



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Thursday, February 3, 2022
9:30 a.m.
Via Videoconference**

**On the following measure:
S.B. 2669, RELATING TO IN VITRO FERTILIZATION INSURANCE COVERAGE**

Chair Baker and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purpose of this bill is to remove 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.

We note that it is unclear whether the amendments in sections 2 and 3 of this bill, which would require health plans to provide benefits for the oocyte donor or surrogate of the subscriber or member or of the subscriber's or member's dependent spouse, would be construed as "in addition to the essential health benefits" within the meaning of 45 Code of Federal Regulations (CFR) § 155.170(a) or subject to defrayment provisions under 45 CFR § 155.170(b), which apply to benefits "in addition to the essential health benefits."

Testimony of DCCA

S.B. 2669

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For the Committee's information, Hawaii Revised Statutes section 23-51 provides, in part, that "[b]efore any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, [sic] can be considered, there shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report[.]"

Thank you for the opportunity to testify on this bill.

SB-2669

Submitted on: 1/28/2022 6:01:34 PM

Testimony for CPN on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai'i (formerly the LGBT Caucus) fully supports SB 2669.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair and SCC Representative
Stonewall Caucus for the DPH



Testimony of
John M. Kirimitsu
Legal & Government Relations Consultant

Before:
Senate Committee on Commerce and Consumer Protection
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

February 3, 2022
9:30 am
Via Videoconference

Re: SB 2669 Relating to In Vitro Fertilization Insurance Coverage

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

Kaiser Permanente Hawaii would like to request an amendment.

Kaiser Permanente supports parity of coverage to ensure that the same types of in vitro fertilization procedures that are already available for a married couple of the opposite sex shall also be extended equally to same-sex couples and for women regardless of their marital status. However, Kaiser Permanente does not participate in any in vitro fertilization procedures involving *third party-assisted reproduction methods* (for either men or women), including oocyte donor or surrogacy, for any of its members, regardless of sex, sexual orientation or marital status, because of the complex legal issues and inherent medical risks surrounding third party participants, which is especially problematic if these third party participants are not a Kaiser Permanente insured.

1) Medical Risks To Third Party Donors and Surrogates

During the egg donor and surrogate procedures, both the donor and surrogate are required to take a course of medical treatments, including various hormone treatments/injections to prepare the egg for retrieval (induce and stimulate egg production for the egg donor) and also prepare the recipient's body to receive the egg (stop the body's regular hormone production for the surrogate). The purpose of these medications, including estrogen and progesterone injections, is to precisely sync the surrogate's cycle with the donor's cycle.

711 Kapiolani Blvd
Honolulu, Hawaii 96813
Telephone: 808-432-5224
Facsimile: 808-432-5906
Mobile: 808-282-6642
E-mail: John.M.Kirimitsu@kp.org

Therefore, there are inherent medical risks involved in both the egg retrieval and surrogacy. For the egg donor, these risk include potential reactions to the fertility drugs (i.e., ovarian hyper-stimulation syndrome), bleeding, infection, and damage to structures surrounding the ovaries, including the bowel and bladder. For the surrogate, these risks include potential reactions to the fertility drugs, increased risks associated with carrying multiples, i.e. pre-eclampsia, maternal hypertension and gestational diabetes, and in the worse case, serious complications and even death that may occur during the birth process, i.e., amniotic fluid embolism. See, “*Surrogate and Babies Die from Complications In Pregnancy*” by The Stream dated October 17, 2015 found at <https://stream.org/us-surrogate-babies-die-due-complications-pregnancy/>

By passing this bill, health insurers will be responsible and potentially liable for all the risks and consequences relating to medical treatment provided to the third-party egg donor and/or surrogate, which is especially problematic when the third party donors or surrogates are not insured by the health plan.

2) Legal Rights of Egg Donors, Surrogate Recipients and Prospective Parents

There are many potential legal issues that arise when egg donors and surrogates are used by infertile couples. Typically, it is recommended that an attorney, who specializes in reproductive law, draft an Egg Donor Contract or Surrogacy Contract to determine the legal rights of egg donors, surrogates and the prospective parents. Specifically, these legal contracts should address the waiving of parental rights by the donor and/or surrogate, while clearly establishing that any children born from the donated eggs or surrogacy are the legitimate children of the prospective parents. For instance, in traditional surrogacy (in which the surrogate provides the egg) and gestational surrogacy (in which an embryo is placed in the surrogate’s uterus), both can lead to various legal issues with regard to who is the "true" parent of the child - especially in cases where the surrogate mother changes her mind and wishes to keep the baby as her own.

Other specific items that should also be included in these legal contracts are:

- Who are the parties to the agreement?
- Will the egg donor or surrogate be anonymous?
- What fees and expenses will be paid to the egg donor or surrogate by the prospective parents?
- What pre-screening and testing procedures will be utilized by the egg donor or surrogate (some states also require the medical pre-screening of the surrogate’s sexual partner for HIV, etc.)?
- Will the egg donor or surrogate agree to multiple attempts if the initial one fails?
- What happens if there are twins or multiple births?
- Who will obtain guardianship of the child should the prospective parents pass away when the child is still a minor?

- What type of indemnification will be given to the prospective parents if the surrogate or egg donor changes their mind and doesn't go through with the process?

In short, the inclusion of this coverage for egg donor and surrogate services as a financial agreement (to provide coverage) may be misconstrued as an adequate substitute for a formal legal contract (Egg Donor and Surrogate Contract), which may have serious legal and liability consequences against the health insurer, as the provider of such services.

Based on the foregoing, **we ask that this bill be amended by deleting all references to “oocyte donor” and “surrogate,”** given the complex legal issues and inherent medical risks surrounding these third party-assisted reproduction methods.

Thank you for the opportunity to comment.



January 31, 2022

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

Re: SB 2669 – Relating to In Vitro Fertilization Insurance Coverage

Dear Chair Baker, Vice Chair Chang, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2669, which 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.

We appreciate the legislature's intent to encourage access to reproductive services in Hawaii. At HMSA we provide in vitro fertilization benefits to our member, including qualifying women over 18 years of age regardless of their marital status.

We would like to respectfully request the State Auditor to conduct an impact assessment report pursuant to Section 23-51 and 23-53 of the Hawaii Revised Statutes. Should this bill move forward, we respectfully request that the impact assessment be conducted first since this bill creates new mandated benefits that increase costs for our members.

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

Sincerely,

Matthew W. Sasaki
Assistant Vice President
Government & External Relations



LATE

January 31, 2021

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

Senate Bill 2669 – Relating to In Vitro Fertilization Insurance Coverage

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to provide testimony on SB 2669. 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 appreciates the intent of this measure and would like to respectfully request that the State Auditor first conduct an impact assessment report pursuant to HRS 23-51 and 23-53. The bill as currently written would create new mandated benefits that would increase costs for our members.

Thank you for allowing us to provide comments on SB 2669.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

hahp.org | 818 Keeaumoku St., Honolulu, HI 96814 | info@hahp.org

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

SB-2669

Submitted on: 1/28/2022 7:35:26 PM

Testimony for CPN on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support SB2669.

Mike Golojuch, Sr.