

**STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES**

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

February 6, 2015

TO: The Honorable Josh Green, M.D., Chair
Senate Committee on Health

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

FROM: Rachael Wong, DrPH, Director

SUBJECT: **S.B. 781- RELATING TO INFERTILITY RIGHTS OF
CANCER PATIENTS**

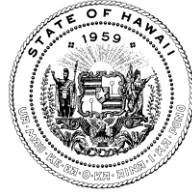
Hearing: Friday, February 6, 2015; 1:15 p.m.
Conference Room 414, State Capitol

PURPOSE: The purpose of this bill is to require insurance coverage for embryo, oocyte, and sperm cryopreservation procedures for adults diagnosed with cancer who have not started cancer treatment.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments for consideration on this measure.

The DHS is unclear if the intent of this measure is to also apply to the Medicaid program. If the Medicaid program is required to cover these services, DHS would need to be provided with state-only funds because Medicaid does not cover treatment for infertility. The DHS would require an appropriation to cover this new service. Alternatively, the measure could clarify that Medicaid is excluded.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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TO THE SENATE COMMITTEES ON HEALTH AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Friday, February 6, 2015
1:15 p.m.

**TESTIMONY ON SENATE BILL NO. 781 – RELATING TO FERTILITY RIGHTS OF
CANCER PATIENTS.**

TO THE HONORABLE JOSH GREEN, M.D. AND ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

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

The purpose of this bill is to add a new mandated health insurance benefit requiring health insurers, mutual benefit societies, and health maintenance organizations to provide fertility preservation procedures for people diagnosed with cancer who have not started cancer treatment.

Additionally, the addition of a new mandated coverage may trigger section 1311(d)(3) of federal Patient Protection and Affordable Care Act which requires states to defray the additional cost of any benefits in excess of the essential health benefits of the state’s qualified health plan.

Senate Bill No. 781
DCCA Testimony of Gordon Ito
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Any proposed mandated health insurance coverage requires the passage of a concurrent resolution requesting the State Auditor to prepare and submit a report assessing the social and financial impacts of the proposed mandate, pursuant to Hawaii Revised Statutes § 23-51.

We thank the Committee for the opportunity to present testimony on this matter.



**American Cancer Society
Cancer Action Network**
2370 Nu`uanu Avenue
Honolulu, Hawai`i 96817
808.432.9149
www.acscan.org

Senate Committee on Health
Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair

Committee on Commerce and Consumer Protection
Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair

HB 781 – RELATING TO FERTILITY RIGHTS OF CANCER PATIENTS

Cory Chun, Government Relations Director – Hawaii Pacific
American Cancer Society Cancer Action Network

Thank you for the opportunity to provide testimony in support of SB 781, which requires insurance coverage for embryo, oocyte, and sperm cryopreservation procedures for adults diagnosed with cancer who have not started cancer treatment.

The American Cancer Society Cancer Action Network (ACS CAN) is the nation's leading cancer advocacy organization. ACS CAN works with federal, state, and local government bodies to support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem.

Cancer can be a physical, emotional, and financial challenge for a person fighting the disease. Losing the ability to bear offspring can be another devastating result in the fight against cancer. Allowing cancer patients the chance to preserve fertility through artificial means would help the patient move past cancer by starting a family and living a normal life.

Thank you for the opportunity to provide testimony on this matter.

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

Before:
Senate Committee on Health
The Honorable Josh Green, Chair
The Honorable Glenn Wakai, Vice Chair
and
Senate Committee on Commerce and Consumer Protection
The Honorable Rosalyn Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair

February 6, 2015
1:15 pm
Conference Room 414

Re: SB 781 Relating to Fertility Rights of Cancer Patients

Chairs, Vice Chairs, and committee members, thank you for this opportunity to provide testimony on this bill relating to fertility rights of cancer patients.

Kaiser Permanente Hawaii opposes this measure based on the findings of the auditor's study.

