

SENATE, No. 1398

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 11, 2016

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senators Stack, Lesniak and Scutari

SYNOPSIS

Expands infertility coverage under certain health insurance plans.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/9/2016)

S1398 WEINBERG, GILL

2

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

3

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

6

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

9 1. a. A hospital service corporation contract which provides
10 hospital or medical expense benefits for groups with more than 50
11 persons, which includes pregnancy-related benefits, shall not be
12 delivered, issued, executed or renewed in this State, or approved for
13 issuance or renewal in this State by the Commissioner of Banking
14 and Insurance on or after the effective date of this act unless the
15 contract provides coverage for persons covered under the contract
16 for medically necessary expenses incurred in the diagnosis and
17 treatment of infertility as provided pursuant to this section. The
18 hospital service corporation contract shall provide coverage which
19 includes, but is not limited to, the following services related to
20 infertility: diagnosis and diagnostic tests; medications; surgery; in
21 vitro fertilization; embryo transfer; artificial insemination; gamete
22 intra fallopian transfer; zygote intra fallopian transfer;
23 intracytoplasmic sperm injection; and four completed egg retrievals
24 per lifetime of the covered person. The hospital service corporation
25 may provide that coverage for in vitro fertilization, gamete intra
26 fallopian transfer and zygote intra fallopian transfer shall be limited
27 to a covered person who: a. has used all reasonable, less expensive
28 and medically appropriate treatments and is still unable to become
29 pregnant or carry a pregnancy; b. has not reached the limit of four
30 completed egg retrievals; and c. is 45 years of age or younger.

31 For purposes of this section, "infertility" means:

32 (1) the disease or condition that results in the abnormal function
33 of the reproductive system such that a person is not able to **[:]**
34 impregnate another person **[:]** or conceive **[after two years of**
35 **unprotected intercourse if the female partner is under 35 years of**
36 **age, or one year of unprotected intercourse if the female partner is**
37 **35 years of age or older or one of the partners is considered**
38 **medically sterile; or carry a pregnancy to live birth]** ; or

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

42 The benefits shall be provided to the same extent as for other
43 pregnancy-related procedures under the contract, except that the
44 services provided for in this section shall be performed at facilities
45 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.

1 Reproductive Medicine or the American College of Obstetricians
2 and Gynecologists. The same copayments, deductibles and benefit
3 limits shall apply to the diagnosis and treatment of infertility
4 pursuant to this section as those applied to other medical or surgical
5 benefits under the contract.

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

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

25 d. The provisions of this section shall not apply to a hospital
26 service corporation contract which, pursuant to a contract between
27 the hospital service corporation and the Department of Human
28 Services, provides benefits to persons who are eligible for medical
29 assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), [the
30 Children's Health Care Coverage Program under P.L.1997, c.272
31 (C.30:4I-1 et seq.),] the NJ FamilyCare [Health Coverage]
32 Program [under P.L.2000, c.71 (C.30:4J-1 et seq.)] established
33 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program
34 administered by the Division of Medical Assistance and Health
35 Services in the Department of Human Services.

36 (cf: P.L.2001, c.236, s.1)

37

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

40 2. a. A medical service corporation contract which provides
41 hospital or medical expense benefits for groups with more than 50
42 persons, which includes pregnancy-related benefits, shall not be
43 delivered, issued, executed or renewed in this State, or approved for
44 issuance or renewal in this State by the Commissioner of Banking
45 and Insurance on or after the effective date of this act unless the
46 contract provides coverage for persons covered under the contract
47 for medically necessary expenses incurred in the diagnosis and
48 treatment of infertility as provided pursuant to this section. The

1 medical service corporation contract shall provide coverage which
2 includes, but is not limited to, the following services related to
3 infertility: diagnosis and diagnostic tests; medications; surgery; in
4 vitro fertilization; embryo transfer; artificial insemination; gamete
5 intra fallopian transfer; zygote intra fallopian transfer;
6 intracytoplasmic sperm injection; and four completed egg retrievals
7 per lifetime of the covered person. The medical service corporation
8 may provide that coverage for in vitro fertilization, gamete intra
9 fallopian transfer and zygote intra fallopian transfer shall be limited
10 to a covered person who: a. has used all reasonable, less expensive
11 and medically appropriate treatments and is still unable to become
12 pregnant or carry a pregnancy; b. has not reached the limit of four
13 completed egg retrievals; and c. is 45 years of age or younger.

