrification	$1000-$2000
	Embryo Storage		$350-$600 a year
	Genetic Testing	Screening for extra or missing chromosomes, tests for genetic mutations based on egg and sperm providers' genes, etc.	$1800-$6000
	Frozen Embryo Transfer	Embryo thaw and monitoring tests	Included in base fee-$6,400
	Medication for FET	Some clinicians prescribe progesterone before FET to help increase odds of successful implementation	$300-$1500

Source: Conrad, Marissa, "How Much Does IVF Cost?," Forbes Health, August 12, 2023. Accessed 11/14/23. How Much Does IVF Cost In 2023? – Forbes Health

Typically, the cost of a single IVF cycle, including ovarian stimulation, egg retrieval, and embryo transfer, can range from an estimated $15,000 to $20,000, with the cost of medications accounting for as much as 35% of those expenses.[xxx] An IVF cycle with more complicated or more extensive procedures can cost as much as $30,000. The National Conference of State Legislatures estimated the average cost for an IVF cycle to be $12,000 to $17,000.[xxxi] Many patients require multiple embryo transfers or multiple full IVF cycles before achieving a live birth. A5235 mandates insurance coverage for up to four completed egg retrievals and unlimited embryo transfers.

Table 2 presents some of the findings of a 2019 study by the Society for Assisted Reproductive Technology (SART) of the rate of live births resulting from egg transfers for women in various age groups. These data are for women using their own eggs in the IVF procedure.[xxxii]

Table 2. Percentage of Live Births per Egg Retrieval Cycle by Age

	Under 35	35-37	38-40	41-42	>42
1st Embryo Transfer	40.7%	31.7%	22.1%	11.7%	3.9%
All Embryo Transfers	55.0%	41.0%	26.8%	13.4%	4.3%
Additional Embryo Transfers (Frozen)*	47.8%	44.7%	40.8%	38.6%	32.5%
*Excludes 1st embryo transfer that did not result in a live birth and includes embryo transfers occurring more than 12 months after egg retrieval.					

Source: Society for Assisted Reproductive Technology (SART), "Final National Summary Report for 2019." Accessed 11/17/23. National Summary Report (sartcorsonline.com)

These data show that the success rate for a woman undergoing IVF, as measured in a live birth, is determined to some extent by the woman's age, the number of embryo transfers attempted, and whether embryos have been frozen and are available for embryo transfer at a later time.[xxxiii]

Intrauterine insemination is commonly used to treat male infertility and couples with unexplained infertility.[xxxiv] In IUI, sperm are collected from the male, and the sample is washed to produce a concentrated sample of healthy, high motility sperm. Several specimens can also be combined to provide an adequate sample for the insemination procedure.[xxxv] Frequently, the female partner is treated with medication to stimulate ovulation, and then, using a catheter, the sperm sample is injected through the female partner's cervix and into the uterus at the optimal time for fertilization. When IUI is combined with the use of medications, the overall success rate is approximately 12% per attempt. Another source stratifies the data by the female patient's age, reporting that IUI results in a live birth in 13% of attempts for women under age 35, 10% of attempts for women aged 35 to 37 years old, 7% of attempts for women aged 38-40 years, and

4% of attempts for women over age 40.[xxxvii] With IUI, "three to four attempts are often recommended before resorting to IVF."

A 2011 study of out-of-pocket costs for IUI treatment with medications for infertility patients in Northern California found that the costs ranged from $3,595 to $8,594 per person (irrespective of outcome) and $10,696 to $19,566 per successful outcome, defined as a live birth or an ongoing pregnancy at the time the study ended.[xxxix] Two more recent sources report that the costs for IUI have come down substantially since 2011. Fertility IQ, for example, finds that a typical IUI cycle costs $500 to $4,000, depending on the type of medication used, with oral medication adding $100 per cycle and injectable medication adding $2000 per cycle, and depending on the intensity of the monitoring and bloodwork required for the specific procedure (date of data unspecified).[xl] Extend Fertility, similarly, reported 2020 costs per IUI cycle ranging from $1,100 for IUI with oral medication ($100 for the medication) to $3,000 for IUI with injectable medication ($2,000 for the medication).[xli]

A5235 expands mandated insurance coverage for infertility treatment by including IUI, genetic testing, and unlimited embryo transfers. This report's next section compares the proposed mandated insurance coverage in A5235 with mandated insurance coverage in other states.

OTHER STATES

As of September 2023, RESOLVE: The National Infertility Association identified 14 states and the District of Columbia (DC) as mandating IVF insurance coverage. RESOLVE also reported that Montana and Louisiana mandate some insurance coverage for infertility treatment, while Texas and California require insurers to offer infertility or IVF treatment coverage but do not mandate that all health benefits plans include such coverage (for example, in California, group plans are required to offer infertility coverage, but employers have discretion as to whether to include that coverage as part of the employer's health benefits package).[xlii] Table 3 presents information on the jurisdictions with current IVF insurance mandates.

