

## California Requires Insured Medical Plans to Provide Fertility Benefits

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California has enacted legislation that will require large-group health insurance policies and HMO contracts to cover the diagnosis and treatment of infertility and fertility services, including in-vitro fertilization treatments. Small-group policies and HMO contracts must offer employers the option to cover these same services but are not required to provide the coverage automatically. The new law is generally effective for health insurance policies and HMO contracts that are issued, amended, or renewed on or after July 1, 2025. The new state law does not apply to self-funded plans.

### Background

Since 1990, California has required every health insurance carrier and HMO to offer the employer (or other policyholder) the option to cover infertility treatments (except in-vitro fertilization) as part of hospital, medical, or surgery insurance, under the terms and conditions agreed to by the policyholder and the insurance carrier or HMO. Insurance carriers and HMOs are required to communicate the availability of this optional coverage to the employer (or other policyholder) but are not mandated to provide the coverage automatically.

### New Requirements

The new state law requires large-group health insurance policies and HMO contracts to cover the diagnosis and treatment of infertility and fertility services, including a maximum of three completed in-vitro fertilization treatments. Small-group health insurance policies and HMO contracts are required to offer the employer (or other policyholder) the option to cover these same services but are not mandated to provide this coverage automatically.

California generally defines “small group” as a plan covering an employer that employs at least one, but not more than 100, full-time equivalent employees on at least 50% of its working days during the preceding calendar quarter or preceding calendar year, the majority of whom were employed in California.

The law prohibits health insurance policies and HMO contracts from excluding or denying coverage of fertility services provided by or to a third party, such as a gestational carrier, a surrogate who enables the intended recipient to become a parent, or the donor of an oocyte, sperm, or embryo. In addition, the new state law prohibits health insurance policies and HMO contracts from including any of the following provisions:

- Any exclusion, limitation, or other restriction on coverage of fertility medications that is different from those imposed on other prescription medications.
- Any deductible, copayment, coinsurance, benefit maximum, waiting period, or other limitation on coverage for the diagnosis and treatment of infertility that is different from those imposed upon benefits for services not related to infertility.

For purposes of the new coverage requirement, the term “infertility” is defined as a condition or status characterized by any of the following:

- A licensed physician’s findings;
- A person’s inability to reproduce as an individual or with a partner without medical intervention; or
- The failure to establish a pregnancy or to carry a pregnancy to live birth after regular unprotected sexual intercourse.

## Effective Date

The new state law is generally effective for health insurance policies and HMO contracts that are issued, amended, or renewed on or after July 1, 2025. However, the new state law does not apply to health plans and policies with CalPERS (the benefit system for state employees) until July 1, 2027.

## Exemptions

The law does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, or specialized disability insurance policies.

In addition, it does not apply to:

- A self-funded group health plan subject to ERISA;
- Any health insurance policy or HMO contract maintained by a “religious employer.”

## Extraterritoriality

The new state law applies to every health insurance policy that is issued, amended, or renewed to residents of California, regardless of the situs of the contract. This provision is identical to the provision under existing law.

## Employer Action

Large employers with fully insured plans should be aware of the new fertility requirements that will take effect for plan years beginning on or after July 1, 2025.

Large employers with fully insured policies written outside of California, but providing coverage to California residents, should discuss compliance with the insurance carrier.

Small employers with fully insured plans should determine whether to opt in to the fertility coverage with the first renewal on or after July 1, 2025.