

ASSEMBLY BILL

No. 2781

Introduced by Assembly Member Wicks

February 20, 2020

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

AB 2781, as introduced, Wicks. Health care coverage: treatment for 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, offer coverage for the treatment of infertility, except in vitro fertilization. Existing law provides that any employer that is a religious organization, or health care service plans and health insurers that 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, 2021, to provide coverage for the treatment of infertility. The bill would revise the definition of infertility, and would remove the exclusion of in vitro fertilization from coverage. 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. 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.~~

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

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

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

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

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

35 ~~(g) Consistent with Section 1365.5, coverage for the treatment~~
36 ~~of infertility shall be offered and, if purchased, provided without~~
37 ~~discrimination on the basis of age, ancestry, color, disability,~~
38 ~~domestic partner status, gender, gender expression, gender identity,~~
39 ~~genetic information, marital status, national origin, race, religion,~~
40 ~~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) On and after January 1, 2021, every health care
6 service plan contract that is issued, amended, or renewed that
7 covers hospital, medical, or surgical expenses, shall provide
8 coverage for the treatment of infertility. Every health care service
9 plan shall include notice of the coverage specified in the plan's
10 evidence of coverage.

11 (b) The following definitions apply for purposes of this section:

12 (1) "Infertility" means a disease or condition characterized by
13 any of the following:

14 (A) The failure to conceive a pregnancy or to carry a pregnancy
15 to live birth after regular, unprotected sexual intercourse.

16 (B) A person's inability to reproduce either as an individual or
17 with their partner.

18 (C) A licensed physician's determination, based on a patient's
19 medical, sexual, and reproductive history, age, physical findings,
20 diagnostic testing, or any combination of those factors.

21 (2) "Treatment of infertility" means procedures consistent with
22 established medical practices in the treatment of infertility by
23 licensed physicians and surgeons including, but not limited to,
24 diagnosis, diagnostic tests, medication, surgery, and other medical
25 procedures.

26 (c) On and after January 1, 2021, every health care service plan
27 that is a health maintenance organization, as defined in Section
28 1373.10, and that issues, renews, or amends a health care service
29 plan contract that provides coverage for hospital, medical, or
30 surgical expenses shall provide the coverage specified in
31 subdivision (a). The plan shall include the notice of the coverage
32 specified in the plan's evidence of coverage.

33 (d) This section does not in any way deny or restrict any existing
34 right or benefit to coverage and treatment of infertility under an
35 existing law, plan, or policy.

36 (e) Consistent with Section 1365.5, coverage for the treatment
37 of infertility shall be provided without discrimination on the basis
38 of age, ancestry, color, disability, domestic partner status, gender,
39 gender expression, gender identity, genetic information, marital
40 status, national origin, race, religion, sex, or sexual orientation.

1 This subdivision shall not be construed to interfere with the clinical
2 judgment of a physician and surgeon.

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

4 ~~10119.6. (a) On and after January 1, 1990, every insurer~~
5 ~~issuing, renewing, or amending a policy of disability insurance~~
6 ~~that covers hospital, medical, or surgical expenses on a group basis~~
7 ~~shall offer coverage of infertility treatment, except in vitro~~
8 ~~fertilization, under those terms and conditions as may be agreed~~
9 ~~upon between the group policyholder and the insurer. Every insurer~~
10 ~~shall communicate the availability of that coverage to all group~~
11 ~~policyholders and to all prospective group policyholders with~~
12 ~~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~~
19 ~~established medical practices in the treatment of infertility by~~
20 ~~licensed physicians and surgeons, including, but not limited to,~~
21 ~~diagnosis, diagnostic tests, medication, surgery, and gamete~~
22 ~~intrafallopian transfer. “In vitro fertilization” means the laboratory~~
23 ~~medical procedures involving the actual in vitro fertilization~~
24 ~~process.~~

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

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

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

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

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

4 (g) ~~Consistent with Section 10140, coverage for the treatment~~
5 ~~of infertility shall be offered and, if purchased, provided without~~
6 ~~discrimination on the basis of age, ancestry, color, disability,~~
7 ~~domestic partner status, gender, gender expression, gender identity,~~
8 ~~genetic information, marital status, national origin, race, religion,~~
9 ~~sex, or sexual orientation. Nothing in this subdivision shall be~~
10 ~~construed to interfere with the clinical judgment of a physician~~
11 ~~and surgeon.~~

12 SEC. 4. Section 10119.6 is added to the Insurance Code, to
13 read:

14 10119.6. (a) On and after January 1, 2021, every insurer
15 issuing, renewing, or amending a policy of disability insurance
16 that covers hospital, medical, or surgical expenses on a group basis
17 shall provide coverage for the treatment of infertility. Every insurer
18 shall include notice of the coverage specified in the insurer’s
19 evidence of coverage.

20 (b) The following definitions apply for purposes of this section:

21 (1) “Infertility” means a disease or condition characterized by
22 any of the following:

23 (A) The failure to conceive a pregnancy or to carry a pregnancy
24 to live birth after regular, unprotected sexual intercourse.

25 (B) A person’s inability to produce either as an individual or
26 with their partner.

27 (C) A licensed physician’s determination, based on a patient’s
28 medical, sexual, and reproductive history, age, physical findings,
29 diagnostic testing, or any combination of those factors.

30 (2) “Treatment of infertility” means procedures consistent with
31 established medical practices in the treatment of infertility by
32 licensed physicians and surgeons including, but not limited to,
33 diagnosis, diagnostic tests, medication, surgery, and other medical
34 procedures.

35 (c) This section does not in any way deny or restrict any existing
36 right or benefit to coverage and treatment of infertility under an
37 existing law, plan, or policy.

38 (d) This section applies to every disability insurance policy that
39 is issued, amended, or renewed to residents of this state regardless
40 of the situs of the contract.

1 (e) Consistent with Section 10140, coverage for the treatment
2 of infertility shall be provided without discrimination on the basis
3 of age, ancestry, color, disability, domestic partner status, gender,
4 gender expression, gender identity, genetic information, marital
5 status, national origin, race, religion, sex, or sexual orientation.
6 This subdivision shall not be construed to interfere with the clinical
7 judgment of a physician and surgeon.

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