Table 3. States with IVF Insurance Coverage Mandates

State	Description of IVF Mandate	Insurance Markets Offering/Exempt from Offering Coverage
Arkansas	Lifetime maximum of $15,000 for IVF coverage	All individual and group insurers that provide maternity benefits must cover IVF; HMOs and self-insured employers are exempt
Colorado	3 complete egg retrieval cycles with unlimited embryo transfers	All large group employers (more than 100 employees) must cover IVF; individual and small group policies are exempt unless the federal Department of Health and Human Services (HHS) determines that coverage for fertility services does not require defrayal by the state; self-insured employers are exempt
Connecticut	4 cycles of ovulation induction; 2 cycles of IVF with 2 embryo transfers per IVF cycle; 3 cycles of intrauterine insemination	Self-insured employers are exempt
Delaware	6 complete cycles of egg retrieval with unlimited embryo transfers; intrauterine insemination	All individual, group and blanket health insurance policies that provide for medical or hospital expenses must cover IVF; employers who self-insure or who have fewer than 50 employees are exempt from the requirements of the law
Hawaii	1 cycle of IVF	Self-insured employers are exempt
Illinois	4 cycles of egg retrieval are covered, but if a live birth results, patient can be covered for 2 more cycles, for a lifetime maximum of 6 cycles	Group insurers and HMOs that provide pregnancy related coverage must cover IVF; employers with fewer than 25 employees and self-insured employers are exempt
Maine	Fertility diagnostic care and fertility treatment (including IVF)	Any carrier offering a health plan must cover IVF
Maryland	3 cycles of IVF, up to a lifetime maximum of $100,000	Individual and group insurance policies that provide pregnancy-related benefits must cover IVF; employers with fewer than 50 employees and self-insured employers are exempt
Massachusetts	IVF services (The law does not limit the number of treatment cycles and does not have a dollar lifetime cap. Insurers may set limits based on their clinical guidelines and patients' medical histories.)	All insurers providing pregnancy-related benefits must cover IVF; self-insured employers are exempt

State	Description of IVF Mandate	Insurance Markets Offering/Exempt from Offering Coverage
New Hampshire	Medically necessary fertility treatment (including IVF), but carriers may impose limitations on coverage based solely on arbitrary factors including, but not limited to, number of attempts or dollar amounts or age, based on clinical guidelines and the enrollee's medical history	Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses must cover IVF; coverage does not apply to plans available through the Small Business Health Options Program (SHOP) or to Extended Transition to Affordable Care Act-Compliant Policies.
New Jersey	4 cycles of egg retrievals and IVF	Group insurers, HMOs, State Health Benefits Program, and School Employees Health Benefits Program that provide pregnancy related coverage must provide infertility treatment; Employers with fewer than 51 employees, individual marketplace plans, and self-insured employers are exempt
New York	Provides up to 3 IVF cycles (fresh embryo transfer or frozen embryo transfer)	IVF mandated coverage only for those in the large group market (100 or more employees); excludes coverage for IVF in the individual and small group markets and self-insured employers
Rhode Island	Medically necessary expenses of diagnosis and treatment of infertility (including IVF). Coverage is limited to women between the ages of 25 and 42 with a $100,000 lifetime cap on treatment	Insurers and HMOs that cover pregnancy benefits must cover IVF; self-insured employers are exempt
Utah	An indemnity benefit of $4,000 that may be used to help patient pay for IVF	For 3-year pilot program for Public Employees' Health Plan, 2018-2021; extended 2021-2024, if policy offers optional maternity benefits, then it must also offer an indemnity benefit of $4,000 to obtain infertility treatments
Washington, DC	Currently, diagnosis, diagnostic tests, medication, surgery, or gamete intrafallopian transfer (including IVF) As of January 1, 2025, 3 cycles of egg retrieval, unlimited embryo transfers, and 3 rounds of IVF	Individual or group health benefit plans must provide coverage for the diagnosis and treatment of infertility; self-insured employers are exempt. Beginning January 1, 2025, all health insurers offering an individual, small group, or large group health benefit plan must cover IVF; self-insured employers are exempt

Source: RESOLVE: The National Infertility Association, "Insurance Coverage by State," 2023. Accessed 11/21/23. Insurance Coverage by State | RESOLVE: The National Infertility Association

A bill introduced in Washington State on January 17, 2023, closely resembles A5235. The text mandates coverage for the diagnosis and treatment of infertility for health plans offered in Washington, including plans covering public employees. The coverage mandate includes fertility medications, intrauterine insemination, in vitro fertilization, and egg freezing, including four completed egg retrievals with unlimited embryo transfers.[xliii] The bill was referred to the Washington Senate's Health and Long Term Care Committee on January 20, 2023, but has not received a vote.

It is interesting to note that a study of the association between state insurance mandates and the utilization of IVF services, using data from 2014 to 2019, found that the existence of state mandated insurance coverage did not reduce disparities in IVF utilization.[xliv] The study found that in 2019, for example, the IVF utilization rate for non-Hispanic White women compared with non-Hispanic Black women were 23.5 cycles per 10,000 reproductive-aged women higher for White women in nonmandated states. The IVF utilization rate increased to 56.2 cycles per 10,000 reproductive-aged women higher for White women compared to Black women in states with IVF insurance mandates. The authors concluded that racial disparities were greater in states with IVF insurance mandates.

DISCUSSION

For an individual, insurance coverage for infertility treatment depends on the state in which that person lives and, if the individual is covered by employer-sponsored insurance, the size of the employer.[xlv] Even when some insurance coverage for infertility is mandated, it frequently excludes the most expensive and effective treatments, like IUI and IVF, imposes waiting periods, or limits the number of cycles or places a cap on lifetime expenditures. Self-funded plans are excluded from state insurance mandates, and Medicaid programs do not offer more expensive treatments. For states that mandate broader coverage of IVF, the utilization of IVF services is significantly higher.[xlvi]

FINANCIAL IMPACT

The New York State Department of Financial Services (DFS) summed up the assessment of the financial impact of expanding the insurance mandate for infertility treatment this way, "The importance of medically-necessary…IVF coverage must be weighed against the potential premium impact, including the impact premium increases have on the affordability of coverage and the potential increase in the uninsured rate…."[xlvii] The impact on premiums has implications for state budgets, employers, and other policy holders.[xlviii] The New York State IVF insurance mandate became effective January 1, 2020, and required large group providers (more than 100 employees) to cover up to 3 cycles of IVF.[xlix] The DFS financial analysis determined that

mandating large group coverage for IVF would increase insurance premiums from approximately 0.7% to 0.8% per member per month (PMPM).[l]

