

**STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES**

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

February 24, 2015

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

FROM: Rachael Wong, DrPH, Director

SUBJECT: **H.B. 864, H.D.1- RELATING TO IN VITRO FERTILIZATION  
INSURANCE COVERAGE**

Hearing: Wednesday, February 25, 2015; 2:30 p.m.  
Conference Room 325, State Capitol

**PURPOSE:** The purpose of this bill is to amend insurance coverage for in vitro fertilization to allow for expanded applicability.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) provides comments for consideration on this measure as the DHS is unclear if the requirements in this bill would also apply to the Medicaid Program.

The DHS does not cover treatment for infertility but does cover pregnancy-related services. If the Medicaid program is required to cover these infertility services through this measure, federal funds will not be available for these services. The new services would be state-only funded. 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 on this measure.



The Public Policy Voice for the Roman Catholic Church in the State of Hawaii

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**HEARING:** House CPC hearing on February 25, 2015 @ 2:30 p.m. #325.  
**SUBMITTED:** February 23, 2015  
**TO:** House Committee on Consumer Protection & Commerce  
Rep. Angus McKelvey, Chair  
Rep. Justin Woodson, Vice Chair  
**FROM:** Walter Yoshimitsu, Executive Director  
**RE:** Opposition to HB 864 HD1 Relating to In Vitro Fertilization (no religious exemption)

Honorable Chairs and members of the House Committee on Consumer Protection & Commerce, I am Walter Yoshimitsu, **representing the Hawaii Catholic Conference**. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents Roman Catholics in the State of Hawaii. We oppose HB 864 HD1 because there is no religious exemption provided. At least in the other House Bill (HB 672) the following language is inserted:

**"It is the intent of the legislature to exempt religious institutions and organizations that believe the covered procedures violate their religious and moral teachings and beliefs."**

As problems of infertility and sterility become more evident, people turn to medical science for solutions. Modern science has developed various techniques such as artificial insemination and in vitro fertilization. In addition, there are also ancillary techniques designed to store semen, ova, and embryos. The fact that these techniques have been developed and have a certain success rate does not make them morally acceptable. The ends do not justify the means. In this case, the ends are very noble: helping an infertile couple to become parents. The Church, however, cannot accept the means.

The "Catechism of the Catholic Church" addresses those cases where the techniques employed to bring about the conception involve exclusively the married couple's semen, ovum, and womb. Such techniques are "less reprehensible, yet remain morally unacceptable." They dissociate procreation from the sexual act. The act which brings the child into existence is no longer an act by which two persons (husband and wife) give themselves to one another, but one that "entrusts the life and identity of the embryo into the power of the doctors and biologists, and establishes the domination of technology over the origin and destiny of the human person. Such a relationship of domination is in itself contrary to the dignity and equality that must be common to parents and children" (#2377).

*In vitro* fertilization puts a great number of embryos at risk, or simply destroys them. These early stage abortions are never morally acceptable. Unfortunately, many people of good will have no notion of what is at stake and simply focus on the baby that results from *in vitro* fertilization, not adverting to the fact that the procedure involves creating many embryos, most of which will never be born because they will be frozen or discarded.

The Church's teaching on the respect that must be accorded to human embryos has been constant and very clear. The Second Vatican Council reaffirms this teaching: "Life once conceived must be protected with the utmost care." Likewise, the more recent "Charter of the Rights of the Family," published by the Holy See reminds us that: "Human life must be absolutely respected and protected from the moment of conception." HB 864 HD1, without a religious exemption, would force the Catholic Church to provide services which are contrary to the tenets of our faith.

Mahalo for the opportunity to testify.



An Independent Licensee of the Blue Cross and Blue Shield Association

February 25, 2015

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair  
House Committee on Consumer Protection and Commerce

**Re: HB 864, HD1 – Relating to In Vitro Fertilization Insurance Coverage.**

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 864 which would amend current state governing health insurance coverage for women who are diagnosed with infertility by removing a spousal requirement and providing for physician determination of treatment success as a condition of coverage. HMSA is supportive of a portion of this Bill, but has concerns with another part of the legislation.

We are aware and empathetic to the situations under which the procedures would be conducted. In fact, HMSA already offers coverage for IVF services, and we agree with the provision in HB 864, HD1, that deletes the current spousal requirement. We already have eliminated a spousal requirement in our medical policies, and this amendment would comport with practice.

That said, this Bill raises an issue of concern. Specifically, the Bill includes the following provision in both Sections 2 and 3 of the Bill:

(4) The patient has been unable to attain a successful pregnancy through other applicable infertility treatments for which coverage [~~is~~] shall be available under the insurance contract[;], unless the individual's physician determines that those treatments are likely to be unsuccessful;

We are concerned that this amendment will require plans to cover other types of fertility procedures that we currently do not cover, such as intrauterine insemination under our preferred provider plan. As written, this Bill would prevent a prior authorization review by our Medical Directors for the appropriateness of the requested procedure.

Thank you for allowing us to testify on of HB 864, HD1. Your consideration of our concern is appreciated.

Sincerely,

Jennifer Diesman  
Vice President, Government Relations



Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:  
House Committee on Consumer Protection  
The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair

February 25, 2015  
2:30 pm  
Conference Room 325

**Re: HB 864, HD1 Relating to In Vitro Fertilization Insurance Coverage**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on this measure regarding expanded in vitro fertilization insurance coverage.

**Kaiser Permanente Hawaii supports the intent of this bill, but would like to offer comments.**

It is widely recognized that the ACA was enacted with the goals of increasing the quality and affordability of health insurance, lowering the uninsured rate by expanding insurance coverage, and reducing the costs of healthcare for individuals and the government. Done correctly, health care reform can reduce costs while simultaneously improving the quality of care. However, this will not happen if the emphasis is shifted to costly mandates that inevitably drive up the price of health insurance.

That being said, Kaiser Permanente has already taken steps to remove the “spouse” requirement for its in vitro fertilization coverage. This benefits modification will allow for non-discriminatory coverage and ensuring quality of care in the diagnosis and treatment of infertility for all Kaiser Permanente members.

Thank you for the opportunity to comment.

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February 24, 2015

House Committee on Consumer Protection and Commerce  
Rep. Angus McKelvey, Chair  
Hawaii State Capitol

**Re: H.B. 864 HD1 Relating to In Vitro Fertilization Insurance Coverage  
Wednesday, February 25, 2015, 2:30 pm.**

Dear Chair McKelvey and Members of the Committee on Consumer Protection and Commerce:

Hawaii Women Lawyers submits this testimony in **strong support** of H.B. 864, H.D.1, which would amend insurance coverage for in vitro fertilization and expanded applicability to all women who are diagnosed with infertility.

Based on the conditions imposed in the current law, single and unmarried women, as well as lesbian women (even if married) cannot receive treatment for infertility. This policy, which has been in existence for over two decades, is discriminatory. With changes occurring in workplace demographics and more women working and obtaining higher education degrees, there are increasing numbers of women who are older when they decide to have children.

The current policy penalizes older women and single women by denying coverage under the law, and should be amended to provide equal access to treatment for all women.

Hawai'i Women Lawyers is committed to enhancing the status of women and providing equal opportunities for all of Hawai'i's people, and believes this measure will end a discriminatory policy that has prevented women from receiving equal access to an important medical treatment.

Thank you for the opportunity to submit testimony in strong support of this bill.

