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## A BILL FOR AN ACT

RELATING TO FERTILITY RIGHTS OF CANCER PATIENTS.

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

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

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



1 types of cancer. As cancer survival rates increase, many  
2 national cancer organizations, such as the President's Cancer  
3 Panel and the National Cancer Institute, acknowledge that more  
4 attention should be directed to ensuring quality of life as it  
5 relates to survivorship.

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

20 Medical literature indicates that infertility can be a  
21 devastating consequence of cancer treatment, thus adversely



1 affecting the quality of life of cancer survivors. Infertility  
2 can have long-term psychological effects among survivors, which  
3 may be experienced years after treatment. Cancer patients  
4 report that the possible or actual loss of fertility causes  
5 immense psychosocial distress. Thus, having options for  
6 fertility preservation can ultimately reduce distress and  
7 improve quality of life.

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



1 coverage for standard fertility preservation procedures,  
2 specifically sperm cryopreservation for adult males and embryo  
3 or oocyte cryopreservation for adult females.

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

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

15 The legislature further finds that cancer patients have a  
16 right to be informed of accurate information on cancer  
17 treatment-associated risks of infertility, options available in  
18 preserving their fertility, and the costs involved. The  
19 literature shows that there is an increasing interest among  
20 cancer patients in preserving their fertility. However,  
21 fertility-sparing options are often not pursued due to financial



1 barriers. The American Society of Clinical Oncology and the  
2 American Society for Reproductive Medicine recommend that health  
3 care providers address the possibility of infertility and  
4 options for fertility preservation with patients who are  
5 anticipating cancer treatment during their reproductive years.  
6 However, the cost and lack of insurance coverage are major  
7 reasons cited by oncologists to explain why information on  
8 fertility preservation options is not provided to their  
9 patients. A person of reproductive age, newly diagnosed with  
10 cancer, has to consider not only how to finance the cancer  
11 treatment but also the daunting possibility of permanent  
12 infertility as a result and the additional stressor of the costs  
13 for fertility preservation, if considering having children in  
14 the future.

15 Hawaii's current insurance code mandates insurance coverage  
16 for one cycle of in vitro fertilization procedures for married  
17 couples experiencing infertility. According to several national  
18 and international health organizations, infertility is defined  
19 as failure to achieve pregnancy over a specified period of time,  
20 usually one year, when engaging in regular, unprotected sexual  
21 intercourse. However, people diagnosed with cancer do not meet



1 the criteria for any definition of infertility because they have  
2 not technically been diagnosed as infertile at the time of their  
3 cancer diagnosis, as they do not yet meet the time requirement  
4 for unsuccessful conception. Therefore, if persons of  
5 reproductive age who are diagnosed with cancer want to preserve  
6 their fertility prior to starting treatment, for the purpose of  
7 future parenting, they would have to bear the full costs. In  
8 Hawaii, sperm cryopreservation costs between \$300 and \$700.  
9 Embryo and oocyte cryopreservation costs can range from \$12,000  
10 to \$20,000, with variations due to individual reproductive  
11 clinic costs and medication regimens used.

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

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

20 "§431:10A- Embryo, oocyte, and sperm cryopreservation  
21 procedure coverage. (a) Each policy of accident and health or



1 sickness insurance providing coverage for health care, except  
2 for policies that provide coverage only for specified diseases  
3 or other limited benefit coverage, shall provide coverage for  
4 embryo, oocyte, and sperm cryopreservation procedures, including  
5 in vitro fertilization procedures, for insureds and covered  
6 dependants; provided that:

- 7     (1) The patient is an adult female of reproductive  
8         potential or an adult male;
- 9     (2) The patient has been diagnosed with cancer and has not  
10         started cancer treatment, including chemotherapy,  
11         biotherapy, or radiation therapy; and
- 12     (3) The procedures conform to guidelines of the American  
13         College of Obstetricians and Gynecologists for in  
14         vitro fertilization or the minimal standards of the  
15         American Society for Reproductive Medicine for in  
16         vitro fertilization.

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

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



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

3        (c) The costs of embryo, oocyte, and sperm  
4 cryopreservation procedures that shall be covered under this  
5 section include all outpatient expenses arising from embryo,  
6 oocyte, and sperm cryopreservation, including evaluations,  
7 laboratory assessments, medications, and treatments associated  
8 with the procedure, and cryopreservation costs.

9        (d) This section shall not require coverage for:

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

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

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

19        "§432:1-        Embryo, oocyte, and sperm cryopreservation  
20 procedure coverage. (a) All individual and group hospital and  
21 medical service contracts providing health care coverage shall





1 provide coverage for embryo, oocyte, and sperm cryopreservation  
2 procedures, including in vitro fertilization procedures, for  
3 subscribers, members, and covered dependants; provided that:

- 4       (1) The patient is an adult female of reproductive  
5             potential or an adult male;
- 6       (2) The patient has been diagnosed with cancer and has not  
7             started cancer treatment, including chemotherapy,  
8             biotherapy, or radiation therapy; and
- 9       (3) The procedures conform to guidelines of the American  
10            College of Obstetricians and Gynecologists for in  
11            vitro fertilization or the minimal standards of the  
12            American Society for Reproductive Medicine for in  
13            vitro fertilization.

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

- 16       (1) For a patient who is an adult female of reproductive  
17            potential, one procedure of either embryo or oocyte  
18            cryopreservation procedure per lifetime; and
- 19       (2) For a patient who is an adult male, one sperm  
20            cryopreservation procedure per lifetime.



1        (c) The costs of embryo, oocyte, and sperm  
 2 cryopreservation procedures that shall be covered under this  
 3 section include all outpatient expenses arising from embryo,  
 4 oocyte, and sperm cryopreservation, including evaluations,  
 5 laboratory assessments, medications, and treatments associated  
 6 with the procedure, and cryopreservation costs.

7        (d) This section shall not require coverage for:

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

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

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

16       **"§432D-23 Required provisions and benefits.**

17 Notwithstanding any provision of law to the contrary, each  
 18 policy, contract, plan, or agreement issued in the State after  
 19 January 1, 1995, by health maintenance organizations pursuant to  
 20 this chapter, shall include benefits provided in sections  
 21 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-



1 116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, 431:10A-121,  
 2 431:10A-125, 431:10A-126, 431:10A-122, [and] 431:10A-116.2, and  
 3 431:10A- , and chapter 431M."

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

6 SECTION 6. This Act shall take effect on July 1, 2015.

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INTRODUCED BY:

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JAN 23 2015



# H.B. NO. 673

**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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