The DFS analysis contains additional insights on potential cost savings that apply to the financial impact of A5235. The DFS report points out that mandated insurance coverage means infertility treatment decisions would be based on medical expertise and what is best for the patient, rather than trying to maximize the potential of fewer treatment attempts according to the patient's ability to pay for services. ASRM guidelines encourage single embryo transfers, for example, reducing the risk of pregnancy complications and multiple births. Genetic testing can also screen for anomalies, potentially resulting in fewer miscarriages and higher sustained pregnancy rates per embryo transfer.[li] A5235 specifically expands mandated coverage for infertility treatment by including genetic testing and infertility services "in accordance with guidelines from the American Society for Reproductive Medicine (ASRM)," including single embryo transfer when recommended by a physician.[lii]

Colorado's fiscal note on its bill mandating insurance coverage for the diagnosis and treatment of infertility, which became law and then went into effect in 2022, provides very little cost information. The fiscal note merely offers that IVF would be a new insurance benefit for state employees, and that, "Any cost increase could contribute to higher insurance premiums, which would be shared by state agencies and employees…. [T]he impact of this bill on premiums is not estimated."[liii]

In January 2022, Maine's Bureau of Insurance produced a report on LD 1539, a bill to mandate access to fertility care, with the assumption that insurers would be responsible for 100% coverage of infertility services, with no limitations on the patient's age or number of treatment attempts, or any cost sharing. The report estimated that the infertility treatment mandate would add $5.03 to $6.32 PMPM to insurance premiums, or 0.90% to 1.13%.[liv] [The costs cited include minimal expenses for fertility preservation for cancer patients of $0.15 to $0.31 PMPM or 0.03% to 0.06% of premium.] With an estimated 62,250 members in Maine enrolled in qualified health plans, the report estimated the cost to the state of $3.7 million to $4.8 million.

Maine's insurance mandate for infertility services replaces a situation in which, "Coverage is not generally available for fertility diagnostic services…[or]…fertility treatment…."[lv] Some New Jersey insurance market segments, on the other hand, already mandate extensive insurance coverage for diagnostic testing, medications, surgery, IVF, and other infertility services. However, New Jersey's individual and small employer (those with fewer than 51 employees) market segments do not cover IVF, embryo transfer, embryo freezing, or a number of other infertility procedures and treatments. The Maine cost estimates assume that coverage for infertility services goes from no mandated coverage to full coverage without limitations of any kind. This makes direct cost comparisons impossible between the law in Maine and A5235.

A comprehensive report on the cost of fertility treatment benefits was prepared as part of the consideration of Senate Bill 5204 (Washington State). The report found:

> Insurance plans…generally did not include coverage for fertility treatments. Out-of-pocket costs for the diagnosis and treatment of infertility…are generally expensive, easily reaching tens of thousands of dollars. The mandated benefits proposed would likely result in increased costs to the state, insurance carriers, and plan holders in the form of higher premiums. However, mandated coverage for infertility treatments may also decrease out-of-pocket costs for patients and allow for better quality care and more informed decision-making."[lvi]

As was the case with Maine's infertility treatment mandate discussed above, Washington State's proposed legislation starts with no existing mandated insurance coverage for infertility services and replaces it with expansive coverage, including diagnostic care, fertility medications, IUI, IVF, and genetic testing, as well as extensive fertility preservation services. The cost figures presented in Table 4, therefore, represent background information, rather than data useful for making direct comparisons to the costs of the expanded infertility benefits to New Jersey's existing infertility coverage mandate contained in A5235.

Table 4. Summary of 2024 Insurance Cost Projections of Washington State Infertility Services Mandate*

Line of Business	Cost of Mandate ($ PMPM)	Total Cost of Mandate ($ million)
Public Employee Benefits Board	3.46 to 3.63	3.39 to 8.94
School Employees Benefits Board	3.49 to 3.99	4.78 to 7.56
Individual	4.93	13.33
Small Group	1.76	6.49
Large Group (Fully Insured)	3.44	17.93
Large Group (Self-Funded)	2.07	41.88

Source: Washington State Health Care Authority and Office of the Insurance Commissioner, Washington State, "Fertility Treatment Benefit, Implementation Cost Analysis," June 30, 2023. Accessed 12/5/23. Fertility Treatment Benefit Implementation cost analysis (wa.gov)

*Costs reported are net of assumed cost sharing.

The Washington bill was not adopted.[lvii]

CONCLUSION

New Jersey already has a substantial infertility insurance coverage mandate, including diagnosis and diagnostic testing for infertility, medications, surgery, IVF, embryo transfer, artificial insemination, intracytoplasmic sperm injection, and four completed egg retrievals, except for its individual and small employer markets. A5235 seeks to expand mandated insurance coverage to include IUI, genetic testing, unlimited embryo transfers (using single embryo transfer when recommended and deemed medically appropriate by a physician) and extending coverage for infertility services to partners of persons who have successfully reversed a voluntary sterilization for all market segments in New Jersey.[lviii]

IUI provides an important option for men with infertility and couples whose infertility is of undetermined etiology. Genetic testing is likely to result in fewer miscarriages and more successful pregnancies per embryo transfer, as genetic problems are detected before pregnancy occurs. Single embryo transfers result in fewer problem pregnancies and miscarriages, and fewer multiple births with their accompanying costs. Unlimited embryo transfers replace an unspecified number of embryo transfers in the existing New Jersey coverage mandate, but the mandate does not go from no coverage to unlimited coverage, as does the infertility coverage mandate in Maine. The number of couples affected by the extension of insurance coverage to partners of people who have had voluntary sterilizations reversed is likely to be small.

