

Infertility Benefits

In General

Proponents of health benefits for the treatment of infertility have good reason to be advocating the payment of such benefits; 1.6 million office visits to infertility practitioners were recently recorded. This is nearly 3 times the number of office visits in for such care a few years prior.

Three reasons are offered for the increase in infertility treatment:

- Availability of more effective therapies.
- Lessening of social stigma attached to infertility.
- Tendency to postpone childbirth.

The treatment of infertility could include a variety of services: laboratory testing, diagnostics, workups, drug therapy, artificial insemination, surgery to repair reproductive organs, hormone and steroid injections, and in-vitro fertilization (IVF). IVF involves the joining of sperm and egg in the laboratory and the implantation of the resulting embryo in the mother.

Expenses for examination, tests and related medical costs for the diagnosis and treatment of infertility will be covered. However, expenses related to the actual clinical fertilization of an ovum (artificial insemination) and/or implantation into the uterus of a fertilized ovum (*in vitro* fertilization) are not covered expenses. Procedures such as artificial insemination, in vitro fertilization or *in vivo* fertilization are not done to correct a physical impairment and are actually done to produce a pregnancy, so cannot be classified as treatment of any injury or illness.

In Vitro Fertilization

In vitro means *in a glass*. That is, fertilization is done outside the body and in a test tube. When conception is verified by microscope, the fertilized eggs are placed in the uterus for normal development.

The process is extremely delicate and timing is essential; the various steps must be all done by nature's timetable. To accomplish the correct timing much testing is needed. Some of the processes and test are:

- Hormone injections (to help egg production)
- Daily blood tests to monitor hormone levels
- Ultrasound pictures of the ovaries
- Pelvic examinations (analysis of mucous and tissues)

Removal of the egg is by either of two means:

- Laparoscopy (surgery)
- Nonsurgical (ultrasound equipment vaginally).

Care of the male sperm is a complex process and enables the washing and concentration in a centrifuge to gain a high percent of active sperm.

There is no uniform position on the infertility issue, nor is there agreement as to what types of treatment are covered and excluded. Opponents of coverage for IVF believe:

- Infertility is not a sickness or disease, per se, and IVF and other procedures bypass, rather than correct, an underlying problem.
- The decision by couples to postpone having children, which increases the risk of infertility, should not be the responsibility of the plans.
- Infertility coverage may bring medical miracles to a relative few at an increased price for health care for everyone.

Those supporting the recognition of IVF as a covered expense believe the following:

- Infertility is most certainly an illness.
- IVF, while costly per patient, is rather infrequently utilized because the procedures are painful and intrusive.
- Mandates for infertility coverage will not necessarily drive up the cost of health insurance as only a third of infertile couples seek any treatment, and of those only 5% to 15% access advanced therapy such as IVF.

Eight states, Arkansas, California, Connecticut, Hawaii, Massachusetts, Rhode Island, and Texas, have enacted requirements for some form of infertility coverage, with similar legislation being introduced in 18 other states.

- California requires a plan to cover diagnostics, but excludes coverage for the technical aspects of IVF.
- Arkansas and Maryland require coverage for IVF treatment only.
- Connecticut requires an offer of coverage for diagnostics and treatment of infertility, including IVF.
- Hawaii stipulates that insurers cover only one IVF attempt.
- Massachusetts requires a comprehensive package of benefits, including surgery, drug therapy, laboratory expenses, IVF, and a Gamete intrafallopian transfer, (a process during which the egg is retrieved from the body and then placed back into the fallopian tube along with sperm so that fertilization can occur naturally), and requires 100 percent coverage.
- Rhode Island requires the same package as Massachusetts, but permits a 20 percent copayment by the insured.
- Texas requires coverage for infertility services.

In addition, Congress is studying various proposals to have the federal government pay for infertility treatment for federal employees and veterans.

Problems With *In Vitro* Fertilization

The examiners should be aware of these difficulties with the procedures.

- It is super-high tech and expensive
- It has a low success rate
- Serious ethical and legal problems

- Testing is difficult because of federal ban on human embryo testing in Medicare-approved hospitals.

Relevant Court Decisions

Plan did not specifically cover sterilizations. When such a claim was submitted, it was denied. Medical testimony said it was medically necessary. Court held it had to be paid.

No specific exclusion was in the plan for *in vitro* fertilization. Plan denied the claim on the grounds of medical necessity. Court agreed, noting that the procedure was elective and not needed to preserve health or cure an illness; also, it was not medically necessary that the participant have a baby. Caution: other court decisions have gone in the opposite direction given similar facts.

Plan was silent as to whether infertility was an illness; plan only referred to *any sickness*. Some large claims were incurred for artificial insemination procedures; such claims were denied. The participant sought relief in court. In absence of clear plan language and definitions, the court looked to the dictionary and the normal context of plan provisions.

- **Definitions.** Illness, disease and disability are synonymous in both the dictionary and plans of health insurance. Key words critical to the infertility issue are these: “...it includes a morbid condition of the body or any deviation from a normal state or any body functions or tissues.”
- **Interpretations.** The court followed the time-honored rule of constructing a plan against the drafter.

The court logically held that infertility was an illness for plan purposes. The plan was liable. Lesson is this: all *gray* issues should be made black and white in plan drafting.