The JAMA Forum

A Same-Sex Infertility Health Insurance Mandate in Maryland?

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To the surprise of many, in March, the legislature of Maryland passed 2 bills (http://bsun.md/1F1t4Um) that would amend an outdated health insurance mandate that excluded same-sex couples from coverage for in vitro fertilization treatments.

Specifically, the 2 bills, proposed separately in the Maryland House and Senate and then amended to be identical, prohibit “insurers, nonprofit health service plans, and health maintenance organizations from requiring specified conditions of coverage for specified infertility benefits for a patient who is married to an individual of the same sex,” (http://1.usa.gov/1AqXOsF).

This first-in-the-nation effort is well worth the attention it has been receiving, because the implications can hardly be overstated.

A 40-Year Journey

Maryland has had its share of challenges making its way toward legalization of same-sex marriage. Clearly, much has changed since 1973, when it became the first state in the nation to define marriage as a union between a man and a woman. That status quo lasted until 2010, when the state’s attorney general issued an opinion that same-sex marriages performed in other states could be recognized by Maryland. That opinion became precedent in 2012, when the Court of Appeals in Port v Cowan (http://bit.ly/1IPMWWb) concluded that out-of-state marriages are recognized in Maryland unless “prohibited by statute or ‘repugnant’ to the public policies of Maryland.”

Around the same time, Maryland’s General Assembly passed the Civil Marriage Protection Act (http://1.usa.gov/1SoRcin), which legalized same-sex marriage, and after a majority of voters approved a subsequent public referendum, the law took effect on January 1, 2013. With this law, the state of Maryland closed the books on a 40-year struggle marked by unforeseen and unprecedented shifts in public opinion.

One important consequence of progress in the gay rights arena that is not appreciated by many people is the requirement to rewrite numerous existing statutes that had been crafted by and for a society previously supporting only opposite-sex marriage. Nowhere is this new imperative more apparent than in matters of reproduction.

Enter the Maryland infertility health insurance state mandate. One of 15 such state mandates nationwide, the Maryland statute holds the distinction of having been the first to require the underwriting of in vitro fertilization. The 1985 legislation, which was the product of exemplary grassroots advocacy efforts by women for women, was signed into law by then Governor Harry Hughes.

At its core, Maryland Insurance, Section 15-810 (http://1.usa.gov/1Apiv6l), requires that qualified health insurance plans that provide pregnancy-related benefits “may not exclude benefits for all outpatient expenses arising from in vitro fertilization procedures...” The law’s minimum eligibility criteria, which apply exclusively to legally married opposite-sex couples, include (but are not limited to) the expectation that the “patient’s oocytes are fertilized with the patient’s spouse’s sperm.” A rewrite was clearly called for.

House Bill 0838 (http://1.usa.gov/1c9UK6L), Health Insurance—Coverage for Infertility Services, sponsored by Delegate Terri L. Hill, and the corresponding Senate Bill 0416 (http://1.usa.gov/1Iv6z2O), sponsored by Senator Cheryl Kagan, were introduced earlier this year and approved by wide, bipartisan margins in both chambers. At the time of this writing, the newly passed bills have been transmitted to Maryland Governor Larry Hogan for his evaluation and possible signature.

A Universal Human Principle

Building a family is a universal human principle shared by single individuals and unmarried opposite-sex couples, as well as gay and lesbian couples. A review by the Ethics Committee of the American Society for Reproductive Medicine found that the data “do not support restricting access to assisted reproductive technologies on the basis of a prospective parent’s marital/partner status or sexual orientation,” (http://bit.ly/1LTlCkx). The European Society of Human Reproduction and Embryology Task Force on Ethics and Law reached similar conclusions in considering medically assisted reproduction in single people, lesbian and gay couples, and transgender people.

The 2 Maryland bills are supported by CareFirst, the state’s largest qualified health insurance issuer. The Maryland Catholic Conference pledged to remain neutral. It remains to be seen, however, if Governor Hogan will sign the legislation into law. •

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