The expanded insurance mandate envisioned in A5235 applies to select infertility treatments that can help to reduce some costs of infertility treatment, calls for no limit in the number embryo transfers, rather than increasing the number of embryo transfers from zero, and extends infertility services to a limited population who have had voluntary sterilizations reversed. It is reasonable to assume that the expanded mandate would have a limited impact on the premium costs in the large employer market, but a greater impact would be expected on the individual and small employer markets, if they are included.

ENDNOTES

[i] The current infertility insurance mandate requires coverage for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided in the law. This bill adds language that medical necessity must be as determined by a physician. It is not clear what effect this additional language would have on the medical necessity determination process for infertility treatment services.

[ii] Centers for Disease Control and Prevention (CDC), "Infertility FAQs," Last Reviewed April 26, 2023. Accessed 11/22/23. Infertility | CDC

[iii] Snow, Morgan, Vranich, Tyler M., Perin, Jamie, and Trent, Maria, "Estimates of Infertility in the United States: 1995-2019," Fertility and Sterility, Volume 118(3), September 2022. Accessed 11/22/23. Estimates of infertility in the United States: 1995-2019 (fertstert.org)

[iv] Johns Hopkins News and Publications, "U.S. Infertility Rate Plateaus," June 16, 2022. Accessed 11/22/23. U.S. Infertility Rate Plateaus | Johns Hopkins Medicine

[v] American Society for Reproductive Medicine, "Age and Fertility: A Guide for Patients," 2012. Accessed 11/22/23. Age_and_Fertility.pdf (reproductivefacts.org)

[vi] Single Care Team, "Infertility Statistics 2023: How Many Couples Are Affected by Infertility?" Updated on February 3, 2023. Accessed 11/28/23. Infertility statistics 2023: How many couples are affected by infertility? (singlecare.com)

[vii] CDC, *op. cit.*

[viii] Swan, Shanna H. and Colino, Stacey, "Reproductive Problems in Both Men and Women Are Rising at an Alarming Rate," Scientific American Health and Medicine, Volume 3(3), June 2021. Accessed 11/28/23. Reproductive Problems in Both Men and Women Are Rising at an Alarming Rate | Scientific American

[ix] Single Care Team, *op. cit.*

[x] Weigel, Gabriella, Ranji, Usha, Long, Michelle, and Salganicoff, Alina, "Coverage and Use of Fertility Services in the U.S.," KFF, September 15, 2020. Accessed 11/14/23. Coverage and Use of Fertility Services in the U.S. | KFF

[xi] Galic, Isabel, Negris, Olivia, Warren, Christopher, *et al.*, "Disparities in Access to Fertility Care: Who's In and Who's Out," Fertility and Sterility Reports, March 2021, Volume 2(1). Accessed 11/30/23. Disparities in access to fertility care: who's in and who's out (nih.gov)

[xii] Hawkins, Drew, "As Infertility Rates Rise, Data Shows Much of the US lives in a 'Fertility Desert'," WWNO – New Orleans Public Radio, August 8, 2023. Accessed 11/22/23. As infertility rates rise, data shows much of the US lives in a 'fertility desert' | WWNO

[xiii] *Ibid.*

[xiv] Weigel, *et al., op. cit.,* (see Appendix 2: Medicaid).

[xv] *Ibid.*

[xvi] Cho, Aimee, "DC Law Expands IVF Insurance Coverage. Here's How It Works," NBC4 Washington, September 13, 2023. Accessed 12/4/23. DC law expands IVF insurance coverage. Here's how it works – NBC4 Washington (nbcwashington.com)

[xvii] Wilson, Natalia, "DC Law Expands Health Insurance Coverage to Include Fertility Diagnosis, Treatment," The Hilltop, September 18, 2023. Accessed 12/4/23. DC Law Expands Health Insurance Coverage to Include Fertility Diagnosis, Treatment - The Hilltop (thehilltoponline.com)

[xviii] Henderson, Tim, "Few States Extend Fertility Treatment Coverage to Medicaid Recipients," Ohio Capital Journal, August 15, 2023. Accessed 11/21/23. Few states extend fertility treatment coverage to Medicaid recipients - Ohio Capital Journal

[xix] Weigel, *et al., op. cit.*

[xx] Patterson, Anne, "Fertility Benefits Rapidly Rising as Employers Look to Attract and Support Talent," International Foundation of Employee Benefit Plans, March 10, 2023. Accessed 11/27/23. Fertility Benefits Rapidly Rising as Employers Look to Attract and Support Talent - Word on Benefits (ifebp.org)

[xxi] *Ibid.*

[xxii] *Ibid.*

[xxiii] Phengsitthy, Nyah, "Fertility Insurance Increase Hinges on Courts, State Mandates," Bloomberg Health Law and Business, August 4, 2023. Accessed 9/20/23. Fertility Insurance Increase Hinges on Courts, State Mandates (bloomberglaw.com)

[xxiv] New Hampshire SB 279-FN -- As Amended by the House, 2019 Session, June 5, 2019. Accessed 11/10/23. New Hampshire-2019-SB279-Amended (legiscan.com)

[xxv] Weigel, *et al., op. cit.*

[xxvi] *Ibid.*

[xxvii] *Ibid.*

[xxviii] Conrad, Marissa, "How Much Does IVF Cost?," Forbes Health, August 14, 2023. Accessed 11/14/23. How Much Does IVF Cost In 2023? – Forbes Health

[xxix] *Ibid.*

[xxx] *Ibid.*

[xxxi] WebMD Editorial Contributors, "Infertility and In Vitro Fertilization," WebMD, September 16, 2023. Accessed 11/14/23. In Vitro Fertilization (IVF): Risks, Success Rate, Procedure, Results (webmd.com)

