



**STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES**

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

March 1, 2015

TO: The Honorable Jill N. Tokuda, Chair
Senate Committee on Ways and Means

FROM: Rachael Wong, DrPH, Director

SUBJECT: **S.B. 768- RELATING TO IN VITRO FERTILIZATION
INSURANCE COVERAGE**

Hearing: Monday, March 2, 2015; 1:00 p.m.
Conference Room 211, State Capitol

PURPOSE: The purpose of this bill is to provide 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.

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.

As stated in testimony on similar measures, Medicaid does not cover treatment for infertility. If DHS is required to cover these proposed services, federal Medicaid funds will not be available for this service and state funds would need to be appropriated to DHS.

Alternatively and 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.



An Independent Licensee of the Blue Cross and Blue Shield Association

March 2, 2015

The Honorable Jill N. Tokuda, Chair
The Honorable Ronald D. Kouchi, Vice Chair
Senate Committee on Ways and Means

Re: SB 768, SD1 – Relating to In Vitro Fertilization Insurance Coverage

Dear Chair Tokuda, Vice Chair Kouchi and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 768, SD1, 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 SB 768, SD1, 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.

Finally, we note that, as drafted, SB 768, SD1, would apply to commercial health insurers and mutual benefit societies, but does not apply to health maintenance organizations. Should the Committee consider passing this measure, equity would demand that its provisions apply to all lines of health insurance.

Thank you for allowing us to testify on SB 768,SD1, and your consideration of the concerns we have raised is appreciated.

Sincerely,

Jennifer Diesman
Vice President, Government Relations



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

HEARING: Senate WAM Committee on March 2, 2015 @ 1:00 p.m. #211.

SUBMITTED: February 27, 2015

TO: Senate Committee on Ways & Means
Sen. Jill Tokuda, Chair
Sen. Ronald Kouchi, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: Opposition to SB 768 SD1 Relating to In Vitro Fertilization (no religious exemption)

Honorable Chairs and members of the Senate Committee on Ways & Means, 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 SB 768 SD1 because it does not contain a religious exemption. SB 789 (which was deferred) included the following language: **"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." SB 768 SD1 does not.**

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." We oppose SB 768 SD1, without a religious exemption, because it would force the Catholic Church to provide services which are contrary to the tenets of our faith. At least SB 789 documented the intent not to force the practice on our institution. Please, at the very least, add a strong religious exemption.

Mahalo for the opportunity to testify.



March 2, 2015

To: Senator Jill Tokuda, Chair
Senator Ronald Kouchi, Vice Chair and
Members of the Committee on Ways and Means

From: Jeanne Y. Ohta, Co-Chair

RE: SB 768 SD1 Relating to In Vitro Fertilization Insurance
Hearing: Monday, March 2, 2015, 1:00 p.m., Room 211

POSITION: Strong Support

The Hawai'i State Democratic Women's Caucus writes in strong support of SB 768 SD1 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, remove the five-year requirement; and include the definition of infertility used by the American Society of Reproductive Medicine

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



February 28, 2015

Senator Jill Tokuda, Chair
Senate Committee on Ways and Means
Hawaii State Capitol

**Re: S.B. 768, SD1 Relating to In Vitro Fertilization Insurance Coverage
Monday, March 2, 2015, 1:00 p.m., Room 211**

Dear Chair Tokuda and Members of the Committee on Ways and Means:

Hawaii Women Lawyers submits this testimony in **strong support** of S.B. 768, S.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

TO: **SENATE COMMITTEE ON WAYS AND MEANS**
The Honorable Jill N. Tokuda Chair
The Honorable Ronald D. Kouchi, Vice Chair

FROM: Na'unanikina'u Kamali'i

SUBJECT: **SB 768 SD1- RELATING TO IN VITRO FERTILIZATION COVERAGE**

Hearing: Monday, March 2, 2015
Time: 1:00 p.m.
Place: Conference Room 211

Thank you for the opportunity to testify. This written testimony is made in my personal capacity in **strong support of SB 768 SD1**. 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 used by the American Society of Reproductive Medicine.