Sincerely,

Tricia M. Nakamatsu, President



February 25, 2015

To: Representative Angus McKelvey, Chair  
Representative Justin Woodson, Vice Chair and  
Members of the Committee on Consumer Protection and Commerce

From: Jeanne Y. Ohta, Co-Chair

RE: HB 864 HD1 Relating to In Vitro Fertilization Insurance  
Hearing: Wednesday, February 25, 2015, 2:30 p.m., Room 325

POSITION: Strong Support, preferring original language

The Hawai'i State Democratic Women's Caucus writes in strong support of HB 864 HD1 Relating to In Vitro Fertilization Insurance which would end the discrimination of eligible patients based on marital status and bring equality into the insurance coverage for women who are diagnosed with infertility. We note however, our preference for the original language of the bill.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls it is because of this mission that the Caucus strongly supports this measure.

This measure will correct outdated language on marital status that was written approximately 28 years ago and provides for more equal treatment regarding medical care. The original language of the bill also removed the five-year requirement and included the definition of infertility used by the American Society of Reproductive Medicine. HD1 upholds the five-year requirement and deleted the ASRM definition.

We ask the committee to pass this measure and we thank the committee for the opportunity to provide testimony.

From: mailinglist@capitol.hawaii.gov  
Sent: Friday, February 20, 2015 8:23 PM  
To: CPCtestimony  
Cc: babyjean@hotmail.com  
Subject: Submitted testimony for HB864 on Feb 25, 2015 14:30PM

**HB864**

Submitted on: 2/20/2015

Testimony for CPC on Feb 25, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ronnie Perry	Individual	Support	No

Comments: I strongly support this bill. Mahalo, Ronnie Perry

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, February 23, 2015 11:24 AM  
To: CPCtestimony  
Cc: teresa.parsons@hawaii.edu  
Subject: Submitted testimony for HB864 on Feb 25, 2015 14:30PM

**HB864**

Submitted on: 2/23/2015

Testimony for CPC on Feb 25, 2015 14:30PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teresa Parsons	Individual	Support	No

Comments: Honorable Representatives, I urge you to support HB 864 HD1. As a Women's Health Nurse Practitioner, I see the heartache of couples who endured significant challenges in creating a family and this Bill will address another stressor faced by those striving to have a child by having insurance coverage for IVF. The amendments included in HD1 are reasonable and in keeping with precluding unnecessary procedures when the likelihood of success is not supported by their medical provider. I urge you to support the building of healthy ohana by voting for this Bill and moving it forward to the larger Legislature for consideration. Mahalo for this opportunity to present testimony on this important Bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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To: **The House Committee on Consumer Protection and Commerce**  
The Honorable Angus McKelvey, Chair  
The Honorable Justin Woodson, Vice Chair

From: Cuyler Otsuka

Subject: HB 864 HD 1 – Relating to In Vitro Fertilization Coverage

Hearing: Wednesday, February 25, 2015  
Time: 2:30 p.m.  
Place: Conference Room 325

This written testimony is in strong support of HB 864, with comments regarding the amendments passed by the House Committee on Health. HB 864 ensures that all women who qualify for or receive health insurance through the Hawai‘i Prepaid Health Care Act employer mandate shall have access to in vitro fertilization. The proposed measure addresses the marriage requirement in the current mandate as outlined in HRS §431:10A–116.5 and §432:1–604. In using a woman’s marital status as a prerequisite to receiving coverage that would allow her to raise a child, a number of legal and constitutional issues arise, a few of which I would like to outline in my testimony below. In short, the bill changes two major roadblocks for women with infertility:

- 1) The proposed legislation would strike the current mandate’s requirement of marriage, recognizing that all people of Hawai‘i, particularly kānaka maoli and other Pacific Islanders, relate to each other through other familial relationships and partnerships not legitimized by the State; and
- 2) HB 864 would reduce the five year history requirement to 12 months for women at the age of 35 and younger and 6 months for women over the age of 35, respecting the definition of infertility per the American Society for Reproductive Medicine, but foremost respecting the women who, after the age of 35, see a drastically reduced fertility rate.

All insured women under the Prepaid Health Care Act, married or unmarried, pay for in vitro fertilization coverage through the monthly premium they pay their health insurers. Yet, only married women are eligible for in vitro fertilization coverage under their health insurance. The marriage requirement status in the current mandate, enacted almost 30 years ago, sets up an overclass and an underclass regarding the benefit of in vitro fertilization coverage. Both classes pay into the insurance pot, but only one class is eligible to receive those benefits. In this case, there exists a transaction of money for services (insurance, of which in vitro fertilization coverage is mandated). As such, this discrimination is a breach of consumer protection—the consumer in this case being unmarried, working women.

Additionally, as the current and proposed amended laws stand, even married, working infertile women (regardless of the gendered nature of their legal partnership) may have difficulty receiving the benefits of their insurance. The law requires that one of the following two conditions be true:

- 1) the patient and her spouse have a history of infertility of at least five years; or
- 2) the patient and her spouse's infertility is associated with one of the four conditions:
  - a) endometriosis;
  - b) exposure in utero to diethylstilbestrol, commonly known as DES;
  - c) blockage of, or surgical removal of, one or both fallopian tubes (lateral or bilateral salpingectomy); or
  - d) abnormal male factors contributing to the infertility.

The law limits married women's rights to coverage without being tailored narrowly and with the least restrictive means. The American Society for Reproductive Medicine defines infertility as being "a disease, defined by the failure to achieve a successful pregnancy after 12 months or more of appropriate, timed unprotected intercourse," noting that, for women over the age of 35, "treatment [...] is warranted after six months." For women not affected by any of the four conditions (i.e. women with low ovarian reserve), the health of her eggs declines dramatically between the ages of 35 and 40. Under the current law, a woman diagnosed with low ovarian reserve at 30 would have to be unsuccessful until 35 before beginning to receive treatment, and a woman with low ovarian reserve at 40 would have to wait until she is 45 before she can begin to receive proper medical treatment. HB 864 (as introduced) as well as its amended Senate companion (SB 768, SD 1) would mandate that the 30 year old woman wait twelve months, and that the 40 year old woman, the health of whose eggs is declining rapidly, wait only six months before receiving medical treatment for her condition.

In considering analogies, I understand this situation to be like a member to a wholesale store. Members receive access to the store and its goods and services through the annual membership fees they pay. With a membership card, members become able to take advantage of the services the store has to offer. Under the current mandate, the analogous wholesale store is creating tiers of members and limiting access to goods and services based on those membership tiers. Standard members pay the same as their gold counterparts, but due to an arbitrary characteristic (for instance, the standard member lives in a two-person household, while gold membership is reserved for members living in three-person or larger households), they are prohibited from buying certain items from which they could benefit.

HB 864 remedies the inequities and questionable constitutionality of the current statute by expanding access to in vitro fertilization for all women who may pay a premium as opposed to married women who pay the premium. All employed and working women, as stakeholders and consumers of their health insurance, deserve the same degree of care for comparable health conditions, regardless of their marital status.