[xxxii] Society for Assisted Reproductive Technology (SART), "Final National Summary Report for 2019." Accessed 11/17/23. National Summary Report (sartcorsonline.com)

[xxxiii] Malhi, Sabrina and Amenabar, Teddy, "How Often Does IVF Succeed, and How Much Does It Cost?," The Washington Post, November 11, 2022. Accessed 11/14/23. How often does IVF succeed and how much does it cost? - The Washington Post

[xxxiv] CDC, *op. cit.*

[xxxv] Leslie, Stephen W., Soon-Sutton, Taylor L., and Khan, Moien A.B., "Male Infertility," StatPearls Publishing, Last Updated March 3, 2023. Accessed 11/28/23. Male Infertility - StatPearls - NCBI Bookshelf (nih.gov)

[xxxvi] Fact Sheet from ReproductiveFacts.org., "Intrauterine Insemination (IUI)," American Society for Reproductive Medicine. Revised 2016. Accessed 11/28/23. intrauterine_insemination_iui_factsheet2.pdf (reproductivefacts.org)

[xxxvii] Extend Fertility, "IUI vs. IVF: The Procedures, Success Rates, and Costs," September 3, 2020. Accessed 11/29/23. IUI vs. IVF: the procedures, success rates, and costs - Extend Fertility

[xxxviii] Leslie, op. cit.

[xxxix] Weigel, *et al., op. cit.*

[xl] Fertility IQ, "Components of IUI Cycle Cost. Accessed 11/29/23. The Cost Of IUI - FertilityIQ

[xli] Extend Fertility, *op. cit.*

[xlii] RESOLVE: The National Infertility Association, "Insurance Coverage by State," 2023. Accessed 11/21/23. Insurance Coverage by State | RESOLVE: The National Infertility Association

[xliii] Senate Bill Report SB 5204, January 17, 2023. Accessed 11/22/23. 5204 SBA HLTC 23 (wa.gov)

[xliv] Correia, Katharine F.B., Kraschel, Katherine, and Seifer, David B., "State Insurance Mandates for In Vitro Fertilization Are Not Associated with Improving Racial and Ethnic Disparities in Utilization and Treatment Outcomes," American Journal of Obstetrics and Gynecology, March 2023, Volume 228(313). Accessed 11/21/23. State insurance mandates for in vitro fertilization are not associated with improving racial and ethnic disparities in utilization and treatment outcomes - American Journal of Obstetrics & Gynecology (ajog.org)

[xlv] Weigel, *et al., op. cit.*

[xlvi] *Ibid.*

[xlvii] New York State Department of Financial Services, "Report on In-Vitro Fertilization and Fertility Preservation Coverage," February 27, 2019. Accessed 12/4/23. DFS: Report on In-Vitro Fertilization and Fertilization Preservation Coverage (ny.gov)

[xlviii] Weigel, *et al., op. cit.*

[xlix] Ibid., (see Appendix 1. Private Insurance).

[l] New York State Department of Financial Services, *op. cit.*

[li] *Ibid.*

[lii] Assembly, No. 5235, State of New Jersey, 220th Legislature, February 23, 2023. Accessed 12/5/23. NJ Legislature (state.nj.us)

[liii] Legislative Council Staff, "HB 20-1158, Final Fiscal Note," October 6, 2020. Accessed 12/5/23.

C:\HB1158_f1.txt (colorado.gov)

[liv] Maine Bureau of Insurance, Department of Professional & Financial Regulation, "A Report to the Joint Standing Committee on Health Coverage, Insurance and Financial Services of the 130th Maine Legislature, Review and Evaluation of LD 1539, An Act to Provide Access to Fertility Care, LD 922, An Act to Help Cancer Patients with Fertility Preservation," January 2022. Accessed 12/5/23. LD1539-and-LD922-Mandated-Benefit-Analysis.pdf (maine.gov)

[lv] *Ibid.*

[lvi] Washington State Health Care Authority and Office of the Insurance Commissioner, Washington State, "Fertility Treatment Benefit, Implementation Cost Analysis," June 30, 2023. Accessed 12/5/23. Fertility Treatment Benefit Implementation cost analysis (wa.gov)

[lvii] Henderson, Tim, "Fertility Health Coverage Is Still Hard to Come by in Many States," Washington State Standard, July 29, 2023. Accessed 12/6/23. Fertility health coverage is still hard to come by in many states - Washington State Standard

[lviii] Assembly, No. 5235, *op. cit.*

ASSEMBLY, No. 5235

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 23, 2023

Sponsored by:
Assemblywoman PAMELA R. LAMPITT
District 6 (Burlington and Camden)
Assemblywoman SHAVONDA E. SUMTER
District 35 (Bergen and Passaic)
Assemblyman STERLEY S. STANLEY
District 18 (Middlesex)

Co-Sponsored by:
Assemblyman McKeon

SYNOPSIS

Revises health insurance coverage requirements for treatment of infertility.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/5/2023)

AN ACT concerning health insurance coverage requirements for infertility treatment and amending and supplementing various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.2001, c.236 (C.17:48-6x) is amended to read as follows:

1. a. A hospital service corporation contract which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the contract provides coverage for persons covered under the contract for medically necessary expenses , as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The hospital service corporation contract shall provide coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; **[**gamete intra fallopian transfer; zygote intra fallopian transfer;**]** intracytoplasmic sperm injection; **[**and**]** four completed egg retrievals **[**per lifetime of the covered person**]**; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The hospital service corporation may provide that coverage for in vitro fertilization**[**, gamete intra fallopian transfer and zygote intra fallopian transfer**]** shall be limited to a covered person who**[**: a.**]** has used all reasonable, less expensive and medically appropriate treatments , as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy **[**; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger**]** to a live birth. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of**]** b. As used in this this section**[**,**]**:

