

# Inclusive Family-Forming Benefits: Definition of Infertility

Jenny Gartman, CEBS

According to “Employee Benefits Survey: 2024 Results,” to be released the end of August 2024, 42% of U.S. organizations currently offer fertility benefits (an increase from 40% in 2022). While fertility benefit offerings are more prevalent, there are varied reasons plan participants may seek fertility treatment and be ineligible based on the plan’s definition of “infertility.”

LGBTQ+ couples and single individuals not in a relationship may face obstacles when they seek fertility assistance for family forming. Significant disparities exist within access to infertility services (both diagnostic and treatment) across the U.S., based on state of residence, insurance plan, sexual orientation, gender identity and more factors, according to [KFF analysis](#). This blog covers expanded fertility treatment eligibility and access at the state and federal level, large employer trends and recent legal challenges alleging discriminatory policies.

## Fertility Benefits Mandates

Federal law that is applicable to self-funded group health plans doesn’t require fertility coverage— Instead, self-funded plan sponsors can decide what to cover. State insurance coverage requirements apply to fully insured plans, and more inclusive coverage mandates have recently been adopted in some states.

## Infertility—A More Inclusive Definition

In October 2023, the American Society for Reproductive Medicine (ASRM) Practice Committee [issued](#) a new definition of “infertility” as follows:

*“Infertility is a disease, condition, or status characterized by any of the following:*

- The inability to achieve a successful pregnancy based on a patient’s medical, sexual, and reproductive history, age, physical findings, diagnostic testing, or any combination of those factors.
- The need for medical intervention, including, but not limited to, the use of donor gametes or donor embryos in order to achieve a successful pregnancy either as an individual or with a partner.
- In patients having regular, unprotected intercourse and without any known etiology for either partner suggestive of impaired reproductive ability, evaluation should be initiated at 12 months when the female partner is under 35 years of age and at six months when the female partner is 35 years of age or older.

Nothing in this definition shall be used to deny or delay treatment to any individual, regardless of relationship status or sexual orientation.”

**Why It Matters:** An updated definition from the ASRM broadening the scope of people affected by infertility is a first step to expanding care access, advocates and attorneys told [Bloomberg Law News](#).

## Expanded Access at the State Level for Fully Insured Plans

[Twenty-one states and the District of Columbia](#) have fertility insurance coverage laws, according to RESOLVE. Eligibility and covered services vary greatly. More inclusive coverage mandates have been adopted by seven states (Colorado, Delaware, Illinois, Maine, Maryland, New Jersey, New York) and the District of Columbia; the laws include either the ASRM definition or language close to it, guaranteeing coverage to individuals beyond heterosexual couples, according to a [Bloomberg Law News](#). Some of the states still require nonheterosexual couples to pay first for intrauterine insemination (IUI) or other services for a certain period, in order to provide evidence of infertility, before they're eligible for coverage. The same is true for some major insurance companies/policies which have faced lawsuits. More on legal challenges are examined below.

## Federal Legislation Introduced

The Access to Infertility Treatment and Care Act ([HR 4731](#)) ([S 2386](#)) would require group and individual health plans that offer obstetric services to cover "treatment of infertility determined appropriate by the treating provider." The bill would define infertility as "a person's incapacity for reproduction either as an individual or with his or her partner," including "based on medical, sexual and reproductive history." The bills haven't shown momentum in Congress.

## Benchmarking

According to the Business Group on Health's 2024 [strategy survey](#), 66% of large employer respondents already had expanded fertility benefits for all types of families in 2023 (i.e., do not require medical diagnosis of infertility to access benefit), 9% planned to add expanded fertility benefits in 2024, 11% are considering adding expanded fertility benefits for 2025/2026. This data shows that over 85% of large group health plan sponsors that offer fertility benefits have updated or are considering definitions of infertility (like the ASRM) that provide equal access to any individual, regardless of relationship status or sexual orientation.

## Legal Challenges

Plan participants and beneficiaries have challenged health insurance companies' definition of infertility, alleging it led to unequal insurance coverage based on sexual orientation. Two examples are provided.

1. In this case, the plaintiffs alleged that an Aetna policy required LGBTQ+ individuals to pay more out of pocket for fertility treatments than heterosexual individuals. The policy required heterosexual couples to represent that they had tried for six or 12 months to get pregnant before covering fertility treatments. But couples who could not conceive through intercourse first had to pay for treatments out of pocket for up to a year before they were covered. Aetna denied wrongdoing in the [settlement](#), under which it agreed to establish a new standard plan

design that covers artificial insemination regardless of sexual orientation, reimburse beneficiaries for out-of-pocket expenses they incurred under the old policy, reprocess eligible claims for coverage, and change clinical policies to ensure equal access to fertility treatments.

2. The plaintiffs [alleged](#) that the plan design, which required LGBTQ+ couples to incur out-of-pocket expenses for medical intervention to demonstrate they meet the criteria for failed attempts to produce conception, violated ACA's nondiscrimination provision. A heterosexual couple would incur no out-of-pocket expenses to meet the criteria. "It's reasonable to infer discrimination on the basis of sex when Blue Cross Blue Shield of Illinois required people in same-sex relationships to prove infertility and qualify for treatment by demonstrating that they were unable to conceive after a year of unprotected sex between a man and a woman," the U.S. District Court for the Northern District of Illinois said in denying the insurance company's motion to dismiss. This case is ongoing.

**Recap:** Many large employers do not require a medical diagnosis of infertility to access fertility benefit offerings. Some state insurance mandates provide coverage to same-sex couples and individuals without a partner. As employees continue seeking financial assistance for family-building, time will tell whether insurance coverage becomes more inclusive.

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