14 For purposes of this section, "infertility" means:

15 (1) the disease or condition that results in the abnormal function
16 of the reproductive system such that a person is not able to [;]
17 impregnate another person [;] or conceive [after two years of
18 unprotected intercourse if the female partner is under 35 years of
19 age, or one year of unprotected intercourse if the female partner is
20 35 years of age or older or one of the partners is considered
21 medically sterile; or carry a pregnancy to live birth] ; or

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

25 The benefits shall be provided to the same extent as for other
26 pregnancy-related procedures under the contract, except that the
27 services provided for in this section shall be performed at facilities
28 that conform to standards established by the American Society for
29 Reproductive Medicine or the American College of Obstetricians
30 and Gynecologists. The same copayments, deductibles and benefit
31 limits shall apply to the diagnosis and treatment of infertility
32 pursuant to this section as those applied to other medical or surgical
33 benefits under the contract.

34 b. A religious employer may request, and a medical service
35 corporation shall grant, an exclusion under the contract for the
36 coverage required by this section for in vitro fertilization, embryo
37 transfer, artificial insemination, zygote intra fallopian transfer and
38 intracytoplasmic sperm injection, if the required coverage is
39 contrary to the religious employer's bona fide religious tenets. The
40 medical service corporation that issues a contract containing such
41 an exclusion shall provide written notice thereof to each prospective
42 subscriber or subscriber, which shall appear in not less than ten
43 point type, in the contract, application and sales brochure. For the
44 purposes of this subsection, "religious employer" means an
45 employer that is a church, convention or association of churches or
46 any group or entity that is operated, supervised or controlled by or
47 in connection with a church or a convention or association of

1 churches as defined in 26 U.S.C. s.3121(w)(3)(A), and that qualifies
2 as a tax-exempt organization under 26 U.S.C. s.501(c)(3).

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

6 d. The provisions of this section shall not apply to a medical
7 service corporation contract which, pursuant to a contract between
8 the medical service corporation and the Department of Human
9 Services, provides benefits to persons who are eligible for medical
10 assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), [the
11 Children's Health Care Coverage Program under P.L.1997, c.272
12 (C.30:4I-1 et seq.),] the NJ FamilyCare [Health Coverage]
13 Program [under P.L.2000, c.71 (C.30:4J-1 et seq.)] established
14 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program
15 administered by the Division of Medical Assistance and Health
16 Services in the Department of Human Services.

17 (cf: P.L.2001, c.236, s.2)

18

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

21 3. a. A health service corporation contract which provides
22 hospital or medical expense benefits for groups with more than 50
23 persons, which includes pregnancy-related benefits, shall not be
24 delivered, issued, executed or renewed in this State, or approved for
25 issuance or renewal in this State by the Commissioner of Banking
26 and Insurance on or after the effective date of this act unless the
27 contract provides coverage for persons covered under the contract
28 for medically necessary expenses incurred in the diagnosis and
29 treatment of infertility as provided pursuant to this section. The
30 health service corporation contract shall provide coverage which
31 includes, but is not limited to, the following services related to
32 infertility: diagnosis and diagnostic tests; medications; surgery; in
33 vitro fertilization; embryo transfer; artificial insemination; gamete
34 intra fallopian transfer; zygote intra fallopian transfer;
35 intracytoplasmic sperm injection; and four completed egg retrievals
36 per lifetime of the covered person. The health service corporation
37 may provide that coverage for in vitro fertilization, gamete intra
38 fallopian transfer and zygote intra fallopian transfer shall be limited
39 to a covered person who: a. has used all reasonable, less expensive
40 and medically appropriate treatments and is still unable to become
41 pregnant or carry a pregnancy; b. has not reached the limit of four
42 completed egg retrievals; and c. is 45 years of age or younger.

43 For purposes of this section, "infertility" means:

44 (1) the disease or condition that results in the abnormal function
45 of the reproductive system such that a person is not able to [:]
46 impregnate another person [;] or conceive [after two years of
47 unprotected intercourse if the female partner is under 35 years of
48 age, or one year of unprotected intercourse if the female partner is

1 35 years of age or older or one of the partners is considered
2 medically sterile; or carry a pregnancy to live birth **】**; or

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

6 The benefits shall be provided to the same extent as for other
7 pregnancy-related procedures under the contract, except that the
8 services provided for in this section shall be performed at facilities
9 that conform to standards established by the American Society for
10 Reproductive Medicine or the American College of Obstetricians
11 and Gynecologists. The same copayments, deductibles and benefit
12 limits shall apply to the diagnosis and treatment of infertility
13 pursuant to this section as those applied to other medical or surgical
14 benefits under the contract.

