

**ASSEMBLY BILL**

**No. 767**

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**Introduced by Assembly Member Wicks**  
**(Principal coauthors: Assembly Members Burke and Low)**  
(Principal coauthor: Senator Stern)

February 19, 2019

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An act to amend Sections 1248 and 1374.55 of the Health and Safety Code, and to amend Section 10119.6 of the Insurance Code, relating to healthcare coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 767, as introduced, Wicks. Healthcare coverage: infertility.

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, offers coverage for the treatment of infertility, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group subscriber or the group policyholder and the health care service plans or the health insurers. Existing law provides that any employer that is a religious organization or health care service plans and health insurers which are a subsidiary of an entity whose owner or corporate member is a religious organization shall not be required to offer coverage for forms of treatment of infertility in a manner inconsistent

with the religious organization’s religious and ethical principles, as specified.

This bill would require every health care service plan contract or health insurance policy that is issued, amended, or renewed on or after January 1, 2020, to provide coverage for in vitro fertilization, as a treatment of infertility, and mature oocyte cryopreservation. The bill would delete the exemption for religiously affiliated employers, health care service plans, and health insurance policies, from the requirements relating to coverage for the treatment of infertility, thereby imposing these requirements on these employers, plans, and policies. The bill would also delete the 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 prospective group contractholders. By expanding the duties of health care service plans, the bill would expand the scope of an existing crime, thereby imposing 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 1248 of the Health and Safety Code is  
2 amended to read:  
3 1248. For purposes of this chapter, the following definitions  
4 shall apply:  
5 (a) “Division” means the Medical Board of California. All  
6 references in this chapter to the division, the Division of Licensing  
7 of the Medical Board of California, or the Division of Medical  
8 Quality shall be deemed to refer to the Medical Board of California  
9 pursuant to Section 2002 of the Business and Professions Code.  
10 (b) (1) “Outpatient setting” means any facility, clinic,  
11 unlicensed clinic, center, office, or other setting that is not part of  
12 a general acute care facility, as defined in Section 1250, and where  
13 anesthesia, except local anesthesia or peripheral nerve blocks, or  
14 both, is used in compliance with the community standard of

1 practice, in doses that, when administered have the probability of  
2 placing a patient at risk for loss of the patient’s life-preserving  
3 protective reflexes.

4 (2) “Outpatient setting” also means facilities that offer in vitro  
5 fertilization, as defined in *paragraph (2) of subdivision (b) (e)* of  
6 Section 1374.55.

7 (3) “Outpatient setting” does not include, among other settings,  
8 any setting where anxiolytics and analgesics are administered,  
9 when done so in compliance with the community standard of  
10 practice, in doses that do not have the probability of placing the  
11 patient at risk for loss of the patient’s life-preserving protective  
12 reflexes.

13 (c) “Accreditation agency” means a public or private  
14 organization that is approved to issue certificates of accreditation  
15 to outpatient settings by the board pursuant to Sections 1248.15  
16 and 1248.4.

17 SEC. 2. Section 1374.55 of the Health and Safety Code is  
18 amended to read:

19 1374.55. (a) On and after January 1, ~~1990~~, 2020, every health  
20 care service plan contract that is issued, amended, or renewed that  
21 covers hospital, medical, or surgical expenses on a group basis,  
22 where the plan is not a health maintenance organization as defined  
23 in Section 1373.10, shall ~~offer~~ *provide* coverage for the treatment  
24 of infertility, ~~except including~~ *including* in vitro fertilization, ~~under those~~  
25 ~~terms and conditions as may be agreed upon between the group~~  
26 ~~subscriber and the plan. Every plan shall communicate the~~  
27 ~~availability of that coverage to all group contractholders and to all~~  
28 ~~prospective group contractholders with whom they are negotiating.~~  
29 ~~and mature oocyte cryopreservation.~~

30 ~~(b) For purposes of this section, “infertility” means either (1)~~  
31 ~~the presence of a demonstrated condition recognized by a licensed~~  
32 ~~physician and surgeon as a cause of infertility, or (2) the inability~~  
33 ~~to conceive a pregnancy or to carry a pregnancy to a live birth after~~  
34 ~~a year or more of regular sexual relations without contraception.~~  
35 ~~“Treatment for infertility” means procedures consistent with~~  
36 ~~established medical practices in the treatment of infertility by~~  
37 ~~licensed physicians and surgeons including, but not limited to,~~  
38 ~~diagnosis, diagnostic tests, medication, surgery, and gamete~~  
39 ~~intrafallopian transfer. “In vitro fertilization” means the laboratory~~

1 ~~medical procedures involving the actual in vitro fertilization~~  
2 ~~process.~~