This measure is not for the purpose of expanding health coverage, rather it is corrective in its purpose to expand availability and applicability to bring the IVF procedure coverage mandate into compliance with the Hawaii State constitution's privacy clause and related federal statutes by removing the marriage requirement and adopting a definition of infertility. These amendments are technical, nonsubstantive amendments for the purpose of clarity and consistency.

There is no cost affect for this corrective measure to expand availability and applicability for those subscribers/members not otherwise eligible. Premium payments for these members is already included in the underwriting process. Employers pay premiums for all of its employees, unmarried or married, even though married members are eligible to utilize the benefit. The reduction of wait time from five years to one year to utilize the benefit is a consideration of medical management, at no additional cost.

In short, the **cost considerations are nil**. Key considerations are as follows:

- A. **Removal of marriage requirement** - *There is no cost consideration*. As reported by the joint committees on Health and Commerce and Consumer Protection, removal of the marriage requirement is a technical, nonsubstantive amendment for the purpose of clarity and consistency. This discriminatory provision, in violation of the constitutional privacy clause, poses no cost increases because employers are already paying premiums for all of its employees, even if only married employees are eligible for IVF procedure coverage;

- B. Reduced wait time for services** *There is no cost consideration.* As reported by the joint committees on Health and Commerce and Consumer Protection, reducing the wait time for services from five years to one year is a technical, nonsubstantive amendment for the purpose of clarity and consistency. The arbitrary five year history provision is in violation of the Hawaii constitution's privacy clause in that it arbitrarily infringes on a woman's right to procreative treatment and to bear and beget a child. The measure provides standards consistent with the guidelines and program standards of the American College of Obstetricians and Gynecologists and American Society for Reproductive Medicine, recognized in the measure
- C. Definition of Infertility.** *There is no cost consideration.* As reported by the joint committees on Health and Commerce and Consumer Protection, the measure was amended to provide the definition of "infertility" to be consistent with the American College of Obstetricians and Gynecologists and American Society for Reproductive Medicine. Definitional sections are technical, nonsubstantive amendment for the purpose of clarity and consistency;
- D. Affordable Care Act** *There is no cost consideration.* In vitro fertilization coverage is federal/state approved an Essential Health Benefit (EHB) and as of **January 1, 2014** strict federal prohibitions against discriminatory practices apply to EHBs. More importantly, this corrective measure, which brings the IVF procedure coverage mandate into compliance with the ACA, ADA, ERISA and the Hawai'i constitution, is at **no cost to the State**. Further, Health plans have already factored these changes into their underwriting practices. As of January, HMSA changed its provider policy to address the marriage requirement and Kaiser reports that it will do so within the year. This measure is necessary to bring the State mandate in compliance with the law, which would require the same changes of other employer plans;
- E. State Medicaid and Medicare plans** *There is no cost consideration.* The IVF mandate is not part of either the federal Medicare plan or the federal/state 1115 waiver negotiated QUEST plans. The IVF procedure coverage mandate is applicable to employer plans and has been mandated for over 28 years.

BACKGROUND - General Comments pertaining to Health and Consumer protection:

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 protected, 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. 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 legislature's purpose for the mandate absent any compelling state interest 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)

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 the 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 ineffect defining family by requiring licensed recognized relationship and determining which kinds of relationships are deserving of the IVF treatment, which is a private matter 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 **SB 768 SD1** 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 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.

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 have called for a member to be married and use her husband’s sperm and 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 mandated IVF benefit.

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 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 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.



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HMSA No:
Servicing Provider:
Service:
Case ID:

NOTICE OF MEDICAL DENIAL

On your behalf, _____ sent us a precertification request for Complete in In Vitro Fertilization. Our review found that In Vitro Fertilization is not eligible for payment. This letter explains why.

As stated in your Guide to Benefits, Chapter 1: Important Information, your plan covers care that is medically necessary when you are sick or hurt. This means that the service or supply must meet HMSA's Payment Determination Criteria and be consistent with HMSA's medical policies.

