SPONSOR: Sen. Townsend & Rep. Longhurst
Sens. Ennis, Hansen, Henry, Poore; Reps. Baumbach, Bentz, Lynn, Mitchell, Paradee

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 132

AN ACT TO AMEND TITLE 18 RELATING TO INSURANCE COVERAGE FOR FERTILITY CARE SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3342A. Fertility care coverage required.

(a) All individual health insurance policies, contracts or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State which provide for medical or hospital expenses shall include coverage for fertility care services, including in vitro fertilization services for persons who, along with their partner, suffer from a disease or condition that results in the inability to procreate or to carry a pregnancy to viability. Such benefits shall be covered to the same extent as other pregnancy-related benefits and must include the following.

(1) Artificial insemination.

(2) Assisted hatching.

(3) Cryopreservation and thawing of eggs and embryos.

(4) Cryopreservation of ovarian and testicular tissue.

(5) Embryo biopsy.

(6) Diagnostic testing.

(7) Fresh and frozen embryo transfers.

(8) Six completed egg retrievals per lifetime, with unlimited single embryo transfer of associated resulting viable embryos.

(9) In vitro fertilization ("IVF"), including IVF using donor eggs or sperm, and IVF where the embryo is transferred to a gestational carrier or surrogate.

(10) Intra-cytoplasmic sperm injection ("ICSI").

(11) Medications.

(12) Ovulation induction.

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(13) Single-Embryo Transfer ("SET").

(14) Storage of embryos.

(15) Surgery, including microsurgical sperm aspiration.

(b) Medical and laboratory services that reduce excess embryo creation through egg cryopreservation and thawing should be a covered benefit without limit under this bill in accordance with an individual's or family's religious beliefs.

(c) For purposes of this section:

(1) "Infertility" means a disease or condition that results in the abnormal function of the reproductive system, whereby a person, or their partner, is unable to procreate or to carry a pregnancy to viability. Infertility does not mean a person who has been voluntarily sterilized after procreating with their current partner.

(2) "Inability to procreate" or "inability to carry a pregnancy to viability" means any reason for infertility, including the following:

a. Absent uterus.

b. Cancer therapies that impede or delay procreation.

c. Damaged or blocked fallopian tubes.

d. Damaged, diminished, or absent sperm.

e. Diminished or absent ovarian function due to genetic or idiopathic causes.

f. Endometriosis.

g. Individuals at known risk for transmitting severe genetic disease to their offspring.

h. Severe adhesions.

i. Uterine fibroids.

j. Sexual dysfunction impeding intercourse.

k. Teratogens, or idiopathic causes.

l. Two or more pregnancy losses, including ectopic pregnancies.

m. Uterine congenital anomalies caused by diethylstilbestrol ("DES").

(d) The coverage under this section must be provided as follows:

(1) Board-certified or board-eligible obstetrician-gynecologist or a subspecialist in reproductive endocrinology must verify that the covered individual or their partner is diagnosed with a condition under § 3556A(c)(2) of this title.

(2) The covered individual or their partner has not been able to obtain a successful pregnancy through any less costly infertility treatments covered by the policy, contract, or certificate, however, no more than 3 treatment

cycles of low technology ovulation induction or intrauterine inseminations may be required before in vitro fertilization services are covered.

(3) For IVF services, retrievals must be complete before the individual is 45 years old and transfers must be completed before the individual is 50 years old.

(4) IVF procedure must be performed at clinics that conform to American Society for Reproductive Medicine and American Congress of Obstetricians and Gynecologists guidelines.

(e) Any such policy or contract may not impose any exclusions, limitations, or other restrictions on coverage of fertility medications that are different from those imposed on any other prescription medications, nor shall they impose deductibles, copayments, coinsurance, benefit maximums, waiting periods or any other limitations on coverage for required fertility care services, which are different from those imposed upon benefits for services not related to infertility.

(f) Any such policy or contract is not required to cover experimental fertility care services, surrogacy, or the reversal of voluntary sterilization.

Section 2. Amend Chapter 35, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3556A. Fertility care coverage required.

(a) All group and blanket health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State by any health insurer, health service corporation, or managed care organization which provide for medical or hospital expenses shall include coverage for fertility care services, including in vitro fertilization services for persons who, along with their partner, suffer from a disease or condition that results in the inability to procreate or to carry a pregnancy to viability. Such benefits shall be covered to the same extent as other pregnancy-related benefits and must include the following.

(1) Artificial insemination.

(2) Assisted hatching.

(3) Cryopreservation and thawing of eggs and embryos.

(4) Cryopreservation of ovarian and testicular tissue.

(5) Embryo biopsy.

(6) Diagnostic testing.

(7) Fresh and frozen embryo transfers.

(8) Six completed egg retrievals per lifetime, with unlimited single embryo transfer of associated resulting viable embryos.

(9) In vitro fertilization ("IVF"), including IVF using donor eggs or sperm, and IVF where the embryo is transferred to a gestational carrier or surrogate.

(10) Intra-cytoplasmic sperm injection ("ICSI").

(11) Medications.

(12) Ovulation induction.

(13) Single-Embryo Transfer ("SET").

(14) Storage of embryos.

(15) Surgery, including microsurgical sperm aspiration.

(b) Medical and laboratory services that reduce excess embryo creation through egg cryopreservation and thawing should be a covered benefit, without limit, under this bill in accordance with an individual's or family's religious beliefs.

