

AMENDED IN SENATE MAY 18, 2023

AMENDED IN SENATE MAY 1, 2023

SENATE BILL

No. 729

Introduced by Senator Menjivar

(Principal coauthor: Assembly Member Wicks)

~~(Coauthor: Senator Wiener)~~

(Coauthors: Senators Portantino and 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 disability insurers by the Department of Insurance. Existing law imposes various requirements and restrictions on health care service plans and disability insurers, including, among other things, a requirement that every group health care service plan contract or 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 large group, small group, and individual health care service ~~care~~ *plan* 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 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 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~~

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~~

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) (1) A large group health care service plan
- 6 contract, except a specialized health care service plan contract,
- 7 that is issued, amended, or renewed on or after January 1, 2024,
- 8 shall provide coverage for the diagnosis and treatment of infertility
- 9 and fertility services. The coverage required by this section includes

1 services, of completed oocyte retrievals with unlimited embryo
2 transfers in accordance with the guidelines of the American Society
3 for Reproductive Medicine (ASRM), using single embryo transfer
4 when recommended and medically appropriate.

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

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

19 (4) A health care service plan shall include notice of the
20 coverage specified in this section in the plan’s evidence of
21 coverage.

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

24 (1) A licensed physician’s findings, based on a patient’s medical,
25 sexual, and reproductive history, age, physical findings, diagnostic
26 testing, or any combination of those factors. This definition shall
27 not prevent testing and diagnosis of infertility ~~prior to~~ *before* the
28 12-month or 6-month period to establish infertility in paragraph
29 (3).

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

32 (3) The failure to establish a pregnancy or to carry a pregnancy
33 to live birth after regular, unprotected sexual intercourse. For
34 purposes of this section, “regular, unprotected sexual intercourse”
35 means no more than 12 months of unprotected sexual intercourse
36 for a person under 35 years of age or no more than 6 months of
37 unprotected sexual intercourse for a person 35 years of age or
38 older. Pregnancy resulting in miscarriage does not restart the
39 12-month or 6-month time period to qualify as having infertility.

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

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

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

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

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

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

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

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

34 SEC. 4. Section 10119.6 is added to the Insurance Code, to
35 read:

36 10119.6. (a) (1) A large group disability insurance policy,
37 except a specialized disability insurance policy, that is issued,
38 amended, or renewed on or after January 1, 2024, shall provide
39 coverage for the diagnosis and treatment of infertility and fertility
40 services. The coverage required by this section includes services,

1 including completed oocyte retrievals with unlimited embryo
2 transfers in accordance with the guidelines of the American Society
3 for Reproductive Medicine (ASRM), using single embryo transfer
4 when recommended and medically appropriate.

5 (2) A small group disability insurance policy, except a disability
6 insurance policy described in paragraph (4), that is issued,
7 amended, or renewed on or after January 1, 2024, shall offer
8 coverage for the diagnosis and treatment of infertility and fertility
9 services. This paragraph shall not be construed to require a small
10 group disability insurance policy to provide coverage for infertility
11 services.

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

19 (4) A disability insurer shall include notice of the coverage
20 specified in this section in the insurer’s evidence of coverage.

21 (5) This section shall not apply to accident-only, specified
22 disease, hospital indemnity, Medicare supplement, or specialized
23 disability insurance policies.

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

26 (1) A licensed physician’s findings, based on a patient’s medical,
27 sexual, and reproductive history, age, physical findings, diagnostic
28 testing, or any combination of those factors. This definition shall
29 not prevent testing and diagnosis ~~prior to~~ *before* the 12-month or
30 6-month period to establish infertility in paragraph (3).

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

33 (3) The failure to establish a pregnancy or to carry a pregnancy
34 to live birth after regular, unprotected sexual intercourse. For
35 purposes of this section “regular, unprotected sexual intercourse”
36 means no more than 12 months of unprotected sexual intercourse
37 for a person under 35 years of age or no more than 6 months of
38 unprotected sexual intercourse for a person 35 years of age or
39 older. Pregnancy resulting in miscarriage does not restart the
40 12-month or 6-month time period to qualify as having infertility.

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

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

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

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

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

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

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

29 SEC. 5. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

O