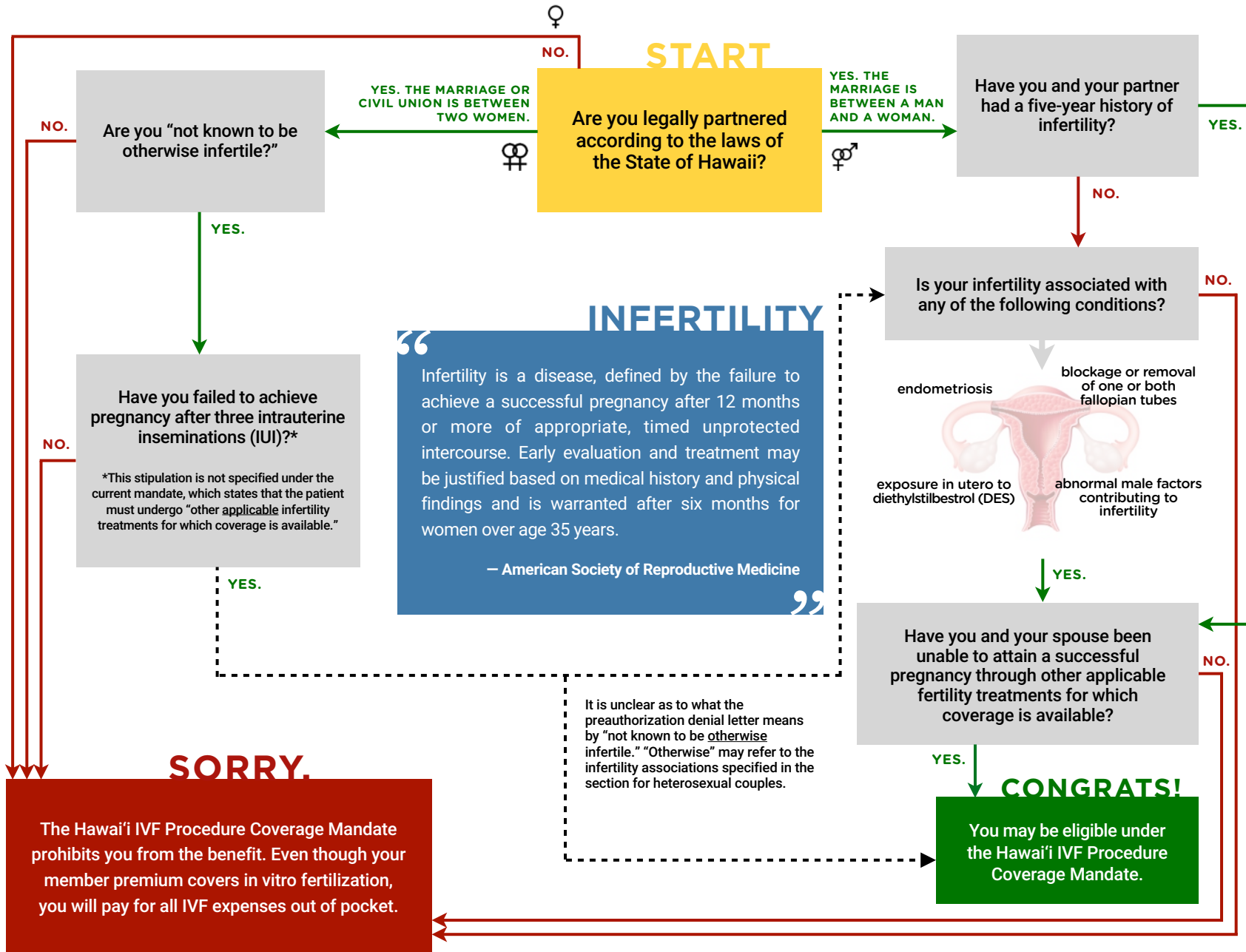
Yours respectfully,

Cuyler Otsuka

Resident of Lualualei Ahupua'a, House District 43

# I am a woman and I would like to have a child by in vitro fertilization.

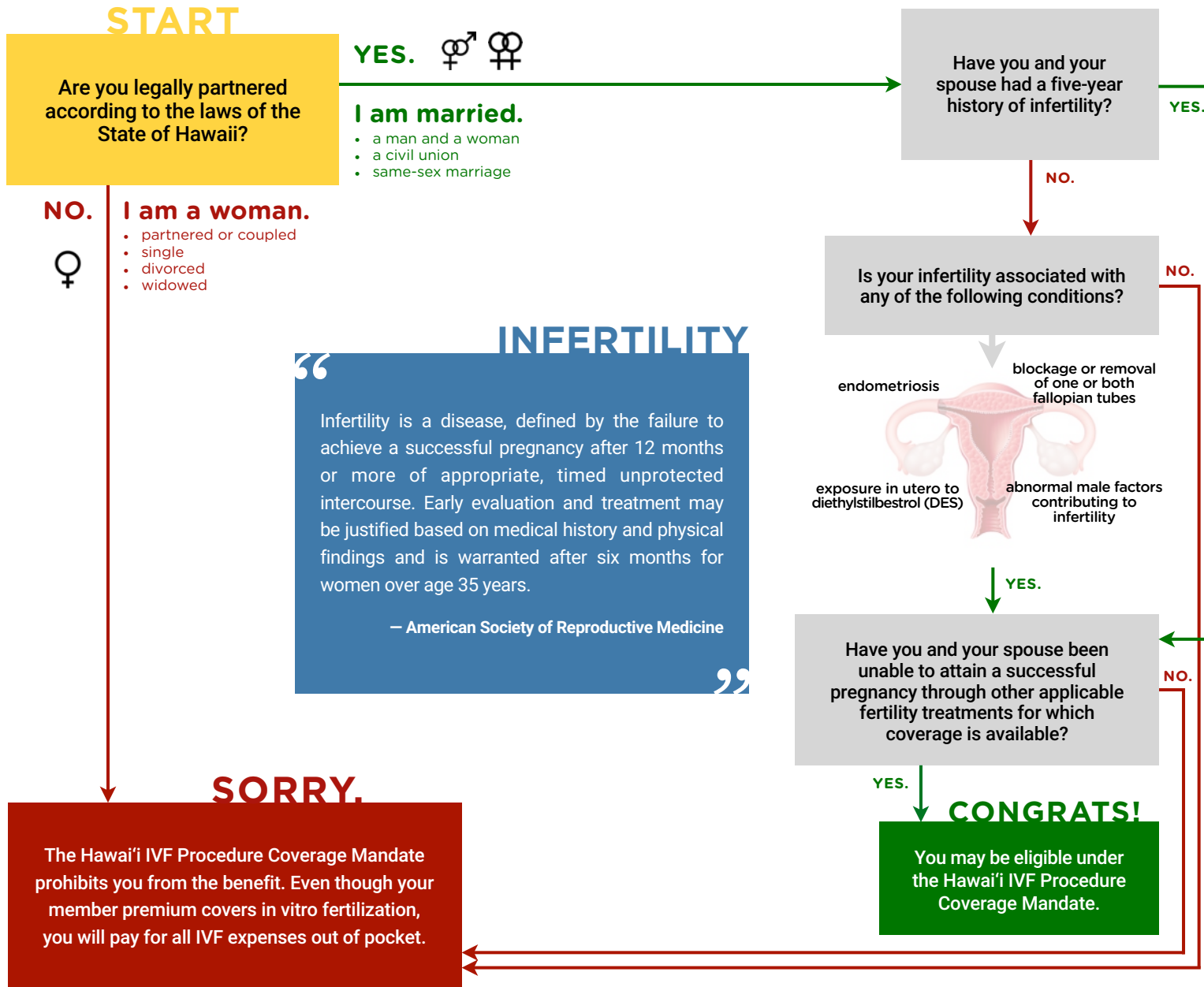
This flowchart presupposes that you are an employed cisgender woman working more than 20 hours per week who is receiving employer-provided health insurance under the Hawai'i Prepaid Health Care Act. Under HMSA's medical policy for in vitro fertilization, these conditions are criteria which appear to be required for medical coverage.



