

AMENDED IN SENATE MAY 1, 2023

SENATE BILL

No. 729

Introduced by Senator Menjivar

(Principal coauthor: Assembly Member Wicks)

(Coauthor: Senator Wiener)

(Coauthor: Assembly Member Low)

February 17, 2023

An act to repeal and add Section 1374.55 of the Health and Safety Code, and to repeal and add Section 10119.6 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 729, as amended, Menjivar. Health care coverage: treatment for infertility and fertility services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of ~~health~~ *disability* insurers by the Department of Insurance. Existing law imposes various requirements and restrictions on health care service plans and ~~health~~ *disability* insurers, including, among other things, a requirement that every group health care service plan contract or ~~health~~ *disability* insurance policy that is issued, amended, or renewed on or after January 1, 1990, offer coverage for the treatment of infertility, except in vitro fertilization.

This bill would require ~~a health care service plan contract or health insurance policy that is~~ *large group, small group, and individual health care service care contracts and disability insurance policies* issued, amended, or renewed on or after January 1, 2024, to provide coverage

for the diagnosis and treatment of infertility and fertility services. The bill would revise the definition of infertility, and would remove the exclusion of in vitro fertilization from coverage. The bill would also delete a requirement that a health care service plan contract and ~~health disability~~ insurance policy provide infertility treatment under agreed-upon terms that are communicated to all group contractholders and policyholders. The bill would prohibit a health care service plan or ~~health disability~~ insurer from placing different conditions or coverage limitations on fertility medications or services, or the diagnosis and treatment of infertility and fertility services, than would apply to other conditions, as specified. With respect to a health care service plan, the bill would not apply to *a specialized health care service plan contract or a Medi-Cal managed care health care service plan contracts* or any entity that enters into a contract with the State Department of Health Care Services for the delivery of health care services pursuant to specified provisions. *With respect to a disability insurer, the bill would not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, or specialized disability insurance policies.* Because the violation of these provisions by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1374.55 of the Health and Safety Code
- 2 is repealed.
- 3 SEC. 2. Section 1374.55 is added to the Health and Safety
- 4 Code, to read:
- 5 1374.55. (a) ~~A health care service plan contract that covers~~
- 6 ~~hospital, medical, or surgical expenses~~ (1) *A large group health*
- 7 *care service plan contract, except a specialized health care service*
- 8 *plan contract, that is issued, amended, or renewed on or after*
- 9 *January 1, 2024, shall provide coverage for the diagnosis and*
- 10 *treatment of infertility and fertility services. The coverage required*

by this ~~subdivision~~ *section* includes services, of completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine (ASRM), using single embryo transfer when recommended and medically appropriate. ~~Every health care service plan shall include notice of the coverage specified in this section in the plan's evidence of coverage.~~

(2) *A small group health care service plan contract, except a specialized health care service plan contract, that is issued, amended, or renewed on or after January 1, 2024, shall offer coverage for the diagnosis and treatment of infertility and fertility services. This paragraph shall not be construed to require a small group health care service plan contract to provide coverage for infertility services.*

(3) *An individual health care service plan contract, except a specialized health care service plan contract, that is issued, amended, or renewed on or after January 1, 2024, shall offer coverage for the diagnosis and treatment of infertility and fertility services. This paragraph shall not be construed to require an individual health care service plan contract to provide coverage for infertility services.*

(4) *A health care service plan shall include notice of the coverage specified in this section in the plan's evidence of coverage.*

(b) For purposes of this section, “infertility” means a ~~condition~~ *disease, condition*, or status characterized by any of the following:

(1) A licensed physician's findings, based on a patient's medical, sexual, and reproductive history, age, physical findings, diagnostic testing, or any combination of those factors. This definition shall not prevent testing and diagnosis of infertility prior to the 12-month or 6-month period to establish infertility in paragraph (3).

(2) A person's inability to reproduce either as an individual or with their partner without medical intervention.

(3) The failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sexual intercourse. For purposes of this section, “regular, unprotected sexual intercourse” means no more than 12 months of unprotected sexual intercourse for a person under 35 years of age or no more than 6 months of unprotected sexual intercourse for a person 35 years of age or

1 older. Pregnancy resulting in miscarriage does not restart the
2 12-month or 6-month time period to qualify as having infertility.

3 (c) The contract may not include any of the following:

4 (1) Any exclusion, limitation, or other restriction on coverage
5 of fertility medications that are different from those imposed on
6 other prescription medications.

7 (2) Any exclusion or denial of coverage of any fertility services
8 based on a covered individual's participation in fertility services
9 provided by or to a third party. For purposes of this section, "third
10 party" includes an oocyte, sperm, or embryo donor, gestational
11 carrier, or surrogate that enables an intended recipient to become
12 a parent.

13 (3) Any deductible, copayment, coinsurance, benefit maximum,
14 waiting period, or any other limitation on coverage for the
15 diagnosis and treatment of infertility, except as provided in
16 subdivision (a) that are different from those imposed upon benefits
17 for services not related to infertility.

18 (d) This section does not in any way deny or restrict any existing
19 right or benefit to coverage and treatment of infertility or fertility
20 services under an existing law, plan, or policy.