"Infertility" means a disease **[**or**]**, condition **[**that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section**】**, or status characterized by:

(1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person's inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician's recommendation, diagnosis, treatment plan, or prescription based on a patient's medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

"Treatment of infertility" means the recommended treatment plan or prescribed procedures, services, and medications as directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other **【**pregnancy-related procedures**】** medical conditions under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. **【**Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section**】** Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A contract shall not impose

any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

b. A religious employer may request, and a hospital service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

d. The provisions of this section shall not apply to a hospital service corporation contract which, pursuant to a contract between the hospital service corporation and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

(cf: P.L.2017, c.48, s.1)

2. Section 2 of P.L.2001, c.236 (C.17:48A-7w) is amended to read as follows:

2. a. A medical service corporation contract which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the contract provides coverage for persons covered under the contract for medically necessary expenses, as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The medical service corporation contract shall provide coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in

vitro fertilization; genetic testing; embryo transfer; artificial insemination; [gamete intra fallopian transfer; zygote intra fallopian transfer;] intracytoplasmic sperm injection; [and] four completed egg retrievals [per lifetime of the covered person]; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The medical service corporation may provide that coverage for in vitro fertilization[, gamete intra fallopian transfer and zygote intra fallopian transfer] shall be limited to a covered person who[: a.] has used all reasonable, less expensive and medically appropriate treatments , as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth[; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger]. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of]b. As used in this this section[,]:

"Infertility" means a disease [or], condition, or status characterized by: [that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section] (1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person’s inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician's recommendation, diagnosis, treatment plan, or prescription based on a patient's medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

"Treatment of infertility" means the recommended treatment plan or prescribed procedures, services, and medications as directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other **[**pregnancy-related procedures**]** medical conditions under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. **[**Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section**]** Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A contract shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

b. A religious employer may request, and a hospital service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

d. The provisions of this section shall not apply to a medical service corporation contract which, pursuant to a contract between the medical service corporation and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ

FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.
(cf: P.L.2017, c.48, s.2)

3. Section 3 of P.L.2001, c.236 (C.17:48E-35.22) is amended to read as follows:

3. a. A health service corporation contract which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the contract provides coverage for persons covered under the contract for medically necessary expenses, as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The health service corporation contract shall provide coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; **[**gamete intra fallopian transfer; zygote intra fallopian transfer;**]** intracytoplasmic sperm injection; **[**and**]** four completed egg retrievals **[**per lifetime of the covered person**]**; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The health service corporation may provide that coverage for in vitro fertilization**[**, gamete intra fallopian transfer and zygote intra fallopian transfer**]** shall be limited to a covered person who**[**: a.**]** has used all reasonable, less expensive and medically appropriate treatments , as determined bya licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth**[**; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger**]**. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of**]**b. As used in this this section**[**,**]**:

"Infertility" means a disease **[**or**]**, condition, or status characterized by: **[**that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology

and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section**]** (1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person's inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician's recommendation, diagnosis, treatment plan, or prescription based on a patient's medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

"Treatment of infertility" means the recommended treatment plan or prescribed procedures, services, and medications as directed by a licensed physician for fertility as defined in this section.

The benefits shall be provided to the same extent as for other **[**pregnancy-related procedures**]** medical conditions under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. **[**Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section**]** Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A contract shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

b. A religious employer may request, and a hospital service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those health service corporation contracts in which the health service corporation has reserved the right to change the premium.

d. The provisions of this section shall not apply to a health service corporation contract which, pursuant to a contract between the health service corporation and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

(cf: P.L.2017, c.48, s.3)

4. Section 4 of P.L.2001, c.236 (C.17B:27-46.1x) is amended to read as follows:

4. a. A group health insurance policy which provides hospital or medical expense benefits for groups with more than 50 persons, which includes pregnancy-related benefits, shall not be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act unless the policy provides coverage for persons covered under the policy for medically necessary expenses , as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The policy shall provide coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; **[**gamete intra fallopian transfer; zygote intra fallopian transfer;**]** intracytoplasmic sperm

injection; [and] four completed egg retrievals [per lifetime of the covered person]; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The policy may provide that coverage for in vitro fertilization[, gamete intra fallopian transfer and zygote intra fallopian transfer] shall be limited to a covered person who[: a.] has used all reasonable, less expensive and medically appropriate treatments , as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth[; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger]. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of]b. As used in this this section[,]:

"Infertility" means a disease [or], condition, or status characterized by: [that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section] (1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person’s inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician’s recommendation, diagnosis, treatment plan, or prescription based on a patient’s medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

"Treatment of infertility" means the recommended treatment plan or prescribed procedures, services, and medications directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other [pregnancy-related procedures] medical conditions under the policy, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. [Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section] Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A policy shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

b. A religious employer may request, and a hospital service corporation shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. This section shall apply to those insurance policies in which the insurer has reserved the right to change the premium.

d. The provisions of this section shall not apply to a group health insurance policy which, pursuant to a contract between the insurer and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

(cf: P.L.2017, c.48, s.4)

5. Section 5 of P.L.2001. c.236 (C.26:2J-4.23) is amended to read as follows:

5. a. No certificate of authority to establish and operate a health maintenance organization in this State shall be issued or continued on or after the effective date of this act unless the health maintenance organization provides health care services, to groups of more than 50 enrollees, for medically necessary expenses, as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. A health maintenance organization shall provide enrollee coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; **[**gamete intra fallopian transfer; zygote intra fallopian transfer;**]** intracytoplasmic sperm injection; **[**and**]** four completed egg retrievals **[**per lifetime of the covered person**]**; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. A health maintenance organization may provide that coverage for in vitro fertilization**[**, gamete intra fallopian transfer and zygote intra fallopian transfer**]** shall be limited to a covered person who**[**: a.**]** has used all reasonable, less expensive and medically appropriate treatments , as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth**[**; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger**]**. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of**]** b. As used in this this section**[**,**]**:

