Fertility Preservation Coverage: Legislative Update

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Oncofertility Consortium Meeting
November 13, 2019
Victoria, Hodgkin Lymphoma, 25

• When I was diagnosed with Hodgkin’s, I was given less than a week to discuss my options with my husband.

• And we met with a Kaiser fertility specialist who told us that we needed to begin the process immediately, as it would delay my chemotherapy – the catch was that I would need to come up with $15,000 by the next business day – and that wasn’t an option for us.

• I now have to watch as chemotherapy drugs are pumped into my body, knowing that they are killing my cancer, but could be destroying my chances of being a mother.
Overview of Mandated FP Coverage

Where We Are
Legislative Summary 2017-2019

• 21 States Introduced Bills

• 8 States Enacted FP Coverage:
  - California
  - Maryland
  - Connecticut
  - New Hampshire
  - Delaware
  - New York
  - Illinois
  - Rhode Island

• 2 States Pending:
  - New Jersey
  - Massachusetts
<table>
<thead>
<tr>
<th>STATE</th>
<th>YEAR</th>
<th>BILL</th>
<th>STRUCTURE</th>
<th>GROUPS COVERED</th>
<th>LIVES</th>
<th>LIMITATIONS</th>
<th>COVERAGE SPECIFICS</th>
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<tbody>
<tr>
<td>CT</td>
<td>2017</td>
<td>HB7124</td>
<td>Amended IVF law; Changed definition of Infertility</td>
<td>Individual and group plans</td>
<td>651,134</td>
<td>Cycle limits; religious exemption</td>
<td>Changed statutory definition of “infertility” to medically necessary</td>
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<td>RI</td>
<td>2017</td>
<td>S 0821A &amp; H 6170A</td>
<td>Amended IVF mandate. Added FP coverage</td>
<td>Individual and group plans; gov’t programs excluded</td>
<td>241,582</td>
<td>Age limits (25-40); unclear whether applies to FP</td>
<td>Standard FP services if necessary medical treatment may cause iatrogenic infertility</td>
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<td>MD</td>
<td>2018</td>
<td>SB271 &amp; HB908</td>
<td>Amended IVF Mandate. Added FP coverage</td>
<td>Large groups only</td>
<td>926,446</td>
<td>No embryos; religious exemption</td>
<td>Standard FP services if necessary medical treatment may cause iatrogenic infertility; “Standard” = sperm and egg cryopreservation</td>
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<td>DE</td>
<td>2018</td>
<td>SB139</td>
<td>New mandate for Infertility including IVF+FP</td>
<td>Doesn’t include state employees or state Medicaid recipients</td>
<td>120,438</td>
<td>Six cycles; religious exemption; retrieval by age 45</td>
<td>Coverage for specific treatments, inc. IVF and sperm, egg, and embryo cryo. Tissue freezing included; but only “standard” treatments covered</td>
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<td>IL</td>
<td>2018</td>
<td>HB2617</td>
<td>New FP coverage not linked to infertility mandate</td>
<td>Broad coverage includes state employees and Medicaid recipients</td>
<td>5,303,325</td>
<td>ACA mandate clause for coverage exceeding the EHB</td>
<td>Standard FP services if necessary medical treatment may cause iatrogenic infertility; Contains non-discrimination language.</td>
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<td>NY</td>
<td>2019</td>
<td>S719 &amp; A 2817 *BUDGET</td>
<td>Amend Infertility mandate to include IVF. Add FP coverage</td>
<td>IVF: Large groups only FP: Individual and group plans</td>
<td>4,700,000</td>
<td>Three cycles of IVF; TBD</td>
<td>Coverage added through State Budget process. IVF + FP coverage.</td>
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<td>NH</td>
<td>2019</td>
<td>SB 279</td>
<td>New mandate for Infertility including IVF+FP</td>
<td>All “health carriers” (insurers, HMOs, etc providing health insur.)</td>
<td>208,515</td>
<td>Limits can’t be “arbitrary”; based on guidelines and patient’s history</td>
<td>Standard FP services for eggs, embryos, sperm, and “material” for not experimental procedures. Storage through policy term.</td>
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<td>CA</td>
<td>2019</td>
<td>SB 600</td>
<td>Clarifies existing coverage for FP</td>
<td>All managed care plans; HMOs, some PPOs</td>
<td>16,900,000</td>
<td>TBD</td>
<td>Codifies regulator’s view that medically-necessary FP is a “basic healthcare service”</td>
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Legislative Successes

