



SPONSOR: Sen. Townsend & Rep. Longhurst
Sens. Cloutier, Ennis, Hansen, Henry, Lopez, Poore,
Simpson, Sokola; Reps. Baumbach, Bennett, Bentz,
Bolden, Brady, Carson, Heffernan, Hensley, Hudson,
Jaques, Keeley, Lynn, Matthews, Mitchell, Paradee,
M. Smith, K. Williams

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 139

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE COVERAGE FOR
OBSTETRICAL AND GYNECOLOGICAL SERVICES.

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

1 Section 1. Amend § 3342, Title 18 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3342. Obstetrical and gynecological coverage.

4 (i)(1) For purposes of this subsection:

5 a. “Iatrogenic infertility” means an impairment of fertility due to surgery, radiation, chemotherapy, or
6 other medical treatment.

7 b. “Infertility” means a disease or condition that results in impaired function of the reproductive
8 system whereby an individual is unable to procreate or to carry a pregnancy to live birth, including the
9 following:

10 1. Absent or incompetent uterus.

11 2. Damaged, blocked, or absent fallopian tubes.

12 3. Damaged, blocked, or absent male reproductive tract.

13 4. Damaged, diminished, or absent sperm.

14 5. Damaged, diminished, or absent oocytes.

15 6. Damaged, diminished, or absent ovarian function.

16 7. Endometriosis.

17 8. Hereditary genetic disease or condition that would be passed to offspring.

18 9. Adhesions.

19 10. Uterine fibroids.

20 11. Sexual dysfunction impeding intercourse.

- 21 12. Teratogens or idiopathic causes.
- 22 13. Polycystic ovarian syndrome.
- 23 14. Inability to become pregnant or cause pregnancy of unknown etiology.
- 24 15. Two or more pregnancy losses, including ectopic pregnancies.
- 25 16. Uterine congenital anomalies, including those caused by diethylstilbestrol (“DES”).
- 26 c. “Standard fertility preservation services” means procedures consistent with established medical
- 27 practices and professional guidelines published by professional medical organizations, including the
- 28 American Society for Clinical Oncology and the American Society for Reproductive Medicine.
- 29 (2) All individual health insurance policies, contracts, or certificates that are delivered, issued for
- 30 delivery, renewed, extended, or modified in this State which provide for medical or hospital expenses shall include
- 31 coverage for fertility care services, including in vitro fertilization services for individuals who suffer from a
- 32 disease or condition that results in the inability to procreate or to carry a pregnancy to live birth and standard
- 33 fertility preservation services for individuals who must undergo medically necessary treatment that may cause
- 34 iatrogenic infertility. Such benefits must be provided to covered individuals, including covered spouses and
- 35 covered non spouse dependents, to the same extent as other pregnancy-related benefits and include the following:
- 36 a. Intrauterine insemination.
- 37 b. Assisted hatching.
- 38 c. Cryopreservation and thawing of eggs, sperm, and embryos.
- 39 d. Cryopreservation of ovarian tissue.
- 40 e. Cryopreservation of testicular tissue.
- 41 f. Embryo biopsy.
- 42 g. Consultation and diagnostic testing.
- 43 h. Fresh and frozen embryo transfers.
- 44 i. Six completed egg retrievals per lifetime, with unlimited embryo transfers in accordance with the
- 45 guidelines of the American Society for Reproductive Medicine, using single embryo transfer (“SET”)
- 46 when recommended and medically appropriate.
- 47 j. In vitro fertilization (“IVF”), including IVF using donor eggs, sperm, or embryos, and IVF where
- 48 the embryo is transferred to a gestational carrier or surrogate.
- 49 k. Intra-cytoplasmic sperm injection (“ICSI”).
- 50 l. Medications.

51 m. Ovulation induction.

52 n. Storage of oocytes, sperm, embryos, and tissue.

53 o. Surgery, including microsurgical sperm aspiration.

54 p. Medical and laboratory services that reduce excess embryo creation through egg cryopreservation

55 and thawing in accordance with an individual's religious or ethical beliefs.