"Infertility" means a disease **[**or**]**, condition, or status characterized by: **[**that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section**]** (1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person's inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician's recommendation, diagnosis, treatment plan, or prescription based on a patient's medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

"Treatment of infertility" means the recommended treatment plan or prescribed procedures, services, and medications directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other **[**pregnancy-related procedures**]** medical conditions under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. **[**Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section**]** Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A contract shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

b. A religious employer may request, and a health maintenance organization shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the

purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

c. The provisions of this section shall apply to those contracts for health care services by health maintenance organizations under which the right to change the schedule of charges for enrollee coverage is reserved.

d. The provisions of this section shall not apply to a contract for health care services by a health maintenance organization which, pursuant to a contract between the health maintenance organization and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

(cf: P.L.2017, c.48, s.5)

6. (New section) a. Every individual health benefits plan that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.), or approved for issuance or renewal in this State on or after the effective date of this act, shall provide benefits to any person covered thereunder for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The individual health benefits plan shall provide for any services related to infertility that is recommended by a physician, which includes, but is not limited to: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; intracytoplasmic sperm injection; four completed egg retrievals; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The plan may provide that coverage for in vitro fertilization shall be limited to a covered person who has used all reasonable, less expensive and medically appropriate treatments, as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

b. As used in this this section:

"Infertility" means a disease, condition, or status characterized by:

(1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person’s inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician’s recommendation, diagnosis, treatment plan, or prescription based on a patient’s medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

“Treatment of infertility” means the recommended treatment plan or prescribed procedures, services, and medications directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other medical conditions under the health benefits plan, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the plan. Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A plan shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

c. A religious employer may request, and a health maintenance organization shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

d. This section shall apply to all individual health benefit plans in which the carrier has reserved the right to change the premium.

e. The provisions of this section shall not apply to an individual health benefit plan contract which, pursuant to a contract between the individual health benefit plan and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the

NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

7. (New section) a. Every small employer health benefits plan that provides hospital or medical expense benefits and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.), or approved for issuance or renewal in this State on or after the effective date of this act, shall provide to any person covered thereunder for medically necessary expenses incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The health benefits plan shall provide for any services related to infertility that is recommended by a physician, which includes, but is not limited to: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; intracytoplasmic sperm injection; four completed egg retrievals; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The health benefits plan may provide that coverage for in vitro fertilization shall be limited to a covered person who has used all reasonable, less expensive and medically appropriate treatments, as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

b. As used in this this section:

"Infertility" means a disease, condition, or status characterized by:

(1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person’s inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician’s recommendation, diagnosis, treatment plan, or prescription based on a patient’s medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

“Treatment of infertility” means the recommended treatment plan or prescribed procedures, services, and medications directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other medical conditions under the health benefits plan, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit

limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the plan. Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A plan shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

c. A religious employer may request, and a health maintenance organization shall grant, an exclusion under the contract for the coverage required by this section for in vitro fertilization, embryo transfer, artificial insemination, zygote intra fallopian transfer and intracytoplasmic sperm injection, if the required coverage is contrary to the religious employer's bona fide religious tenets. The hospital service corporation that issues a contract containing such an exclusion shall provide written notice thereof to each prospective subscriber or subscriber, which shall appear in not less than 10 point type, in the contract, application and sales brochure. For the purposes of this subsection, "religious employer" means an employer that is a church, convention or association of churches or any group or entity that is operated, supervised or controlled by or in connection with a church or a convention or association of churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

d. The provisions of this section shall apply to all health benefit plans in which the carrier has reserved the right to change the premium.

e. The provisions of this section shall not apply to a small employer health benefits plan contract which, pursuant to a contract between the small employer health benefits plan and the Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

[6**]** 8. Section 6 of P.L.2017, c.48 (C.52:14-17.29y) is amended to read as follows:

6. The State Health Benefits Commission shall ensure that every contract under the State Health Benefits Program shall provide coverage for medically necessary expenses , as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The State Health Benefits Program shall provide coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**:

diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; [gamete intra fallopian transfer; zygote intra fallopian transfer;] intracytoplasmic sperm injection; [and] four completed egg retrievals [per lifetime of the covered person]; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a physician. The State Health Benefits Commission may provide that coverage for in vitro fertilization[, gamete intra fallopian transfer and zygote intra fallopian transfer] shall be limited to a covered person who[: a.] has used all reasonable, less expensive and medically appropriate treatments , as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth[; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger]. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of] b. As used in this this section[,]:

"Infertility" means a disease [or], condition, or status characterized by: [that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section] (1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person's inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician's recommendation, diagnosis, treatment plan, or prescription based on a patient's medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

"Treatment of infertility" means the recommended treatment plan or prescribed procedures, services, and medications directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other **[**pregnancy-related procedures**]** medical conditions under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. **[**Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section**]** Infertility resulting from a voluntary unreversed sterilization procedure may be excluded if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A contract shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.

