

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO IN VITRO FERTILIZATION INSURANCE COVERAGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that reproductive  
2 technologies, such as in vitro fertilization, are extremely  
3 important to many who desire to have children. The legislature  
4 also finds that the State's mandate that insurance plans provide  
5 a one-time benefit for costs associated with in vitro  
6 fertilization procedures, though admirable, excludes same-sex  
7 couples, unmarried women, and male-female couples for whom male  
8 infertility is the relevant factor. While some insurers  
9 independently offer policies that cover female couples or women  
10 without male partners, these policies are not guaranteed by law  
11 and not all cover single women. No policies currently cover  
12 male couples; policies typically exclude procedures involving  
13 donor oocytes and surrogates that male couples require.  
14 Finally, male-female couples for whom male infertility is the  
15 relevant factor are excluded through the current statutory  
16 requirement that the covered treatment involve sperm from the  
17 male spouse.



1           The legislature finds that the current unequal treatment of  
2 individuals seeking medical fertility assistance constitutes  
3 discrimination on the basis of sex, sexual orientation, and  
4 marital status. In vitro fertilization procedures are  
5 expensive, costing \$10,000 to \$15,000 per cycle, which is  
6 approximately half of the average annual disposable income in  
7 the United States. Same-sex couples, unmarried women, and male-  
8 female couples affected by male infertility must unreasonably  
9 bear the full cost of the procedures while male-female married  
10 couples for whom female infertility is the relevant factor do  
11 not bear the same burden.

12           The purpose of this Act is to ensure equal access to in  
13 vitro fertilization for all couples, including same-sex couples,  
14 and for women regardless of their marital status.

15           SECTION 2. Section 431:10A-116.5, Hawaii Revised Statutes,  
16 is amended by amending subsection (a) to read as follows:

17           "(a) All individual and group accident and health or  
18 sickness insurance policies [~~which~~] that provide pregnancy-  
19 related benefits shall include, in addition to any other  
20 benefits for treating infertility, a one-time only benefit for  
21 all outpatient expenses arising from in vitro fertilization



1 procedures performed on the insured or the insured's dependent  
2 spouse[+] or the oocyte donor or surrogate of the insured or of  
3 the insured's dependent spouse; provided that:

4 (1) Benefits under this section shall be gender neutral,  
5 meaning any benefit available for a married couple of  
6 the opposite sex shall also be available for same-sex  
7 couples and for women regardless of their marital  
8 status;

9 ~~[(1)]~~ (2) Benefits under this section shall be provided to  
10 the same extent as the benefits provided for other  
11 pregnancy-related benefits;

12 ~~[(2)]~~ ~~The patient is the insured or covered dependent of the~~  
13 ~~insured,]~~

14 (3) The ~~[patient's]~~ oocytes ~~[are fertilized with the~~  
15 ~~patient's spouse's sperm,]~~ or sperm of the insured or  
16 of the insured's dependent spouse are used in the in  
17 vitro fertilization procedures;

18 (4) The:

19 (A) ~~[Patient and the patient's spouse have]~~ Insured  
20 or the insured's dependent spouse has a history



- 1 of infertility of at least [~~five years' duration;~~  
2 ~~or~~] twelve months;
- 3 (B) Infertility is associated with one or more of the  
4 following medical conditions:
- 5 (i) Endometriosis;
- 6 (ii) Exposure in utero to diethylstilbestrol,  
7 commonly known as DES;
- 8 (iii) Blockage of, or surgical removal of, one or  
9 both fallopian tubes (lateral or bilateral  
10 salpingectomy); or
- 11 (iv) Abnormal male factors contributing to the  
12 infertility; or
- 13 (C) Insured and insured's spouse are of the same sex;
- 14 (5) The [~~patient~~] insured or the insured's dependent  
15 spouse has been unable to attain a successful  
16 pregnancy through other applicable infertility  
17 treatments for which coverage is available under the  
18 insurance contract; and
- 19 (6) The in vitro fertilization procedures are performed at  
20 medical facilities that conform to the American  
21 College of Obstetricians and Gynecologists guidelines



1 for in vitro fertilization clinics or to the American  
2 Society for Reproductive Medicine minimal standards  
3 for programs of in vitro fertilization.

