



NEIL ABERCROMBIE
GOVERNOR

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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Monday, February 10, 2014
5:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2061, H.D. 1 – RELATING TO FERTILITY
RIGHTS OF CANCER PATIENTS.**

TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department takes no position on this bill, and submits the following comments on this bill.

The purpose of this bill is to add a new mandated health insurance benefit requiring health insurers, hospital and medical services plan, and health maintenance organizations to provide fertility preservation procedures for people diagnosed with cancer who have not started cancer treatment. This bill is a medical matter that is outside of our expertise.

Additionally, the addition of a new mandated coverage may trigger section 1311(d)(3) of federal Patient Protection and Affordable Care Act, which requires states to defray the additional cost of any benefits in excess of the essential health benefits of the state's qualified health plan.

We thank the Committee for the opportunity to present testimony on this matter.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 10, 2014 at 5:00 P.M.
State Capitol - Conference Room 325**

RE: HOUSE BILL 2061, HD1 RELATING TO FERTILITY RIGHTS OF CANCER PATIENTS

Chair McKelvey and Vice Chair Kawakami, and members of the committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 2061 Relating to Fertility Rights of Cancer Patients.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While we understand that persons may need additional health care services, we do not believe that business should be the group responsible for paying for this mandated benefit. Ninety percent of the cost of an employee's health care premium is paid for by the employer. Most employers would be unable to pass this new cost onto the consumer. Please keep in mind that this would be in addition to the already annual increase in health care premiums of 7-10% each year.

Thank you for the opportunity to testify.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 10, 2014

The Honorable Angus L. K. McKelvey, Chair
The Honorable Derek S. K. Kawakami, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 2061, HD1 – Relating to Fertility Rights of Cancer Patients.

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2061, HD1 which would require health insurance coverage for fertility preservation procedures for persons diagnosed with cancer, including embryo, oocyte, and sperm cryopreservation procedures for adult females and males. HMSA opposes this Bill.

We certainly are aware and empathetic to the situations under which the procedures would be conducted. However, there are many issues with the measure that need to be clarified. This was highlighted in the State Auditor's 2012 study, "Mandatory Health Insurance Coverage for Fertility Preservation Procedures for People of Reproductive Age Diagnosed with Cancer," and which, unfortunately, was inconclusive, but raised many issues. In addition to the Auditor's study, issues that need to be considered include:

- (1) Are plans only responsible for harvesting, fertilizing, and freezing the embryos, or are the plans also responsible to cover the cost of implantation? (We are advised that a global IVF fee costs about \$16,000 per case. And, the required drugs run approximately \$8,000 per case.)
- (2) After the retrieval and preservation procedures are performed, who pays the fees for maintaining the frozen sperm or embryo and for how long a period? (We also are advised that cryopreservation may cost between \$600 and \$800 per year).
- (3) If the member loses coverage, who is responsible for the cryopreservation costs?
- (4) If the woman is unmarried, who is responsible for the donor sperm? There are a significant number of women who will not be able to become pregnant because of their underlying cancer diagnosis and its potential progression. What happens to the embryos?
- (5) If the procedure is performed under coverage by one plan and the member transfers to another plan, which plan is responsible for covering the maintenance cost?
- (6) If a donor passes away, is the plan responsible to continue covering the maintenance costs.

(7) What constitutes an adult of “reproductive age”? Would it be 18 years or older?

We believe it is important to consider these issues because these costs will be borne by the State. Pursuant to the Affordable Care Act (ACA), any new or expanded coverage mandate enacted after December 31, 2011, that exceeds the State’s benchmark plan will be the financial responsibility of the State. Consequently, the proposed change in IVF coverage to three trials would result in the State paying for the cost of the two additional IVF trials for plans sold both inside and outside of the Hawai’i Health Connector.

Thank you for allowing us to comment on HB 2061. While we truly believe this legislation merits serious consideration, we believe the many pending issues need to be vetted if the legislation is to be successful.

Sincerely,



Jennifer Diesman
Vice President
Government Relations



February 10, 2014

The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair

Committee on Consumer Protection and Commerce

Re: HB 2061, HD1 – Relating to Fertility Rights of Cancer Patients

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Rick Jackson and I am Chairperson of the Hawaii Association of Health Plans (“HAHP”) Public Policy Committee. HAHP is a non-profit organization consisting of nine (9) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.
Kaiser Permanente

MDX Hawai‘i
‘Ohana Health Plan
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to provide testimony in opposition to HB 2061, HD1 which would require health insurance coverage for cryopreservation procedures for adults diagnosed with cancer.