Bill Structure
- IVF + Fertility Preservation or
- FP only (iatrogenic)
  = Not limited to cancer

Coverage Environment
- Preexisting IVF mandates (CT, RI, MD, IL) or
- IVF & FP coverage passed together (DE, NY, NH)
  = Existence of IVF coverage

Political Environment
- Triumvirate Democrat (CT, RI, DE, NY) or
- Democrat legislature, signed by R Gov (MD, IL, NH)
  = No red state passage
Legislative Barriers

Fiscal Concerns
- Insurers
- State concerns about “mandates” – ACA
- Small business opposition

Religious/Cultural Opposition
- Right to Life; Personhood bills
- Perception of infertility treatment

State Politics & Processes
- Idiosyncratic state processes
- Understanding local politics/relationships
- Need for lobbyists
Achieving Mandated Coverage for FP

Going Forward
Where Does Fertility Preservation Coverage Belong?

FP as a subset of infertility coverage

FP as part of cancer/disease coverage
FP on the Continuum of Infertility Coverage

**FP Only**

1. *iatrogenic* infertility
2. Protect from imminent, irreversible damage; Duty to offset
3. Affects a limited population

**IVF + FP**

1. *Update* infertility mandates to include IVF; reduce limits, outdated/discriminatory coverage
2. Broader population reached (including survivors)
3. May apply only to certain plans

**Comprehensive Fertility Coverage**

1. All insurers
2. Broader population: cancer, other diseases/conditions; infertility; transgender
3. Elective FP; Egg cryo; and sperm?
4. 3rd party services? Donor and surrogacy?
FP on the Continuum of Disease Coverage

Cancer Treatment
1. Medically Necessary
2. Life-saving, life-extending
3. E.g., chemotherapy, radiation, surgery

FP Coverage
1. Medically Necessary
2. Minimize harm, increase treatment adherence
3. Akin to other side effects
4. Q of L; reduce distress, depression

[WHCRA model: part of cancer care; offset side effect of treatment]
Ameliorating a Side Effect of Cancer Treatment


- Deemed breast reconstruction as *medically necessary* part of treatment for breast cancer
- Amended ERISA
- Directed at self-insureds

REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

(a) In General. A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for--

(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) prostheses and physical complications all stages of mastectomy, including lymphedemas; in a manner determined in consultation with the attending physician and the patient.
California Coverage

• 1st state to add stand-alone FP coverage
• Based on state law: Knox Keene Act
• Insurers must cover BASIC HEALTH CARE SERVICES if medically necessary
• Bill “clarifies” coverage

Los Angeles Times

Fertility options for cancer patients must be covered under new California law

By MELODY GUTIERREZ | STAFF WRITER   OCT. 13, 2019   |  8:02 AM

SACRAMENTO — California will require health insurance companies to cover the cost of fertility procedures for patients undergoing treatment that can make it difficult to have children, such as chemotherapy, under a bill signed by Gov. Gavin Newsom on Saturday.
Goal:

- Challenge denials of FP coverage
- Escalate to external appeals process
- Assisted patients filing IMRs w/ CA's DMHC

Result:

- Unanimous overturns of denials
- DMHC has now recognized coverage as part of "basic health care" per state law
- Enforcement actions now pending; C&D against Kaiser
- Decisions supported rationale for legislation
“The reviewer determined that the services at issue were medically necessary for treatment of the patient’s medical condition. Therefore, the Health Plan’s denial should be overturned.”
Policy Arguments for Coverage

1. Fertility Preservation is “Medically Necessary”
2. Treatments are Standard of Care
3. Promotes Better Medical Outcomes
4. Low Cost & Potential Cost Offsets/Business Case
5. Equity Considerations
Looking Ahead: 2020

Legislation
States Introducing/Pending Bills:
- Arizona
- Massachusetts
- Colorado
- New Jersey
- Washington

Active State Coalition Work:
- Iowa
- Oregon
- Texas
- Utah

Additional Activities
• Implementation Concerns
• Medicaid Coverage
• Federal Coverage
THANK YOU!
FP Coverage Checklist

- Conduct State-Specific Research
  - Legal Status of Infertility Coverage
  - Political/Cultural Environment
  - Insurance Landscape

- Build a Winning Coalition
  - Leaders
  - Allies
  - Grassroots

- Create a Case for Coverage
  - Data
  - Arguments

- Determine Strategies for Coverage
  - Legislation
  - Regulation/DOI
  - Private Sector Insurers/Employers