The Effect of Mandated Coverage on Decisions Regarding Single vs. Multiple Embryo Transfers

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A study recently published in the *Lancet* indicates that the transfer of only one embryo during the process of in vitro fertilization (IVF) is as effective in achieving pregnancy as transferring two embryos.\(^1\) IVF, a technique used to help infertile people conceive,\(^2\) involves stimulating the ovaries with hormones, surgically removing the egg follicles, combining the eggs and sperm in the laboratory, allowing the embryos to develop for three to five days, then placing one or more embryos directly into the uterus.\(^3\) While IVF has been successful in helping many women conceive, it sometimes results in multiple births (twins, triplets, and higher order births) which can lead to health problems for the mother and children involved. These multiple births occur because more than one embryo is often implanted during IVF to increase the chance of pregnancy. These multiple births can cost as much as ten times more than a singleton birth.\(^4\) But this problem could be lessened if, as the *Lancet* study reports, implantation of only one embryo is as successful as the transfer of more than one embryo.

What the *Lancet* study also reports, however, is that the equal success of implanting only one embryo is only achieved over multiple cycles of IVF.\(^5\) The study compared two groups of women.\(^6\) One group received “mild treatment” which included transfer of one embryo.\(^7\) A second group received “standard treatment” which included transfer of two embryos.\(^8\) The number of live births that resulted after one year of treatment were virtually the same for each group – 43.3% for the group receiving “mild treatment” and 44.7% for the group receiving “standard treatment.”\(^9\) However, as the authors of the study report, there is a “reduced chance of term live births per cycle” for a single embryo transfer as compared to a multiple embryo transfer.\(^10\) Therefore, these single embryo transfer successes occur at the cost of an infertile woman having to undergo an

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\(^2\) Note here that the text does not refer to infertile woman. Infertility is often seen as a woman’s issue, but infertility effects men and women in equal proportions. Aaron C. McKee, *The American Dream – 2.5 Kids and a White Picket Fence: The Need for Federal Legislation to Protect the Insurance Rights of Infertile Couples*, 41 WASHBURN L.J. 191, 192 (2001). Women account for 40% of infertility issues and men account for 40% of infertility issues. Id. The remaining 20% of infertility issues are caused by an unknown source. Id.

\(^3\) Id. at 194 (citation omitted).

\(^4\) David Frankfurter, *To Insure or Not to Insure: That Is the Question*, 80 FERTILITY & STERILITY 24 (2001) (citations omitted). Between 1978, when the first child was born from IVF, and 2001, over one million births have resulted from IVF procedures. McKee, supra note 2, at 195 n.38 (citation omitted).

\(^5\) Heijnen, et al., supra note 1, at 748.

\(^6\) Id. at 744.

\(^7\) Id.

\(^8\) Id.

\(^9\) Id. at 745.

\(^10\) Id. at 748.
additional IVF cycle. This is problematic for people experiencing infertility because IVF is expensive and rarely reimbursed.

The average cost of an IVF cycle is $8,000 to $10,000 and can be higher. And many women who have experienced infertility and are resorting to IVF have already been through years of other forms of infertility treatment that, while less expensive than IVF, can certainly over time add up to substantial costs. Therefore, having to endure an additional cycle for some couples could mean financial strain that they simply cannot bear. However, if insurance coverage of infertility treatment were mandated and IVF cycles were therefore covered by insurance, women might be willing to take the risk of having to endure an additional IVF cycle to decrease the chance of health problems caused by multiple births. In fact, this proposition has been studied. One such study concluded with statistical significance that, in states with mandated coverage, fewer embryos were transferred and the number of pregnancies with multiple births was lower. Achieving mandated coverage in all states across the United States, however, might prove to be difficult.

Currently, 14 states have laws that provide some protection for those who have insurance and are in need of infertility treatment. Nine of these states require insurers to cover infertility treatment and five require insurers to offer to cover infertility treatment. Some states that mandate coverage, however, require insurers to cover such a limited level of treatment that the mandated coverage is inadequate for many patients. For example, Arkansas mandates insurance coverage for IVF only, excludes other forms of ART, excludes health maintenance organizations from this requirement, and allows insurers to limit the coverage to a lifetime maximum of $15,000. Other states, however, have much more comprehensive statutes. Massachusetts is one such state which requires coverage for a host of treatments and provides insurers with no lifetime limit. Comprehensive coverage like Massachusetts provides, however, is an anomaly.

Without more comprehensive coverage in more states, it is unlikely that women will choose to take the risk of having to undergo another cycle of IVF. This is especially true because women are not often educated about the risks entailed with multiple births. If we

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12 Other forms of infertility treatment include, among other things, drug therapies which can cost as much as $3,000 per cycle and intrauterine insemination that cost approximately $400 per cycle. McKee, supra note 2, at 194 (citation omitted).
14 Id.
15 For a summary of the current state mandated infertility benefits, see American Society of Reproductive Medicine, State Infertility Insurance Laws, available at http://www.asrm.org/Patients/insur.html (last visited April 8, 2007).
16 Daar, supra note 11, at 275.
19 American Society of Reproductive Medicine, supra note 15.
want to take advantage of the findings from the study published in the *Lancet*, more states will have to mandate coverage of infertility treatment and physicians will have to educate their patients about the risks of multiple births. Otherwise women may be forced to take the risks associated with transferring multiple embryos, have to find a way to pay for an additional IVF cycle, or accept a life without genetically related children.

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