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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 4, 2015
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 864 – RELATING TO IN VITRO FERTILIZATION
INSURANCE COVERAGE.**

TO THE HONORABLE DELLA AU BELATTI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

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

The purpose of this bill is to provide in vitro fertilization insurance coverage
equality for women who are diagnosed with infertility by requiring non-discriminatory
coverage.

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 Health
Wednesday, February 4, 2015 at 9:00 A.M.
Conference Room 329, State Capitol**

**RE: HOUSE BILL 864 RELATING TO IN VITRO FERTILIZATION INSURANCE
COVERAGE**

Chair Belatti, Vice Chair Creagan, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 864, which provides insurance coverage equality for women who are diagnosed with infertility by making available to them expanded treatment options, ensuring adequate and affordable health care services.

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 customer. 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.



February 4, 2015

To: Representative Della Au Belatti, Chair
Representative Richard Creagan, Vice Chair and
Members of the Committee on Health

From: Jeanne Y. Ohta, Co-Chair

RE: HB 864 Relating to In Vitro Fertilization Insurance
Hearing: Tuesday, February 4, 2015, 9:00 a.m., Room 329

POSITION: Strong Support

The Hawai'i State Democratic Women's Caucus writes in strong support of HB 864 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.

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.

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



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

HEARING: House HLT hearing on Wednesday, February 4, 2015 @ 9:00 a.m.

SUBMITTED: February 2, 2015

TO: House Committee on Health
Rep. Della Au Belatti, Chair
Rep. Richard Creagan, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: Opposition to HB 864 Relating to In Vitro Fertilization because there is no religious exemption provided

Honorable Chairs and members of the House Committee on Health, 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. At least in the other House Bill that was introduced (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 advertent 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, 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 3, 2015

The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
House Committee on Health

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

Dear Chair Belatti, Vice Chair Creagan and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 864 which would require health insurance coverage for women who are diagnosed with infertility by making available to them expanded treatment options. HMSA would like to offer comments on this Bill.

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 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 a number of issues that need to be considered and clarified:

- (1) We are uncertain as to the types of fertility benefits that are to be covered under this measure.
- (2) The Bill may require a plan to cover drug benefits for members who have not contracted for drug coverage.
- (3) The Bill does not consider the age of the individual. It opens the possibility of requiring coverage for service provided to individuals under the age of 18 and, on the other hand, to individuals who are past biologically normal child-bearing age.

Given this uncertainty, the Committee may wish to consider having the State Auditor review this Bill to determine its impact on the health care system and the State.

Thank you for allowing us to testify on HB 864, and your consideration of the concerns we have raised is appreciated.

Sincerely,

Jennifer Diesman
Vice President, Government Relations

TO: **HOUSE COMMITTEE ON HEALTH**
The Honorable Della Au Bellati, Chair
The Honorable Dee Morikawa, Vice Chair

FROM: Na'unanikina'u Kamali'i

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

Hearing: Wednesday, February 4, 2015
Time: 9:00 a.m.
Place: Conference Room 329

This testimony is in **strong support of HB 864**. This measure provides in vitro fertilization coverage equality for all women who are diagnosed with infertility by requiring non-discriminatory coverage 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 a discriminatory framework. The discriminatory language must be corrected by the legislature. 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** for several reasons. **HB 864** provides for in vitro fertilization coverage equality for all women diagnosed with infertility. In short, the measure does the following:

- 1) Brings the existing Hawaii IVF mandate into compliance with the Hawaii State Constitution's Privacy Clause;
- 2) Mandates in vitro fertilization coverage equality for all women diagnosed with a medical condition of infertility by removing discriminatory language based on marital status;
- 3) Ends class discrimination among women with employer health benefits;
- 4) Defines "infertility" consistent with the American Society of Reproductive Medicine (ARSM);
- 5) Recognizes that infertility is a disability that is protected under the Americans with Disabilities Act (ADA); and
- 6) Addresses ACA prohibitions against discrimination.