HMSA has a medical policy for In Vitro Fertilization (IVF). It is covered when all of the following criteria are met:

1. *The patient and spouse are legally married 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 have been unable to attain a successful pregnancy through other infertility treatments for which coverage is available.*

Or for female couples:

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.*

Our Medical Director, Stephen Lin, M.D., has reviewed the clinical information provided. Documentation does not support that the above criteria have been met. Therefore, we are unable to approve this request.

A copy of the benefit provision that was the basis for this decision can be provided to you upon request. If you disagree with this decision, you may request an appeal in accordance with the procedures and timeframes described in your participating provider agreement.

Please call Customer Service on Oahu at 948-6111 for PPO members, 948-6372 for HPH members or 1 (800) 776-4672 if you have any questions regarding this matter. Representatives are available Monday through Friday, from 8 a.m. to 4 p.m., Hawaii Standard Time.

Attachment

SL/mri

attributable to good cause or matters beyond HMSA's control: 4) in the context of an ongoing good-faith exchange of information; and 5) not reflective of a pattern or practice of non-compliance.

For more information regarding an external IRO request, including the documents which must be submitted with your request, please contact HMSA at one of the numbers listed above or contact the Insurance Commissioner at (808) 586-2804.

Hawaii Insurance Division
Attn: Health Insurance Branch – External Appeals
335 Merchant Street, Room 213
Honolulu, HI 96813

Arbitration:

Request arbitration before a mutually selected arbitrator within one year of the decision of your appeal to the address listed below. If you choose arbitration, your request for arbitration shall be voluntary and your decision as to whether or not to arbitrate will have no effect on your right to any other benefits under this plan. HMSA waives any right to assert that you have failed to exhaust administrative remedies because you did not select arbitration. You must have fully complied with HMSA's appeal procedures to be eligible for arbitration, and we must receive your request your request within one year of the decision of your appeal. The following information is provided to assist you in deciding whether submit your dispute to arbitration:

- In arbitration, one person (the arbitrator) reviews the positions of both parties and makes the final decision to resolve the disagreement.
- You have the right to representation during arbitration proceedings and to participate in the selection of the arbitrator.
- The arbitration hearing shall be in Hawaii.
- HMSA will pay the arbitrators fee.
- You must pay your attorney's or witness' fees, if you have any, and we must pay ours.
- The arbitrator will decide who will pay all other costs of the arbitration.
- The decision of the arbitrator is final and binding and no further appeal or court action can be taken.

HMSA Legal Services
P.O. Box 860
Honolulu, HI 96808-0860

Lawsuit:

File a lawsuit against HMSA under section 502(a) of ERISA.

Information Available From Us

HMSA will provide upon your request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to your claims as defined by ERISA. You may also request and we will provide the diagnosis and treatment codes, as well as their corresponding meanings, applicable to this notice, if available.

Information Available From Us

For question about your appeal rights, this notice, or for assistance, you can contact the Employee Benefits Security Administration at 1-866-444-EBSA (3272).

MEMBER APPEAL RIGHTS AND PROCESS

For more information about your appeal rights, call Customer Service or see your Guide to Benefits handbook.

How To File An Appeal

You have a right to appeal any decision not to provide you or pay for an item or service. Your request must be in writing (except for an expedited appeal) and must be received within one year from the date we first informed you of the denial of coverage for any requested service or supply. Your **written request** must be mailed or faxed to the following:

HMSA Member Advocacy & Appeals
P.O. Box 1958
Honolulu, HI 96805-1958
FAX NO.: (808) 952-7546 or (808) 948-8206

If you have any questions regarding appeals, you may call the following numbers:

O'ahu: (808) 948-5090
Toll free: 1 (800) 462-2085

The review of your appeal will be conducted by individuals not involved with the previous decision.

What Your Request Must Include

To be recognized as an appeal, your request must include all of the following information:

- The date of your request
- Your name
- Your date of birth
- The date of our denial of coverage for the requested service or supply (may include copy of denial letter)
- The subscriber name from your membership card
- The provider name
- A description of facts related to your request and why you believe our decision was in error
- Any other information relating to the claim for benefits including written comments, documents, and records you would like us to review.

