



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair

**H.C.R. NO. 28 REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND
FINANCIAL EFFECTS OF MANDATORY HEALTH INSURANCE COVERAGE FOR
FERTILITY PRESERVATION PROCEDURES FOR CERTAIN PERSONS WHO HAVE
BEEN DIAGNOSED WITH CANCER AND WHOSE CANCER OR CANCER
TREATMENT MAY ADVERSELY AFFECT THEIR FERTILITY**

Hearing: Tuesday, April 5, 2022, 2:00 p.m.

The Office of the Auditor takes **no position** regarding H.C.R. No. 28, requesting the auditor to assess, in accordance with sections 23-51 and 23-52, Hawai'i Revised Statutes, the social and financial effects of mandating health insurance coverage for fertility preservation procedures for certain persons who have been diagnosed with cancer and whose cancer or cancer treatment may adversely affect the person's fertility, as provided in House Bill No. 2242 and Senate Bill No. 3308, Regular Session of 2022, and offer the following comments.

We have strong concerns about our capacity to perform the work required by the resolution without additional staff.

We currently are statutorily mandated to regularly audit the Office of Hawaiian Affairs, the Hawai'i Tourism Authority, and the Deposit Beverage Container Program; to review departments' special funds, revolving funds, trust funds, and trust accounts; to assess proposed special and revolving funds; and to analyze the State's tax incentives. We are concerned we do not have the capacity to perform, internally, the work required by the resolution.

Thank you for considering our testimony related to H.C.R. No. 28.



April 1, 2022

The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair
House Committee on Consumer Protection & Commerce

Re: HCR 28 – Requesting the Auditor to assess the social and financial effects of mandatory health insurance coverage for fertility preservation procedures for certain persons who have been diagnosed with cancer and whose cancer or cancer treatment may adversely affect their fertility.

Dear Chair Johanson, Vice Chair Kitagawa, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the intent of HCR 28 to request that the State Auditor conduct an impact study on the social and financial effects of mandating health insurance coverage. We would like to respectfully offer the following amendments that we believe will assist the Auditor's office to further refine their study.

BE IT FURTHER RESOLVED that the Auditor is requested to include in the impact assessment report a survey of other states in the U.S. which have implemented a mandate for cryopreservation benefits for those diagnosed with cancer to examine what the social and financial impact has been in these states; and

BE IT FURTHER RESOLVED that the Auditor is requested to research if the proposed cryopreservation coverage for those diagnosed with cancer constitutes benefits that are in excess of the essential health benefits, thus requiring the state to defray such costs; and

BE IT FURTHER RESOLVED that the Auditor is requested to research what is being used as the standard medical definition of "reproductive age" that is best suited for the proposed cryopreservation procedures for those diagnosed with cancer, and examine the success rates for the different age groups to determine coverage benefit limitations for this covered benefit. This research should examine whether different standards of infertility treatments are applied to different age groups for those diagnosed with cancer; and

BE IT FURTHER RESOLVED that the Auditor is requested to research public (including but not limited to, Medicare and Medicaid) and private entities that provide the proposed

coverage for cryopreservation procedures for those diagnosed with cancer to determine what is currently being used as a standard for coverage, and what, if any, cost limitations are placed on this coverage benefit; and

BE IT FURTHER RESOLVED that the Auditor is requested to examine current medically necessary standards of care used to determine what types of infertility treatment options are available, at a more cost-effective savings than the proposed cryopreservation procedures, which may be best suited for those individuals diagnosed with cancer. An examination of the existing technology in infertility procedures and possible future technology should be examined; and

BE IT FURTHER RESOLVED that the Auditor is requested to examine current scientific studies and current medical literature relating to the efficacy of the proposed cryopreservation procedures for those diagnosed with cancer; and

BE IT FURTHER RESOLVED that the Auditor is requested to examine that the scope of coverage for those "diagnosed with a cancer that may or whose treatment may adversely affect the fertility of the insured" is limited to medically necessary fertility preservation treatments for "iatrogenic infertility." "Iatrogenic infertility" means an impairment of fertility by surgery, radiation, chemotherapy, or other medical treatment affecting reproductive organs or processes; and