56 (3) An individual qualifies for coverage under this subsection if all of the following requirements are met:

57 a. A board-certified or board-eligible obstetrician-gynecologist, subspecialist in reproductive

58 endocrinology, oncologist, urologist, or andrologist verifies that the covered individual is diagnosed with

59 infertility or is at risk of iatrogenic infertility.

60 b. When the covered individual is diagnosed with infertility, the covered individual has not been able

61 to obtain a successful pregnancy through reasonable effort with less costly infertility treatments covered

62 by the policy, contract, or certificate, except as follows:

63 1. No more than 3 treatment cycles of ovulation induction or intrauterine inseminations may be

64 required before in vitro fertilization services are covered.

65 2. If IVF is medically necessary, no cycles of ovulation induction or intrauterine inseminations

66 may be required before in vitro fertilization services are covered.

67 3. IVF procedure must be performed at a practice that conforms to American Society for

68 Reproductive Medicine and American Congress of Obstetricians and Gynecologists guidelines.

69 c. For IVF services, retrievals are completed before the individual is 45 years old and transfers are

70 completed before the individual is 50 years old.

71 (4) A policy, contract, or certificate may not impose any exclusions, limitations, or other restrictions on

72 coverage of fertility medications that are different from those imposed on any other prescription medications, nor

73 may it impose deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitations

74 on coverage for required fertility care services, which are different from those imposed upon benefits for services

75 not related to infertility.

76 (5) A policy, contract, or certificate is not required to cover experimental fertility care services, monetary

77 payments to gestational carriers or surrogates, or the reversal of voluntary sterilization undergone after the covered

78 individual successfully procreated with the covered individual's partner at the time the reversal is desired.

79 Section 2. Amend § 3556, Title 18 of the Delaware Code by making deletions as shown by strike through and

80 insertions as shown by underline as follows:

81 § 3556. Obstetrical and gynecological coverage.

82 (i)(1) For purposes of this subsection:

83 a. “Iatrogenic infertility” means an impairment of fertility due to surgery, radiation, chemotherapy, or
84 other medical treatment.

85 b. “Infertility” means a disease or condition that results in impaired function of the reproductive
86 system whereby an individual is unable to procreate or to carry a pregnancy to live birth, including the
87 following:

- 88 1. Absent or incompetent uterus.
- 89 2. Damaged, blocked, or absent fallopian tubes.
- 90 3. Damaged, blocked, or absent male reproductive tract.
- 91 4. Damaged, diminished, or absent sperm.
- 92 5. Damaged, diminished, or absent oocytes.
- 93 6. Damaged, diminished, or absent ovarian function.
- 94 7. Endometriosis.
- 95 8. Hereditary genetic disease or condition that would be passed to offspring.
- 96 9. Adhesions.
- 97 10. Uterine fibroids.
- 98 11. Sexual dysfunction impeding intercourse.
- 99 12. Teratogens or idiopathic causes.
- 100 13. Polycystic ovarian syndrome.
- 101 14. Inability to become pregnant or cause pregnancy of unknown etiology.
- 102 15. Two or more pregnancy losses, including ectopic pregnancies.
- 103 16. Uterine congenital anomalies, including those caused by diethylstilbestrol (“DES”).

104 c. “Standard fertility preservation services” means procedures consistent with established medical
105 practices and professional guidelines published by professional medical organizations, including the
106 American Society for Clinical Oncology and the American Society for Reproductive Medicine.

107 (2) All individual health insurance policies, contracts, or certificates that are delivered, issued for
108 delivery, renewed, extended, or modified in this State which provide for medical or hospital expenses shall include
109 coverage for fertility care services, including in vitro fertilization services for individuals who suffer from a
110 disease or condition that results in the inability to procreate or to carry a pregnancy to live birth and standard

111 fertility preservation services for individuals who must undergo medically necessary treatment that may cause
112 iatrogenic infertility. Such benefits must be provided to covered individuals, including covered spouses and
113 covered non spouse dependents, to the same extent as other pregnancy-related benefits and include the following:

114 a. Intrauterine insemination.

115 b. Assisted hatching.

116 c. Cryopreservation and thawing of eggs, sperm, and embryos.