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 likely deemed protected, then 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 and as a result, it imposes an undue burden on their constitutional right and should be corrected to remove any unconstitutional language. **HB 864** provides the appropriate revisions to the Hawaii IVF mandate and should pass out of committee without amendment. 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. When the IVF mandated benefit was enacted in 1987, the purpose of the bill was to "require 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." SCRep. 1309, Consumer Protection and Commerce on S.B. 1112 (1987) The purpose of **HB 864** is to provide in vitro fertilization insurance coverage equality for women who are diagnosed with infertility by requiring non-discriminatory coverage and ensuring quality of care in the diagnosis and treatment of infertility. The corrective action by the legislature to eliminate 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.

3. 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 deliberately upheld discriminatory provisions which called for a member to be married and use her husband's sperm, reaping 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 mandated IVF benefit.

4. 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 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 which is arbitrary and not in line with the current definition of infertility and treatment protocols. The measure applies the corrected definition of infertility which is desired and supported.

5. 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 receive 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.

TO: **HOUSE COMMITTEE ON HEALTH**
The Honorable Della Au Bellati, Chair
The Honorable Richard P. Creagan, Vice Chair

FROM: Pi'ilani Smith

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

Hearing: Wednesday, February 4, 2015
Time: 9:00 a.m.
Place: Conference Room 329

This testimony is in **strong support of HB 864**. HB 684 provides for in vitro fertilization coverage equality for women diagnosed with infertility, by requiring non-discriminatory coverage and ensuring quality of care in the diagnosis and treatment of infertility. The existing Hawaii IVF mandated benefit is discriminatory, wrongfully denying women with an employer's health plan equal access to its member's health plan because she is not marriage, is not in a same sex marriage or does not hold a civil union. HB 864 is a corrective measure, bringing the existing Hawaii IVF mandated benefit into compliance with the Hawaii State Constitution. The State of Hawaii violates its own constitution by infringing on the constitutional right of its citizens to privacy without a compelling state interest.

I strongly urge this committee to pass HB 864, which makes the following necessary changes that are timely and withstand legal and medical scrutiny by:

- 1) Bringing the existing Hawaii IVF mandate into compliance with the Hawaii State Constitution, Privacy Clause;
- 2) Ending class discrimination amongst women with an employer health plan, paying the same premium;
- 3) Updating the definition of "infertility" consistent with the American Society of Reproductive Medicine (ARSM);
- 4) Recognizing that infertility is a disability that is protected under the Americans with Disabilities Act (ADA); and
- 5) Complying with Federal ACA requirements which the State of Hawaii is not exempt from under the Hawaii Prepaid Health Care Act.

Comments:

1. Violation of the Hawaii State Constitution Privacy Clause - Unjustified Government Interference. The Hawaii Revised Statute (HRS) 431:10A-116.5 regarding in vitro fertilization procedure coverage requires that a woman's eggs be "fertilized with the patient's spouse's sperm." This marital status requirement legislated in health insurance coverage imposes an undue burden on its citizen's right of privacy as provided for under the Privacy Clause of the Hawaii State Constitution, 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. The legislature shall take affirmative steps to implement this right.” Haw. Const. Art I, § 6.

In the case of State v. Mueller, the Hawaii Supreme Court held “that only personal rights that can be deemed fundamental or implicit in the concept of ordered liberty are included in this guarantee of personal privacy.” State v. Mueller, 671 P.2d 1351 (Haw. 1983). This decision was reaffirmed by and further clarified in Baehr v. Lewin, that if a right is considered fundamental then it is “subject to interference only when a compelling state interest is demonstrated.” Baehr v. Lewin, 852 P.2d 44 (Haw. 1993).¹

In determining which rights are fundamental, the Hawaii Supreme Court in State v. Mallan, 950 P.2d 178 quoting Baehr, 852 P.2d at 57 “look[ed] to the “traditions and collective conscience of [the] people to determine whether a principle is so rooted there as to be ranked as fundamental.” The court relied on federal case law, finding that rights that “emphasize protection of intimate personal relationships such as those concerning marriage, contraception, and the family” to be fundamental, and thus protected under the right to privacy. Mallan, 950 P.2d at 182. The Hawaii Supreme Court reinforced the notion of family decisions are afforded protection in Doe v. Doe, 172 P.3d 1067 (Haw. 2007) stating:

Parents' right to raise their children is protected under article I, section 6 of the Hawai'i Constitution, which requires the showing of a compelling state interest prior to infringing on privacy rights. Under the constitutional right to privacy, **“among 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.”** Id. at 1078 (quoting Mallan, 950 P.2d at 233)²

