



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Earl Ray Tomblin
Governor

Michael D. Riley
Insurance Commissioner

MARCH 2013

WEST VIRGINIA INFORMATIONAL LETTER

NO. 185

TO: All Health Maintenance Organizations Licensed to do Business in the State of West Virginia and Interested Medical Providers

RE: Infertility Services – Minimum Benefits

This letter is intended to clarify minimum benefits that a health maintenance organization (“HMO”) is required to offer or otherwise make available to its enrollees with respect to infertility services. Clarification of the minimum benefits for infertility services is also expected to assist in the calculation of premium tax credits available pursuant to section 1401 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended.¹

West Virginia Code § 33-25A-2(11) defines an HMO as “a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services[.]”² Included among the mandated basic health care services, which are itemized at W. Va. Code § 33-25A-2(1), are “infertility services.”

For the purposes of this letter and W. Va. Code § 33-25A-2(1), infertility services mean diagnostic and/or exploratory procedures to establish a diagnosis of infertility and identify the cause. Infertility services do *not* include the treatment of infertility, which may consist of, but not be limited to, ovulation induction, intrauterine insemination, in-vitro fertilization, uterine embryo lavage, embryo transfer, gamete intra-fallopian transfer, zygote intra-fallopian transfer and low tubal ovum transfer.

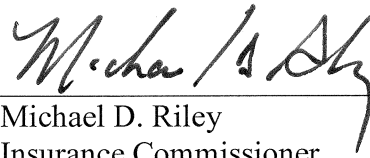
¹ Section 1401 of the Patient Protection and Affordable Care Act created section 36B of the Internal Revenue Code (26 U.S.C. 36B), which provides for a premium tax credit that is available on an advanced basis to reduce the monthly insurance costs for eligible individuals who enroll in a qualified health plan through an approved health insurance exchange. Because infertility services mandated by W. Va. Code § 33-25A-2(1) are part of West Virginia’s “state-required benefits enacted on or before December 31, 2011,” an approved health insurance exchange must regard infertility services as an essential health benefit subject to the premium tax credit. *See* 45 CFR 155.

² W. Va. Code § 33-25A-18(1)(c) allows the Insurance Commissioner to suspend or revoke an HMO’s certificate of authority if the HMO fails to provide or arrange for basic health care services.



Nothing in this letter shall be construed to deny or restrict any existing right or benefit to coverage and treatment of infertility under an existing plan or policy. In addition, nothing in this letter shall be construed to prohibit an HMO from offering coverage for infertility services in excess of the required minimum benefits set forth herein.

Questions regarding this informational letter should be directed to Jeremiah Samples, Director of Health Policy for the OIC, at 304-558-6279 ext. 1131 or jeremiah.samples@wvinsurance.gov.



Michael D. Riley
Insurance Commissioner