June 30, 2023

Timothy N. Schott
Acting Superintendent
Department of Professional and Financial Regulation
Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Sent by email to Karma.Y.Lombard@maine.gov

Dear Superintendent Schott,

On behalf of Resolve New England (RNE), we are writing to provide comments on the proposed **Rule Chapter 865, Standards for Fertility Coverage**. RNE is a non-profit organization that provides emotional support, resources and advocacy for ALL those in New England that are dealing with fertility and family building challenges. We proudly advocated for the passage of this fertility insurance legislation. RNE is grateful to the legislature and to Governor Mills for making this pro-family law a reality, and to the Department of Professional and Financial Regulation for the work to date on these proposed rules.

We know that the Bureau of Insurance shares our desire to ensure that these regulations align with the authorizing statute 24-A M.R.S. § 4320-U and with other existing Maine statutes as applicable. Attached is a redline of the draft rules, but we will also highlight a few items here.

First, the term “fertility preservation services” is included in the definition section of the proposed rules but not under Required Coverage, as indicated in the statute. I believe this was an unintentional oversight and should be fixed. This is a core part of the law.

After consulting with a urologist who specializes in fertility, we suggest that a definition for "Microsurgical Testicular Sperm Extraction” should be included in these rules, and then also should be added in Section 5, subsection 11, as shown in the redline.

These rules should reflect that the “Standard-setting organization” in the 24-A M.R.S. § 4320-U statute is the American Society for Reproductive Medicine, its successor organization or a comparable organization.

We are very proud that the statute has an intentionally inclusive definition of fertility patient, which is what should be used in Section 4, subsection 1c. It was approved in this way so that all those of reproductive age, including individuals and LGBTQ couples, would have equitable access to care.

Another vital part of the statute is that fertility health care coverage/decisions should not be arbitrary, but rather they should be grounded in the individual patient's "medical history" in consultation with their medical provider. Given this, the rule 865 cannot include blanket limits on insemination, egg retrievals or in vitro fertilization, as such blanket limits are arbitrary and not based on medical standards. The concept of "lifetime limits" should also not be used, as the statute is clear that previous treatment and diagnosis cannot be a basis for limiting coverage and that language also conflicts with the pre-existing condition provision of the Affordable Care Act (ACA). Limiting egg retrievals is also not consistent with 24-A M.R.S. § 4320-U, which specifically does not permit different coverage based on sex.

There should not be a *limit* on insemination, if that is a course of treatment that is likely to be successful for an individual patient, but also patients should also not be arbitrarily required to do inseminations if it is not clinically indicated.

We strongly recommend that carriers provide unlimited coverage for embryo transfers. This encourages patients to do single embryo transfer when clinically indicated and ensures that patients will not have embryos that they cannot afford to transfer if they wish to do so.

We do not expect unlimited coverage for all and recognize that the carriers will develop clinical guidelines, which need to be based on current information and best practices. As indicated in the statute, "Any clinical guidelines must cite with specificity any data or scientific reference relied upon". This should also be explicitly referenced in Section 6, subsection 4 of these rules, as shown in the redline.

Finally, we feel that it should be clear that the cost defrayal outlined in Section 7 would only be done if the federal government *specifically* acts on or enforces the language that is in the ACA. To our knowledge, specific regulations about how these should be calculated or paid have not been promulgated. We feel that Maine would set a troubling precedent if the state made cost defrayal payments voluntarily.

RNE wants to continue to be involved as this process continues and is willing to help any way we can. Our organization can be reached at admin@resolvenewengland.org. Thank you.

Sincerely,

Kate Weldon LeBlanc
Executive Director

Catherine Tucker, Esq.
Vice Chair, RNE Advocacy Committee