

**ASSEMBLY BILL**

**No. 2029**

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**Introduced by Assembly Member Wicks**

February 14, 2022

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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 2029, 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 a health care service plan or health insurer that is 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 a health care service plan contract or health insurance policy that is issued, amended, or renewed on or after January

1, 2023, 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 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 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 prospective group contractholders. 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. The bill would prohibit a health care service plan that is a health maintenance organization 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. 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~~

1 and the plan. Every plan shall communicate the availability of that  
2 coverage to all group contractholders and to all prospective group  
3 contractholders with whom they are negotiating.

4 (b) For purposes of this section, “infertility” means either (1)  
5 the presence of a demonstrated condition recognized by a licensed  
6 physician and surgeon as a cause of infertility, or (2) the inability  
7 to conceive a pregnancy or to carry a pregnancy to a live birth after  
8 a year or more of regular sexual relations without contraception.  
9 “Treatment for infertility” means procedures consistent with  
10 established medical practices in the treatment of infertility by  
11 licensed physicians and surgeons including, but not limited to,  
12 diagnosis, diagnostic tests, medication, surgery, and gamete  
13 intrafallopian transfer. “In vitro fertilization” means the laboratory  
14 medical procedures involving the actual in vitro fertilization  
15 process.

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

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

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

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

39 (2) For purposes of this subdivision, “subsidiary” of a specified  
40 corporation means a corporation more than 45 percent of the voting

1 power of which is owned directly, or indirectly through one or  
2 more subsidiaries, by the specified corporation.

3 ~~(g) Consistent with Section 1365.5, coverage for the treatment~~  
4 ~~of infertility shall be offered and, if purchased, provided without~~  
5 ~~discrimination on the basis of age, ancestry, color, disability,~~  
6 ~~domestic partner status, gender, gender expression, gender identity,~~  
7 ~~genetic information, marital status, national origin, race, religion,~~  
8 ~~sex, or sexual orientation. Nothing in this subdivision shall be~~  
9 ~~construed to interfere with the clinical judgment of a physician~~  
10 ~~and surgeon.~~

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

13 1374.55. (a) A health care service plan contract that covers  
14 hospital, medical, or surgical expenses that is issued, amended, or  
15 renewed on or after January 1, 2023, shall provide coverage for  
16 the diagnosis and treatment of infertility and fertility services. The  
17 coverage required by this subdivision includes four completed  
18 oocyte retrievals with unlimited embryo transfers in accordance  
19 with the guidelines of the American Society for Reproductive  
20 Medicine (ASRM), using single embryo transfer when  
21 recommended and medically appropriate. Every health care service  
22 plan shall include notice of the coverage specified in the plan’s  
23 evidence of coverage.

24 (b) For purposes of this section, “infertility” means a disease,  
25 condition, or status characterized by any of the following:

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

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

33 (3) The failure to establish a pregnancy or to carry a pregnancy  
34 to live birth after regular, unprotected sexual intercourse. For  
35 purposes of this section, “regular, unprotected sexual intercourse”  
36 means no more than 12 months of unprotected sexual intercourse  
37 for a person under 35 years of age or no more than 6 months of  
38 unprotected sexual intercourse for a person 35 years of age or  
39 older. Pregnancy resulting in miscarriage does not restart the  
40 12-month or 6-month time period to qualify as having infertility.

1 (c) On and after January 1, 2023, every health care service plan  
2 that is a health maintenance organization, as defined in Section  
3 1373.10, and that issues, amends, or renews, a health care service  
4 plan contract that provides coverage for hospital, medical, or  
5 surgical expenses shall provide the coverage specified in  
6 subdivision (a). The plan shall include the notice of the coverage  
7 specified in the plan’s evidence of coverage. The plan may not  
8 include any of the following:

9 (1) Any exclusion, limitation, or other restriction on coverage  
10 of fertility medications that are different from those imposed on  
11 other prescription medications.