Sources: (1) "Notice of Medical Denial," Hawai'i Medical Service Association (December 2014).  
 (2) Hawai'i Revised Statutes §431:10A-116.5 and §432:1-604.

# I am a woman and I would like to have a child by in vitro fertilization.

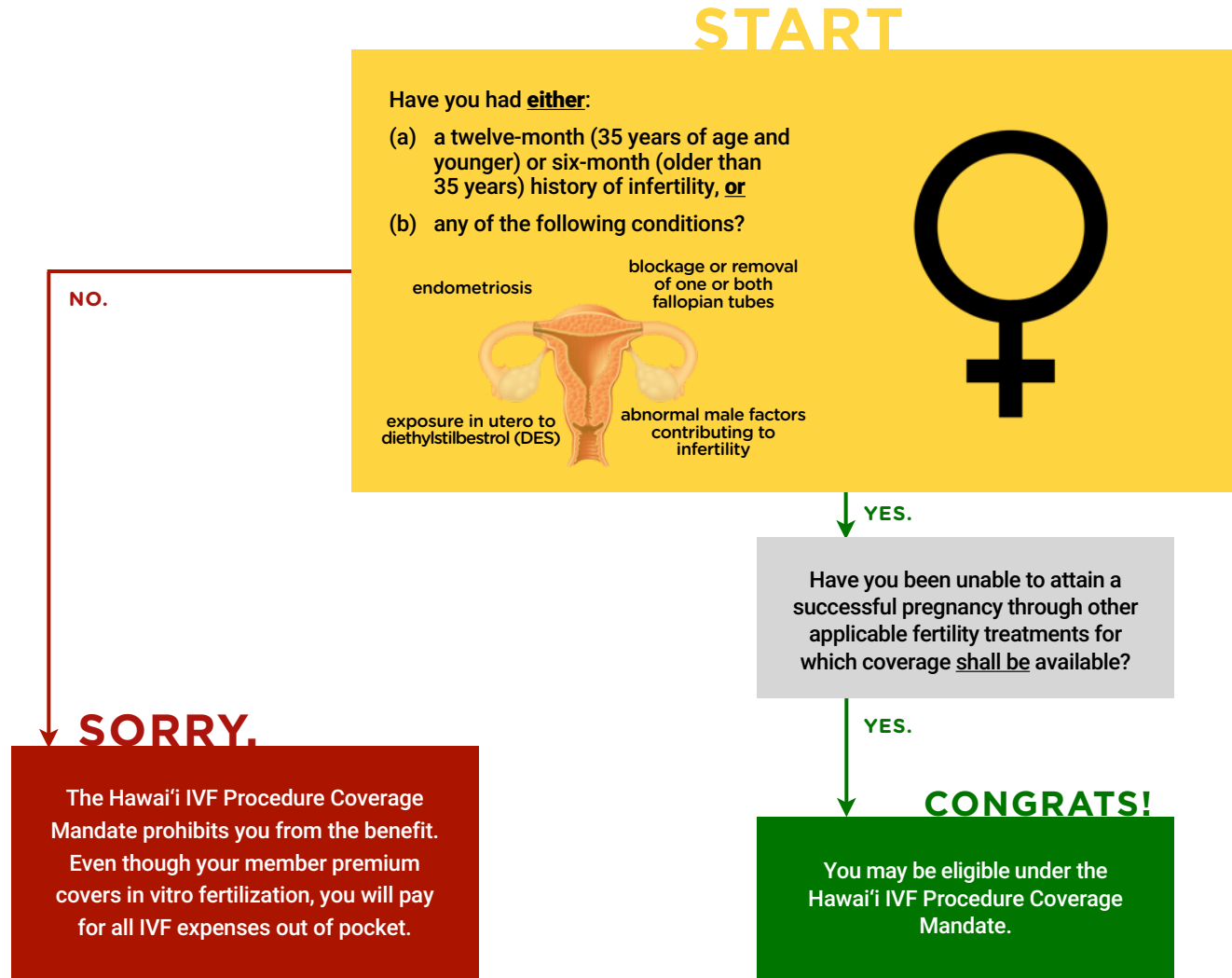
This flowchart presupposes that you are an employed cisgender woman working more than 20 hours per week who is receiving employer-provided health insurance under the Hawai'i Prepaid Health Care Act and in accordance with Hawai'i Revised Statutes §431:10A-116.5 and §432:1-604, "In vitro fertilization procedure coverage."



Source: Hawai'i Revised Statutes §431:10A-116.5 and §432:1-604.

# I am a woman and I would like to have a child by in vitro fertilization.

This process flowchart flows HB 864 and SB 768, “A bill for an act relating to in vitro fertilization insurance coverage.” The bill presupposes that you are an employed cisgender woman working more than 20 hours per week who is receiving employer-provided health insurance under the Hawai'i Prepaid Health Care Act.



Source: HB 864 (2015) and SB 768 (2015), Hawai'i State Legislature.

TO: **HOUSE COMMITTEE ON CONSUMER PROTECTION AND  
COMMERCE**

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair

FROM: Na'unanikina'u Kamali'i

SUBJECT: **HB 864 – RELATING TO IN VITRO FERTILIZATION  
COVERAGE**

Hearing: Wednesday, February 25, 2015

Time: 2:30 p.m.

Place: Conference Room 325

This testimony is in **strong support of HB 864, HD1, with amendments**. This measure provides in vitro fertilization coverage equality for all women who are diagnosed with infertility by requiring non-discriminatory coverage, reducing the arbitrary five year wait time for treatment and by providing a definition of infertility, which is consistent with the current medical definition utilized in the medical community and by the American Society of Reproductive Medicine.

For over 28 years the Hawaii in vitro fertilization health insurance law mandated insurance coverage within an unconstitutional discriminatory framework. The discriminatory language must be corrected by the legislature, even though health insurance companies make such changes voluntarily. In vitro fertilization coverage is an Essential Health Benefit (EHB) and as of **January 1, 2014**, strict federal prohibitions against discriminatory practices apply to EHBs. More importantly, the measure will be brought in compliance with the Hawaii State Constitution's privacy clause.

I am submitting testimony in my individual capacity **in support of HB 864 HD1 with amendments** for several reasons. **HB 864** as introduced provided for in vitro fertilization coverage equality for all women diagnosed with infertility and included key provisions which addressed an arbitrary five (5) year wait time for which the legislature provided no compelling state interest in its enactment and provided a definition of "infertility".

In short, the HD1 should be amended to address the following:

- A. Bring the existing Hawaii IVF mandate into compliance with the Hawaii State Constitution's Privacy Clause;
- B. Mandate in vitro fertilization coverage equality for all women diagnosed with a medical condition of infertility by removing discriminatory language based on marital status;
- C. End class discrimination among women with employer health benefits;

- D. Defines “infertility” consistent with the American Society of Reproductive Medicine (ARSM);
- E. Recognize that infertility is a disability that is protected under the Americans with Disabilities Act (ADA); and
- F. Address ACA prohibitions against the discrimination in the provision of health coverage.