3 ~~(e)~~

4 ~~(b) On and after January 1, 1990, 2020, every health care service~~  
5 ~~plan that is a health maintenance organization, as defined in Section~~  
6 ~~1373.10, and that issues, renews, or amends a health care service~~  
7 ~~plan contract that provides group coverage for hospital, medical,~~  
8 ~~or surgical expenses shall offer the coverage specified in~~  
9 ~~subdivision (a), according to the terms and conditions that may be~~  
10 ~~agreed upon between the group subscriber and the plan to group~~  
11 ~~contractholders with at least 20 employees to whom the plan is~~  
12 ~~offered. The plan shall communicate the availability of the~~  
13 ~~coverage to those group contractholders and prospective group~~  
14 ~~contractholders with whom the plan is negotiating.~~

15 ~~(d)~~

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

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

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

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

32 ~~(g)~~

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

1 (e) *The following definitions shall apply for purposes of this*  
2 *section:*

3 (1) *“Infertility” means the presence of a demonstrated condition*  
4 *recognized by a licensed physician and surgeon as a cause of*  
5 *infertility.*

6 (2) *“In vitro fertilization” means the laboratory medical*  
7 *procedures involving the in vitro fertilization process.*

8 (3) *“Mature oocyte cryopreservation” means the procedures*  
9 *consistent with established medical practices, including laboratory*  
10 *medical procedures, involving ovulation induction, egg retrieval,*  
11 *and freezing of the egg.*

12 (4) *“Preventative fertility care treatment” means procedures*  
13 *consistent with established medical practices in the treatment of*  
14 *fertility care, which is rendered by a licensed physician and*  
15 *surgeon, to prevent the inability to conceive a child.*

16 (5) *“Treatment for infertility” means procedures consistent*  
17 *with established medical practices in the treatment of infertility*  
18 *by a licensed physician and surgeon, including, but not limited to,*  
19 *diagnosis, diagnostic tests, medication, surgery, gamete*  
20 *intrafallopian transfer, and in vitro fertilization.*

21 SEC. 3. Section 10119.6 of the Insurance Code is amended to  
22 read:

23 10119.6. (a) On and after January 1, ~~1990~~, 2020, every insurer  
24 issuing, renewing, or amending a policy of disability insurance  
25 that covers hospital, medical, or surgical expenses on a group basis  
26 shall ~~offer~~ *provide* coverage of infertility treatment, ~~except~~  
27 *including* in vitro fertilization, ~~under those terms and conditions~~  
28 *as may be agreed upon between the group policyholder and the*  
29 *insurer. Every insurer shall communicate the availability of that*  
30 *coverage to all group policyholders and to all prospective group*  
31 *policyholders with whom they are negotiating, and mature oocyte*  
32 *cryopreservation.*

33 ~~(b) For purposes of this section, “infertility” means either (1)~~  
34 ~~the presence of a demonstrated condition recognized by a licensed~~  
35 ~~physician and surgeon as a cause of infertility, or (2) the inability~~  
36 ~~to conceive a pregnancy or to carry a pregnancy to a live birth after~~  
37 ~~a year or more of regular sexual relations without contraception.~~  
38 ~~“Treatment for infertility” means procedures consistent with~~  
39 ~~established medical practices in the treatment of infertility by~~  
40 ~~licensed physicians and surgeons, including, but not limited to,~~

1 diagnosis, diagnostic tests, medication, surgery, and gamete  
2 intrafallopian transfer. "In vitro fertilization" means the laboratory  
3 medical procedures involving the actual in vitro fertilization  
4 process.

5 (e)

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

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

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

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

22 (f)

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

26 (g)

27 (d) 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 (e) *The following definitions shall apply for purposes of this  
36 section:*

37 (1) *"Infertility" means the presence of a demonstrated condition  
38 recognized by a licensed physician and surgeon as a cause of  
39 infertility.*

1 (2) *“In vitro fertilization” means the laboratory medical*  
2 *procedures involving the in vitro fertilization process.*

3 (3) *“Mature oocyte cryopreservation” means the procedures*  
4 *consistent with established medical practices, including laboratory*  
5 *medical procedures, involving ovulation induction, egg retrieval,*  
6 *and freezing of the egg.*

7 (4) *“Preventative fertility care treatment” means procedures*  
8 *consistent with established medical practices in the treatment of*  
9 *fertility care, which is rendered by a licensed physician and*  
10 *surgeon, to prevent the inability to conceive a child.*

11 (5) *“Treatment for infertility” means procedures consistent*  
12 *with established medical practices in the treatment of infertility*  
13 *by a licensed physician and surgeon, including, but not limited to,*  
14 *diagnosis, diagnostic tests, medication, surgery, gamete*  
15 *intrafallopian transfer, and in vitro fertilization.*

16 SEC. 4. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.