SENATE, No. 1398

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED FEBRUARY 11, 2016

Sponsored by:
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District 37 (Bergen)
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District 34 (Essex and Passaic)

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SYNOPSIS

Expands infertility coverage under certain health insurance plans.

CURRENT VERSION OF TEXT

As introduced.
AN ACT concerning infertility coverage under certain health insurance plans and amending P.L.2001, c.236.

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 incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The hospital service corporation contract shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; 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. 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 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.

For purposes of this section, “infertility” means:

(1) the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to impregnate another person or conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth; or

(2) a determination of infertility by a physician licensed to practice medicine and surgery in this State pursuant to the provisions of R.S.45:9-1 et seq.

The benefits shall be provided to the same extent as for other pregnancy-related procedures 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

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.
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.

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 Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.),] the NJ FamilyCare [Health Coverage] Program [under P.L.2000, c.71 (C.30:4J-1 et seq.)] 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.2001, c.236, 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 incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The
medical service corporation contract shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; 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. 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 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.

For purposes of this section, "infertility" means:

(1) the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to impregnate another person or conceive after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth; or

(2) a determination of infertility by a physician licensed to practice medicine and surgery in this State pursuant to the provisions of R.S.45:9-1 et seq.

The benefits shall be provided to the same extent as for other pregnancy-related procedures 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.

b. A religious employer may request, and a medical 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 medical 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 ten 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 Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.),] the NJ FamilyCare Health Coverage Program [under P.L.2000, c.71 (C.30:4J-1 et seq.)] 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.2001, c.236, 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 incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The health service corporation contract shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; 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. 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 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.

For purposes of this section, "infertility" means:

(1) the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to impregnate another person or conceive (after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is
35 years of age or older or one of the partners is considered
medically sterile; or carry a pregnancy to live birth; or
(2) a determination of infertility by a physician licensed to
practice medicine and surgery in this State pursuant to the
provisions of R.S.45:9-1 et seq.

The benefits shall be provided to the same extent as for other
pregnancy-related procedures 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.

b. A religious employer may request, and a health 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
health 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 ten
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
Children's Health Care Coverage Program under P.L.1997, c.272
(C.30:4I-1 et seq.), the NJ FamilyCare Health Coverage
Program under P.L.2000, c.71 (C.30:4J-1 et seq.) 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.2001, c.236, 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 incurred in the diagnosis and treatment of infertility as provided pursuant to this section. The policy shall provide coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; 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. The insurer 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 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.

For purposes of this section, "infertility" means:

1. the disease or condition that results in the abnormal function of the reproductive system such that a person is not able to [.] impregnate another person [.] or conceive [after two years of unprotected intercourse if the female partner is under 35 years of age, or one year of unprotected intercourse if the female partner is 35 years of age or older or one of the partners is considered medically sterile; or carry a pregnancy to live birth] ; or

2. a determination of infertility by a physician licensed to practice medicine and surgery in this State pursuant to the provisions of R.S.45:9-1 et seq.

The benefits shall be provided to the same extent as for other pregnancy-related procedures 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 policy.

b. A religious employer may request, and an insurer shall grant, an exclusion under the policy 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 insurer that issues a
policy containing such an exclusion shall provide written notice thereof to each prospective insured or insured, which shall appear in not less than ten point type, in the policy, 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 Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.),] the NJ FamilyCare [Health Coverage] Program [under P.L.2000, c.71 (C.30:4I-1 et seq.)] 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.2001, c.236, 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 incurred in the diagnosis and treatment of infertility as provided pursuant to this section. A health maintenance organization shall provide enrollee coverage which includes, but is not limited to, the following services related to infertility: diagnosis and diagnostic tests; medications; surgery; in vitro fertilization; embryo transfer; artificial insemination; gamete intra fallopian transfer; zygote intra fallopian transfer; intracytoplasmic sperm injection; and four completed egg retrievals per lifetime of the enrollee. The health maintenance organization may provide that health care services 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 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.

   For purposes of this section, "infertility" means:
(1) the disease or condition that results in the abnormal function
of the reproductive system such that a person is not able to [1]
impregnate another person [1] or conceive [after two years of
unprotected intercourse if the female partner is under 35 years of
age, or one year of unprotected intercourse if the female partner is
35 years of age or older or one of the partners is considered
medically sterile; or carry a pregnancy to live birth]; or
(2) a determination of infertility by a physician licensed to
practice medicine and surgery in this State pursuant to the
provisions of R.S.45:9-1 et seq.

The health care services shall be provided to the same extent as
for other pregnancy-related procedures 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 health care services under the contract.

b. A religious employer may request, and a health maintenance
organization shall grant, an exclusion under the contract for the
health care services required by this section for in vitro fertilization,
embryo transfer, artificial insemination, zygote intra fallopian
transfer and intracytoplasmic sperm injection, if the required health
care services are contrary to the religious employer's bona fide
religious tenets. The health maintenance organization that issues a
contract containing such an exclusion shall provide written notice
thereof to each prospective enrollee or enrollee, which shall appear
in not less than ten 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 Children's Health Care
Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.),] the
NJ FamilyCare [Health Coverage] Program [under P.L.2000, c.71
established pursuant to P.L.2005, c.156
(C.30:4J-1 et seq.) or any other program administered by the
Division of Medical Assistance and Health Services in the
Department of Human Services.
(cf: P.L.2001, c.236, s.5)
6. This act shall take effect 90 days after enactment and shall
apply to policies or contracts issued or renewed on or after the
effective date.

STATEMENT

This bill expands the availability of insurance coverage for
infertility-related health benefits to certain women that are currently
denied coverage for those benefits under certain health insurance
plans.

Under current law, hospital, medical and health service
corporations, commercial group insurers and health maintenance
organizations are required, in certain circumstances, to provide
coverage under group policies for medically necessary expenses
incurred in the diagnosis and treatment of infertility. In relevant
part, current law defines “infertility” as the disease or condition that
results in the abnormal function of the reproductive system such
that a female partner under 35 years of age has been unable to
conceive after two years of unprotected intercourse, or a female
partner over 35 has been unable to conceive after one year of
unprotected intercourse or one of the partners is considered
medically sterile. Because the definition of infertility requires the
female partner to have unprotected intercourse, certain females,
such as lesbians, women without partners, or women with partners
who have protected intercourse, may not be qualified to receive
coverage for these benefits. This bill defines “infertility” as: (1) the
disease or condition that results in the abnormal function of the
reproductive system such that a person is not able to impregnate
another person or conceive; or (2) a determination of infertility by a
physician licensed to practice medicine and surgery in this State.

Current provisions of law, which remain unchanged, also permit
insurers to limit coverage for in vitro fertilization, gamete intra
fallopian transfer and zygote intra fallopian transfer, to a covered
persons who: (1) has used all reasonable, less expensive and
medically appropriate treatments and is still unable to become
pregnant or carry a pregnancy; (2) has not reached the limit of four
completed egg retrievals; and (3) is 45 years of age or younger.