**AMENDMENTS TO HD1:**

1. Amend HD1 to reflect the original language of HB864 in section (a)(3)(A) on page 3 and 5 of the measure as follows:

3       ~~(4)}~~ (3) The:  
 4       (A) Patient ~~[and the patient’s spouse have]~~ has a  
 5       history of infertility of at least ~~[five years’~~  
 6       ~~duration;]~~ twelve months if thirty-five years or  
 7       younger or at least six months if over thirty-  
 8       five years; or

2. Amend HD1 by removing the definition of “spouse” and inserting the *American Society of Reproductive Medicine* definition of infertility on pages 4 and 7 of the measure:

3       (b) For the purposes of this section, the term ~~["spouse"~~  
 4       ~~means a person who is lawfully married to the patient under the~~  
 5       ~~laws of the State.]~~ "Infertility" means a disease, defined by  
 6       the failure to achieve a successful pregnancy after  
 7       twelve months of appropriate, timed unprotected intercourse or  
 8       therapeutic donor insemination. Earlier evaluation and treatment  
 9       may be justified based on medical history and physical findings and  
 10       is warranted after 6 months for women over age 35 years.

**Comments:**

1. **Violation of the Privacy Clause.** Under the IVF mandated benefit, the IVF treatment requires that the woman’s eggs be fertilized by her spouse’s sperm. The marital requirement is unconstitutional as violative of the Privacy Clause of the Hawaii State Constitution. The marital restriction placed on infertility coverage arguably imposes an undue burden on a woman’s right to privacy as provided under the Privacy Clause, which states that “[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. Haw. Const. of 1978, art. I, §§ 5,6. Under the constitutional right to privacy, “among the decisions that an individual can make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.” *Doe v. Doe*, 172 P.3d 1067 (Haw. 2007) Because the use of infertility treatments to bear a child is a protected

right, the marital status restrictions placed on insurance coverage will be found unconstitutional. Unmarried women, unmarried couples, divorced women, widowed women are all excluded under the current IVF mandated benefit as a class of unmarried women and as a result, it imposes an undue burden on their constitutional right. The IVF mandate should be corrected to remove any unconstitutional language. See generally, Jessie R. Cardinale, *The Injustice of Infertility Insurance Coverage: An examination of Marital Status Restrictions Under State Law*, 75 *Alb. L. Rev.* 2133, 2141 (2012).

**2. Marital Status requirement.** The Hawaii State legislature has provided no compelling state interest for the marriage requirement. Under the constitutional right to privacy, “[a]mong the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.” *Doe v. Doe*, 172 P.3d 1078 (Haw. 2007) (quoting *State v. Mallan*, 950 P.2d at 233).

In 1987, when the legislature enacted the IVF mandated benefit, it did not provide a compelling state interest for the requirement. The purpose of the bill was to:

“[r]equire individual and group health insurance policies and individual and group hospital or medical service contracts, which provide pregnancy-related benefits to allow a one-time only benefit for all one-patient expenses arising from in vitro fertilization procedures performed on the insured or the insured’s dependent spouse. ... The legislature finds that infertility is a significant problem for many people in Hawaii, and that this bill will encourage appropriate medical care. Additionally, this bill limits insurance coverage to a one-time only benefit, thereby limiting costs to the insurers. This bill will be a significant benefit to those married couples who have in vitro fertilization as their only hope for allowing pregnancy.” Senate Concurrent Report 1309, Consumer Protection and Commerce on S.B. 1112 (1987)

**3. Denial of coverage if not married.** Women who do not meet the marriage requirement are denied IVF coverage irrespective of their diagnosis of infertility. As reflected in HMSA’s Notice of Medical Denial, attached hereto, the first requirement that must be met is that “the patient and spouse are legally married according to the laws of the State of Hawaii.” For personal, cultural and religious purposes, some couples will not marry and should not be forced by government to marry to meet the eligibility requirements for the IVF benefit. It is a practice by health insurance companies during the precertification process to ask whether the woman who is not married whether she is gay and then to inform her that the treatment is covered if she has a civil union or is legally married to her partner. This “outing” process is an infringement on the woman’s right to privacy. The government is in effect defining family by requiring licensed government recognized relationships and determining which kinds of relationships are deserving of the IVF treatment. These private



matters and protected under the constitution. The IVF law is reminiscent of unconstitutional laws, which permitted only married couples access to contraceptives.

**4. Equality for all women** The purpose of **HB 864** is to provide in vitro fertilization insurance coverage equality for all women who are diagnosed with infertility by requiring non-discriminatory coverage and ensuring quality of care in the diagnosis and treatment of infertility. Equality not just amongst married women, but also for all women who are diagnosed with a condition of infertility. The corrective action of eliminating the discriminatory marital status requirement is long overdue. The overriding corrective measure should prevail over any cost consideration to address prohibited discriminatory practices. The focus must again be on a diagnosis of infertility as a determinant on whether coverage will be provided.

**5. Discriminatory provisions** The current IVF coverage law wrongfully creates two “classes” of premium paying members and is discriminatory on its face under ERISA, ADA, and ACA. Health plans have deliberately upheld discriminatory provisions which require that a member to be married and use her husband’s sperm. Health plans have reaped a prohibited premium savings from the practice. In application, employed health plan members who are single, divorced, widowed, partnered or otherwise “not married” women, pay premiums just like married members diagnosed with infertility yet, ARE NOT eligible for the IVF coverage. The “marital status” requirement appears to rest squarely on moral grounds and is violative of the Hawaii constitution because the State has not provided any compelling interest for the restrictive and limiting marital status requirement.

**6. Definition of infertility** In its guidance to patients, the American Society of Reproductive Medicine defines infertility as the inability to achieve pregnancy after one year of unprotected intercourse. If the individual has been trying to conceive for a year or more, she should consider an infertility evaluation. However, if she is 35 years or older, she should begin the infertility evaluation and treatment after about six months of unprotected intercourse rather than a year, so as not to delay potentially needed treatment. The Hawaii mandated benefit requires a five-year history that is arbitrary, unconstitutional and not in line with the current definition of infertility and treatment protocols. The measure applies the corrected definition of infertility that is desired and supported.

#### **7. ACA prohibitions on discrimination**

The ACA prohibits discrimination as set forth in Title 45 of Code of Federal Regulations Part 156. Two sections in particular, which prohibit discrimination, are 45 CFR §156.125 and §156.200(e) of the subchapter and also in the Federal Register Vol. 78, No. 37(February 25, 2013). The marital status provision in the current IVF coverage law, which requires that the member be married in order to received treatment creates two classes of members and is in violation of the

prohibitions on discrimination. Even if the legislature disagrees with the assertion that it is in violation with the ACA or other federal laws, marriage should not be a defining factor that prohibits access to this benefit for women who have been diagnosed with infertility disability. Equal access should be afforded to all women. The statutory sections referenced herein are provided here.

**45 CFR §156.125 Prohibition on discrimination.**

(a) An issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.

(b) An issuer providing EHB must comply with the requirements of §156.200(e) of this subchapter; and

(c) Nothing in this section shall be construed to prevent an issuer from appropriately utilizing reasonable medical management techniques.

**45 CFR §156.200 (e) Non-discrimination.** A QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation.

**8. IVF Infertility treatments are not covered under Medicare and Medicaid and Federal Employer Plans.**

Any concern raised by the Hawaii State Department of Health and Human Services regarding the possible impact that this corrective measure may have on Medicare, Medicaid or Federal Employer Plans is unfounded. Hawaii Quest health plans are carefully negotiated under the 1115 waiver process and IVF coverage treatments are not a covered benefit and this measure will not affect federal plans.