(c) For purposes of this section:

(1) "Infertility" means a disease or condition that results in the abnormal function of the reproductive system, whereby a person, or their partner, is unable to procreate or to carry a pregnancy to viability. Infertility does not mean a person who has been voluntarily sterilized after procreating with their current partner.

(2) "Inability to procreate" or "inability to carry a pregnancy to viability" means any reason for infertility, including the following:

a. Absent uterus.

b. Cancer therapies that impede or delay procreation.

c. Damaged or blocked fallopian tubes.

d. Damaged, diminished, or absent sperm.

e. Diminished or absent ovarian function due to genetic or idiopathic causes.

f. Endometriosis.

g. Individuals at known risk for transmitting severe genetic disease to their offspring.

h. Severe adhesions.

i. Uterine fibroids.

j. Sexual dysfunction impeding intercourse.

k. Teratogens, or idiopathic causes.

l. Two or more pregnancy losses, including ectopic pregnancies.

m. Uterine congenital anomalies caused by diethylstilbestrol ("DES").

(d) The coverage under this section must be provided as follows:

(1) Board-certified or board-eligible obstetrician-gynecologist or a subspecialist in reproductive endocrinology must verify that the covered individual or their partner is diagnosed with a condition under § 3556A(c)(2) of this title.

(2) The covered individual or their partner has not been able to obtain a successful pregnancy through any less costly infertility treatments covered by the policy, contract, or certificate, however, no more than 3 treatment cycles of low technology ovulation induction or intrauterine inseminations may be required before in vitro fertilization services are covered.

(3) For IVF services, retrievals must be complete before the individual is 45 years old and transfers must be completed before the individual is 50 years old.

(4) IVF procedure must be performed at clinics that conform to American Society for Reproductive Medicine and American Congress of Obstetricians and Gynecologists guidelines.

(e) Any such policy or contract may not impose any exclusions, limitations or other restrictions on coverage of fertility medications that are different from those imposed on any other prescription medications, nor shall they impose deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitations on coverage for required fertility care services, which are different from those imposed upon benefits for services not related to infertility.

(f) A religious employer may request and an entity subject to this section shall grant an exclusion from coverage under the policy, plan, or contract for the coverage required under this section if the required coverage conflicts with the religious organization's bona fide religious beliefs and practices. A religious employer that obtains an exclusion under this subsection shall provide its employees reasonable and timely notice of the exclusion.

(g) Employers who self-insure or who have fewer than 50 employees are exempt from the requirements of this section.

(h) Any such policy or contract is not required to cover experimental fertility care services, surrogacy, or the reversal of voluntary sterilization.

SYNOPSIS

This Act requires that health insurance offered in this State provide coverage for fertility care services, including in vitro fertilization ("IVF") procedures for persons, who along with their partner, suffer from a disease or condition that results in the inability to procreate or to carry a pregnancy to viability.

Like all other diseases, infertility should be covered by insurance. According to the National Infertility Association, RESOLVE, infertility affects 1 in 8 couples and 1 in 4 cannot afford treatment. Everyone deserves the right to procreate.

Right now, many Delaware families diagnosed with infertility fall into a “coverage gap” and pay out-of-pocket for fertility care services. Only certain employers provide any fertility care coverage in Delaware and many of these plans provide very limited coverage. Families generally must pay high co-pays or adhere to service restrictions and lifetime dollar caps that strictly limit their treatment options, and thus make it unaffordable for many of them to proceed without risking

their financial security or without achieving a successful pregnancy. For example, 1 IVF cycle can cost between $15,000 and $25,000 and, on average, it takes 2 to 3 cycles to achieve pregnancy. Additionally, highly inflated managed care pharmacy prices for IVF medications, where families with coverage can pay as much as 100% more for medications compared to prices charged to self-pay families, often contribute to 25-50% or more of total IVF costs, which can quickly drain lifetime caps and severely limit overall IVF care options.

According to the National Conference of State Legislatures, 15 states currently have laws requiring insurance coverage for infertility diagnosis or treatment, including 2 states that border Delaware, New Jersey and Maryland. This puts the State at a significant competitive disadvantage, as many reproductive age residents intentionally change employers and leave Delaware to gain more attractive fertility care benefits. It is also well-documented that individuals who self-pay for IVF procedures, or have limited benefits, often demand that 2 or more embryos be transferred to their uterus. This is a dangerous and costly approach for heavily burdened health care resources, and can be completely avoided, with greater access to covered fertility care services.

This Act require insurers to cover fertility care services based on the latest IVF technologies to increase pregnancy success rates for singleton births at the lowest possible costs. This will greatly reduce the risk of multiple births and greatly reduce hospital and health care costs, thus saving employers money. Several recent studies have found that the cost of perinatal and neonatal care for twins is about $100,000, whereas singleton pregnancies cost about $13,000. Triplet pregnancies can cost $400,000 or more. For every 100 pregnancies from IVF that are singletons (but could have been twins), about $8.7 million dollars is saved, on top of reduced pain and suffering for parents and premature babies. This Act would significantly reduce this high financial and societal burden, with the promotion of IVF technologies that exclusively use single-embryo transfers.

This Act could increase the number of persons treated for infertility, but also increase the number of babies born in Delaware by 2-300 per year, thus increasing the state's birth rate by 1-2% and providing a boost to the local economy, while also decreasing health care costs.

Author: Senator Townsend