State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1658

02/13/2023 Authored by Brand, Smith, Frederick, Long, Becker-Finn and others
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
03/11/2024 Adoption of Report: Amended and re-referred to the Committee on Health Finance and Policy

A bill for an act

relating to insurance; requiring health plans and medical assistance to cover infertility treatment; amending Minnesota Statutes 2022, section 256B.0625, by adding a subdivision; Minnesota Statutes 2023 Supplement, section 256B.0625, subdivision 13; proposing coding for new law in Minnesota Statutes, chapter 62A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[62A.0412] COVERAGE OF INFERTILITY TREATMENT.**

Subdivision 1. **Scope.** This section applies to all health plans that provide maternity benefits to Minnesota residents.

Subd. 2. **Required coverage.** (a) Every health plan under subdivision 1 must provide coverage for procedures related to infertility diagnosis and treatment that are (1) considered medically necessary by the enrollee's treating health care provider, and (2) recognized by either the American Society for Reproductive Medicine or the American College of Obstetrics and Gynecologists.

(b) Coverage must include but is not limited to ovulation induction, procedures and devices to monitor ovulation, artificial insemination, oocyte retrieval procedures, in vitro fertilization, gamete intrafallopian transfer, oocyte replacement, cryopreservation techniques, micromanipulation of gametes, and fertility preservation procedures for cancer patients. Coverage must include unlimited embryo transfers, but may impose a limit of four completed egg retrievals during a single plan year.

(c) Coverage for surgical reversal of elective sterilization and expenses related to purchase of donor gametes is not required under this section.

(d) Cost-sharing requirements, including co-payments, deductibles, and coinsurance for infertility coverage, must not be greater than the cost-sharing requirements for maternity coverage under the enrollee's health plan.

Subd. 3. **Definitions.** For the purpose of this section, "infertility" means a disease, condition, or status affecting the reproductive system that (1) interferes with an individual's ability to achieve a pregnancy, or (2) decreases a woman's ability to carry a pregnancy to a live birth.

Subd. 4. **Exclusion.** This section does not apply to health plans offered under chapter 256B or 256L.

EFFECTIVE DATE. This section is effective January 1, 2025, and applies to all health plans issued or renewed on or after that date.

Sec. 2. Minnesota Statutes 2023 Supplement, section 256B.0625, subdivision 13, is amended to read:

Subd. 13. **Drugs.** (a) Medical assistance covers drugs, ~~except for fertility drugs when specifically used to enhance fertility,~~ if prescribed by a licensed practitioner and dispensed by a licensed pharmacist, by a physician enrolled in the medical assistance program as a dispensing physician, or by a physician, a physician assistant, or an advanced practice registered nurse employed by or under contract with a community health board as defined in section 145A.02, subdivision 5, for the purposes of communicable disease control.

(b) The dispensed quantity of a prescription drug must not exceed a 34-day supply unless authorized by the commissioner or as provided in paragraph (h) or the drug appears on the 90-day supply list published by the commissioner. The 90-day supply list shall be published by the commissioner on the department's website. The commissioner may add to, delete from, and otherwise modify the 90-day supply list after providing public notice and the opportunity for a 15-day public comment period. The 90-day supply list may include cost-effective generic drugs and shall not include controlled substances.

(c) For the purpose of this subdivision and subdivision 13d, an "active pharmaceutical ingredient" is defined as a substance that is represented for use in a drug and when used in the manufacturing, processing, or packaging of a drug becomes an active ingredient of the drug product. An "excipient" is defined as an inert substance used as a diluent or vehicle for a drug. The commissioner shall establish a list of active pharmaceutical ingredients and excipients which are included in the medical assistance formulary. Medical assistance covers selected active pharmaceutical ingredients and excipients used in compounded prescriptions

when the compounded combination is specifically approved by the commissioner or when a commercially available product:

(1) is not a therapeutic option for the patient;

(2) does not exist in the same combination of active ingredients in the same strengths as the compounded prescription; and

(3) cannot be used in place of the active pharmaceutical ingredient in the compounded prescription.

(d) Medical assistance covers the following over-the-counter drugs when prescribed by a licensed practitioner or by a licensed pharmacist who meets standards established by the commissioner, in consultation with the board of pharmacy: antacids, acetaminophen, family planning products, aspirin, insulin, products for the treatment of lice, vitamins for adults with documented vitamin deficiencies, vitamins for children under the age of seven and pregnant or nursing women, and any other over-the-counter drug identified by the commissioner, in consultation with the Formulary Committee, as necessary, appropriate, and cost-effective for the treatment of certain specified chronic diseases, conditions, or disorders, and this determination shall not be subject to the requirements of chapter 14. A pharmacist may prescribe over-the-counter medications as provided under this paragraph for purposes of receiving reimbursement under Medicaid. When prescribing over-the-counter drugs under this paragraph, licensed pharmacists must consult with the recipient to determine necessity, provide drug counseling, review drug therapy for potential adverse interactions, and make referrals as needed to other health care professionals.