While we are certainly empathetic to the situation in which this procedure would be performed, we do have concerns with the definition of “reproductive age.” Without a specific definition or delineated range of ages, reproductive age could refer from the onset of puberty through the onset of menopause for females and the onset of puberty until death/impotence for males. General understanding is that the quality of eggs preserved from females after the age of 35 is significantly less than those from younger patients, and that after age 40 preserved eggs are typically non-viable.

Cryopreservation is an extremely expensive procedure that is still in its early stages. The cost of obtaining and storing ova is approximately \$10,000 and is considered an investigational procedure, which is generally not a covered benefit. The cost of the collection and storage of sperm for five (5) years of cryopreservation is roughly \$2,000 per patient. By requiring health plans to cover such procedures, millions of dollars which could go towards coverage of other conditions would be utilized for procedures that may not be viable.

Thank you for the opportunity to provide testimony.

Sincerely,

Rick Jackson
Chair, Public Policy Committee



[HB 2061](#)
[Status](#)

RELATING TO FERTILITY RIGHTS OF CANCER PATIENTS.
Requires insurance coverage for embryo, oocyte, and sperm
cryopreservation procedures for adults diagnosed with cancer who
have not started cancer treatment.

This testimony is in support of HB 2061. Over the years, I have experienced many patients get the devastating news that they are diagnosed with cancer. With the treatment of cancer, there are side effects that could hinder their ability to have children. As nurses we educate these patients and how they may go about and preserve their fertility. Roughly 8% of women who are diagnosed with cancer are less than 40 years old. Currently estimates state that 1 out of every 250 people in the adult US population will be a childhood/adolescent cancer survivor. While the success of cancer treatments continues to rise, the side effects of those treatments are still being realized. For women, certain therapies can cause ovarian damage or failure, early menopause, genetic damage to growing eggs and other reproductive problems. For men, cancer treatments can cause damage to the testes and interfere with sperm production.

Fertility benefits are usually tied to an infertility diagnosis. Prior to cancer treatment most of these patients do not meet the insurance companies criteria for infertility. However it is at this point, before their reproductive systems are damaged by the treatment that may save their lives, they must undergo fertility preservation procedures. The sad paradox is that after cancer treatment most of these patients will have an infertility diagnosis but the side effects will have already done damage to their reproductive system depicting the treatments useless and all but eliminating any hope for a child that is genetically theirs.

I urge you to continue with the effort to require health insurance coverage of fertility preservation for insured persons diagnosed with cancer facing likely infertility as a result of a necessary medical procedure. These patients are caught in a cruel loophole that denies them access to care when their bodies can respond, but will otherwise offer them care when it is too late.

Respectfully yours,

Stephanie Guy, RN

The Queen's Medical Center

LATE

House Committee on Consumer Protection and Commerce
House Bill 2061 HD1: Relating to Fertility Rights of Cancer Patients
February 10, 2014 5:00pm

Dear Chair Representative McKelvey and Vice Chair Representative Kawakami and members of the Consumer Protection and Commerce

I am in support of Bill 2061 HD1 relating to the fertility rights of cancer patients. Working in the health care field I have seen younger population of adults between the ages of 20 to 45 stricken with cancer. Better public education and detection methods have helped to diagnose this population at a younger age with earlier treatment and improved morbidity and mortality. Treatments may include chemotherapy or radiation therapy or a combination of both which can affect a young adults chances of having children in the future.

The preservation and harvesting of embryo, oocyte, and sperm cryopreservation would allow them to bear a child in the future. Insurance companies would then be mandated to assist these adults by allowing them to carry out their dream to have a child.

Please consider passage of this bill as it will afford some of your constituents the opportunity to bear a child in the future.

Respectfully,

Elaine Kaneshiro

NEIL ABERCROMBIE
GOVERNOR



LATE

PATRICIA MCMANAMAN
DIRECTOR
BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 10, 2014

TO: The Honorable Angus L.K. McKelvey., Chair
House Committee on Consumer Protection and Commerce

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2061, H.D. 1 - RELATING TO FERTILITY RIGHTS OF CANCER PATIENTS**

Hearing: Monday, February 10, 2014; 5:00 p.m.
Conference Room 325, State Capitol

PURPOSE: The purpose of this bill is to require insurance coverage for embryo, oocyte, and sperm cryopreservation procedures for adults diagnosed with cancer who have not started cancer treatment.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides the following comment on this measure.

It is unclear if the requirements of this bill would also apply to Medicaid. Medicaid does not cover treatment for infertility so federal funds will not be available for this service. If Med-QUEST is required to cover these services, they would be state-only funded, and the DHS would require an additional appropriation. To provide clarity, the DHS respectfully recommends that the measure specify that Medicaid is excluded from this bill's requirements.