BE IT FURTHER RESOLVED that the Auditor is requested to research the ethical and legal issues surrounding the rights and entitlements with respect to the cryopreserved material, as well as the legal rights of offspring conceived posthumously, including contract remedies, i.e., cryobank agreement, to address the storage and disposition of the cryopreserved material. Some questions that should be considered are:

- o How long will the cryopreserved material be preserved?
- o When and how will the cryopreserved material be destroyed?
- o Upon the donor's death, who has ownership rights of the cryopreserved material? At the time of donor's death, who pays for the storage of the cryopreserved



material? If the donor is married at the time, can the spouse use the cryopreserved material to have a baby after the donor's death?

- o What will happen to the cryopreserved material if the donor and the spouse separate?
- o Can others, i.e., spouse, use the cryopreserved material posthumously? Who has legal decision making authority as to the storage or disposal of the cryopreserved material posthumously?

Thank you for the opportunity to testify on this measure. Your consideration of our comments is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew W. Sasaki', is written in a cursive style.

Matthew W. Sasaki
Assistant Vice President
Government & External Relations



April 1, 2022

The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair
House Committee on Consumer Protection & Commerce

HCR 28 – Requesting the Auditor to assess the social and financial effects of mandatory health insurance coverage for fertility preservation procedures for certain persons who have been diagnosed with cancer and whose cancer or cancer treatment may adversely affect their fertility.

Dear Chair Johanson, Vice Chair Kitagawa, and Committee Members:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify providing **comments** on HCR 28. HAHP is a statewide partnership of Hawaii’s health plans and affiliated organizations to improve the health of Hawaii’s communities together. The vast majority of Hawaii residents receive their health coverage through a health plan associated with one of our organizations.

HAHP supports the intent of this resolution to request that the State Auditor study the social and financial impacts of these proposed mandates to health insurance coverage. We respectfully request the following amendments as we believe they may be helpful to further refine the Auditor’s study.

BE IT FURTHER RESOLVED that the Auditor is requested to include in the impact assessment report a survey of other states in the U.S. which have implemented a mandate for cryopreservation benefits for those diagnosed with cancer to examine what the social and financial impact has been in these states; and

BE IT FURTHER RESOLVED that the Auditor is requested to research if the proposed cryopreservation coverage for those diagnosed with cancer constitutes benefits that are in excess of the essential health benefits, thus requiring the state to defray such costs; and

BE IT FURTHER RESOLVED that the Auditor is requested to research what is being used as the standard medical definition of “reproductive age” that is best suited for the proposed cryopreservation procedures for those diagnosed with cancer, and examine the success rates for the different age groups to determine coverage benefit limitations

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for this covered benefit. This research should examine whether different standards of infertility treatments are applied to different age groups for those diagnosed with cancer; and

BE IT FURTHER RESOLVED that the Auditor is requested to research public (including but not limited to, Medicare and Medicaid) and private entities that provide the proposed coverage for cryopreservation procedures for those diagnosed with cancer to determine what is currently being used as a standard for coverage, and what, if any, cost limitations are placed on this coverage benefit; and

BE IT FURTHER RESOLVED that the Auditor is requested to examine current medically necessary standards of care used to determine what types of infertility treatment options are available, at a more cost-effective savings than the proposed cryopreservation procedures, which may be best suited for those individuals diagnosed with cancer. An examination of the existing technology in infertility procedures and possible future technology should be examined; and

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BE IT FURTHER RESOLVED that the Auditor is requested to examine that the scope of coverage for those “diagnosed with a cancer that may or whose treatment may adversely affect the fertility of the insured” is limited to medically necessary fertility preservation treatments for “iatrogenic infertility.” “Iatrogenic infertility” means an impairment of fertility by surgery, radiation, chemotherapy, or other medical treatment affecting reproductive organs or processes; and