21 (e) Consistent with Section 1365.5, coverage for the treatment
22 of infertility and fertility services shall be provided without
23 discrimination on the basis of age, ancestry, color, disability,
24 domestic partner status, gender, gender expression, gender identity,
25 genetic information, marital status, national origin, race, religion,
26 sex, or sexual orientation. This subdivision shall not be construed
27 to interfere with the clinical judgment of a physician and surgeon.

28 (f) This section does not apply to Medi-Cal managed care health
29 care service plan contracts or any entity that enters into a contract
30 with the State Department of Health Care Services for the delivery
31 of health care services pursuant to Chapter 7 (commencing with
32 Section 14000), Chapter 8 (commencing with Section 14200),
33 Chapter 8.75 (commencing with Section 14591), or Chapter 8.9
34 (commencing with Section 14700) of Part 3 of Division 9 of the
35 Welfare and Institutions Code.

36 SEC. 3. Section 10119.6 of the Insurance Code is repealed.

37 SEC. 4. Section 10119.6 is added to the Insurance Code, to
38 read:

39 10119.6. (a) ~~A policy of disability insurance that covers~~
40 ~~hospital, medical, or surgical expenses~~ (1) *A large group disability*

1 *insurance policy, except a specialized disability insurance policy,*
2 *that is issued, amended, or renewed on or after January 1, 2024,*
3 *shall provide coverage for the diagnosis and treatment of infertility*
4 *and fertility services. The coverage required by this ~~subdivision~~*
5 *section includes services, including completed oocyte retrievals*
6 *with unlimited embryo transfers in accordance with the guidelines*
7 *of the American Society for Reproductive Medicine (ASRM),*
8 *using single embryo transfer when recommended and medically*
9 *appropriate. ~~Every insurer shall include notice of the coverage~~*
10 *~~specified in this section in the insurer's evidence of coverage.~~*

11 (2) *A small group disability insurance policy, except a disability*
12 *insurance policy described in paragraph (4), that is issued,*
13 *amended, or renewed on or after January 1, 2024, shall offer*
14 *coverage for the diagnosis and treatment of infertility and fertility*
15 *services. This paragraph shall not be construed to require a small*
16 *group disability insurance policy to provide coverage for infertility*
17 *services.*

18 (3) *An individual disability insurance policy, except a disability*
19 *insurance policy described in paragraph (4), that is issued,*
20 *amended, or renewed on or after January 1, 2024, shall offer*
21 *coverage for the diagnosis and treatment of infertility and fertility*
22 *services. This paragraph shall not be construed to require an*
23 *individual disability insurance policy to provide coverage for*
24 *infertility services.*

25 (4) *A disability insurer shall include notice of the coverage*
26 *specified in this section in the insurer's evidence of coverage.*

27 (5) *This section shall not apply to accident-only, specified*
28 *disease, hospital indemnity, Medicare supplement, or specialized*
29 *disability insurance policies.*

30 (b) For purposes of this section, “infertility” means ~~condition~~
31 *a disease, condition, or status characterized by any of the*
32 *following:*

33 (1) A licensed physician's findings, based on a patient's medical,
34 sexual, and reproductive history, age, physical findings, diagnostic
35 testing, or any combination of those factors. This definition shall
36 not prevent testing and diagnosis prior to the 12-month or 6-month
37 period to establish infertility in paragraph (3).

38 (2) A person's inability to reproduce either as an individual or
39 with their partner without medical intervention.

(3) The failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sexual intercourse. For purposes of this section “regular, unprotected sexual intercourse” means no more than 12 months of unprotected sexual intercourse for a person under 35 years of age or no more than 6 months of unprotected sexual intercourse for a person 35 years of age or older. Pregnancy resulting in miscarriage does not restart the 12-month or 6-month time period to qualify as having infertility.

(c) The policy may not include any of the following:

(1) Any exclusion, limitation, or other restriction on coverage of fertility medications that are different from those imposed on other prescription medications.

(2) Any exclusion or denial of coverage of any fertility services based on a covered individual’s participation in fertility services provided by or to a third party. For purposes of this section, “third party” includes an oocyte, sperm, or embryo donor, gestational carrier, or surrogate that enables an intended recipient to become a parent.

(3) Any deductible, copayment, coinsurance, benefit maximum, waiting period, or any other limitation on coverage for the diagnosis and treatment of infertility, except as provided in subdivision (a) that are different from those imposed upon benefits for services not related to infertility.

(d) This section does not in any way deny or restrict any existing right or benefit to coverage and treatment of infertility or fertility services under an existing law, plan, or policy.

(e) This section applies to every disability insurance policy that is issued, amended, or renewed to residents of this state regardless of the situs of the contract.

(f) Consistent with Section 10140, coverage for the treatment of infertility and fertility services shall be provided without discrimination on the basis of age, ancestry, color, disability, domestic partner status, gender, gender expression, gender identity, genetic information, marital status, national origin, race, religion, sex, or sexual orientation. This subdivision shall not be construed to interfere with the clinical judgment of a physician and surgeon.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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