



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1539

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H.P. 1144

House of Representatives, April 22, 2021

### An Act To Provide Access to Fertility Care

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Received by the Clerk of the House on April 20, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative MADIGAN of Waterville.  
Cosponsored by Senator DAUGHTRY of Cumberland and  
Representatives: CRAVEN of Lewiston, EVANS of Dover-Foxcroft, Speaker FECTEAU of  
Biddeford, MEYER of Eliot, Senators: BRENNER of Cumberland, CARNEY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §4320-Q** is enacted to read:

3 **§4320-Q. Coverage for fertility services**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Experimental fertility procedure" means a procedure for which the published  
7 medical evidence is not sufficient for the American Society for Reproductive Medicine,  
8 its successor organization or a comparable organization to regard the procedure as  
9 established medical practice.

10 B. "Fertility diagnostic care" means procedures, products, medications and services  
11 intended to provide information about an individual's fertility, including laboratory  
12 assessments and imaging studies.

13 C. "Fertility patient" means an individual or couple with infertility or an individual  
14 unable to conceive as an individual or with a partner because the individual or couple  
15 does not have the necessary gametes for conception.

16 D. "Fertility preservation services" means procedures, products, medications and  
17 services, intended to preserve fertility, consistent with established medical practice and  
18 professional guidelines published by the American Society for Reproductive Medicine,  
19 its successor organization or a comparable organization for an individual who has a  
20 medical or genetic condition or who is expected to undergo treatment that may directly  
21 or indirectly cause a risk of impairment of fertility. "Fertility preservation services"  
22 includes the procurement and cryopreservation of gametes, embryos and reproductive  
23 material and storage from the time of cryopreservation for a period of 5 years. Storage  
24 may be offered for a longer period of time.

25 E. "Fertility treatment" means procedures, products, medications and services intended  
26 to achieve pregnancy consistent with established medical practice and professional  
27 guidelines published by the American Society for Reproductive Medicine, its successor  
28 organization or a comparable organization.

29 F. "Gamete" means a cell containing a haploid complement of deoxyribonucleic acid  
30 that has the potential to form an embryo when combined with another gamete.  
31 "Gamete" includes sperm and eggs.

32 G. "Infertility" means the presence of a demonstrated condition recognized by a  
33 provider as a cause of loss or impairment of fertility or a couple's inability to achieve  
34 pregnancy after 12 months of unprotected intercourse when the couple has the  
35 necessary gametes for conception, including the loss of a pregnancy occurring within  
36 that 12-month period, or after a period of less than 12 months due to a person's age or  
37 other factors. Pregnancy resulting in a loss does not cause the time period of trying to  
38 achieve a pregnancy to be restarted.

39 **2. Required coverage.** A carrier offering a health plan in this State shall provide  
40 coverage as provided in this subsection to an enrollee:

41 A. For fertility diagnostic care;

42 B. For fertility treatment if the enrollee is a fertility patient; and

1           C. For fertility preservation services.

2           Coverage under this subsection must include evaluations, laboratory assessments,  
3           medications and procedures intended to achieve pregnancy, including but not limited to the  
4           procurement of donor gametes. Coverage must be provided to the same extent that  
5           coverage is provided for other medical services or prescription drugs. Coverage under this  
6           subsection may not be denied to any enrollee who foregoes a particular fertility treatment  
7           or fertility preservation service if a provider determines that such fertility treatment or  
8           fertility preservation service is likely to be unsuccessful.

9           **3. Limitations on coverage.** A health plan that provides coverage for the services  
10          required by this section may include reasonable limitations to the extent that these  
11          provisions are not inconsistent with the following requirements.

12          A. A carrier may not impose deductibles, copayments, coinsurance, maximum benefits,  
13          waiting periods or other limitations that are different from those that are imposed on  
14          coverage for other services under the health plan or any limitations on coverage for  
15          prescribed fertility medication that are different from those that are imposed on other  
16          prescription medication.

17          B. A carrier may not use any prior diagnosis or prior fertility treatment as a basis for  
18          excluding, limiting or otherwise restricting the availability of coverage required by this  
19          section.

20          C. A carrier may not impose any limitations on coverage for any fertility services based  
21          on an enrollee's use of donor gametes, donor embryos or surrogacy.

22          D. A carrier may not impose any limitations on coverage solely based on arbitrary  
23          factors, such as number of conception attempts, dollar amounts or age of an enrollee,  
24          or provide different benefits to or impose different requirements on a class of persons  
25          protected under Title 5, chapter 337 than those limitations placed on other enrollees.

26          E. Any limitations imposed by a carrier must be based on an enrollee's medical history  
27          and clinical guidelines. Any clinical guidelines used by a carrier must be maintained  
28          in written form and must be made available to an enrollee in writing upon request.  
29          Clinical guidelines developed by the American Society for Reproductive Medicine, its  
30          successor organization or a comparable organization may serve as a basis for a carrier's  
31          clinical guidelines. Making, issuing, circulating or causing to be made, issued or  
32          circulated any clinical guidelines that are based on data that are not reasonably current  
33          or that do not cite with any specificity any reference relied upon constitutes an unfair  
34          or deceptive act or practice in the business of insurance pursuant to section 2152.

35          **4. Certain services not required.** This section does not require a carrier to provide  
36          coverage for:

37          A. Any experimental fertility procedure; or

38          B. Any nonmedical costs related to donor gametes, donor embryos or surrogacy.

39          **5. Rules.** The superintendent shall adopt rules as necessary to implement the  
40          requirements of this section. Rules adopted pursuant to this subsection are routine technical  
41          rules as defined in Title 5, chapter 375, subchapter 2-A.

42          **Sec. 2. Application.** This Act applies to all policies, contracts and certificates  
43          executed, delivered, issued for delivery, continued or renewed in this State on or after

1 January 1, 2023. For purposes of this Act, all contracts are deemed to be renewed no later  
2 than the next yearly anniversary of the contract date.

3 **SUMMARY**

4 This bill requires carriers offering health plans in this State to provide coverage for  
5 fertility diagnostic care, for fertility treatment if the enrollee is a fertility patient and for  
6 fertility preservation services. The requirements of the bill apply to health plans issued or  
7 renewed on or after January 1, 2023.