STATE OF MAINE
DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
BUREAU OF INSURANCE

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Bulletin 476

Fertility Coverage for Single Parents and LGBTQ+ Couples

Following the enactment of P.L. 2021, Chapter 692, which added 24-A M.R.S. § 4320-U (the "Fertility Act") to the Health Plan Improvement Act, the Superintendent of Insurance issued Maine Insurance Rule Chapter 865, "Standards for Fertility Coverage." The purpose of this bulletin is to clarify the circumstances in which the Fertility Act and Rule 865 require health insurance carriers in Maine to cover fertility care for individuals seeking to become single parents and LGBTQ+ couples seeking to have children.

For opposite-sex cisgender couples, the need for fertility care is generally driven by clinical factors: a condition making conception difficult or impossible or creating a need for fertility preservation. The condition may either be diagnosed directly or inferred from repeated unsuccessful attempts to conceive. We have been asked whether a similar threshold requirement applies to other insured Mainers. In other words, must a single individual or at least one of the partners in an LGBTQ+ couple demonstrate the diagnosed or inferred presence of a clinical fertility problem? Under Maine law, the answer is no, for the reasons discussed below.

Nondiscrimination is one of the fundamental guiding principles of Maine law. As the protections of the Fertility Act are summarized in Rule 865:

> In making coverage available under this rule, a carrier shall not discriminate against any class of enrollees protected by the Maine Human Rights Act, Title 5 M.R.S. Chapter 337. In particular, carriers shall make coverage available regardless of sexual orientation, gender identity or expression, and family composition, including single parents.[1]

It could be argued that nondiscrimination means taking the same standards that apply to opposite-sex cisgender couples and applying them uniformly across the board to all health plan enrollees. However, different enrollees have different needs, and Maine law recognizes those differences by establishing three means by which a health plan enrollee can qualify as a "fertility patient." Two of them are clinically grounded: "an individual or couple with infertility" or "an individual or

[1] 02-031 CMR § 4(1).

couple who is at increased risk of transmitting a serious inheritable genetic or chromosomal abnormality to a child." The third, however, is unique to the Maine Fertility Act and does not appear, based on our research and published descriptions of our law, to be used in any other state's fertility coverage laws: "an individual unable to conceive as an individual or with a partner because the individual or couple does not have the necessary gametes for conception." This language recognizes that single individuals and almost all LGBTQ+ couples have an inherent need for some form of assisted reproduction in order to conceive a child.

Therefore, single individuals and LGBTQ+ couples who are covered by health plans subject to the Maine Fertility Act are eligible for coverage of necessary fertility care, subject to their carrier's clinical guidelines and to the other generally applicable conditions and limitations set forth in the Fertility Act and Rule 865.

It should be noted that although Maine's statutory language appears to be unique, this does not mean our coverage requirements are unique. In October of 2023, the American Society of Reproductive Medicine (ASRM) adopted the following revised definition of "infertility":

> "Infertility" is a disease, condition, or status characterized by any of the following:
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> - The inability to achieve a successful pregnancy based on a patient's medical, sexual, and reproductive history, age, physical findings, diagnostic testing, or any combination of those factors.
> - The need for medical intervention, including, but not limited to, the use of donor gametes or donor embryos in order to achieve a successful pregnancy either as an individual or with a partner.
> - In patients having regular, unprotected intercourse and without any known etiology for either partner suggestive of impaired reproductive ability, evaluation should be initiated at 12 months when the female partner is under 35 years of age and at six months when the female partner is 35 years of age or older.
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> Nothing in this definition shall be used to deny or delay treatment to any individual, regardless of relationship status or sexual orientation.[2]

This definition addresses the same family status issues discussed in this bulletin by expanding the definition of infertility beyond traditional factors, such as those used in the Maine Fertility Act,[3] to include, *inter alia*, the "status" of needing medical intervention, including, but not limited to, the use of donor gametes or donor embryos in order to achieve a successful pregnancy either as an individual or with a partner. We are aware of at least three states that have enacted similar language in their statutory definitions of infertility or amended their existing definitions to add such

[2] Available at https://www.asrm.org/practice-guidance/practice-committee-documents/denitions-of-infertility

[3] 24-A M.R.S. § 4320-U(1)(G).

language.[4] In a press release, ASRM explained that their intent was to reflect "the fact that challenges in reproduction can have a myriad of causes, all of which deserve to be taken seriously and treated," and that the definition was "driven by the clinical needs of patients who come from different places and with different treatment needs. This revised definition reflects that all persons, regardless of marital status, sexual orientation, or gender identity, deserve equal access to reproductive medicine. This inclusive definition helps ensure that anyone seeking to build a family has equitable access to infertility treatment and care."

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NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

[4] Colorado Rev. Stat. § 10-16-104(23)(g)(VI)(B); 215 Illinois Comp. Stat. ch. 5, § 356m(c)(2); New Jersey Rev. Stat. § 17:48-6x(1)(a)(2).