In 2012, the state auditor completed its study on mandating fertility insurance coverage for cancer patients and reported that the enactment of this mandate was premature. The complete Office of the Auditor Report and its findings may be viewed at <http://files.hawaii.gov/auditor/Reports/2012/12-09.pdf>. Notably, the auditor concluded:

- “No state currently requires insurance coverage for infertility treatments for people who may become infertile as a result of cancer treatments.”
See Audit Report, Pgs. 5 -6.
- “[T]he affected population utilizing the procedures is relatively small, the number generally utilizing the procedures is unknown, and the level of public demand is low.”
See Audit Report, Pg. 10.
- “The impact of indirect costs upon the costs and benefits of coverage may increase.” See Audit Report, Pg. 14. Arguably, if the overall costs for delivering health care increases, insurance premiums and administrative costs would likely increase. Also of

significance is that the auditor made no findings as to whether the state was required to pay costs of this new mandate since it is being enacted after December 31, 2011, and therefore, not considered part of the essential benefits package.

Equally significant is the auditor's reported concern over the ethical and legal issues relating to both patient and offspring welfare, as well as the legal rights of offspring conceived posthumously. For example:

- If the woman is unmarried, who is responsible for the donor sperm? Is the cost of the donor sperm considered a "treatment associated with the procedure" that must be covered by the insurer under this bill?
- Upon the donor's death, who has ownership rights of the preserved sperm and embryo? Once the donor is deceased, who pays for the storage of the preserved sperm and embryo?
- Can others, i.e. spouse, use the genetic material posthumously? Who has legal decision making authority as to the storage or disposal of the genetic material posthumously?

Although it appears that this bill is intended to only address mandated coverage for the cryopreservation procedures, there are a slew of ethical and legal issues that will undoubtedly survive the donor's death and therefore, must be addressed by the legislature.

For the foregoing reasons, Kaiser Permanente shares in the auditor's conclusion that the enactment of this mandate is premature. Thank you for the opportunity to comment.

January 29, 2014

I fully **SUPPORT** HB 2061 (Now HB 673 and SB 781)

You always picture the day you'll graduate from college, the day you get married and the day you will have a child to be one the biggest days of your life. These are the days that you perceive to be the most unforgettable, the days you dream of as a little girl. The ones you just can't wait to happen. Yet, you come to find that it's the normal days that turn into the ones you won't ever forget, the ones that hit you unexpected that cancel out the days you thought would be the biggest. It could be a day you wake up and get ready for school, a day you just plan to run some errands or a day you go to the doctor for a checkup. Those are the days that turn into the biggest days of your life. They are the ones you won't forget, the ones you don't see coming, the ones that were not supposed to be the biggest days of your life.

Being diagnosed with cancer as a young girl is the not the news you hoped for, dreamed of or thought would be one of the biggest days of your life. Yet, for some it is, at least for me it was. In July of 2012, being twenty one years old, I received devastating news, I heard the three words that nobody wants to hear, the words "you have cancer". I was diagnosed with stage III Squamous Cell Carcinoma cancer of the vulva. I was told I would undergo numerous surgeries, chemotherapy and radiation. Not only would the treatment be aggressive and I would have to fight through my sickness, the radiation would destroy my fertility. That day, that normal day, was not supposed to be the biggest day of my life. Being told you have cancer turns your world upside down, not knowing if you will survive. Yet, if you do make it will those biggest days still happen, the days that are supposed to be the most unforgettable, the days you dream of as a little girl? Well in my case, they weren't.

The day you will have a child is a picture, a dream, an expectation that is held in most girls' hearts. Cancer took that away from me and has taken that away from many other girls. I was sent to a Fertility Institute that gave me the hope that one of the biggest days that I had dreamed of, the day of having a child would still happen. Yet, to find my insurance company would not cover the cost. I began to search the internet for any organization that would help me with the expenses, since being only a college student could not afford it. I was fortunate to have received some financial aid from the Live strong organization through a program called Fertile Hope. Yet, I was still down six thousand dollars, with nowhere to turn. After applying for various loans and getting turned down. Fortunately, I was accepted by one and took out the loan to pay off the remainder of the costs. .

Unlike me, many girls do not have the support system to obtain a loan or reach out for financial assistance. Not only am I swarmed with medical bills and am in debt from student loans, I am currently paying for my six thousand dollar loan with money I earn from a part time job near my university. The side effects of my cancer treatment were beyond my control. My IVF egg harvesting should have been covered by my insurance company. A young girl being told "you have cancer" does not expect that day to be one of the biggest days of her life. Nonetheless, does she expect one of the biggest days, the day she would have a child to be no longer possible. I, Jesslyn Lousie Bogard, patient of Dr. John Frattarelli at the Fertility Institute of Hawaii strongly support House Bill 2061 (now HB 673 and SB 781). Insurance companies should not make one of the biggest days, the day of having a child impossible for any girl who has cancer. Insurance company's should cover the costs of IVF egg harvesting and make one of the biggest days of a girl's life still happen, the day she will have a child.