To assist us with processing your appeal, please also include your telephone number and the address of member to receive services.

You should keep a copy of your request for your records.

Types of Appeals You Can File

Standard

Pre-certification- We will respond to your appeal as soon as possible given the medical circumstances of your case but not later than **30 days** after we receive your appeal.

Post-Service – We will respond to your appeal as soon as possible but not later than **60 days** after we receive your appeal.

Expedited

You may request an expedited appeal if application of the pre-certification (30 days) time period may:

- Seriously jeopardize your life or health,
- Seriously jeopardize your ability to gain maximum function, or
- Subject you to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal.

You may also request an **expedited** appeal by phone at the following number s:

O'ahu: (808) 948-5090
Toll free: 1 (800) 462-2085

We will respond to your expedited appeal request as soon as possible taking into account your medical condition but not later than **72 hours** after all information sufficient to make a determination is provided to us.

You may also begin an external review at the same time as the internal appeals process if this is an urgent care situation or you are in an ongoing course of treatment.

What Your Request Must Include

Either you or your authorized representation may request an appeal. An authorized representative includes:

- Any person you authorize to act on your behalf provided you follow our procedures, which include filing a form with us.
- A court appointed guardian or an agent under a health care proxy.

To obtain a form to authorize a person to act on your behalf, call on O'ahu 948-5090 or toll free 1 (800) 462-2085.

What Happens Next

If you appeal, we will review our decision and provide you with a written determination. If you disagree with HMSA's appeal decision, you have additional appeal rights. You may request a review by an Independent Review Organization, request arbitration or file a lawsuit against HMSA. Please see details below.

Independent Review Organization:

If the services request did not meet payment determination criteria, did not meet medical policy or was determined to be investigative or experimental, you may request an external review by an Independent Review Organization (IRO) selected by the Insurance Commissioner, who will review the denial and issue a final decision. You must submit your request to the Insurance Commissioner, at the address indicated below, within 130 days of HMSA's decision to deny or limit the service or supply. Unless you qualify for expedited external review of our initial decision, before requesting review, you must have exhausted HMSA's internal appeals process or show that HMSA violated federal rules related to claims and appeals unless the violation was 1) de minimis; 2) non-prejudicial; 3)

This document contains important information about your HMSA health plan. To ensure that you fully understand its contents, you may have it orally interpreted at no charge to you. At your request, this document may be interpreted into several languages: Chinese, Japanese, Korean, Ilocano, Tagalog, Spanish, Navajo or Samoan. Please contact us at 1-800-776-4672.

CHINESE (中文): 如果您需要中文翻譯, 請致電 1-800-776-4672.

JAPANESE (日本語): このレポートにつきまして、日本語による通訳をご利用できます。1-800-776-4672. までお電話ください。

KOREAN (한국어): 1-800-776-4672으로 전화해서 문의하시면 한국어 통역 서비스를 받으실 수가 있습니다.

ILOCANO (Ilocano): No masapulyo o tulongin ILOCANO awaganyo ni 1-800-776-4672.

TAGALOG (Tagalog): Tulong sa pagpapaliwanag sa salitang TAGALOG, tawagan ang numero 1-800-776-4672.

SPANISH (Español): Para obtener asistencia en Español, llame al 1-800-776-4672.

NAVAJO (Dine): Diné'ehgo shika adóhíí'ni nínáíngó, k'wáíngó hóí'ne! 1-800-776-4672.

SAMOAN (A mana'o ma se fesosoani I le Ganana Fa'asamoa Fa'amolemole valaap ma'i I le telefoni e 1-800-776-4672).



An Independent Licensee of the Blue Cross and Blue Shield Association

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:

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.

SB768

Submitted on: 2/28/2015

Testimony for WAM on Mar 2, 2015 13:00PM in Conference Room 211

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

Comments: Honorable Senators, I urge you to support SB 768 SD1. 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 stress factor faced by those striving to have a child by having insurance coverage. The language in the Bill brings State statute in line with professional organizations and current social norms. 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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