

# SENATE BILL 416

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CF HB 838

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By: **Senators Kagan, Conway, Currie, Feldman, Ferguson, Guzzone, Kelley, King, Lee, Madaleno, Manno, McFadden, Montgomery, Pinsky, Pugh, Raskin, Rosapepe, Waugh, and Young**

Introduced and read first time: February 6, 2015

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2015

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Insurance – ~~Mandated Benefits – In Vitro Fertilization and Artificial~~**  
3 **~~Insemination Procedures~~ Coverage for Infertility Services**

4 FOR the purpose of prohibiting certain insurers, nonprofit health service plans, and health  
5 maintenance organizations from ~~excluding benefits for certain expenses arising from~~  
6 ~~artificial insemination procedures performed on certain individuals; requiring a~~  
7 ~~policyholder or subscriber, whose expenses for certain in vitro fertilization or~~  
8 ~~artificial insemination procedures are covered under certain benefits, to be married;~~  
9 requiring certain conditions of coverage for certain infertility benefits for a patient  
10 who is married to an individual of the same sex; providing that certain provisions of  
11 law relating to health insurance coverage of in vitro fertilization do not apply to  
12 insurers, nonprofit health service plans, and health maintenance organizations that  
13 provide certain benefits under certain health insurance policies or contracts;  
14 applying a certain condition of providing benefits for certain expenses arising from  
15 in vitro fertilization ~~or artificial insemination~~ procedures only to a patient whose  
16 spouse is ~~capable of producing sperm;~~ of the opposite sex; specifying that a history of  
17 infertility required as a condition of coverage be involuntary; specifying how the  
18 history of involuntary infertility may be demonstrated; ~~requiring certain benefits to~~  
19 ~~be provided when the patient and the patient's spouse are of the same sex;~~ altering  
20 the guidelines and standards to which medical facilities performing certain covered  
21 procedures must conform; providing that certain insurers, nonprofit health service  
22 plans, and health maintenance organizations are not responsible for certain costs;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 providing that a denial of coverage for certain in vitro fertilization benefits  
 2 constitutes an adverse decision under a certain provision of law; prohibiting this Act  
 3 from being construed to require the provision of certain coverage; making certain  
 4 technical corrections; providing for the application of this Act; and generally relating  
 5 to ~~mandated health insurance benefits for in vitro fertilization and artificial~~  
 6 ~~insemination procedures~~ health insurance coverage for infertility services.

7 BY repealing and reenacting, with amendments,  
 8 Article – Insurance  
 9 Section 15–810  
 10 Annotated Code of Maryland  
 11 (2011 Replacement Volume and 2014 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 13 That the Laws of Maryland read as follows:

14 **Article – Insurance**

15 15–810.

16 (a) This section applies to:

17 (1) insurers and nonprofit health service plans that provide hospital,  
 18 medical, or surgical benefits to individuals or groups on an expense–incurred basis under  
 19 health insurance policies that are issued or delivered in the State; and

20 (2) health maintenance organizations that provide hospital, medical, or  
 21 surgical benefits to individuals or groups under contracts that are issued or delivered in  
 22 the State.

23 **(B) AN ENTITY SUBJECT TO THIS SECTION THAT PROVIDES COVERAGE FOR**  
 24 **INFERTILITY BENEFITS OTHER THAN IN VITRO FERTILIZATION MAY NOT REQUIRE**  
 25 **AS A CONDITION OF THAT COVERAGE, FOR A PATIENT WHO IS MARRIED TO AN**  
 26 **INDIVIDUAL OF THE SAME SEX:**

27 **(1) THAT THE PATIENT’S SPOUSE’S SPERM BE USED IN THE COVERED**  
 28 **TREATMENTS OR PROCEDURES; OR**

29 **(2) THAT THE PATIENT DEMONSTRATE INFERTILITY EXCLUSIVELY BY**  
 30 **MEANS OF A HISTORY OF UNSUCCESSFUL HETEROSEXUAL INTERCOURSE.**

31 ~~(b)~~ **(C) (1) THIS SUBSECTION DOES NOT APPLY TO INSURERS,**  
 32 **NONPROFIT HEALTH SERVICE PLANS, AND HEALTH MAINTENANCE ORGANIZATIONS**  
 33 **THAT PROVIDE HOSPITAL, MEDICAL, OR SURGICAL BENEFITS UNDER HEALTH**  
 34 **INSURANCE POLICIES OR CONTRACTS:**

1                   **(I) THAT ARE ISSUED OR DELIVERED TO A SMALL EMPLOYER IN**  
 2 **THE STATE; AND**

3                   **(II) FOR WHICH THE ADMINISTRATION HAS DETERMINED THAT**  
 4 **IN VITRO FERTILIZATION PROCEDURES ARE NOT ESSENTIAL HEALTH BENEFITS, AS**  
 5 **DETERMINED UNDER § 31-116 OF THIS ARTICLE.**

6                   **(2)** An entity subject to this section that provides pregnancy-related  
 7 benefits may not exclude benefits for all outpatient expenses arising from in vitro  
 8 fertilization ~~OR ARTIFICIAL INSEMINATION~~ procedures performed on [the] A ~~MARRIED~~  
 9 policyholder or subscriber or **ON THE** dependent spouse of [the] A policyholder or  
 10 subscriber.

