

## [Health & Safety Code Only Required Blue Cross to "Offer" to Provide Infertility Group Coverage](#)

Posted on July 21, 2009 by [Ophir Johna](#)

The Court of Appeal recently interpreted the infertility treatment provisions of Health and Safety Code section 1374.55 in *Yeager v. Blue Cross of California*, \_\_ Cal. Rptr. 3d \_\_, 2009 WL 2033209 (July 15, 2009). Yeager sued Blue Cross, alleging that it violated its duty under section 1374.55 to offer coverage for infertility treatment in the group plan that Blue Cross provided through Yeager's employer, Westmont College. Blue Cross moved for summary judgment, arguing that it complied with section 1374.55 by offering optional coverage of up to \$2,000 a year for half the cost of each group member's infertility treatment, which Westmont College declined to purchase for cost-related reasons. The trial court granted summary judgment, and Yeager appealed.

The Court of Appeal held that section 1374.55 – which states that “every health care service plan contract . . . shall offer coverage for the treatment of infertility . . . under those terms and conditions as may be agreed upon between the group subscriber and the plan” – merely obligated Blue Cross to offer coverage for infertility treatment, and left the amount and cost of that coverage to agreement between Blue Cross and Westmont College. Thus, the court agreed that Blue Cross complied with the statute.

The court rejected Yeager's argument that Blue Cross's offer of \$2,000 of coverage was insufficient to comply with the statute because infertility treatment typically costs much more than \$2,000. On this point, the court held that Yeager's position that the statute required “full coverage” found no support in the statute's language. The court pointed out that the “Legislature knows how to establish a health plan's coverage and costs when it chooses,” as it has done in other sections, and found that the Legislature clearly indicated its intent to leave the specific terms of infertility coverage for negotiation between the plan and the group subscriber.

Still, the Court of Appeal left “for another day” the question of how generous a benefit offer must be to satisfy the duty imposed by section 1374.55 upon a plan to negotiate the amount and cost of coverage with the group subscriber, finding that Yeager's motion for summary judgment did not properly frame this issue.