

Introduced by Senator Menjivar
(Principal coauthor: Assembly Member Wicks)
(Coauthor: Senator 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 introduced, 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 health insurers by the Department of Insurance. Existing law imposes various requirements and restrictions on health care service plans and health insurers, including, among other things, a requirement that every group health care service plan contract or health 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 a health care service plan contract or health insurance policy that is 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 health 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 health 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 respect to a health care service plan, the bill would not apply to 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. 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 ~~1374.55. (a) On and after January 1, 1990, every health care~~
 4 ~~service plan contract that is issued, amended, or renewed that~~
 5 ~~covers hospital, medical, or surgical expenses on a group basis,~~
 6 ~~where the plan is not a health maintenance organization as defined~~
 7 ~~in Section 1373.10, shall offer coverage for the treatment of~~
 8 ~~infertility, except in vitro fertilization, under those terms and~~
 9 ~~conditions as may be agreed upon between the group subscriber~~
 10 ~~and the plan. Every plan shall communicate the availability of that~~
 11 ~~coverage to all group contractholders and to all prospective group~~
 12 ~~contractholders with whom they are negotiating.~~
 13 ~~(b) For purposes of this section, “infertility” means either (1)~~
 14 ~~the presence of a demonstrated condition recognized by a licensed~~
 15 ~~physician and surgeon as a cause of infertility, or (2) the inability~~
 16 ~~to conceive a pregnancy or to carry a pregnancy to a live birth after~~
 17 ~~a year or more of regular sexual relations without contraception.~~
 18 ~~“Treatment for infertility” means procedures consistent with~~

1 established medical practices in the treatment of infertility by
2 licensed physicians and surgeons including, but not limited to,
3 diagnosis, diagnostic tests, medication, surgery, and gamete
4 intrafallopian transfer. “In vitro fertilization” means the laboratory
5 medical procedures involving the actual in vitro fertilization
6 process.

7 (e) On and after January 1, 1990, every health care service plan
8 that is a health maintenance organization, as defined in Section
9 1373.10, and that issues, renews, or amends a health care service
10 plan contract that provides group coverage for hospital, medical,
11 or surgical expenses shall offer the coverage specified in
12 subdivision (a), according to the terms and conditions that may be
13 agreed upon between the group subscriber and the plan to group
14 contractholders with at least 20 employees to whom the plan is
15 offered. The plan shall communicate the availability of the
16 coverage to those group contractholders and prospective group
17 contractholders with whom the plan is negotiating.

18 (d) This section shall not be construed to deny or restrict in any
19 way any existing right or benefit to coverage and treatment of
20 infertility under an existing law, plan, or policy.

21 (e) This section shall not be construed to require any employer
22 that is a religious organization to offer coverage for forms of
23 treatment of infertility in a manner inconsistent with the religious
24 organization’s religious and ethical principles.

25 (f) (1) This section shall not be construed to require any plan,
26 which is a subsidiary of an entity whose owner or corporate
27 member is a religious organization, to offer coverage for treatment
28 of infertility in a manner inconsistent with that religious
29 organization’s religious and ethical principles.

30 (2) For purposes of this subdivision, “subsidiary” of a specified
31 corporation means a corporation more than 45 percent of the voting
32 power of which is owned directly, or indirectly through one or
33 more subsidiaries, by the specified corporation.

34 (g) Consistent with Section 1365.5, coverage for the treatment
35 of infertility shall be offered and, if purchased, provided without
36 discrimination on the basis of age, ancestry, color, disability,
37 domestic partner status, gender, gender expression, gender identity,
38 genetic information, marital status, national origin, race, religion,
39 sex, or sexual orientation. Nothing in this subdivision shall be

1 ~~construed to interfere with the clinical judgment of a physician~~
2 ~~and surgeon.~~

3 SEC. 2. Section 1374.55 is added to the Health and Safety
4 Code, to read:

5 1374.55. (a) A health care service plan contract that covers
6 hospital, medical, or surgical expenses that is issued, amended, or
7 renewed on or after January 1, 2024, shall provide coverage for
8 the diagnosis and treatment of infertility and fertility services. The
9 coverage required by this subdivision includes services, of
10 completed oocyte retrievals with unlimited embryo transfers in
11 accordance with the guidelines of the American Society for
12 Reproductive Medicine (ASRM), using single embryo transfer
13 when recommended and medically appropriate. Every health care
14 service plan shall include notice of the coverage specified in this
15 section in the plan's evidence of coverage.

16 (b) For purposes of this section, "infertility" means a condition
17 or status characterized by any of the following:

18 (1) A licensed physician's findings, based on a patient's medical,
19 sexual, and reproductive history, age, physical findings, diagnostic
20 testing, or any combination of those factors. This definition shall
21 not prevent testing and diagnosis of infertility prior to the 12-month
22 or 6-month period to establish infertility in paragraph (3).

23 (2) A person's inability to reproduce either as an individual or
24 with their partner without medical intervention.