BE IT FURTHER RESOLVED that the Auditor is requested to research the ethical and legal issues surrounding the rights and entitlements with respect to the cryopreserved material, as well as the legal rights of offspring conceived posthumously, including contract remedies, i.e., cryobank agreement, to address the storage and disposition of the cryopreserved material. Some questions that should be considered are:

- How long will the cryopreserved material be preserved?
- When and how will the cryopreserved material be destroyed?
- Upon the donor’s death, who has ownership rights of the cryopreserved material? At the time of donor’s death, who pays for the storage of the cryopreserved material? If the donor is married at the time, can the spouse use the cryopreserved material to have a baby after the donor’s death?

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- What will happen to the cryopreserved material if the donor and the spouse separate?
- Can others, i.e., spouse, use the cryopreserved material posthumously? Who has legal decision making authority as to the storage or disposal of the cryopreserved material posthumously?

Thank you for the opportunity to provide comments on HCR 28.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

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AlohaCare | HMAA | HMSA | Humana | HWMG | Kaiser Permanente | MDX Hawaii | Ohana Health Plan |
UHA Health Insurance | UnitedHealthcare



April 5, 2022

The Honorable Aaron Ling Johanson
Chairman, House Committee on Consumer Protection and Commerce
Hawaii State Capitol
415 South Beretania St.
Room 329
Honolulu, HI 96813

Dear Chair Johanson and Members of the Committee,

The Hawaii Society of Clinical Oncology (HSCO) and the Association for Clinical Oncology (ASCO) are pleased to support **House Concurrent Resolution 28: Requesting the auditor assess the social and financial effects of mandatory health insurance coverage for fertility preservation procedures for certain persons who have been diagnosed with cancer and whose cancer or cancer treatment may adversely affect their fertility.** This resolution calls for Hawaii to update an auditor report with newer information, which would pave the way for the state to provide coverage for fertility preservation services for patients with cancer when necessary medical treatments may cause infertility. Committee passage of HCR 28 would be a crucial step in helping to make Hawaii the 11th state to provide this important protection for patients with cancer.

HSCO is a community of oncologists, nurse practitioners, physician assistants, and other allied health professionals who provide a passionate voice for multidisciplinary cancer care teams and the patients they serve. ASCO is a national organization representing physicians who care for people with cancer. With nearly 45,000 members, our core mission is to ensure that cancer patients have meaningful access to high quality cancer care.

HSCO and ASCO believe that as part of education and informed consent before cancer therapy, health care providers should address the possibility of infertility with both male and female patients treated during their reproductive years. Providers should also be prepared to discuss fertility preservation options and/or refer all potential patients to appropriate reproductive specialists. As such, HSCO and ASCO advocate for coverage of embryo, oocyte and sperm cryopreservation procedures for an insured patient who is at least eighteen years of age and has been diagnosed with cancer but has not started cancer treatment (including chemotherapy, biotherapy or radiation therapy treatment) in accordance with [guidelines](#) developed by our affiliate organization, the American Society of Clinical Oncology.

We encourage providers to advise patients regarding potential threats to fertility as early as possible in the treatment process to allow for the widest array of options for fertility preservation. HSCO and ASCO strongly support HCR 28 and encourage the committee to pass it in order to update the auditor report. If you have questions or would like assistance on any issue involving the care of individuals with cancer,

please contact Blake Oshiro at blake.oshiro@gmail.com representing HSCO or Aaron Segel at ASCO at aaron.segel@asco.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Burris III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Carney, MD
President
Hawaii Society of Clinical Oncology

Howard Burris III, MD, FACP, FASCO
Chair of the Board
Association for Clinical Oncology

Testimony of
John Kirimitsu
Legal and Government Relations Consultant

Before:
House Committee on Consumer Protection & Commerce
The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair

April 5, 2022
2:00 pm
Videoconference & Conference Room 329

HCR 28 REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND FINANCIAL EFFECTS OF MANDATING HEALTH INSURANCE COVERAGE FOR FERTILITY PRESERVATION PROCEDURES FOR CERTAIN PERSONS WHO HAVE BEEN DIAGNOSED WITH CANCER AND WHOSE CANCER TREATMENTS MAY ADVERSELY AFFECT THEIR FERTILITY.