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

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

34 d. The provisions of this section shall not apply to a health
35 service corporation contract which, pursuant to a contract between
36 the health service corporation and the Department of Human
37 Services, provides benefits to persons who are eligible for medical
38 assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), **【**the
39 Children's Health Care Coverage Program under P.L.1997, c.272
40 (C.30:4I-1 et seq.),**】** the NJ FamilyCare **【**Health Coverage**】**
41 Program **【**under P.L.2000, c.71 (C.30:4J-1 et seq.)**】** established
42 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any other program
43 administered by the Division of Medical Assistance and Health
44 Services in the Department of Human Services.
45 (cf: P.L.2001, c.236, s.3)

46
47 4. Section 4 of P.L.2001, c.236 (C.17B:27-46.1x) is amended
48 to read as follows:

1 4. a. A group health insurance policy which provides hospital
2 or medical expense benefits for groups with more than 50 persons,
3 which includes pregnancy-related benefits, shall not be delivered,
4 issued, executed or renewed in this State, or approved for issuance
5 or renewal in this State by the Commissioner of Banking and
6 Insurance on or after the effective date of this act unless the policy
7 provides coverage for persons covered under the policy for
8 medically necessary expenses incurred in the diagnosis and
9 treatment of infertility as provided pursuant to this section. The
10 policy shall provide coverage which includes, but is not limited to,
11 the following services related to infertility: diagnosis and diagnostic
12 tests; medications; surgery; in vitro fertilization; embryo transfer;
13 artificial insemination; gamete intra fallopian transfer; zygote intra
14 fallopian transfer; intracytoplasmic sperm injection; and four
15 completed egg retrievals per lifetime of the covered person. The
16 insurer may provide that coverage for in vitro fertilization, gamete
17 intra fallopian transfer and zygote intra fallopian transfer shall be
18 limited to a covered person who: a. has used all reasonable, less
19 expensive and medically appropriate treatments and is still unable
20 to become pregnant or carry a pregnancy; b. has not reached the
21 limit of four completed egg retrievals; and c. is 45 years of age or
22 younger.

23 For purposes of this section, "infertility" means:

24 (1) the disease or condition that results in the abnormal function
25 of the reproductive system such that a person is not able to [;]
26 impregnate another person [;] or conceive [after two years of
27 unprotected intercourse if the female partner is under 35 years of
28 age, or one year of unprotected intercourse if the female partner is
29 35 years of age or older or one of the partners is considered
30 medically sterile; or carry a pregnancy to live birth] ; or

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

34 The benefits shall be provided to the same extent as for other
35 pregnancy-related procedures under the policy, except that the
36 services provided for in this section shall be performed at facilities
37 that conform to standards established by the American Society for
38 Reproductive Medicine or the American College of Obstetricians
39 and Gynecologists. The same copayments, deductibles and benefit
40 limits shall apply to the diagnosis and treatment of infertility
41 pursuant to this section as those applied to other medical or surgical
42 benefits under the policy.

43 b. A religious employer may request, and an insurer shall grant,
44 an exclusion under the policy for the coverage required by this
45 section for in vitro fertilization, embryo transfer, artificial
46 insemination, zygote intra fallopian transfer and intracytoplasmic
47 sperm injection, if the required coverage is contrary to the religious
48 employer's bona fide religious tenets. The insurer that issues a

1 policy containing such an exclusion shall provide written notice
2 thereof to each prospective insured or insured, which shall appear in
3 not less than ten point type, in the policy, application and sales
4 brochure. For the purposes of this subsection, "religious employer"
5 means an employer that is a church, convention or association of
6 churches or any group or entity that is operated, supervised or
7 controlled by or in connection with a church or a convention or
8 association of churches as defined in 26 U.S.C. s.3121(w)(3)(A),
9 and that qualifies as a tax-exempt organization under 26 U.S.C.
10 s.501(c)(3).

