



Insurance Circular Letter No. 7 (2017)

April 19, 2017

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations (“HMOs”), Student Health Plans Certified Pursuant to Insurance Law § 1124, and Municipal Cooperative Health Benefit Plans

RE: Health Insurance Coverage for Infertility Treatment Regardless of Sexual Orientation or Marital Status

STATUTORY AND REGULATORY REFERENCES: N.Y. Insurance Law §§ 3221(k)(6) and 4303(s); 11 NYCRR §§ 52.17(a)(35) and 52.18(a)(10)

I. Introduction

The purpose of this circular letter is to provide guidance to insurers authorized to write accident and health insurance in this state, article 43 corporations, health maintenance organizations, student health plans certified pursuant to Insurance Law § 1124, and municipal cooperative health benefit plans (collectively, “issuers”) regarding health insurance coverage for infertility treatment pursuant to Insurance Law §§ 3221(k)(6) and 4303(s) regardless of sexual orientation or marital status.

II. Discussion

Insurance Law §§ 3221(k)(6)(C)(vi) and 4303(s)(3)(F) require the Superintendent of Financial Services (“Superintendent”), in consultation with the Commissioner of Health, to promulgate regulations that stipulate, among other things, the guidelines and standards for the determination of infertility in accordance with the standards and guidelines established and adopted by the American College of Obstetricians and Gynecologists and American Society for Reproductive Medicine (“ASRM”). The Superintendent added a new § 52.17(a)(35) and § 52.18(a)(10) to 11 NYCRR 52 (Insurance Regulation 62) to require issuers issuing policies and contracts subject to Insurance Law §§ 3221(k)(6) or 4303(s) to use standards and guidelines no less favorable than those established and adopted by ASRM in relation to the determination of infertility for the purposes of compliance with Insurance Law §§ 3221(k)(6)(C) and 4303(s)(3).

The current ASRM description of infertility provides that “[i]nfertility is a disease, defined by the failure to achieve a successful pregnancy after 12 months or more of

appropriate, timed unprotected intercourse or therapeutic donor insemination. Earlier evaluation and treatment may be justified based on medical history and physical findings and is warranted after 6 months for women over age 35 years.”¹ This definition of infertility does not distinguish between heterosexual individuals in a relationship or who are married, individuals in a same-sex relationship or who are married, single individuals, or based on gender identity. If an individual meets the definition of infertility and otherwise qualifies for coverage, then an issuer must provide coverage regardless of sexual orientation, marital status or gender identity. Moreover, since the definition of infertility expressly permits a provider to provide for treatment earlier than 12 months, issuers should be mindful that, with respect to individuals in a same-sex relationship or single individuals, earlier treatment may be justified.

III. Conclusion

An issuer must provide coverage for infertility treatment using standards and guidelines no less favorable than those established and adopted by ASRM. ASRM’s definition of infertility does not distinguish between heterosexual individuals in a relationship or who are married, individuals in a same-sex relationship or who are married, single individuals, or based on gender identity. Therefore, every issuer must provide coverage for infertility treatment to any individual who meets ASRM’s definition of infertility when all of the other terms and conditions of the policy or contract are satisfied, regardless of the individual’s sexual orientation, marital status or gender identity.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, Health Bureau, New York State Department of Financial Services, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202 or by e-mail at thomas.fusco@dfs.ny.gov.

Very truly yours,

Lisette Johnson
Bureau Chief, Health Bureau

¹ Definitions of infertility and recurrent pregnancy loss: a committee opinion, Practice Committee of the American Society for Reproductive Medicine, Fertil Steril 2013;99:63, at https://www.asrm.org/uploadedFiles/ASRM_Content/News_and_Publications/Practice_Guidelines/Committee_Opinions/Definitions_of_infertility.pdf.