HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

H.B. NO. 2061 H.D. 2

A BILL FOR AN ACT

RELATING TO FERTILITY RIGHTS OF CANCER PATIENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that each year, approximately 165,000 Americans under forty-five years of age are diagnosed with cancer. In Hawaii, regardless of age, approximately six thousand individuals are diagnosed with cancer each year. According to the Hawaii Tumor Registry, between 2007 and 2011, the average number of new diagnosed cases of cancer annually among those aged eighteen through forty-five years was seven hundred thirty-one.

Improvements in cancer screening have resulted in an increase in cancer diagnosis among people in their reproductive years, many of whom are at risk for premature gonadal failure and permanent infertility due to chemotherapy or radiation therapy. For example, women with cancer who are less than forty years of age have a twenty to ninety per cent chance of premature ovarian failure resulting from cancer treatment. Advances in cancer treatment have resulted in decreased mortality and patients having longer survival rates for many types of cancer. As cancer survival rates increase, many

national cancer organizations, such as the President's Cancer Panel and the National Cancer Institute, acknowledge that more attention should be directed to ensuring quality of life as it relates to survivorship.

The legislature further finds that cancer treatment can contribute to reproductive damage, resulting in subsequent infertility. In males, chemotherapy or radiation can adversely affect sperm number, morphology, and motility and can result in DNA damage. Surgery to reproductive organs such as testes can affect fertility and pelvic surgery can result in nerve damage, interfering with ejaculation. In females, cancer treatment can damage or destroy oocytes and follicles, cause hormone imbalance, and interfere with the functioning of the ovaries, fallopian tubes, uterus, or cervix. Surgery to remove female reproductive organs hinders the ability to become pregnant or carry a pregnancy. Total body, abdominal, or pelvic radiation can cause ovarian and uterine damage, increasing the risk of miscarriage or low-birth weight infants.

Medical literature indicates that infertility can be a devastating consequence of cancer treatment, thus adversely affecting the quality of life of cancer survivors. Infertility can have long-term psychological effects among survivors, which

may be experienced years after treatment. Cancer patients report that the possible or actual loss of fertility causes immense psychosocial distress. Thus, having options for fertility preservation can ultimately reduce distress and improve quality of life.

The legislature further finds that although reproductive medicine offers several methods to preserve fertility, the most successful and established or standard methods for fertility preservation are sperm cryopreservation for males and embryo cryopreservation for females. In 2013, the American Society for Reproductive Medicine expanded standard fertility preservation methods to include oocyte cryopreservation for females because of its significantly improved success rate. Accordingly, the procedure is no longer considered an experimental method. However, other fertility preservation alternatives that are considered experimental should only be offered in a research setting as part of an institutional review board-approved protocol, according to the American Society for Reproductive Medicine. For these reasons, this Act only mandates insurance coverage for standard fertility preservation procedures, specifically sperm cryopreservation for adult males and embryo or oocyte cryopreservation for adult females.

Sperm cryopreservation for males is a procedure to preserve sperm cells through freezing semen. It is recommended that the semen specimen should be collected prior to the start of chemotherapy because there is a higher risk of genetic damage in sperm collected after chemotherapy has commenced.

Embryo cryopreservation for females is the process of preserving an embryo through freezing techniques. It requires a cycle of in vitro fertilization in which the ovaries are stimulated to produce eggs, which are then fertilized by male sperm through intracytoplasmic sperm injection. Embryos can be stored and used years later.

The legislature further finds that cancer patients have a right to be informed of accurate information on cancer treatment-associated risks of infertility, options available in preserving their fertility, and the costs involved. The literature shows that there is an increasing interest among cancer patients in preserving their fertility. However, fertility-sparing options are often not pursued due to financial barriers. The American Society of Clinical Oncology and the American Society for Reproductive Medicine recommend that health care providers address the possibility of infertility and options for fertility preservation with patients who are

anticipating cancer treatment during their reproductive years. However, the cost and lack of insurance coverage are major reasons cited by oncologists to explain why information on fertility preservation options is not provided to their patients. A person of reproductive age, newly diagnosed with cancer, has to consider not only how to finance the cancer treatment but also the daunting possibility of permanent infertility as a result and the additional stressor of the costs for fertility preservation, if considering having children in the future.

Hawaii's current insurance code mandates insurance coverage for one cycle of in vitro fertilization procedures for married couples experiencing infertility. According to several national and international health organizations, infertility is defined as failure to achieve pregnancy over a specified period of time, usually one year, when engaging in regular, unprotected sexual intercourse. However, people diagnosed with cancer do not meet the criteria for any definition of infertility because they have not technically been diagnosed as infertile at the time of their cancer diagnosis, as they do not yet meet the time requirement for unsuccessful conception. Therefore, if persons of reproductive age who are diagnosed with cancer want to preserve

their fertility prior to starting treatment, for the purpose of future parenting, they would have to bear the full costs. In Hawaii, sperm cryopreservation costs between $300 and $700. Embryo and oocyte cryopreservation costs can range from $12,000 to $20,000, with variations due to individual reproductive clinic costs and medication regimens used.