An Independent Licensee of the Blue Cross and Blue Shield Association

## In Vitro Fertilization

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**Policy Number:**

MM.03.002

**Line(s) of Business:**

HMO; PPO

**Section:**

OB/GYN & Reproduction

**Place(s) of Service:**

Outpatient

**Original Effective Date:**

05/21/1999

**Current Effective Date:**

01/01/2015

### I. Description

In vitro fertilization is a method used to treat infertility. It involves the administration of medications to stimulate the development, growth and maturation of eggs that are within the ovaries. The eggs are retrieved from the follicles when they reach optimum maturation and are combined with sperm in the laboratory before being placed in an incubator to promote fertilization and embryo development. The embryos are then transplanted back into the woman's uterus.

### II. Criteria/Guidelines

- A. In vitro fertilization for women with a male partner is covered (subject to Limitations/Exclusions and Administrative Guidelines) when all of the following criteria are met:
  - 1. If the woman and her male partner have a five-year history of infertility, or infertility associated with one or more of the following conditions:
    - a. Endometriosis
    - b. Exposure in utero to diethylstilbestrol (DES)
    - c. Blockage or surgical removal of one or both fallopian tubes
    - d. Abnormal male factors contributing to the infertility
  - 2. The woman and her male partner have been unable to attain a successful pregnancy through other infertility treatments for which coverage is available.
- B. In vitro fertilization for women without a male partner is covered (subject to Limitations/Exclusions and Administrative Guidelines) when the woman, who is not known to be otherwise infertile, has failed to achieve pregnancy following 3 cycles of physician directed, appropriately timed intrauterine insemination (IUI). This applies whether or not the IUI is a covered service.
- C. The in vitro procedure must be performed at a medical facility that conforms to the American College of Obstetricians and Gynecologists (ACOG) guidelines for in vitro fertilization clinics or

the American Society for Reproductive Medicine's (ASRM) minimal standards for programs of in vitro fertilization.

### III. Limitations/Exclusions

- A. Coverage is limited to a one-time only benefit for one outpatient in vitro fertilization procedure while the patient is an HMSA member. This benefit is limited to one complete attempt at in vitro fertilization per qualified woman. If this benefit was received under one HMSA plan, the member is not eligible for in vitro fertilization benefits under any other HMSA plan, except for Federal Plan 87 which has a separate limit of one complete procedure
  - 1. A complete in vitro attempt or cycle is defined as a complete effort to fertilize eggs and transfer the resulting embryo(s) into the patient. A complete cycle does not guarantee pregnancy. Members are liable for the costs of any subsequent attempts, regardless of the reason for the previous failure.
- B. In vitro fertilization services are not covered when a surrogate is used. A surrogate is defined as a woman who carries a child for a couple or single person with the intention of giving up that child once it is born.
- C. While most of HMSA's plans cover in vitro fertilization using donor oocytes and sperm, there are a few that do not. Providers should check the patient's plan benefits before considering the procedure.
  - 1. While the patient may be precertified for the IVF procedure, HMSA will not cover the cost of donor oocytes and donor sperm, and any donor-related services, including, but not limited to collection, storage and processing of donor oocytes and donor sperm.
- E. Cryopreservation of oocytes, embryos or sperm is not covered.

### IV. Administrative Guidelines

- A. Precertification is required. To precertify, please complete the In Vitro Fertilization Precertification and mail or fax the form as indicated. Appropriate documentation to support a clinical diagnosis should be submitted with the precertification request.
- B. For claims filing instructions, see Billing Instructions and Code Information. HMSA reserves the right to perform retrospective reviews to validate if services rendered met coverage criteria.

### V. Important Reminder

The purpose of this Medical Policy is to provide a guide to coverage. This Medical Policy is not intended to dictate to providers how to practice medicine. Nothing in this Medical Policy is intended to discourage or prohibit providing other medical advice or treatment deemed appropriate by the treating physician.

Benefit determinations are subject to applicable member contract language. To the extent there are any conflicts between these guidelines and the contract language, the contract language will control.

## VI. References

1. American Society for Reproductive Medicine (SART). Age and Fertility: A Guide for Patients, Revised 2012.
2. Bancsi LF, Broeknas FJ, Eijkemans MJ, et al. Predictors of poor ovarian response in in vitro fertilization: a prospective study comparing basal markers of ovarian reserve. *Fertility Sterility* 2002 February; 77 (2): 328-36.
3. Chuang CC, Chen CD, Chao KH, et al., Age is a better predictor of pregnancy potential than basal follicle-stimulating hormone levels in women undergoing in vitro fertilization. *Fertility Sterility* 2003 January; 79 (1): 63-8.
4. Corson SL. Achieving and maintaining pregnancy after age 40. *International Journal of Fertility Women's Medicine* 1998 September-October; 43 (5): 249-56.
5. Creus M, Penarrubia J, Fabregues F, et al., Day 3 serum inhibin B and FSH and age as predictor of assisted reproduction treatment outcome. *Human Reproduction* 2000 November; 15 (11); 23-6.
6. Van Rooij IA, Broekmans FJ, Te Velde ER, et al., Serum anti-Mullerian hormone levels: a novel measure of ovarian reserve. *Human Reproduction* 2002 December; 17 (12): 3065-71.
7. Watt AH, Legedza AT, Ginsburg ES, et al. the prognostic value of age and follicle-stimulation hormone levels in women over forty years undergoing in vitro fertilization. *Journal of Assisted Reproductive Genetics* 2000 May; 17 (5): 264-8.
8. HMSA Guide to Benefits. HPH January 2014 and PPP January 2014.
9. Hawaii Revised Statutes, Sections 431:10A-116.5 and 432.1-604.

**LATE**

HAWAII  
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February 24, 2015

To: Representative Angus McKelvey, Chair  
Representative Justin Woodson, Vice Chair  
Members of the House Committee on Consumer Protection and Commerce

From: Cathy Betts, Executive Director  
Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 864, HD1, Relating to In Vitro Fertilization Insurance Coverage

On behalf of the Hawaii State Commission on the Status of Women, I would like to express my support my support for HB 864, HD1, which would revise the current statute to allow equal coverage, without discrimination.

Women are widely affected by infertility. Our changing workplace demographics and the breadth of diversity found in families should be reflected in our policies. Women of all ages make personal decisions about whether they will choose to have children. Today, some women who desire to have children also desire to obtain higher education and a professional career. Some women wait for various other reasons. As such, many women will delay attempting to get pregnant until later in life. Finally, many medical reasons prevent women from being able to become pregnant. Coverage for fertility treatment should be equal, despite marital status or sexual orientation.

The statute, as written, requires a woman to show 5 years of difficulty getting pregnant in order to receive coverage for infertility. By the time many women begin considering fertility treatment, time is of the essence, and waiting five years will eliminate all chances of becoming pregnant.

Additionally, as written, the statute prohibits lesbian couples or unmarried couples from obtaining coverage. This is inherently discriminatory on its face. The Commission respectfully requests this Committee amend the HD 1 language that retains the five year requirement. Additionally, the Commission requests that this Committee restore the definition of infertility used by the American Society of Reproductive Medicine, to be placed in subsection (b). That definition reads as:

"Infertility is a disease, defined by the failure to achieve a successful pregnancy after 12 months or more of appropriate, timed unprotected intercourse or therapeutic donor insemination. Earlier evaluation and treatment may be justified based on medical history and physical findings and is warranted after 6 months for women over age 35 years."

Thank you for this opportunity to provide supportive testimony with requests for amendments.

