



*The Commonwealth of Massachusetts
Health Policy Commission
Office of Patient Protection
Two Boylston Street
Boston, MA 02116*

To: External Review Agencies under Contract with the Health Policy Commission Pursuant to G.L. c. 176O, § 14
cc: Commercial Health Insurers, Blue Cross Blue Shield of Massachusetts, and Health Maintenance Organizations Accredited Pursuant to G.L. c. 176O
From: Jenifer Bosco, Director, Office of Patient Protection
Re: External Review for Denials of Coverage for Infertility Treatment
Date: June 24, 2013

External Review for Denials of Coverage for Infertility Treatment

Definition of Infertility

Massachusetts law defines “infertility” as “the condition of an individual who is unable to conceive or produce conception during a period of one year if the female is age 35 or younger or during a period of six months if the female is over the age of 35. For purposes of meeting the criteria for infertility ... if a person conceives but is unable to carry that pregnancy to live birth, the period of time she attempted to conceive prior to achieving that pregnancy shall be included in the calculation of the one year or six month period, as applicable.” G.L. c. 175, section 47H.

Changes to Massachusetts Law

Note that the definition of infertility in G.L. c. 175, section 47H has been updated. It no longer contains a requirement that the person seeking treatment must be otherwise healthy. Insurance carriers and external review agencies must use the current infertility definition. In addition, cryopreservation of eggs is now a mandated benefit when medically necessary. See also recently updated regulations at 211 CMR 37.05.

Required Infertility Benefits

The following procedures must be covered if medically necessary:

- Artificial Insemination (AI) and Intrauterine Insemination (IUI)
- In Vitro Fertilization and Embryo Transfer (IVF-ET)
- Gamete Intrafallopian Transfer (GIFT)

- Sperm, egg and/or inseminated egg procurement and processing, and banking of sperm or inseminated eggs, to the extent such costs are not covered by the donor's insurer, if any
- Intracytoplasmic Sperm Injection (ICSI) for the treatment of male factor infertility
- Zygote Intrafallopian Transfer (ZIFT)
- Assisted Hatching
- Cryopreservation of eggs
- All other non-experimental infertility procedures

See 211 CMR 37.05.

Eligibility for External Review

When health insurance carriers deny coverage for infertility treatment based on medical necessity, a determination that a procedure is experimental or investigational, or other health plan criteria or guidelines, then these final adverse determinations will be eligible for external review. The review will be based upon medical necessity, which is defined as follows:

“[M]edical necessity” or “medically necessary” means health care services that are consistent with generally accepted principles of professional medical practice as determined by whether:

- (a) the service is the most appropriate available supply or level of service for the insured in question considering potential benefits and harms to the individual;
- (b) is known to be effective, based on scientific evidence, professional standards and expert opinion, in improving health outcomes; or
- (c) for services and interventions not in widespread use, is based on scientific evidence.

See 958 CMR 128.020 and 211 CMR 52.03.

If you have questions about external reviews and infertility treatment, please contact Jenifer Bosco, Director of the Office of Patient Protection, at jenifer.bosco@state.ma.us or 617-979-1413.