Chair Johanson, Vice-Chair Kitagawa, and committee members; thank you for this opportunity to provide testimony on this resolution requesting a study by the legislative auditor of mandating health insurance coverage for cryopreservation procedures for those diagnosed with cancer.

Kaiser Permanente Hawaii supports this resolution.

We support asking the legislative auditor to study the social and financial impacts of this proposed expansion of in vitro fertilization benefits for those diagnosed with cancer. We offer for your consideration a few additional clauses that may make the auditor's study more useful.

BE IT FURTHER RESOLVED that the Auditor is requested to include in the impact assessment report a survey of other states in the U.S. which have implemented a mandate for cryopreservation benefits for those diagnosed with cancer to examine what the social and financial impact has been in these states; and

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- What will happen to the cryopreserved material if the donor and the spouse separate?
- Can others, i.e. spouse, use the cryopreserved material posthumously? Who has legal decision making authority as to the storage or disposal of the cryopreserved material posthumously?

Thank you for your consideration.



April 5, 2022

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Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection and Commerce
Hawaii State Capitol
415 South Beretania Street
Room 329
Honolulu, HI 96813

Executive Director:
Joyce Reinecke, JD

RE: Support for HCR28 - SUPPORT

Dear Chair Johanson and Members of the Committee:

On behalf of the Alliance for Fertility Preservation (the AFP), we are writing to express our support for House Concurrent Resolution 28 which would request the Auditor conduct a much needed update to its Report No. 12-09. This report will assess the social and financial effects of mandatory health insurance coverage for fertility preservation procedures for cancer patients who need these services prior to receiving cancer treatments that might cause sterility or leave them with infertility.

We are a national 501(c)(3) organization dedicated to expanding fertility resources for cancer patients and survivors. We have deep professional experience with this patient need, and we know that due to advances in reproductive technology, a cancer diagnosis should not preclude parenthood. Offering techniques to preserve fertility is now recognized by all relevant medical societies as a standard part of cancer care, but patient access remains a challenge.

Based on cancer incidence rates for Hawaii from the NIH/CDC state profile, each year approximately 530 Hawaiians are diagnosed with cancer while still in their reproductive years (under age 45). Despite the high likelihood (better than 85%) that they will survive their cancer, these patients may involuntarily lose an important part of life after cancer – their ability to one day have their own biological children.

HCR 28 requires an update to the Auditor's Report No. 12-09. The primary conclusion of that report was that the social and financial impacts of covering fertility preservation could not, at that time, be properly assessed, due to a dearth of data about such coverage. Since that report was written (2012), however, eleven states have passed fertility preservation bills that would provide this type of coverage. Several states have undertaken rigorous analyses estimating the expected costs and benefits of this coverage, so far more data exists for the Auditor to review. Report No. 12-09 also raised additional, ethical concerns that lawmakers would have to confront if they enacted such coverage. Many of these issues about the experimental nature of these technologies or how to properly assent minors for these procedures have been resolved. The available procedures have been expanded and experimental techniques such as egg freezing and ovarian tissue cryopreservation have now been recognized as standard. The ethical concern that now remains is the inequitable access that currently exists due to a lack of insurance coverage. This means that only patients with sufficient financial means can access what are now

considered standard procedures to address a well-recognized side effect of cancer treatment – damage to reproductive capacity. Insurance coverage for these services would substantially enhance patients’ subsequent quality of life.

For these reasons, we respectfully ask that you revisit the 2012 Auditor’s Report No. 12-09 to analyze the social and financial effects of fertility preservation coverage as they exist in 2022.

Sincerely,



Joyce Reinecke,
Executive Director