

Chapter 483

(House Bill 838)

AN ACT concerning

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

FOR the purpose of prohibiting certain insurers, nonprofit health service plans, and health maintenance organizations from ~~excluding benefits for certain expenses arising from artificial insemination procedures performed on certain individuals; requiring a policyholder or subscriber, whose expenses for certain in vitro fertilization or artificial insemination procedures are covered under certain benefits, to be married; requiring certain conditions of coverage for certain infertility benefits for a patient who is married to an individual of the same sex; providing that certain provisions of law relating to health insurance coverage of in vitro fertilization do not apply to insurers, nonprofit health service plans, and health maintenance organizations that provide certain benefits under certain health insurance policies or contracts; applying a certain condition of providing benefits for certain expenses arising from in vitro fertilization or artificial insemination procedures only to a patient whose spouse is capable of producing sperm; of the opposite sex; specifying that a history of infertility required as a condition of coverage be involuntary; specifying how the history of involuntary infertility may be demonstrated; requiring certain benefits to be provided when the patient and the patient's spouse are of the same sex; altering the guidelines and standards to which medical facilities performing certain covered procedures must conform; providing that certain insurers, nonprofit health service plans, and health maintenance organizations are not responsible for certain costs; providing that a denial of coverage for certain in vitro fertilization benefits constitutes an adverse decision under a certain provision of law; prohibiting this Act from being construed to require the provision of certain coverage; making certain technical corrections; providing for the application of this Act; and generally relating to mandated health insurance benefits for in vitro fertilization and artificial insemination procedures~~ health insurance coverage for infertility services.

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

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

Article – Insurance

15–810.

(a) This section applies to:

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

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

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

(1) THAT THE PATIENT'S SPOUSE'S SPERM BE USED IN THE COVERED TREATMENTS OR PROCEDURES; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. endometriosis;

2. exposure in utero to diethylstilbestrol, commonly known as DES;

3. blockage of, or surgical removal of, one or both fallopian tubes (lateral or bilateral salpingectomy); or

4. abnormal male factors, including oligospermia, contributing to the infertility; ~~OR~~

~~**(H)** THE PATIENT AND THE PATIENT'S SPOUSE ARE OF THE SAME SEX;~~

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

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

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

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

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

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

~~(e)~~ **(I)** Notwithstanding any other provision of this section, if the coverage required under this section conflicts with the bona fide religious beliefs and practices of a religious organization, on request of the religious organization, an entity subject to this section shall exclude the coverage otherwise required under this section in a policy or contract with the religious organization.

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

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2015.