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

13 d. The provisions of this section shall not apply to a group
14 health insurance policy which, pursuant to a contract between the
15 insurer and the Department of Human Services, provides benefits to
16 persons who are eligible for medical assistance under P.L.1968,
17 c.413 (C.30:4D-1 et seq.), **the Children's Health Care Coverage**
18 **Program under P.L.1997, c.272 (C.30:4I-1 et seq.),** the NJ
19 FamilyCare **Health Coverage** Program **under P.L.2000, c.71**
20 (C.30:4J-1 et seq.) established pursuant to P.L.2005, c.156
21 (C.30:4J-8 et al.), or any other program administered by the
22 Division of Medical Assistance and Health Services in the
23 Department of Human Services.
24 (cf: P.L.2001, c.236, s.4)

25

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

28 5. a. No certificate of authority to establish and operate a health
29 maintenance organization in this State shall be issued or continued
30 on or after the effective date of this act unless the health
31 maintenance organization provides health care services, to groups
32 of more than 50 enrollees, for medically necessary expenses
33 incurred in the diagnosis and treatment of infertility as provided
34 pursuant to this section. A health maintenance organization shall
35 provide enrollee coverage which includes, but is not limited to, the
36 following services related to infertility: diagnosis and diagnostic
37 tests; medications; surgery; in vitro fertilization; embryo transfer;
38 artificial insemination; gamete intra fallopian transfer; zygote intra
39 fallopian transfer; intracytoplasmic sperm injection; and four
40 completed egg retrievals per lifetime of the enrollee. The health
41 maintenance organization may provide that health care services for
42 in vitro fertilization, gamete intra fallopian transfer and zygote intra
43 fallopian transfer shall be limited to a covered person who: a. has
44 used all reasonable, less expensive and medically appropriate
45 treatments and is still unable to become pregnant or carry a
46 pregnancy; b. has not reached the limit of four completed egg
47 retrievals; and c. is 45 years of age or younger.

48 For purposes of this section, "infertility" means:

1 (1) the disease or condition that results in the abnormal function
2 of the reproductive system such that a person is not able to [:]
3 impregnate another person [;] or conceive [after two years of
4 unprotected intercourse if the female partner is under 35 years of
5 age, or one year of unprotected intercourse if the female partner is
6 35 years of age or older or one of the partners is considered
7 medically sterile; or carry a pregnancy to live birth] ; or

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

11 The health care services shall be provided to the same extent as
12 for other pregnancy-related procedures under the contract, except
13 that the services provided for in this section shall be performed at
14 facilities that conform to standards established by the American
15 Society for Reproductive Medicine or the American College of
16 Obstetricians and Gynecologists. The same copayments,
17 deductibles and benefit limits shall apply to the diagnosis and
18 treatment of infertility pursuant to this section as those applied to
19 other medical or surgical health care services under the contract.

20 b. A religious employer may request, and a health maintenance
21 organization shall grant, an exclusion under the contract for the
22 health care services required by this section for in vitro fertilization,
23 embryo transfer, artificial insemination, zygote intra fallopian
24 transfer and intracytoplasmic sperm injection, if the required health
25 care services are contrary to the religious employer's bona fide
26 religious tenets. The health maintenance organization that issues a
27 contract containing such an exclusion shall provide written notice
28 thereof to each prospective enrollee or enrollee, which shall appear
29 in not less than ten point type, in the contract, application and sales
30 brochure. For the purposes of this subsection, "religious employer"
31 means an employer that is a church, convention or association of
32 churches or any group or entity that is operated, supervised or
33 controlled by or in connection with a church or a convention or
34 association of churches as defined in 26 U.S.C. s.3121(w)(3)(A),
35 and that qualifies as a tax-exempt organization under 26 U.S.C.
36 s.501(c)(3).

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

41 d. The provisions of this section shall not apply to a contract
42 for health care services by a health maintenance organization
43 which, pursuant to a contract between the health maintenance
44 organization and the Department of Human Services, provides
45 benefits to persons who are eligible for medical assistance under
46 P.L.1968, c.413 (C.30:4D-1 et seq.), [the Children's Health Care
47 Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.),] the
48 NJ FamilyCare [Health Coverage] Program [under P.L.2000, c.71

1 (C.30:4J-1 et seq.)**】** established pursuant to P.L.2005, c.156
2 (C.30:4J-8 et al.), or any other program administered by the
3 Division of Medical Assistance and Health Services in the
4 Department of Human Services.
5 (cf: P.L.2001, c.236, s.5)

6

7 6. This act shall take effect 90 days after enactment and shall
8 apply to policies or contracts issued or renewed on or after the
9 effective date.

10

11

12

STATEMENT

13

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

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

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