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 24, 2015 3:49 PM  
To: CPCtestimony  
Cc: lisak@hmhb-hawaii.org  
Subject: Submitted testimony for HB864 on Feb 25, 2015 14:30PM



**HB864**

Submitted on: 2/24/2015

Testimony for CPC on Feb 25, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Kimura	Healthy Mothers Healthy Babies	Support	No

Comments: This is an important measure affecting women's constitutional right of privacy and reproductive rights. To ensure that all parents (including single mothers and same-sex couples) receive the equal right to access IVF services, our request is to support: 1) Removal of the marriage requirement (which is a violation of constitutional right of privacy); 2) Removal of the five year requirement and restore language in HB 864 subsection (a)(3) (not HD 1 which upholds the five year requirement); and 2) Restore the definition of infertility used by the American Society of Reproductive Medicine for placement in subsection (b). HD1 is problematic because it removed the definitional subsection (b) altogether. ASRM definition: "Infertility is a disease, defined by the failure to achieve a successful pregnancy after 12 months or more of appropriate, timed unprotected intercourse or therapeutic donor insemination. Earlier evaluation and treatment may be justified based on medical history and physical findings and is warranted after 6 months for women over age 35 years." Due to the documented decline in fertility after age 35, a successful pregnancy should attempt to be achieved at the earliest possible opportunity. Thank you for the opportunity to testify.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



# AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE

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**LATE**

February 25, 2015

Rep. Angus McKelvey  
House Committee on Consumer Protection and Commerce  
Hawaii House of Representatives

Dear Chairman McKelvey:

On behalf of the American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology (SART), we are writing in support of legislation to make current the existing law in Hawaii with respect to health coverage for the disease of infertility.

ASRM is a multidisciplinary organization of nearly 8,000 professionals dedicated to the advancement of the science and practice of reproductive medicine. Distinguished members of ASRM include obstetricians and gynecologists, urologists, reproductive endocrinologists, embryologists, mental health professionals and others. SART is an organization of nearly 400 member practices performing more than 95% of the ART cycles in the United States. SART's mission is to set and help maintain the highest medical and professional standards for ART. SART works with the ASRM to create practice guidelines and standards of care for this field of medicine. SART is actively involved in the collection of data outcomes from its member programs.

Hawaii's infertility coverage law was enacted nearly 30 years ago and modeled after a law passed in the state of Maryland at that time. The Maryland law has since been amended to address initial shortcomings, and we encourage changes in Hawaii's law to update coverage, as well. We prefer the Senate version of this bill, SB 768 over the House version, HB 864.

The changes would better reflect current medical practice, improve the quality of patient care, and remove discriminatory elements of the current law. Specifically the proposed changes would reduce from five years to one year the waiting period before one can access treatment, which more appropriately conforms to the medical definition of

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*Editor, Journal of Assisted Reproduction and Genetics*



infertility and will lead to improved outcomes. Female fertility wanes with age and requires that patients access treatment sooner. The bill would also eliminate the requirement that only a spouse's sperm can be used in treatment. That requirement ignores that for some men, sperm is absent altogether. It also precludes treatment for same sex couples.

As the medical professionals that treat patients with infertility, we know how devastating this diagnosis is for most. Changes to the existing infertility benefit are very important, and we encourage you to support these changes to update Hawaii's infertility benefit.

Sincerely,



Rebecca Z. Sokol, MD, MPH  
President ASRM



James P. Toner, MD, PhD  
President SART



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February 25, 2015

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

**RE: House Bill 864 H.D. 1/Senate Bill 768 S.D. 1 (Shimabukuro) – Support**

Dear Representatives McKelvey & Woodson,

The California Cryobank (CCB) supports HB 864 and SB 768, which would expand health care coverage for in vitro fertilization (IVF). Founded in 1977, California Cryobank is a full-service sperm bank providing a comprehensive resource for frozen donor sperm, private semen cryopreservation, and specialized reproductive services (including egg and embryo storage and assisted reproductive guidance). The CCB vision is to be the world leader in reproductive and stem cell services by helping to grow and protect healthy families. Increasing access in vitro fertilization care for women who are diagnosed with infertility by requiring non-discriminatory coverage and ensuring quality of care in the diagnosis and treatment of infertility is essential to that vision.

We commend Hawaii for having an infertility insurance mandate since 1987 as few states provide any benefits for the more than seven million infertile couples diagnosed per year. However, existing law discriminates against single women or anyone using donor gametes. HB 864 and SB 768 remove that provision expanding access to all individuals. It makes sense medically to cast off this requirement because more than a third of infertility is caused by “male factor,” that is, a problem with the man’s sperm. Some men may also be carriers of a sex-linked disease. If pregnancy can’t be achieved with a husband’s sperm, then patients should be able to use sperm from a donor. Also, sometimes couples are not married or some single women may need treatment to have a family.

CCB would like to see the infertility definition requiring that the patient have a history of infertility of at least 12 months if 35 years or younger, or at least six months if over 35 return to HB 864. The existing law is not current or commensurate with infertility definitions or guidelines published by the American Society of Reproductive Medicine (ASRM). ASRM, the professional society in this field, defines infertility as the failure to conceive after one year (12 months) of intercourse. Hawaii’s old requirement of five years is obviously much longer. Waiting five years, however, can materially hurt a woman’s chance of conceiving with IVF, because female fertility is time sensitive and beginning around age 32-35, declines quickly.

Hawaii’s five-year waiting period is by far the longest waiting period in any of the laws mandating infertility insurance in this country. This bill will bring Hawaii’s law in step with other states. And, it will help infertility

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patients obtain needed treatment on a timely basis. The Senate version changes the waiting period but the House version of the bill does not. We urge the Committee to use the Senate language and change the waiting period to 12 months.

For all of these reasons, we applaud the you for introducing these bills and urge you to move the Senate version of this bill to change the waiting period and eliminate the requirement of using the “husband’s sperm”. On behalf of people with infertility who are trying to build families, we support this legislation. If you have any questions or would like to discuss our position, please contact me at [acrisci@cryobank.com](mailto:acrisci@cryobank.com) or 310-496-5665.

Sincerely,



Alice Crisci  
Government Affairs and Patient Advocacy  
California Cryobank

CC: Members of the House Committee on Consumer Protection & Commerce



## LATE TESTIMONY

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February 24, 2015

The Honorable Justin H. Woodson  
House Committee on Consumer Protection and Commerce  
Hawaii House of Representatives  
Hawaii State Capitol  
Honolulu, HI 96813

Re: HB 864 HD 1 / SB 768 SD 1: Support with changes

Dear Representative Woodson:

As the President & CEO of RESOLVE: The National Infertility Association, a nonprofit that represents men and women all over the country who face fertility problems, we support HB 864 HD 1/SB 768 SD 1.

On behalf of the over 28,000 Hawaiians who are trying to overcome the disease of infertility and have children, we urge the Consumer Protection and Commerce Committee to vote "yes" on the Senate version of this bill, SB 768 SD1, which varies slightly from the House version, HB 864 HD 1, which update Hawaii's law providing coverage for in vitro fertilization (IVF).

The updates are straightforward: they will help bring Hawaii's law in step with current practice; they improve the quality of care; their goal is equality and non-discrimination; and they are pro-family. We hope you will vote to approve.

The two changes are discussed below:

1. **Changing the waiting period from five years to one year.** The American Society for Reproductive Medicine (ASRM), which is the professional society in this field, defines infertility as the failure to conceive after one year (12 months) of intercourse. Hawaii's old requirement of five years is obviously much longer. Waiting five years, however, can materially hurt a woman's chance of conceiving with IVF, because female fertility is time sensitive and beginning around age 32-35, declines quickly.