(cf: P.L.2017, c.48, s.6)

[7**]** 9. Section 7 of P.L.2017, c.48 (C.52:14-17.46.6g) is amended to read as follows:

7. The School Employees Health Benefits Commission shall ensure that every contract under the School Employees Health Benefits Program shall provide coverage for medically necessary expenses , as determined by a physician, incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The School Employees Health Benefits Program contract shall provide coverage for any services related to infertility that is recommended by a physician, which includes, but is not limited to**[**, the following services related to infertility**]**: diagnosis and diagnostic tests; medications; surgery; intrauterine insemination; in vitro fertilization; genetic testing; embryo transfer; artificial insemination; **[**gamete intra fallopian transfer; zygote intra fallopian transfer;**]** intracytoplasmic sperm injection; **[**and**]** four completed egg retrievals **[**per lifetime of the covered person**]**; and unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, using single embryo transfer when recommended and deemed medically appropriate by a

physician. The School Employees Health Benefits Commission may provide that coverage for in vitro fertilization[, gamete intra fallopian transfer and zygote intra fallopian transfer] shall be limited to a covered person who[: a.] has used all reasonable, less expensive and medically appropriate treatments , as determined by a licensed physician, and is still unable to become pregnant or carry a pregnancy to a live birth[; b. has not reached the limit of four completed egg retrievals; and c. is 45 years of age or younger]. Coverage for infertility services provided to partners of persons who have successfully reversed a voluntary sterilization shall not be excluded.

[For purposes of] b. As used in this this section[,]:

"Infertility" means a disease [or], condition, or status characterized by: [that results in the abnormal function of the reproductive system, as determined pursuant to American Society for Reproductive Medicine practice guidelines by a physician who is Board Certified or Board Eligible in Reproductive Endocrinology and Infertility or in Obstetrics and Gynecology or that the patient has met one of the following conditions:

(1) A male is unable to impregnate a female;

(2) A female with a male partner and under 35 years of age is unable to conceive after 12 months of unprotected sexual intercourse;

(3) A female with a male partner and 35 years of age and over is unable to conceive after six months of unprotected sexual intercourse;

(4) A female without a male partner and under 35 years of age who is unable to conceive after 12 failed attempts of intrauterine insemination under medical supervision;

(5) A female without a male partner and over 35 years of age who is unable to conceive after six failed attempts of intrauterine insemination under medical supervision;

(6) Partners are unable to conceive as a result of involuntary medical sterility;

(7) A person is unable to carry a pregnancy to live birth; or

(8) A previous determination of infertility pursuant to this section] (1) the failure to establish a pregnancy or carry a pregnancy to term;

(2) a person’s inability to reproduce as a single individual or with a partner of the individual without medical intervention; or

(3) a physician’s recommendation, diagnosis, treatment plan, or prescription based on a patient’s medical, sexual, and reproductive history, age, physical findings or diagnostic testing.

“Treatment of infertility” means the recommended treatment plan or prescribed procedures, services, and medications directed by a licensed physician for infertility as defined in this section.

The benefits shall be provided to the same extent as for other ⟦pregnancy-related procedures⟧ medical conditions under the contract, except that the services provided for in this section shall be performed at facilities that conform to standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists. The same copayments, deductibles and benefit limits shall apply to the diagnosis and treatment of infertility pursuant to this section as those applied to other medical or surgical benefits under the contract. ⟦Infertility resulting from voluntary sterilization procedures shall be excluded under the contract for the coverage required by this section⟧ Infertility resulting from a voluntary unreversed sterilization procedure may be excluded under the contract if the voluntary unreversed sterilization is the sole cause of infertility, provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed. A contract shall not impose any exclusions, limitations, or restrictions on coverage of any fertility services provided by or to a third party.
(cf: P.L.2017, c.48, s.7)

⟦8⟧ 10. This act shall take effect immediately and shall apply to contracts issued or renewed on or after the effective date.

STATEMENT

This bill updates current law on health insurance coverage of infertility by requiring health insurance carriers (which include hospital service corporations, medical service corporations, health service corporations, health maintenance organizations authorized to issue health benefits plans in New Jersey, individual and small employer health benefits plans, and any entities contracted to administer health benefits in connection with the State Health Benefits Program and School Employees' Health Benefits Program) to cover infertility services for a partner of a person who has successfully reversed a voluntary sterilization. The bill also requires health insurance carriers to cover certain infertility services including intrauterine insemination, genetic testing, unlimited embryo transfers, in accordance with guidelines from the American Society for Reproductive Medicine, and any other services related to infertility recommended by a physician. Additionally, the bill revises the current statutory definition of "infertility" and adds a definition of "treatment of infertility."

Finally, the bill excludes coverage for infertility services if an individual's infertility resulted solely from a voluntary unreversed sterilization; provided, however, that coverage for infertility services shall not be excluded if the voluntary sterilization is successfully reversed.

Appendix II

NEW JERSEY GENERAL ASSEMBLY

JOHN F. MCKEON
PARLIAMENTARIAN
ASSEMBLYMAN, 27TH DISTRICT
ESSEX & MORRIS COUNTIES
221 MAIN STREET
MADISON, NJ 07940
PHONE: (973) 377-1606
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AsmMcKeon@njleg.org

COMMITTEES
FINANCIAL INSTITUTIONS AND INSURANCE, CHAIR
BUDGET
ENVIRONMENT AND SOLID WASTE
JUDICIARY
INTERGOVERNMENTAL RELATIONS COMMISSION

September 13, 2023

New Jersey Mandated Health Benefits Advisory Commission
P.O. Box 325
Trenton, NJ 08625

Dear Members of the Commission:

As the Chairman of the Assembly Financial Institutions and Insurance Committee, I respectfully request the Commission review and prepare a written report of A-5235, which revises health insurance coverage requirements for the treatment of infertility.

If you have any questions, please do not hesitate to contact Mark Iaconelli, Jr., Esq., Deputy General Counsel, at 609-847-3500.

Thank you for your immediate attention to this matter.

Sincerely,

John F. McKeon

CC: Mark Iaconelli, Jr., Esq.
Deputy General Counsel
Assembly Majority Office