Fertility Within Reach®
ADVOCATING FOR FERTILITY HEALTH CARE

June 30, 2023

Timothy N. Schott
Acting Superintendent
Department of Professional and Financial Regulation
Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Sent by email to Karma.Y.Lombard@maine.gov

Dear Superintendent Schott,

I hope this letter finds you well. My name is Davina Fankhauser and I am the Co-Founder of Fertility Within Reach, a national nonprofit advocating for fertility healthcare and currently serve as President of the New England Fertility Society. Last legislative session, I had the honor of testifying before this committee, in favor of LD 1539, An Act to Provide Access to Fertility Care. I also served as an expert for the actuary reports related to the bill. Today, I am writing to ask you to take action to implement the law after considering the Maine Bureau of Insurance's report.

We are grateful to see potential insurance regulations constructed for **02, 031, Chapter 865:DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION BUREAU OF INSURANCE STANDARDS FOR FERTILITY COVERAGE.** After a thorough review, I would like to share some concerns we would appreciate you addressing before finalizing these important regulations. For easier reference, I will include the section title, troubling language, reason for concern, and recommended edit.

Section 4. Coverage Requirements

1. B. "identifying the required training, experience, and other standards for health care providers to provide procedures and treatments to diagnose and <u>treat infertility</u>; and

Concern: The words "treat infertility" limits when coverage can be provided.
Recommendation: Use the term "offer fertility healthcare treatment" so fertility preservation can be included.

Section 4. Coverage Requirements

1. (C) determining appropriate candidates for fertility treatment including without limitation enrollees:

    (1) with iatrogenic infertility, and

Concern: Using the term "iatrogenic infertility" (an impairment of fertility caused by surgery, radiation, chemotherapy, or other medical treatment affecting reproductive organs or processes) prevents those with a medical need from accessing fertility preservation. For example, a patient with Diminished Ovarian Reserve would not qualify for iatrogenic infertility benefits because their soon-to-be infertility was not caused by "iatrogenic infertility."
Recommendation: Change "iatrogenic infertility" to "a medical need for fertility preservation,".

Section 5. Required Benefits

5. A. Egg retrievals, unless the egg retrieval patient has already undergone four completed egg retrievals, provided that:

> (A) Where a live donor is used in an egg retrieval, the medical costs of the donor associated with the retrieval shall be covered until the donor is released from treatment by the reproductive endocrinologist; donor medical costs include without limitation physical examination, laboratory screening, psychological screening, and prescription drugs;

Concern: The current list of donor medical costs does not include "monitoring" follicle development or "egg retrieval." These would be the same CPT Codes used on the intended parent (enrollee) if they were to experience the egg retrieval themselves. It is the same cost to the carrier whether monitoring and egg retrieval are with the intended parent or the live donor. The Enrollee is paying premiums for this benefit, so why limit access to the treatment they need just because they are working with a donor? In the past, insurance carriers have claimed they do not provide benefits to a non-enrollee, but this is not the case for those who provide organ donation benefits. The standard of providing benefits to a non-enrollee is already set.
Recommendation: Add to the list of covered medical costs for the use of live donors to include "monitoring, egg retrieval."

9. Medications, including injectable infertility medications, even if the contract or policy does not provide prescription drug benefits. Where a contract or policy provides both prescription drug and medical and hospital benefits, infertility drugs shall be covered under the prescription drug coverage;

Concern: Using the term "infertility drugs" limits the reasons medications can be provided and how they are used. Additionally, some medications used to treat fertility health care may not have a first indication of use as an "infertility drug."
Recommendation: "drugs used to treat fertility health care" instead of "infertility drugs."

Sec. 6 Permissible Benefit Limitations and Exclusions

2. Benefits for any combination of in vitro fertilization (IVF), gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), or fresh or frozen embryo transfer (FET) may be limited to two lifetime cycles;

Concern: Most IVF cycles include fresh embryo transfers. This can optimize patient outcomes. This permissible limitation, where an egg retrieval and transfer combination is limited to two-lifetime cycles, directly conflicts with the required benefits. As written, the insurance department is regulating that patients must avoid an embryo transfer at the time of their egg retrieval if they want access to the required benefit of four egg retrievals.
Further, GIFT and ZIFT are procedures that are no longer performed by Reproductive Endocrinologits.
Recommendation: Eliminate Sec. 6, 2.

3. This rule does not prohibit coverage exclusions for the following services:

> F. In vitro fertilization, gamete intrafallopian tube transfer, and zygote intrafallopian tube transfer for persons who have not used all reasonable less expensive and medically appropriate treatments for infertility, or who have exceeded the limit of four covered completed egg retrievals.

Concern:

- Who determines what is considered “all reasonable less expensive and medically appropriate treatments” is undefined. This should only be determined by the treating physician. In addition, the determination must be based on current medical findings (less than five years old).
- It is also undefined what is considered less expensive. Research shows certain patients who went straight to IVF and were followed through birth saved medical costs. (FASST Trial)
- It is unclear whether frozen embryo transfers be covered after the four completed egg retrievals.
- It is not recommended to transfer poorly graded embryos before moving forward with another egg retrieval. This disrupts timely and appropriate care and potentially placing the patient at risk of miscarriage.
- Further, GIFT and ZIFT are procedures that are no longer performed by Reproductive Endocrinologists.

Recommendation: Edit the wording of F. to be "F. In vitro fertilization for persons who have exceeded the limit of four covered completed egg retrievals, excluding frozen embryo transfers."

4. Any other limitations or exclusions on fertility coverage must be consistent with the carrier's clinical guidelines, which guidelines must comply with the requirements of this rule. The carrier shall adopt and maintain its clinical guidelines in writing and make them available to any enrollee upon request.

Concern: Insurance carriers have used outdated research to support their clinical guidelines. In addition, they use references at the end of the guidelines rather than citing the specific research that supports each guideline. To expedite access to care, patients need to understand why they are denied coverage immediately so they can properly advocate for their access to health care.
Recommendation: Any other limitations or exclusions on fertility coverage must be consistent with the carrier's clinical guidelines, which guidelines must comply with the requirements of this rule. The carrier shall adopt and maintain its clinical guidelines in writing, citing current research for each guideline, and make them available to any enrollee upon denial of coverage.

During last week's hearing, Anthem Insurance shared its belief that costs associated with maternity care should be added to the premium costs for fertility healthcare. Insurers calculate maternal care, and they do not subtract the population facing fertility healthcare issues. Therefore, to add maternity to the fertility premium would be to count this population twice.

Thank you for your time and consideration. Please do not hesitate to reach out if you have any questions.

Sincerely yours,

Davina Fankhauser
Co-Founder & Executive Director, Fertility Within Reach
President, New England Fertility Society
www.fertilitywithinreach.org
Email: admin@fertilitywithinreach.org