

**STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339
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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. 789- RELATING TO IN VITRO FERTILIZATION
INSURANCE COVERAGE**

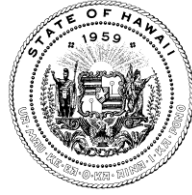
Hearing: Friday, February 6, 2015; 1:15 p.m.
Conference Room 414, State Capitol

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 the similar measure S.B.768, 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.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
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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. 789 – RELATING TO IN VITRO FERTILIZATION
INSURANCE COVERAGE.**

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.

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, and ensuring quality of care in the diagnosis and treatment of infertility. The bill, however, limits lifetime benefits for treating infertility to three in vitro fertilization cycles or live birth. Existing law provides for a one-time benefit.

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



Testimony of
John M. Kirimitsu
Legal & 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 789 Relating to In Vitro Fertilization Insurance Coverage

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

Kaiser Permanente Hawaii opposes this bill.

Kaiser Permanente opposes the lifetime benefit of three in vitro fertilization cycles or live birth. Hawaii law provides for a one-time benefit. This proposed increase from one to three in vitro cycles or live birth would undoubtedly increase the overall costs for delivering health care, and drive up insurance premiums and administrative costs. This would be counter-productive to the ACA's goal (which does not require infertility coverage unless mandated by the state) to provide affordable healthcare through health reform.

Kaiser Permanente acknowledges that the American College of Obstetricians and Gynecologists (ACOG) and American Society of Reproductive Medicine (ASRM) define "infertility" as not becoming pregnant after one year of having regular sexual intercourse without birth control. However, this standard "infertility" definition does not include the shorter 6 month period for women older than 35 years. Rather, both national organizations merely recommend that infertility evaluations should begin after 6 months for those women 35 years or older.

Furthermore, Kaiser Permanente is not convinced that the medical conditions added to this measure are supported by medical guidelines. Without medical evidence, the mandating of these

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medical conditions may subject the patient to added health risks when pursuing in vitro fertilization. For instance, morbid obesity is oftentimes a primary factor for those diagnosed with “ovulatory dysfunction,” and therefore, these patients have a heightened risk when undergoing in vitro fertilization procedures, i.e. increased risk from medication, etc.

Kaiser Permanente opposes SB 789, and prefers the alternate version of this bill, which is moving forward as SB 768.

Thank you for the opportunity to comment.

From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: regina.gormley@gmail.com
Subject: *Submitted testimony for SB789 on Feb 6, 2015 13:15PM*
Date: Tuesday, February 03, 2015 2:08:19 PM

SB789

Submitted on: 2/3/2015

Testimony for HTH/CPN on Feb 6, 2015 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Gina Gormley	Individual	Support	No

Comments:

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

HEARING: Senate HTH/CPN Committee on February 6, 2015 @ 1:15 p.m. #414.

SUBMITTED: February 3, 2015

TO: Senate Committee on Health Senate Committee on Commerce & Consumer Protection
Sen. Josh Green, Chair Sen. Rosalyn Baker, Chair
Sen. Glenn Wakai, Vice Chair Sen. Brian Taniguchi, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: Opposition to SB 768 & Relating to In Vitro Fertilization (no religious exemption)
Comments on SB 789 (contains religious exemption)

Honorable Chairs and members of the Senate Committee on Health & Consumer Protection, 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. Although the Catholic Church opposes in-vitro fertilization, SB 789 includes 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."

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, 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 documents the intent not to force the practice on our institution. Mahalo for the opportunity to testify.

From: [Lance Bateman](#)
To: [WAM Testimony](#); [HTH Testimony](#); [CPN Testimony](#)
Subject: Testimony on SB789, hearing February 6, 2015
Date: Tuesday, February 03, 2015 2:17:10 PM
Attachments: [Testimony on SB789 February 6 2015.docx](#)
[MM.03.002 In Vitro Fertilization 042514.pdf](#)

Attached are two documents that make up my testimony, which I will provide in person. The second document is an exhibit referenced in the first document.

Please provide to the appropriate committees for the hearing. The contents of the documents are provided below in case attachments are not usable.

Lance Bateman

"To accept only that which is popular is to accept the lowest common denominator"

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

Date: February 3, 2015

Re: SB789, Related to In-Vitro Fertilization Insurance Coverage

Hearing: February 6, 2015, 1:15 PM, Room 414
(Testimony to be presented in person)

I would like to submit testimony in favor of SB789, 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 SB789 as it appears to go much further.

SB789 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.

SB789 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.

SB789 also eliminates the requirement to attempt other methods if the physician determines those methods are likely to be unsuccessful.

SB789 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 SB789 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.

Lance Bateman

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In Vitro Fertilization

Policy Number: Original Effective Date:

MM.03.002 05/21/1999

Line(s) of Business: Current Effective Date: HMO; PPO 04/25/2014 Section: OB/GYN & Reproduction Place(s) of Service: Outpatient

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.

In Vitro Fertilization 2

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.

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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.
10. Hawaii Marriage Equality Act. Senate Bill 1369. Available at: http://www.capitol.hawaii.gov/session2014/bills/SB1369_.pdf. Accessed April 2014.
11. Hawaii Civil Union Law. Senate Bill 232. Available at: <http://health.hawaii.gov/vitalrecords/about-civil-unions/>. Accessed April 2014.

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

Date: February 3, 2015

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