4 The benefits available under this subsection shall be covered  
5 expenses directly related to in vitro fertilization services,  
6 and shall not include other pregnancy-related or other post-in  
7 vitro fertilization outpatient services."

8 SECTION 3. Section 432:1-604, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) All individual and group hospital or medical service  
11 plan contracts [~~which~~] that provide pregnancy-related benefits  
12 shall include, in addition to any other benefits for treating  
13 infertility, a one-time only benefit for all outpatient expenses  
14 arising from in vitro fertilization procedures performed on the  
15 subscriber or member or the subscriber's or member's dependent  
16 spouse [7] or the oocyte donor or surrogate of the subscriber or  
17 member or of the subscriber's or member's dependent spouse;  
18 provided that:

19 (1) Benefits under this section shall be gender neutral,  
20 meaning any benefit available for a married couple of  
21 the opposite sex shall also be available for same-sex



1 couples and for women regardless of their marital  
2 status;

3 ~~[(1)]~~ (2) Benefits under this section shall be provided to  
4 the same extent as the benefits provided for other  
5 pregnancy-related benefits;

6 ~~[(2) The patient is a subscriber or member or covered~~  
7 ~~dependent of the subscriber or member,]~~

8 (3) The ~~[patient's]~~ oocytes ~~[are fertilized with the~~  
9 ~~patient's spouse's sperm,]~~ or sperm of the subscriber  
10 or member or of the subscriber's or member's dependent  
11 spouse are used in the in vitro fertilization  
12 procedures;

13 (4) The:

14 (A) ~~[Patient and the patient's spouse have]~~  
15 Subscriber or member or the subscriber's or  
16 member's dependent spouse has a history of  
17 infertility of at least ~~[five years' duration,~~  
18 ~~or]~~ twelve months;

19 (B) Infertility is associated with one or more of the  
20 following medical conditions:

21 (i) Endometriosis;



- 1           (ii) Exposure in utero to diethylstilbestrol,
- 2                           commonly known as DES;
- 3           (iii) Blockage of, or surgical removal of, one or
- 4                           both fallopian tubes (lateral or bilateral
- 5                           salpingectomy); or
- 6           (iv) Abnormal male factors contributing to the
- 7                           infertility; or
- 8           (C) Subscriber or member and the subscriber's or
- 9                           member's spouse are of the same sex;
- 10       (5) The [~~patient~~] subscriber or member or the subscriber's
- 11                           or member's dependent spouse has been unable to attain
- 12                           a successful pregnancy through other applicable
- 13                           infertility treatments for which coverage is available
- 14                           under the contract; and
- 15       (6) The in vitro fertilization procedures are performed at
- 16                           medical facilities that conform to the American
- 17                           College of Obstetricians and Gynecologists guidelines
- 18                           for in vitro fertilization clinics or to the American
- 19                           Society for Reproductive Medicine minimal standards
- 20                           for programs of in vitro fertilization.



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1 The benefits available under this subsection shall be covered  
 2 expenses directly related to in vitro fertilization services,  
 3 and shall not include other pregnancy-related or other post-in  
 4 vitro fertilization outpatient services."

5 SECTION 4. The coverage for in vitro fertilization  
 6 services required under sections 2 and 3 of this Act is not  
 7 intended to apply to the medicaid program.

8 SECTION 5. Statutory material to be repealed is bracketed  
 9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2018.

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INTRODUCED BY: Will Egan  




# S.B. NO. 2633

**Report Title:**

In Vitro Fertilization; Required Insurance Coverage

**Description:**

Removes discriminatory requirements for mandatory insurance coverage of in vitro fertilization procedures to create parity of coverage for same-sex couples, unmarried women, and male-female couples for whom male infertility is the relevant factor.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