In the case of the State v. Kam, the Hawaii Supreme Court applied the protection under the right of privacy is protected under the United States Constitution First Amendment. State v. Kam, 748 P.2d 372 (Haw. 1988). In this case, the court based its holding on the United States Supreme Court’s ruling in State v. Georgia, 394 U.S. 557 (1969) which held that the right to view pornographic material in one’s home is protected by the First Amendment. Id. at 568. Therefore, the State cannot interfere with these rights unless a compelling state interest is shown. Kam, 748 P.2d at 380.³

The decision by a woman to utilize infertility treatments to have a family and procreate involves intimate decision-making, protected under the right of privacy. The limitation on insurance coverage excludes certain groups such as single women (unmarried, divorced, and widowed), unmarried couples, married women unable to use her husband’s sperm from exercising their right of privacy Therefore the marriage

¹ 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 Cardinale, *supra* n. 86 at 2142.

³ Cardinale, *supra* n. 91 at 2143.

requirement imposes an undue burden on one's constitutional right and thus, unconstitutional.

2. CLASS DISCRIMINATION - Marital status has no bearing regarding the treatment of a medical diagnosis and condition of infertility. The present Hawai'i IVF mandated benefit for 28 years has been and continues to impose religious dogma related to marital status, thus creating two classes of members, violating ACA Title 45 of the Code of Federal Regulations Part 156, 445 CFR §156.200(e) of the Federal Register Vol. 78 No. 37 (Feb. 25, 2013) and discriminatorily providing IVF treatment of infertility to one class of female members who are married and prohibiting another class of female members who are single, divorced, widowed, never married, or married and unable to use her spouse's sperm from the same IVF health benefit, while charging both classes for female members the same premium.

Certainly, the health plans are aware of such discrimination and have been wrongfully collecting on two classes of members while resting of this discriminatory law. For 28 years, the women of Hawaii with employer health plans have wrongfully endured this class discrimination. From personal experience, HMSA aggressively denies its discriminatory practice through its IVF health insurance coverage, as well as the denying the members right to appeals on the medical benefit due to failure of meeting the "administrative" requirement of marriage or civil union, because of the existing law.

Both HMSA and Kaiser recognize the legal issues raised by women with legal standing to protect their rights of privacy and non-discrimination in the courts. So much so that as of January 1, 2015, HMSA was removed the marriage requirement, after a member raised an internal appeal of discrimination. Likewise, Kaiser has stated that they will also be removing the marriage requirement in January of 2016. Kaiser has gone so far as to argue that the state need not remove the marriage requirement because the health plans are doing it on their own. This statement was made by Phyllis Dendle of Kaiser Permanente.

The marriage requirement cannot stand legal scrutiny of the Hawaii Constitution, constitutionality of Equal Rights, Religious Freedom and the Affordable Care Act. Both HMSA and Kaiser deny that they are in violation of these laws and regulations, by resting on the present antiquated discriminatory Hawaii IVF mandated law. The obligation to make sure that laws passed uphold the Hawaii Constitution, Federal Constitution, as well as state and federal laws belongs to the Hawaii Legislature. Therefore, despite the health plans insistence that the legislature need not get rid of the discriminatory language in the existing IVF mandate because the health plans are making the change on their own, the legislature has a legal obligation to its citizens that cannot be assumed by a third party. Thus, this committee and the legislature must pass HB 864 without amendments.

3. DEFINITION OF INFERTILITY (ASRM) - The proposed definition of infertility in this legislation is consistent with the definition of infertility by the American Society for Reproductive Medicine, and has been adopted as the standard definition of infertility amongst the reproductive medical community in the U.S.. The states five year history on

infertility requirement puts its citizens diagnosed with infertility at risk by arbitrarily imposing this unreasonable delay. HB 864 provides corrective measure to the definition of infertility that is necessary, because a woman's fertility naturally declines with age.

4. **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 receive 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.

As a woman wrongfully denied access to my IVF health benefit with HMSA, I ask that you protect my constitutional rights and that of all women in Hawaii by passing HB 864.

Mahalo.