Thank you for the opportunity to testify.

LATE

February 10, 2014

House Committee on Consumer Protection and Commerce
Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair

Re: HB 2061 – Relating to Fertility Rights of Cancer Patients

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

Thank you for the opportunity to testify in support of HB 2061, which would require health plans to provide coverage for embryo, oocyte, and sperm cryopreservation procedures for adults diagnosed with cancer who have not started cancer treatment.

As an oncology nurse, I have taken care of young adult patients who are faced with the devastating diagnosis of cancer and then told that cancer treatment has the potential to make them infertile, denying them of their dream of having children in the future. The expensive out-of-pocket cost of fertility preservation is the most frequently reported barrier preventing patients from undergoing fertility sparing measures prior to the start of cancer treatment. Assisted reproductive medicine and Hawaii's existing law mandating insurance coverage for IVF procedures has provided the opportunity to many infertile couples to realize their dream of having a family. Unfortunately, a person diagnosed with cancer would not be eligible for benefits under this law because he/she does not meet the criteria of infertility prior to starting cancer treatment; HB 2061 addresses this gap in the system and extends coverage to this unique subpopulation.

No one can deny and appreciate the good intent of HB 2061. As expected, the greatest opposition of this bill will come from the insurance companies and organizations representing businesses. Concerns that insurers highlighted in written testimonies for HB 2061 (Health Committee hearing) and HB 2105 (2012 legislative session) primarily related to costs: 1) who is responsible for paying storage costs and for what period of time; 2) who is responsible for paying maintenance costs if the donor passes away; 3) what part of the procedure would be covered and whether costs of implantation would be covered; 4) who is responsible for cryopreservation costs if the member loses coverage; and 5) which plan is responsible for maintenance costs if the member transfer from one plan to another. House Bill 2061 addresses these concerns in its criteria and limitations of usage, in that the adult insured has to be diagnosed with cancer and has not started cancer treatment; expenses for embryo, oocyte, and sperm cryopreservation including evaluations, labs, medications, treatments associated with the procedure, and cryopreservation costs are covered; and storage fees as well as subsequent medical costs from utilizing cryopreserved embryo, oocyte, and sperm to attempt a pregnancy are excluded.

Report No. 12-09, published by the State Auditor in 2012, assessed the proposed mandatory health insurance for fertility preservation procedures. The study stated that expanding existing

coverage for IVF would increase premiums and administrative costs. HMSA estimated an increase in costs of \$6.6 million. This is more than the estimate of \$6.5 million net costs that the California Health Benefits Review Program (CHBRP) provided in 2011 in their independent analyses of the impacts of proposed health insurance mandate covering fertility preservation, similar to HB 2061. CHBRP's estimate is based on the 21.9 million people enrolled in California health plans and subpopulation of individuals with cancer enrolled in those plans. Compare that to the total population of 1.36 million people in the State of Hawaii according to the 2010 Census. So, it begs the question whether, in Hawaii, it would truly increase health care costs by \$6.6 million for insurance to cover fertility preservation for the 731 men and women, between 18 through 45 years of age, who are diagnosed with cancer each year. And of the 731 individuals, not all would be candidates for fertility preservation procedures due to progressed cancer disease and/or poor prognosis, contraindicating medical conditions, or the necessity to start cancer treatment immediately.

HB 2061 also addresses the other concerns that are brought up in the Report, including providing coverage only for standard fertility preservation methods of embryo, oocyte, and sperm cryopreservation, thus excluding experimental assisted reproductive methods. Concerns raised by insurers and ethical implications with respect to posthumous reproduction and the disposition of preserved gametes and embryo after the donor is deceased, are currently addressed by individual fertility clinics which have policies and procedures in place for IVF and could be dealt with in the same manner.

HB 2061 is a comprehensive measure that addresses many of the concerns that have been raised by insurers and the State Auditor's Report. Passage of HB 2061 provides Hawaii with the unique opportunity to set a precedent for the rest of nation in passing the first piece of legislation to address the reproductive rights of cancer patients by requiring insurance coverage for fertility preservation.

I fully support HB 2061. As a woman in my reproductive years, I see myself in my patients and I empathize in their grief that they may not ever realize their dreams of having a child. For many people with children, they believe their greatest legacy is their children. House Bill 2061 can help cancer survivors someday realize their dream of that legacy.

Sincerely,

A handwritten signature in cursive script that reads "Ally Andres". The signature is written in black ink and is positioned below the word "Sincerely,".

Ally Andres, RN