



41 State Street • Suite 900  
Albany, NY 12207-1717  
518.462.2293  
Fax: 518.462.2150  
www.nyhpa.org

# MEMORANDUM IN OPPOSITION

**FOR IMMEDIATE RELEASE: MARCH 11, 2019**

**Re: S.719 (Savino)/A.2817(Simotas) – An act to amend the insurance law, in relation to insurance coverage of in vitro fertilization and other fertility preservation treatments.**

---

This legislation, S.719/A.2817, would mandate health plans provide coverage of in vitro fertilization (IVF). The New York Health Plan Association (HPA) opposes this legislation because health insurance mandates result in increased costs and increased premiums at a time we are seeking affordability.

The bill mandates coverage of IVF procedures as a new benefit for small group and individual coverage. New York, in compliance with the Affordable Care Act (ACA), is required to cover ten Essential Health Benefits (EHBs). While states may offer benefits beyond the EHB, the ACA requires states to pay for new mandated benefits. Under the ACA, states that pass new mandated benefits after December 31, 2011 are required to absorb the costs services that fall outside the essential health benefit package established as part of a state's benchmark plan.

While some may argue that requiring coverage of IVF would merely be an amendment to existing state law, New York state law currently explicitly excludes coverage of IVF, and S.719/A.2817 would be changing the services covered under the benefit itself to require a new set of treatment benefits not covered under New York's EHB. This creates the potential for financial exposure for the state as federal law requires any state that adds coverage benefits above the 10 EHBs to pay for such additional services with state funds.

Despite claims by the advocates that several states have passed mandated benefits without making defrayal payments, some states, such as Massachusetts, have been paying for the cost of new mandated benefits, consistent with the provisions in the ACA. In 2012, MA passed three mandated benefits (cleft palate, pediatric hearing aids, and oral cancer therapy). Since 2014, the state's exchange (the Health Connector) has been reimbursing health plans for the cost of the three mandated benefits, as they were passed after December 31, 2011 and were not part of the state's EHB. Additionally, in 2016, Massachusetts began requiring coverage of HIV lipodystrophy with the state recently informing health plans that it would reimburse them for the cost of that mandated benefit, consistent with the ACA provisions.

Our member health plans recognize the importance of coverage of certain treatments to families struggling with fertility. The Department of Financial Services (DFS) recently released a study how best to include in vitro fertilization in the state's existing infertility coverage mandate, noting that including this coverage would cost approximately \$110 million dollars annually. The DFS report noted, "the importance of medically-necessary fertility preservation and IVF coverage must be weighed against the potential premium impact, including the impact premium increases have on the affordability of coverage and the potential increase in the uninsured rate in New York." At a time when New York faces a

*The New York Health Plan Association represents 29 managed care health plans that provide comprehensive health care services to nearly 8 million New Yorkers.*

significant budget shortfall, we should be wary of adding new, expensive mandates without any appropriation to cover these costs.

The issue of increased utilization is also important. When someone else – insurance, in this case – pays for a service or treatment, utilization goes up. This concern was included in the DFS report, which cited analysis indicating that “introducing IVF and other fertility benefits into a market where it was previously not widely offered may produce higher than average utilization in the first few years.” When the Department of Insurance (now DFS) studied the impact of New York’s 1997 Chiropractic Care Act (conducted by William Mercer and issued in May 2000), it found chiropractic service utilization increased “significantly,” which also resulted in cost increases. The concerns about utilization and accompanying cost increases are made even more worrisome when you consider this proposal is open-ended. Unlike other states that have enacted IVF mandates, this proposal has no limits on the number of attempts that would be covered or age of the mother, or caps on lifetime cost of the benefit.

Like other mandated benefit bills, the cost of this legislation will be disproportionately fall on small businesses, as expanding existing mandated benefits force them to include benefits they and their workforce may not want or need, exacerbating the challenge they face to find affordable health care options. Mandated benefit bills pertain only to fully-insured policies, which are purchased either by individuals who purchase coverage on their own or receive it through a small or medium-sized business. Large companies typically “self-insure,” providing employee health benefits by directly paying health care claims to providers. They are governed by the Federal Employee Retirement Income Security Act (ERISA) and are not subject to state mandated benefits, one reason large employers self-insure their employees’ health benefit plans. Today, roughly 50 percent of the commercial market in New York is covered under a self-insured plan. As more employers self-insure, state laws mandating specific types of benefits and services, or expanding existing mandates as these bills would, affect an increasingly smaller portion of the privately insured marketplace and fall largely on small and medium-sized employers.

For all the reasons stated above, we urge you to say no to S.719/A.2817

*The New York Health Plan Association represents 29 managed care health plans that provide comprehensive health care services to nearly 8 million New Yorkers.*