12 (2) Any exclusion, limitation, or other restriction on coverage  
13 of any fertility services based on a covered individual’s  
14 participation in fertility services provided by or to a third party.

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

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

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

30 (f) This section does not apply to Medi-Cal managed care health  
31 care service plan contracts or any entity that enters into a contract  
32 with the State Department of Health Care Services for the delivery  
33 of health care services pursuant to Chapter 7 (commencing with  
34 Section 14000), Chapter 8 (commencing with Section 14200),  
35 Chapter 8.75 (commencing with Section 14591), or Chapter 8.9  
36 (commencing with Section 14700) of Part 3 of Division 9 of the  
37 Welfare and Institutions Code.

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

39 ~~10119.6. (a) On and after January 1, 1990, every insurer~~  
40 ~~issuing, renewing, or amending a policy of disability insurance~~

1 that covers hospital, medical, or surgical expenses on a group basis  
 2 shall offer coverage of infertility treatment, except in vitro  
 3 fertilization, under those terms and conditions as may be agreed  
 4 upon between the group policyholder and the insurer. Every insurer  
 5 shall communicate the availability of that coverage to all group  
 6 policyholders and to all prospective group policyholders with  
 7 whom they are negotiating.

8 (b) For purposes of this section, “infertility” means either (1)  
 9 the presence of a demonstrated condition recognized by a licensed  
 10 physician and surgeon as a cause of infertility, or (2) the inability  
 11 to conceive a pregnancy or to carry a pregnancy to a live birth after  
 12 a year or more of regular sexual relations without contraception.  
 13 “Treatment for infertility” means procedures consistent with  
 14 established medical practices in the treatment of infertility by  
 15 licensed physicians and surgeons, including, but not limited to,  
 16 diagnosis, diagnostic tests, medication, surgery, and gamete  
 17 intrafallopian transfer. “In vitro fertilization” means the laboratory  
 18 medical procedures involving the actual in vitro fertilization  
 19 process.

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

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

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

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

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

39 (g) Consistent with Section 10140, coverage for the treatment  
 40 of infertility shall be offered and, if purchased, provided without

1 ~~discrimination on the basis of age, ancestry, color, disability,~~  
2 ~~domestic partner status, gender, gender expression, gender identity,~~  
3 ~~genetic information, marital status, national origin, race, religion,~~  
4 ~~sex, or sexual orientation. Nothing in this subdivision shall be~~  
5 ~~construed to interfere with the clinical judgment of a physician~~  
6 ~~and surgeon.~~

7 SEC. 4. Section 101196 is added to the Insurance Code, to  
8 read:

9 101196. (a) A policy of disability insurance that covers  
10 hospital, medical, or surgical expenses that is issued, amended, or  
11 renewed on or after January 1, 2023, shall provide coverage for  
12 the diagnosis and treatment of infertility and fertility services. The  
13 coverage required by this subdivision includes four completed  
14 oocyte retrievals with unlimited embryo transfers in accordance  
15 with the guidelines of the American Society for Reproductive  
16 Medicine (ASRM), using single embryo transfer when  
17 recommended and medically appropriate. Every insurer shall  
18 include notice of the coverage specified in the insurer’s evidence  
19 of coverage.

20 (b) For purposes of this section, “infertility” means a disease,  
21 condition, or status characterized by any of the following:

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

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

29 (3) The failure to establish a pregnancy or to carry a pregnancy  
30 to live birth after regular, unprotected sexual intercourse. For  
31 purposes of this section “regular, unprotected sexual intercourse”  
32 means no more than 12 months of unprotected sexual intercourse  
33 for a person under 35 years of age or no more than 6 months of  
34 unprotected sexual intercourse for a person 35 years of age or  
35 older. Pregnancy resulting in miscarriage does not restart the  
36 12-month or 6-month time period to qualify as having infertility.

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

1 (d) 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 (e) Consistent with Section 10140, coverage for the treatment  
5 of infertility and fertility services shall be 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. This subdivision shall not be construed  
10 to interfere with the clinical judgment of a physician and surgeon.

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