The purpose of this Act is to require Hawaii insurance companies to include as a covered benefit embryo, oocyte, and sperm cryopreservation procedures for adult females of reproductive potential and adult males who are diagnosed with cancer and have not started cancer treatment.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

"**§431:10A- Embryo, oocyte, and sperm cryopreservation procedure coverage.** (a) Each policy of accident and health or sickness insurance providing coverage for health care, except for policies that provide coverage only for specified diseases or other limited benefit coverage, shall provide coverage for embryo, oocyte, and sperm cryopreservation procedures, including in vitro fertilization procedures, for insureds and covered dependants; provided that:

(1) The patient is an adult female of reproductive potential or an adult male;

(2) The patient has been diagnosed with cancer and has not started cancer treatment, including chemotherapy, biotherapy, or radiation therapy; and

(3) The procedures conform to guidelines of the American College of Obstetricians and Gynecologists for in vitro fertilization or the minimal standards of the American Society for Reproductive Medicine for in vitro fertilization.

(b) Utilization of coverage under this section shall be limited as follows:

(1) For a patient who is an adult female of reproductive potential, one procedure of either embryo or oocyte cryopreservation procedure per lifetime; and

(2) For a patient who is an adult male, one sperm cryopreservation procedure per lifetime.

(c) The costs of embryo, oocyte, and sperm cryopreservation procedures that shall be covered under this section include all outpatient expenses arising from embryo, oocyte, and sperm cryopreservation, including evaluations,

laboratory assessments, medications, and treatments associated with the procedure, and cryopreservation costs.

(d) This section shall not require coverage for:

(1) Costs for initial or annual storage of embryos, oocytes, or sperm; and

(2) Subsequent medical costs, including evaluations, diagnostic studies, medical treatment, or medications, for the future use of cryopreserved embryos, oocytes, or sperm to attempt a pregnancy.

(e) As used in this section, "reproductive potential" means the inability to become pregnant after one year of trying, or after six months if the woman is thirty-five years of age or older."

SECTION 3. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to part VI of article 1 to be appropriately designated and to read as follows:

"**§432:1- Embryo, oocyte, and sperm cryopreservation procedure coverage.** (a) All individual and group hospital and medical service contracts providing health care coverage shall provide coverage for embryo, oocyte, and sperm cryopreservation procedures, including in vitro fertilization procedures, for subscribers, members, and covered dependants; provided that:

(1) The patient is an adult female of reproductive potential or an adult male;

(2) The patient has been diagnosed with cancer and has not started cancer treatment, including chemotherapy, biotherapy, or radiation therapy; and

(3) The procedures conform to guidelines of the American College of Obstetricians and Gynecologists for in vitro fertilization or the minimal standards of the American Society for Reproductive Medicine for in vitro fertilization.

(b) Utilization of coverage under this section shall be limited as follows:

(1) For a patient who is an adult female of reproductive potential, one procedure of either embryo or oocyte cryopreservation procedure per lifetime; and

(2) For a patient who is an adult male, one sperm cryopreservation procedure per lifetime.

(c) The costs of embryo, oocyte, and sperm cryopreservation procedures that shall be covered under this section include all outpatient expenses arising from embryo, oocyte, and sperm cryopreservation, including evaluations,

laboratory assessments, medications, and treatments associated with the procedure, and cryopreservation costs.

(d) This section shall not require coverage for:

(1) Costs for initial or annual storage of embryos, oocytes, or sperm; and

(2) Subsequent medical costs, including evaluations, diagnostic studies, medical treatment, or medications, for the future use of cryopreserved embryos, oocytes, or sperm to attempt a pregnancy.

(e) As used in this section, "reproductive potential" means the inability to become pregnant after one year of trying, or after six months if the woman is thirty-five years of age or older."

SECTION 4. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

"**§432D-23 Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, 431:10A-121,

431:10A-125, 431:10A-126, 431:10A-122, [~~and~~] 431:10A-116.2, and 431:10A- , and chapter 431M."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2112.

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Report Title:
Embryo, Oocyte, and Sperm Cryopreservation; Insurance

Description:
Requires insurance coverage for embryo, oocyte, and sperm cryopreservation procedures to preserve the fertility of adults diagnosed with cancer who have not yet started cancer treatment. Effective July 1, 2112. (HB2061 HD2)

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