25 (3) The failure to establish a pregnancy or to carry a pregnancy
26 to live birth after regular, unprotected sexual intercourse. For
27 purposes of this section, "regular, unprotected sexual intercourse"
28 means no more than 12 months of unprotected sexual intercourse
29 for a person under 35 years of age or no more than 6 months of
30 unprotected sexual intercourse for a person 35 years of age or
31 older. Pregnancy resulting in miscarriage does not restart the
32 12-month or 6-month time period to qualify as having infertility.

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

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

37 (2) Any exclusion or denial of coverage of any fertility services
38 based on a covered individual's participation in fertility services
39 provided by or to a third party. For purposes of this section, "third
40 party" includes an oocyte, sperm, or embryo donor, gestational

1 carrier, or surrogate that enables an intended recipient to become
2 a parent.

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

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

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

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

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

27 ~~10119.6. (a) On and after January 1, 1990, every insurer~~
28 ~~issuing, renewing, or amending a policy of disability insurance~~
29 ~~that covers hospital, medical, or surgical expenses on a group basis~~
30 ~~shall offer coverage of infertility treatment, except in vitro~~
31 ~~fertilization, under those terms and conditions as may be agreed~~
32 ~~upon between the group policyholder and the insurer. Every insurer~~
33 ~~shall communicate the availability of that coverage to all group~~
34 ~~policyholders and to all prospective group policyholders with~~
35 ~~whom they are negotiating.~~

36 ~~(b) For purposes of this section, "infertility" means either (1)~~
37 ~~the presence of a demonstrated condition recognized by a licensed~~
38 ~~physician and surgeon as a cause of infertility, or (2) the inability~~
39 ~~to conceive a pregnancy or to carry a pregnancy to a live birth after~~
40 ~~a year or more of regular sexual relations without contraception.~~

1 ~~“Treatment for infertility” means procedures consistent with~~
 2 ~~established medical practices in the treatment of infertility by~~
 3 ~~licensed physicians and surgeons, including, but not limited to,~~
 4 ~~diagnosis, diagnostic tests, medication, surgery, and gamete~~
 5 ~~intrafallopian transfer. “In vitro fertilization” means the laboratory~~
 6 ~~medical procedures involving the actual in vitro fertilization~~
 7 ~~process.~~

8 ~~(e) This section shall not be construed to deny or restrict in any~~
 9 ~~way any existing right or benefit to coverage and treatment of~~
 10 ~~infertility under an existing law, plan, or policy.~~

11 ~~(d) This section shall not be construed to require any employer~~
 12 ~~that is a religious organization to offer coverage for forms of~~
 13 ~~treatment of infertility in a manner inconsistent with the religious~~
 14 ~~organization’s religious and ethical principles.~~

15 ~~(e) (1) This section shall not be construed to require any insurer,~~
 16 ~~which is a subsidiary of an entity whose owner or corporate~~
 17 ~~member is a religious organization, to offer coverage for treatment~~
 18 ~~of infertility in a manner inconsistent with that religious~~
 19 ~~organization’s religious and ethical principles.~~

20 ~~(2) For purposes of this subdivision, “subsidiary” of a specified~~
 21 ~~corporation means a corporation more than 45 percent of the voting~~
 22 ~~power of which is owned directly, or indirectly through one or~~
 23 ~~more subsidiaries, by the specified corporation.~~

24 ~~(f) This section applies to every disability insurance policy that~~
 25 ~~is issued, amended, or renewed to residents of this state regardless~~
 26 ~~of the situs of the contract.~~

27 ~~(g) Consistent with Section 10140, coverage for the treatment~~
 28 ~~of infertility shall be offered and, if purchased, provided without~~
 29 ~~discrimination on the basis of age, ancestry, color, disability,~~
 30 ~~domestic partner status, gender, gender expression, gender identity,~~
 31 ~~genetic information, marital status, national origin, race, religion,~~
 32 ~~sex, or sexual orientation. Nothing in this subdivision shall be~~
 33 ~~construed to interfere with the clinical judgment of a physician~~
 34 ~~and surgeon.~~

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

37 10119.6. (a) A policy of disability insurance that covers
 38 hospital, medical, or surgical expenses that is issued, amended, or
 39 renewed on or after January 1, 2024, shall provide coverage for
 40 the diagnosis and treatment of infertility and fertility services. The

1 coverage required by this subdivision includes services, including
2 completed oocyte retrievals with unlimited embryo transfers in
3 accordance with the guidelines of the American Society for
4 Reproductive Medicine (ASRM), using single embryo transfer
5 when recommended and medically appropriate. Every insurer shall
6 include notice of the coverage specified in this section in the
7 insurer’s evidence of coverage.

8 (b) For purposes of this section, “infertility” means condition
9 or status characterized by any of the following:

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

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

17 (3) The failure to establish a pregnancy or to carry a pregnancy
18 to live birth after regular, unprotected sexual intercourse. For
19 purposes of this section “regular, unprotected sexual intercourse”
20 means no more than 12 months of unprotected sexual intercourse
21 for a person under 35 years of age or no more than 6 months of
22 unprotected sexual intercourse for a person 35 years of age or
23 older. Pregnancy resulting in miscarriage does not restart the
24 12-month or 6-month time period to qualify as having infertility.

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

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

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

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

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

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

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

14 SEC. 5. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.