211 CMR 37.00: INFERTILITY BENEFITS

Section

37.01: Authority

211 CMR 37.00 is issued under the authority of M.G.L. chs. 175; 176A; 176B; 176D and 176G.

37.02: Purpose

The purpose of 211 CMR 37.00 is to implement St. 1987, c. 394: *An Act Providing a Medical Definition of Infertility*, as amended by St. 2010, c. 288, §§ 15, 16 and 17.

37.03: Definitions

The following words as used in 211 CMR 37.00 shall be defined as follows:

Commissioner: The Commissioner of Insurance or his or her designee.

Experimental Infertility Procedure: A procedure not yet recognized as non-experimental as defined in 211 CMR 37.03.

Infertility: The condition of an individual who is unable to conceive or produce conception during a period of one year if the female is age 35 or younger or during a period of six months if the female is over the age of 35. For purposes of meeting the criteria of infertility in this section, if a person conceives but is unable to carry that pregnancy to live birth, the period of time she attempted to conceive prior to achieving that pregnancy shall be included in the calculation of the one year or six month period, as applicable.

Insured: A subscriber, member, policy holder, certificate holder or his or her covered spouse or other covered dependent.

Insurer: Any company as defined in M.G.L. c. 175, § 1 and authorized to write accident and health insurance; any hospital service corporation as defined in M.G.L. c. 176A, § 1; any medical service corporation as defined in M.G.L. c. 176B, § 1; or any health maintenance organization as defined in M.G.L. c. 176G, § 1.

Non-experimental Infertility Procedure: A procedure which is recognized as such by the American Society for Reproductive Medicine (ASRM), or the American College of Obstetrics and Gynecology (ACOG) or the Society of Assisted Reproductive Technology (SART) or another infertility expert recognized as such by the Commissioner.

37.04: Scope of Coverage

Insurers shall provide benefits for required infertility procedures, as described in 211 CMR 37.05, which are furnished to an insured, covered spouse and/or other covered dependent.

Insurers shall not be required to provide benefits for services furnished to a spouse or dependent if the spouse or dependent is not otherwise covered by the insurer, except as provided in 211 CMR 37.05(4).

37.05: Required Infertility Benefits

Subject to any reasonable limitations as described in 211 CMR 37.09, insurers shall provide benefits for all non-experimental infertility procedures including, but not limited to:

(1) Artificial Insemination (AI) and Intrauterine Insemination (IUI).

(2) *In Vitro* Fertilization and Embryo Transfer (IVF-ET).

(3) Gamete Intrafallopian Transfer (GIFT).

(4) Sperm, egg and/or inseminated egg procurement and processing, and banking of sperm or inseminated eggs, to the extent such costs are not covered by the donor's insurer, if any.

(5) Intracytoplasmic Sperm Injection (ICSI) for the treatment of male factor infertility.

(6) Zygote Intrafallopian Transfer (ZIFT).

(7) Assisted Hatching.

(8) Cryopreservation of eggs.

37.06: Prescription Drugs

Insurers shall not impose exclusions, limitations or other restrictions on coverage for infertility-related drugs that are different from those imposed on any other prescription drugs.

37.07: Optional Infertility Benefits

No insurer shall be required to provide benefits for:

(1) Any experimental infertility procedure, until the procedure becomes recognized as non-experimental;

(2) Surrogacy;

(3) Reversal of Voluntary Sterilization.

37.08: Prohibited Limitations on Coverage

(1) No insurer shall impose deductibles, copayments, coinsurance, benefit maximums, waiting periods or any other limitations on coverage for required infertility benefits which are different from those imposed upon benefits for services not related to infertility.

(2) No insurer shall impose pre-existing condition exclusions or pre-existing condition waiting periods on coverage for required infertility benefits. No insurer shall use any prior diagnosis of or prior treatment for infertility as a basis for excluding, limiting or otherwise restricting the availability of coverage for required infertility benefits.

(3) No insurer shall impose limitations on coverage based solely on arbitrary factors, including but not limited to number of attempts or dollar amounts.

37.09: Permissible Limitations on Coverage

Limitations on coverage shall be based on clinical guidelines and the insured's medical history. Clinical guidelines shall be maintained in written form and shall be available to any insured upon request. Standards or guidelines developed by the American Society for Reproductive Medicine, the American College of Obstetrics and Gynecology or the Society for Assisted Reproductive Technology may serve as a basis for these clinical guidelines.

37.10: Severability

If any section or portion of a section of 211 CMR 37.00 or the applicability thereof to any person, entity or circumstance is held invalid by a court, the remainder of 211 CMR 37.00 or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 37.00: M.G.L. chs. 175, 176A, 176B, 176D and 176G; St. 1987, c. 394.

NON-TEXT PAGE