117 d. Cryopreservation of ovarian tissue.

118 e. Cryopreservation of testicular tissue.

119 f. Embryo biopsy.

120 g. Consultation and diagnostic testing.

121 h. Fresh and frozen embryo transfers.

122 i. Six completed egg retrievals per lifetime, with unlimited embryo transfers in accordance with the
123 guidelines of the American Society for Reproductive Medicine, using single embryo transfer (“SET”)
124 when recommended and medically appropriate.

125 j. In vitro fertilization (“IVF”), including IVF using donor eggs, sperm, or embryos, and IVF where
126 the embryo is transferred to a gestational carrier or surrogate.

127 k. Intra-cytoplasmic sperm injection (“ICSI”).

128 l. Medications.

129 m. Ovulation induction.

130 n. Storage of oocytes, sperm, embryos, and tissue.

131 o. Surgery, including microsurgical sperm aspiration.

132 p. Medical and laboratory services that reduce excess embryo creation through egg cryopreservation
133 and thawing in accordance with an individual’s religious or ethical beliefs.

134 (3) An individual qualifies for coverage under this subsection if all of the following requirements are met:

135 a. A board-certified or board-eligible obstetrician-gynecologist, subspecialist in reproductive
136 endocrinology, oncologist, urologist, or andrologist verifies that the covered individual is diagnosed with
137 infertility or is at risk of iatrogenic infertility.

138 b. When the covered individual is diagnosed with infertility, the covered individual has not been able
139 to obtain a successful pregnancy through reasonable effort with less costly infertility treatments covered
140 by the policy, contract, or certificate, except as follows:

141 1. No more than 3 treatment cycles of ovulation induction or intrauterine inseminations may be
142 required before in vitro fertilization services are covered.

143 2. If IVF is medically necessary, no cycles of ovulation induction or intrauterine inseminations
144 may be required before in vitro fertilization services are covered.

145 3. IVF procedure must be performed at a practice that conforms to American Society for
146 Reproductive Medicine and American Congress of Obstetricians and Gynecologists guidelines.

147 c. For IVF services, retrievals are completed before the individual is 45 years old and transfers are
148 completed before the individual is 50 years old.

149 (4) A policy, contract, or certificate may not impose any exclusions, limitations, or other restrictions on
150 coverage of fertility medications that are different from those imposed on any other prescription medications, nor
151 may it impose deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitations
152 on coverage for required fertility care services, which are different from those imposed upon benefits for services
153 not related to infertility.

154 (5) A religious employer may request and an entity subject to this subsection shall grant an exclusion
155 from coverage for the coverage required under this subsection in a policy, contract, or certificate if the required
156 coverage conflicts with the religious organization's bona fide religious beliefs and practices. A religious employer
157 that obtains an exclusion under this subsection shall provide its employees reasonable and timely notice of the
158 exclusion.

159 (6) Employers who self-insure or who have fewer than 50 employees are exempt from the requirements
160 of this subsection.

161 (7) A policy, contract, or certificate is not required to cover experimental fertility care services, monetary
162 payments to gestational carriers or surrogates, or the reversal of voluntary sterilization undergone after the covered
163 individual successfully procreated with the covered individual's partner at the time the reversal is desired.

SYNOPSIS

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

This Act also requires that health insurance offered in this State provide coverage for fertility preservation for individuals diagnosed with cancer and other diseases, when medically necessary treatment could adversely affect their fertility.

Like all other diseases, infertility should be covered by insurance. According to the National Infertility Association, RESOLVE, infertility affects 1 in 8 couples and 3 in 4 never obtain needed treatment, often because they cannot afford it. Everyone deserves the right to procreate and to try to build a family.

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 what they do provide is often very limited. 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 regarding 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 an IVF procedure, or have limited benefits, often demand that 2 or more embryos be transferred to their uterus. This greatly increases the risk of multiple births and 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. Studies show that states with insurance coverage have a lower rate of multiple births because fewer embryos are transferred.

This Act requires insurers to cover fertility care services based on the current standard of care for IVF treatments to achieve 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 by promoting IVF technologies that 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