To: Health Committee Chair and members; Consumer Protection and Commerce Chair and members

Date: February 3, 2015

Re: HB864, Related to In-Vitro Fertilization Insurance Coverage

Hearing: February 4, 2015, 9:00 AM, Room 239
(Testimony to be presented in person)

I would like to submit testimony in favor of HB864, with reservations.

While I am fully in favor of extending the requirements of HRS431:10-A-116.5 and 432:1-604 to provide equal access to in-vitro fertilization insurance coverage to women, as has been done by HMSA per their policy MM.03.002 (copy attached), I have concerns with HB864 as it appears to go much further.

HB864 extends in-vitro insurance coverage to any single woman including daughters of an insured, going beyond an equalization that would extend coverage to those married or those in a civil union, whether same-sex or opposite-sex.

HB864 reduces the standards to qualify for coverage to what I believe is a medically unrealistic standard, only 12 months if 35 years of age or younger, or six months if over 35.

HB864 also eliminates the requirement to attempt other methods if the physician determines those methods are likely to be unsuccessful.

HB864 attempts to apply the same verbiage for required coverage to opposite-sex and same-sex couples. This does not recognize the differences these couple face when attempting a successful pregnancy, while the HMSA policy MM03.002 does recognize the difference.

The Affordable Care Act (aka Obamacare) places some requirements on states that require a new insurance coverage. Due to the broad extensions of HB864, I caution that a thorough evaluation be made, including that a determination from the federal CMS (Center for Medicare and Medicaid Services) be obtained whether the ACA restriction may be applied.

I suggest HB864 be amended to follow the HMSA policy MM.03.002, including both civil union and marriage relationships. This approach can easily be defended as an equalization under current law; would follow an existing approach established by the largest insurance-type provider in the State of Hawaii; would lessen any impact on insurance premiums; and I believe would lessen resistance to the equalization of the required coverage.

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In Vitro Fertilization

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:

04/25/2014

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 opposite sex couples is covered (subject to Limitations/Exclusions and Administrative Guidelines) when all of the following criteria are met:
 - 1. The patient and spouse or civil union partner are legally married or joined according to the laws of the State of Hawaii.
 - 2. The couple has 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
 - 3. The patient and spouse or civil union partner have been unable to attain a successful pregnancy through other infertility treatments for which coverage is available.
- B. In vitro fertilization for female couples is covered (subject to Limitations/Exclusions and Administrative Guidelines) when all of the following criteria are met:
 - 1. The patient and civil union partner are legally joined according to the laws of the State of Hawaii.
 - 2. The patient, 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 for in vitro fertilization services for civil union couples only applies to groups and individual plans that provide coverage for civil union couples.
- B. 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 married or civil union couple. 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.
- C. In vitro fertilization services are not covered for married or civil union couples 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.
- D. 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.
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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 9:27 PM
To: HLTtestimony
Cc: teresa.parsons@hawaii.edu
Subject: Submitted testimony for HB864 on Feb 4, 2015 09:00AM

HB864

Submitted on: 2/3/2015

Testimony for HLT on Feb 4, 2015 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Teresa Parsons | Individual | Support | No |

Comments: Honorable Health Committee Chair, Representatives Belatti and Vice-Chair Creagan, Please accept this testimony for the House Health Committee hearing on HB 864. I support HB 864 which will ensure insurance coverage equality for women who are diagnosed with infertility by requiring non-discriminatory coverage and ensuring quality of care in the diagnosis and treatment of infertility. With advancements in diagnosis of the reasons for infertility, the adjustment of the bill's language to more reflect medical time frames in the definition of infertility is appropriate rather than forcing a woman to wait five times the length of medically defined infertility prior to mandating some level of insurance coverage. Additionally, it is appropriate to adjust the language in the bill to remove restrictions on the male partner, who may also be diagnosed with infertility. The desire to conceive a child and bring a life into a family should not be restricted if the male cannot provide viable sperm. The change in the language of the bill allows surrogate sperm to complete the IVF process. For couples who wish to have a family, there are many roadblocks and risks. It should not be the lack of insurance coverage which impedes the already difficult process. As a Women's Health Nurse Practitioner, I counsel families who struggle with infertility. Adjusting this Bill's language will ease the burden and allow the focus to be on the "how to conceive", not how to pay for it. I urge you to support the changes to this important piece of legislation. Mahalo for allowing me to submit testimony in support of HB 864.

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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