11                   ~~(2)~~ **(3)** The benefits under this subsection shall be provided:

12                   (i) for insurers and nonprofit health service plans, to the same  
 13 extent as the benefits provided for other pregnancy-related procedures; and

14                   (ii) for health maintenance organizations, to the same extent as the  
 15 benefits provided for other infertility services.

16                   ~~(C)~~ **(D)** Subsection ~~(C)~~ **(D)** of this section applies if:

17                   (1) the patient is the policyholder or subscriber or a covered dependent of  
 18 the policyholder or subscriber;

19                   (2) **FOR A PATIENT WHOSE SPOUSE IS CAPABLE OF PRODUCING**  
 20 **SPERM, OF THE OPPOSITE SEX,** the patient's oocytes are fertilized with the patient's  
 21 spouse's sperm;

22                   (3) (i) the patient and the patient's spouse have a history of  
 23 **INVOLUNTARY infertility of at least 2 years' duration, WHICH MAY BE DEMONSTRATED**  
 24 **BY A HISTORY OF:**

25                                   **1. IF THE PATIENT AND THE PATIENT'S SPOUSE ARE OF**  
 26 **OPPOSITE SEXES, INTERCOURSE OF AT LEAST 2 YEARS' DURATION FAILING TO**  
 27 **RESULT IN PREGNANCY; OR**

28                                   **2. IF THE PATIENT AND THE PATIENT'S SPOUSE ARE OF**  
 29 **THE SAME SEX, SIX ATTEMPTS OF ARTIFICIAL INSEMINATION OVER THE COURSE OF**  
 30 **2 YEARS FAILING TO RESULT IN PREGNANCY; {or}**

31                   (ii) the infertility is associated with any of the following medical  
 32 conditions:

- 1 1. endometriosis;
- 2 2. exposure in utero to diethylstilbestrol, commonly known  
3 as DES;
- 4 3. blockage of, or surgical removal of, one or both fallopian  
5 tubes (lateral or bilateral salpingectomy); or
- 6 4. abnormal male factors, including oligospermia,  
7 contributing to the infertility; ~~OR~~

8 ~~(III) THE PATIENT AND THE PATIENT'S SPOUSE ARE OF THE~~  
9 ~~SAME SEX;~~

10 (4) ~~FOR IN VITRO FERTILIZATION BENEFITS,~~ the patient has been  
11 unable to attain a successful pregnancy through a less costly infertility treatment for which  
12 coverage is available under the policy or contract; and

13 (5) the [in vitro fertilization] ~~COVERED~~ procedures are performed at  
14 medical facilities that conform to **APPLICABLE GUIDELINES OR MINIMUM STANDARDS**  
15 **ISSUED BY** the American College of Obstetricians and Gynecologists [guidelines for in vitro  
16 fertilization clinics or to the American Fertility Society minimal standards for programs of  
17 in vitro fertilization] **OR THE AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE.**

18 ~~(d)~~ **(E)** An entity subject to this section may limit coverage of the benefits **FOR**  
19 **IN VITRO FERTILIZATION** required under this section to three in vitro fertilization  
20 attempts per live birth, not to exceed a maximum lifetime benefit of \$100,000.

21 **(F) AN ENTITY SUBJECT TO THIS SECTION IS NOT RESPONSIBLE FOR ANY**  
22 **COSTS INCURRED BY A POLICYHOLDER OR SUBSCRIBER OR A DEPENDENT OF A**  
23 **POLICYHOLDER OR SUBSCRIBER IN OBTAINING DONOR SPERM.**

24 **(G) A DENIAL OF COVERAGE FOR IN VITRO FERTILIZATION BENEFITS**  
25 **REQUIRED UNDER THIS SECTION BY AN ENTITY SUBJECT TO THIS SECTION**  
26 **CONSTITUTES AN ADVERSE DECISION UNDER SUBTITLE 10A OF THIS TITLE.**

27 **(H) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE AN ENTITY**  
28 **SUBJECT TO THIS SECTION TO PROVIDE COVERAGE FOR A TREATMENT OR A**  
29 **PROCEDURE THAT WOULD NOT TREAT A DIAGNOSED MEDICAL CONDITION OF A**  
30 **PATIENT.**

31 ~~(e)~~ **(I)** Notwithstanding any other provision of this section, if the coverage required  
32 under this section conflicts with the bona fide religious beliefs and practices of a religious  
33 organization, on request of the religious organization, an entity subject to this section shall

1 exclude the coverage otherwise required under this section in a policy or contract with the  
2 religious organization.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all  
4 policies, contracts, and health benefit plans issued, delivered, ~~or~~ renewed, or in force in the  
5 State on or after ~~October~~ July 1, 2015.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 ~~October~~ July 1, 2015.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.