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House of Representatives, April 22, 2021

An Act To Provide Access to Fertility Care

Received by the Clerk of the House on April 20, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MADIGAN of Waterville.
Cosponsored by Senator DAUGHTRY of Cumberland and
Representatives: CRAVEN of Lewiston, EVANS of Dover-Foxcroft, Speaker FECTEAU of
Biddeford, MEYER of Eliot, Senators: BRENNER of Cumberland, CARNEY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §4320-Q** is enacted to read:

3 **§4320-Q. Coverage for fertility services**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Experimental fertility procedure" means a procedure for which the published
7 medical evidence is not sufficient for the American Society for Reproductive Medicine,
8 its successor organization or a comparable organization to regard the procedure as
9 established medical practice.

10 B. "Fertility diagnostic care" means procedures, products, medications and services
11 intended to provide information about an individual's fertility, including laboratory
12 assessments and imaging studies.

13 C. "Fertility patient" means an individual or couple with infertility or an individual
14 unable to conceive as an individual or with a partner because the individual or couple
15 does not have the necessary gametes for conception.

16 D. "Fertility preservation services" means procedures, products, medications and
17 services, intended to preserve fertility, consistent with established medical practice and
18 professional guidelines published by the American Society for Reproductive Medicine,
19 its successor organization or a comparable organization for an individual who has a
20 medical or genetic condition or who is expected to undergo treatment that may directly
21 or indirectly cause a risk of impairment of fertility. "Fertility preservation services"
22 includes the procurement and cryopreservation of gametes, embryos and reproductive
23 material and storage from the time of cryopreservation for a period of 5 years. Storage
24 may be offered for a longer period of time.

25 E. "Fertility treatment" means procedures, products, medications and services intended
26 to achieve pregnancy consistent with established medical practice and professional
27 guidelines published by the American Society for Reproductive Medicine, its successor
28 organization or a comparable organization.

29 F. "Gamete" means a cell containing a haploid complement of deoxyribonucleic acid
30 that has the potential to form an embryo when combined with another gamete.
31 "Gamete" includes sperm and eggs.

32 G. "Infertility" means the presence of a demonstrated condition recognized by a
33 provider as a cause of loss or impairment of fertility or a couple's inability to achieve
34 pregnancy after 12 months of unprotected intercourse when the couple has the
35 necessary gametes for conception, including the loss of a pregnancy occurring within
36 that 12-month period, or after a period of less than 12 months due to a person's age or
37 other factors. Pregnancy resulting in a loss does not cause the time period of trying to
38 achieve a pregnancy to be restarted.

39 **2. Required coverage.** A carrier offering a health plan in this State shall provide
40 coverage as provided in this subsection to an enrollee:

41 A. For fertility diagnostic care;

42 B. For fertility treatment if the enrollee is a fertility patient; and

1 C. For fertility preservation services.

2 Coverage under this subsection must include evaluations, laboratory assessments,
3 medications and procedures intended to achieve pregnancy, including but not limited to the
4 procurement of donor gametes. Coverage must be provided to the same extent that
5 coverage is provided for other medical services or prescription drugs. Coverage under this
6 subsection may not be denied to any enrollee who foregoes a particular fertility treatment
7 or fertility preservation service if a provider determines that such fertility treatment or
8 fertility preservation service is likely to be unsuccessful.

9 **3. Limitations on coverage.** A health plan that provides coverage for the services
10 required by this section may include reasonable limitations to the extent that these
11 provisions are not inconsistent with the following requirements.

12 A. A carrier may not impose deductibles, copayments, coinsurance, maximum benefits,
13 waiting periods or other limitations that are different from those that are imposed on
14 coverage for other services under the health plan or any limitations on coverage for
15 prescribed fertility medication that are different from those that are imposed on other
16 prescription medication.

17 B. A carrier may not use any prior diagnosis or prior fertility treatment as a basis for
18 excluding, limiting or otherwise restricting the availability of coverage required by this
19 section.

20 C. A carrier may not impose any limitations on coverage for any fertility services based
21 on an enrollee's use of donor gametes, donor embryos or surrogacy.

22 D. A carrier may not impose any limitations on coverage solely based on arbitrary
23 factors, such as number of conception attempts, dollar amounts or age of an enrollee,
24 or provide different benefits to or impose different requirements on a class of persons
25 protected under Title 5, chapter 337 than those limitations placed on other enrollees.

26 E. Any limitations imposed by a carrier must be based on an enrollee's medical history
27 and clinical guidelines. Any clinical guidelines used by a carrier must be maintained
28 in written form and must be made available to an enrollee in writing upon request.
29 Clinical guidelines developed by the American Society for Reproductive Medicine, its
30 successor organization or a comparable organization may serve as a basis for a carrier's
31 clinical guidelines. Making, issuing, circulating or causing to be made, issued or
32 circulated any clinical guidelines that are based on data that are not reasonably current
33 or that do not cite with any specificity any reference relied upon constitutes an unfair
34 or deceptive act or practice in the business of insurance pursuant to section 2152.

35 **4. Certain services not required.** This section does not require a carrier to provide
36 coverage for:

37 A. Any experimental fertility procedure; or

38 B. Any nonmedical costs related to donor gametes, donor embryos or surrogacy.

39 **5. Rules.** The superintendent shall adopt rules as necessary to implement the
40 requirements of this section. Rules adopted pursuant to this subsection are routine technical
41 rules as defined in Title 5, chapter 375, subchapter 2-A.

42 **Sec. 2. Application.** This Act applies to all policies, contracts and certificates
43 executed, delivered, issued for delivery, continued or renewed in this State on or after

1 January 1, 2023. For purposes of this Act, all contracts are deemed to be renewed no later
2 than the next yearly anniversary of the contract date.

3 **SUMMARY**

4 This bill requires carriers offering health plans in this State to provide coverage for
5 fertility diagnostic care, for fertility treatment if the enrollee is a fertility patient and for
6 fertility preservation services. The requirements of the bill apply to health plans issued or
7 renewed on or after January 1, 2023.