Mahalo for your support of this bill,

Jesslyn Lousie Bogard



3 February 2015

Dear Honorable Committee Chair and Committee Members:

This letter is in **SUPPORT** of HB 673 and SB 781.

We all know someone who has been diagnosed with and treated for cancer. Likewise, we all know someone who is now a cancer survivor. What many do not realize is that these patients are now suffering with another treatable diagnosis –Infertility.

Fortunately, cancer treatment has progressed to a point where often patients are cured of their disease. For the reproductive age patient, this then creates a dilemma –living without the ability to procreate. For many people diagnosed with cancer, the dream of having a family will never be realized. With today's technology, cancer survivors do NOT need to have a childless survival.

Science has provided hope for cancer patients. Prior to cancer treatments, patients can preserve their fertility so that once cured they can do what many take for granted -start a family.

There are many fertility preservation options available for cancer patient.

1. Males can freeze sperm. When thawed and used, frozen sperm has the same reproductive fidelity as fresh sperm. Frozen sperm has been utilized as a fertility treatment for decades without any adverse findings on offspring.
2. Male and/or Females have been able to freeze embryos using In Vitro Fertilization for years. Eggs can be harvested, fertilized with sperm, and the resulting embryos can be cryopreserved indefinitely. Over the last 30+ years, more than a million children have been born from frozen-thawed embryos. No detriment to the offspring has been seen.
3. More recently, females now have the ability to freeze eggs utilizing In Vitro Fertilization. Within the past 5-years, the ability to vitrify (very rapidly freeze) eggs has revolutionized fertility preservation. We can now freeze eggs with the same reproductive success that has been realized for decades using frozen sperm and/or embryos.

As a fertility specialist, I counsel cancer patients (males and females) routinely on their options for fertility preservation. I see the hope that this option brings to the patient with newly diagnosed cancer. This HOPE of future fertility and family is helpful in allowing patients to proceed through the arduous cancer treatment successfully.

I fully and enthusiastically support HB 673 and SB 781. Without it, many of our friends and families who survive cancer will not be able to experience the privilege of having a family –a privilege that many take for granted.

Sincerely and Mahalo,

John L. Frattarelli, M.D.

Laboratory, Practice, & Medical Director
Advanced Reproductive Medicine & Gynecology of Hawaii, Inc.

&

Fertility Institute of Hawaii
1401 South Beretania Street, Ste 250, Honolulu HI 96814
www.IVFcenterHawaii.com

Senate Bill 781: Relating to Fertility Rights of Cancer Patients
The Senate Committee on Health
February 4, 2015

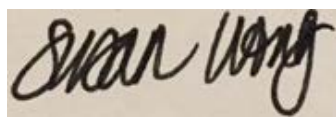
Dear Senator Josh Green, Chair and Senator Glenn Wakai, Vice Chair:

I am writing in support of Bill SB 781 relating to fertility rights of cancer patients. As a 33-year-old cancer survivor, I have first hand experience with the challenges and the financial burden involved with cancer treatment and cryopreservation. When I first received the devastating cancer diagnosis, I did not meet the criteria for infertility—as I was not married and not actively trying to become pregnant. Faced with the dreaded possibility of having the radiation therapy affecting my future ability to bear children, I sought advice from a reproductive endocrinologist regarding my diagnosis. With her recommendation, I decided to pursue embryo cryopreservation before my radiation treatment.

The cost of therapy totaled to about \$20,000. Without having a payment plan option, I had to resort to using multiple credit cards to make the full payment prior to the in vitro fertilization and cryopreservation procedures. The cost of the procedure would have been insurmountable, without the generous support of my family—who helped fund my fertility treatment procedures. I can empathize with the financial struggles that other cancer patients go through when having to deal with the overwhelming costs of cryopreservation along with the expenses that come with cancer treatment. After successful fertility and radiation therapy, I now look forward to the day where I am financially able to have children.

I hope my story inspires you to continue with the efforts to mandate health insurance coverage of fertility preservation for patients diagnosed with cancer.

Very Respectfully,

A handwritten signature in black ink on a light-colored rectangular background. The signature is written in a cursive style and appears to read "Susan Wong".

Susan Wong