(e) Effective January 1, 2006, medical assistance shall not cover drugs that are coverable under Medicare Part D as defined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, section 1860D-2(e), for individuals eligible for drug coverage as defined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, section 1860D-1(a)(3)(A). For these individuals, medical assistance may cover drugs from the drug classes listed in United States Code, title 42, section 1396r-8(d)(2), subject to this subdivision and subdivisions 13a to 13g, except that drugs listed in United States Code, title 42, section 1396r-8(d)(2)(E), shall not be covered.

(f) Medical assistance covers drugs acquired through the federal 340B Drug Pricing Program and dispensed by 340B covered entities and ambulatory pharmacies under common ownership of the 340B covered entity. Medical assistance does not cover drugs acquired through the federal 340B Drug Pricing Program and dispensed by 340B contract pharmacies.

(g) Notwithstanding paragraph (a), medical assistance covers self-administered hormonal contraceptives prescribed and dispensed by a licensed pharmacist in accordance with section 151.37, subdivision 14; nicotine replacement medications prescribed and dispensed by a licensed pharmacist in accordance with section 151.37, subdivision 15; and opiate antagonists used for the treatment of an acute opiate overdose prescribed and dispensed by a licensed pharmacist in accordance with section 151.37, subdivision 16.

(h) Medical assistance coverage for a prescription contraceptive must provide a 12-month supply for any prescription contraceptive if a 12-month supply is prescribed by the prescribing health care provider. The prescribing health care provider must determine the appropriate duration for which to prescribe the prescription contraceptives, up to 12 months. For purposes of this paragraph, "prescription contraceptive" means any drug or device that requires a prescription and is approved by the Food and Drug Administration to prevent pregnancy. Prescription contraceptive does not include an emergency contraceptive drug approved to prevent pregnancy when administered after sexual contact. For purposes of this paragraph, "health plan" has the meaning provided in section 62Q.01, subdivision 3.

Sec. 3. Minnesota Statutes 2022, section 256B.0625, is amended by adding a subdivision to read:

Subd. 72. **Coverage of infertility treatment.** (a) Medical assistance covers the diagnosis of infertility, treatment for infertility, and standard fertility preservation services that are:

(1) considered medically necessary by the enrollee's treating health care provider; and

(2) recognized by either the American Society for Reproductive Medicine, the American College of Obstetrics and Gynecologists, or the American Society of Clinical Oncology.

(b) Coverage under this section must include but is not limited to ovulation induction, procedures and devices to monitor ovulation, artificial insemination, oocyte retrieval procedures, in vitro fertilization, gamete intrafallopian transfer, oocyte replacement, cryopreservation techniques, micromanipulation of gametes, and standard fertility preservation services.

(c) Coverage under this section must include unlimited embryo transfers, but may impose a limit of four completed oocyte retrievals. Single embryo transfer must be used when medically appropriate and recommended by the treating health care provider.

(d) Coverage for surgical reversal of elective sterilization is not required under this section.

(e) Coverage must meet the requirements that would otherwise apply to a health plan under section 62A.0412.

(f) For the purpose of this subdivision:

(1) "infertility" means a disease, condition, or status characterized by:

(i) the failure of a person with a uterus to establish a pregnancy or to carry a pregnancy to live birth after 12 months of unprotected sexual intercourse for a person under the age of 35, or six months for a person 35 years of age or older, regardless of whether a pregnancy resulting in miscarriage occurred during such time;

(ii) a person's inability to reproduce either as a single individual or with the person's partner without medical intervention; or

(iii) a licensed health care provider's findings based on a patient's medical, sexual, and reproductive history; age; physical findings; or diagnostic testing;

(2) "diagnosis of and treatment for infertility" means the recommended procedures and medications from the direction of a licensed health care provider that are consistent with established, published, or approved medical practices or professional guidelines from the American College of Obstetricians and Gynecologists or the American Society for Reproductive Medicine; and

(3) "standard fertility preservation services" means procedures that are consistent with the established medical practices or professional guidelines published by the American Society for Reproductive Medicine or the American Society of Clinical Oncology for a person who has a medical condition or is expected to undergo medication therapy, surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical professionals to cause a risk of impairment to fertility.

EFFECTIVE DATE. This section is effective January 1, 2025, or upon federal approval, whichever is later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.