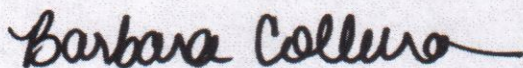
Hawaii's five-year waiting period is by far the longest waiting period in any of the laws mandating infertility insurance in this country. This bill will bring Hawaii's law in step with other states. And, it will help infertility patients obtain needed treatment on a timely basis. The Senate version changes the waiting period but the House version of the bill does not. We urge the Committee to use

the Senate language and change the waiting period to 12 months.

2. **Eliminating the requirement that only the spouse's sperm may be used.** It makes sense medically to cast off this requirement because more than a third of infertility is caused by "male factor," that is, a problem with the man's sperm. Some husbands may also be carriers of a sex-linked disease. If pregnancy can't be achieved with a husband's sperm, then patients should be able to use sperm from a donor. Also, sometimes couples are not married or some single women may need treatment to have a family. The proposed change in the bills will help Hawaiian citizens in these circumstances, too. Both bills include this change.

For all of these reasons, we applaud the legislature of Hawaii for introducing this bill and urge you to adopt the Senate version of this bill to change the waiting period and eliminate the requirement of using the "husband's sperm". On behalf of people with infertility who are trying to build families, we support this legislation and urge you to vote "yes."

Respectfully submitted,



Barbara Collura  
President & CEO

**TO: HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair

**FROM: Pi'ilani Smith**

**SUBJECT: HB 864 HD 1 - RELATING TO IN VITRO FERTILIZATION COVERAGE**

Hearing: Wednesday, February 25, 2015

Time: 2:30 p.m.

Place: Conference Room 325

***"The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right."***

*Haw. Const. Art I, § 6.*

This testimony is in **strong support of HB 864 HD 1 with amendments**. The following amendments are corrective and bring the existing Hawaii IVF procedure mandate into compliance with the Constitution of the State of Hawaii Privacy Clause, the U.S. Constitution, and Hawaii and federal case law.

**AMENDMENTS TO HB 864 HD1:**

- 1) Amend HD1 to reflect the original language of HB 864 in section (a)(3)(A) on pages 3 and 5 of this measure to read:

~~(4)}~~ (3) The:

(A) Patient ~~[and the patient's spouse have]~~ has a history of infertility of at least ~~[five years' duration;]~~ twelve months if thirty-five years or younger or at least six months if over thirty-five years; or

- 2) Amend HD1 by creating (b) under ~~(5)~~ on pages 4 and 7 and inserting the ASRM definition of infertility on pages 4 and 7 of the measure to read:

(b) For the purposes of this section, the term "Infertility" means a disease, defined by the failure to achieve a successful pregnancy after twelve months of appropriate, timed unprotected intercourse or therapeutic donor insemination. Earlier evaluation and treatment may be justified based on medical history and physical findings and is warranted after 6 months for women over age 35 years.

**COMMENTS:**

AMENDMENT 1 – Remove the arbitrary and unconstitutional five year history of infertility and insert the medical definition of infertility consistent with the American Society of Reproductive Medicine (“ASRM”).

According to the Constitution of the State of Hawaii Privacy Clause it states:

**“The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.”** Haw. Const. Art I, § 6.

In State v. Mueller, 66 Haw. 616, 612, 671 P.2d 1351 (1983), the Hawaii Supreme court held:

**“If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusions into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”**

In Doe v. Doe, 172 P.3d 1078 (Haw. 2007) (quoting State v. Mallan, 950 P.2d at 233), the Supreme Court held under the Constitutional Right of Privacy:

**“among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation ... .”**

In State v. Mueller, 671 P.2d 1351 (Haw. 1983) the court held:

**“Only personal rights that can be deemed fundamental or implicit in the concept of ordered liberty are included in this guarantee of personal privacy.”**

According to the ASRM\*, infertility is defined as:

**“a disease, defined by the failure to achieve a successful pregnancy after 12 months or more or appropriate, timed unprotected intercourse of therautic donor insemination. Earlier evaluation and treatment may be justified based on medical history and physical findings and is warranted after six months for women over age 35 years.”**

\*[http://www.asrm.org/uploadedFiles/ASRM\\_Content/News\\_and\\_Publications/Practice\\_Guidelines/Committee\\_Opinions/Definitions\\_of\\_infertility.pdf](http://www.asrm.org/uploadedFiles/ASRM_Content/News_and_Publications/Practice_Guidelines/Committee_Opinions/Definitions_of_infertility.pdf)

According to the American College of Obstetricians and Gynecologists (“ACOG”)\*\*, infertility is defined as:

**“not having become pregnant after 1 year of having regular sexual intercourse without the use of birth control.”**

\*\*<http://www.acog.org/-/media/For-Patients/faq137.pdf?dmc=1&ts=20150225T1655260968>

A woman's decision to bear a child is a fundamental right protected under the privacy clause. The current Hawaii IVF mandate arbitrarily subjects a woman to a five year history of infertility. The five year history is a risk barrier placed upon a woman diagnosed with infertility. It imposes a prohibitive delay without rational basis. According to the ASRM and ACOG, one year in general and 6 months for women 36 years and older defines infertility. In this case, the government has no compelling state interest to warrant a five year requirement.

In Doe, 172 P.3d 1078, a woman's decision to procreate without unjustified government interference, was affirmed. Hence, for this legislature to place a five year history of infertility on a woman's decision to bear a child as this measure aims, without rational basis tied to medical standards, places undue burden on a woman's protected decision to procreate, and thus, infringe upon her constitutional right of privacy. For this reason, the legislature must take affirmative steps to implement this right, by adopting a requirement of infertility that is based on medical standards. Therefore, the five year history of infertility must be removed, and the proposed Amendment 1 to adopt the ASRM definition is justified.

AMENDMENT 2 – Adoption of the ASRM definition of infertility, as a definition in the measure.

The adoption and inclusion of the ASRM definition of infertility in this measure provides clarity to the meaning of the term "infertility".

Kaiser Permanente testified in a previous hearing on this measure in the Senate, acknowledging the definitions of the ASRM and the ACOG. In further discussion via email addressed to myself, Ms. Na'unanikina`u Kamali`i and cc'd to the chairs of both the House and the Senate Committees on Health, and Sen. Maile Shimabukuro (the introducer of the Senate companion to this measure), Kaiser Permanente agreed to support the ASRM's definition of infertility going forward, "in the spirit of compromise." Having the support of Kaiser Permanente on this issue, and seeing no comment by HMSA thus far, there is no stakeholder concern in conflict and thus, both amendments should be adopted. The Hawaii health plans objections, if any, are not paramount, nor a point for negotiation and compromise, to the consumers protections and interest in timely medical treatment protected under the constitutional right of privacy.

## **CONCLUSION:**

Pass HB 864 HD1 with these amendments, because the Hawaii legislature is mandated to uphold its own constitution, and take affirmative steps to uphold its citizen's constitutional right of privacy, which cannot be infringed, with an arbitrary and prohibitive 5 year delay on a medical condition of infertility, unsupported by medical standards.

The existing Hawaii IVF mandate and HB 864 HD1 are unconstitutional with the arbitrary five year history of infertility. The amendments set forth here, and by Ms.



## LATE TESTIMONY

Na`unanikina`u Kamali`i in written testimony are remedies to the State of Hawaii and the Hawaii health providers 28 year history of infringement upon Hawaii women's right of privacy. The legislature is obligated to remedy this violation of privacy, now. Not next year or any other year.

**One woman, all women.**

**One family, all families.**

**One child, all children.**

**Protected.**

Aloha mai kakou.