



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF INSURANCE
280 FRIEND STREET, BOSTON 02114
(617) 727-7189

TIMOTHY H. GAILEY
COMMISSIONER OF INSURANCE

BULLETIN B-90-3

To: Health Insurers, Blue Cross and Blue Shield and Health Maintenance Organizations

From: Nancy C. Turnbull, Deputy Commissioner and Director of Health Policy

Re: Coverage of Cryopreservation under the Infertility Benefits Regulation, 211 CMR 37.05(4)

Date: September 21, 1990

This two-page bulletin is intended to assure that all health carriers provide infertility benefits in accordance with 211 CMR 37.05(4). The regulation requires insurers to cover expenses associated with banking or "cryopreservation" (i.e., the freezing and storage) of sperm or embryos. Some insurers have refused to cover these expenses on the grounds that this procedure is not covered under the infertility benefits mandate (Chapter 394 of the Acts of 1987) or that the insured is not entitled to coverage until the sperm or embryos are actually implanted.

Under the infertility benefits mandate, insurers must cover freezing and storage charges at the time such charges are incurred. Insurers may not deny claims for coverage of freezing and storage charges on the basis that benefits have not yet been provided to the insured. It is our understanding that providers of infertility treatment who offer the cryopreservation procedure customarily charge a freezing fee and a storage fee, with the storage fee billed either at the time of initial freezing and storage, or periodically over the course of the storage period. If a separate thawing fee or transfer fee is charged at the time these particular services are provided, the insurer must cover these procedures under the mandate as well.

The cryopreservation process, both the freezing and ongoing storage, constitutes an immediate benefit for the insured. If these cryopreservation charges were not an immediately covered infertility benefit, insureds who are unable to afford the out-of-pocket expense would forgo the cryopreservation step altogether, thus depriving them of a legally mandated service. Lack of coverage for cryopreservation could also increase the

total costs of the mandate by necessitating a repeat of harvesting for subsequent cycles. Without cryopreservation as an option, fewer eggs are initially harvested for in vitro fertilization or GIFT. In the event that the fertilization of each egg in this already smaller harvest is unsuccessful, or in the event a successful fertilization and pregnancy does not reach full term, further costs associated with fertility drugs and egg retrieval procedures are likely to be incurred because there are no frozen embryos available in storage. For both legal and policy reasons, the Division requires that freezing and ongoing storage be covered benefits at the time the charges are incurred.

Providers often require patients to sign a form consenting to the provider's disposition of frozen embryos or sperm in storage upon completion of a cycle resulting in pregnancy or upon the expiration of a specified time period. These consent forms govern certain rights and duties of providers and patients, and do not involve insurers. Insurers concerned with the legal ramifications of paying current bills for storage fees have been unable to cite any case law or other legal authority which would justify their concerns. The Division therefore sees no reasonable basis for insurers to deny claims for storage fees on the theory that the insurer becomes legally liable for the custody or disposition of embryos or sperm, merely by paying for the storage of these cells.

If you have any questions, please call Mary Bresnicky in the Legal Section at (617) 727-7189, ext. 411.