
HOUSE CONCURRENT RESOLUTION

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.

1 WHEREAS, certain cancers and cancer treatments or
2 procedures may affect a person's ability to procreate by
3 damaging the person's reproductive organs or otherwise reducing
4 fertility; and

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6 WHEREAS, due to the high costs of fertility preservation
7 procedures and the narrow window to obtain services, the
8 procedure is unattainable for many people; and

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10 WHEREAS, mandated health care coverage for fertility
11 preservation procedures would allow persons who are diagnosed
12 with cancer, and who will undergo treatment that may affect
13 their fertility, to have the opportunity to have a child in the
14 future; and

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16 WHEREAS, the Legislature adopted House Concurrent
17 Resolution No. 9, S.D. 1, Regular Session of 2012, requesting
18 the Auditor to assess the social and financial effects of
19 mandating health insurance coverage for fertility preservation
20 procedures for persons of reproductive age who have been
21 diagnosed with cancer and will undergo treatment that may
22 adversely affect fertility, as further described by House Bill
23 No. 2105 (Regular Session of 2012); and

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25 WHEREAS, in October 2012, the Auditor issued its Report No.
26 12-09, entitled "Mandatory Health Insurance Coverage for
27 Fertility Preservation Procedures for People of Reproductive Age
28 Diagnosed with Cancer"; and



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2 WHEREAS, at the time the report was written, no state
3 required insurance coverage for infertility treatments for
4 people who may become infertile as a result of cancer
5 treatments; further, the Auditor found that insurance coverage
6 for the two fertility preservation procedures proposed in House
7 Bill No. 2105, was not generally available in Hawaii or in other
8 states; and
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10 WHEREAS, the report found that "there is insufficient data
11 to assess the social and financial impacts of mandating
12 insurance coverage. Individuals diagnosed with cancer, who may
13 want to preserve their reproductive ability, must seek the
14 service on their own and bear the full costs, which could be
15 upwards of \$10,000. . . . [B]ut we conclude that the number of
16 people generally utilizing the procedures is unknown and the
17 level of public demand is low"; and
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19 WHEREAS, since that time, more fertility preservation
20 options have been developed and improved and are now recognized
21 as part of the standard of care in oncology treatment; and
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23 WHEREAS, due to significant advances in cancer treatment
24 over the past generation, cancer patients eligible for these
25 treatments, meaning patients ages zero to forty-five, have
26 extremely good chances of survival, often above eighty percent,
27 and therefore deserve mitigation of side effects such as
28 infertility that will adversely impact their subsequent quality
29 of life; and
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31 WHEREAS, in the past four years, eleven states have
32 recognized the need for this coverage and have therefore enacted
33 laws mandating insurance coverage for fertility preservation
34 procedures for cancer patients and others facing potential
35 infertility as result of medical treatment: California,
36 Colorado, Connecticut, Delaware, Illinois, Maryland, New
37 Hampshire, New Jersey, New York, Rhode Island, and Utah; and
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39 WHEREAS, with experience in other states of various size,
40 geography, and demographics; published, detailed reports from
41 California and Connecticut; and potentially more fertility
42 preservation options available now than were available ten years



1 ago, this body finds that the Auditor should be able to evaluate
2 additional experiential data and better assess the social and
3 financial impacts of mandating insurance coverage for fertility
4 preservation procedures for those who have been diagnosed with
5 cancer and whose cancer or cancer treatment may adversely affect
6 their fertility; and
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8 WHEREAS, House Bill No. 2242 and Senate Bill No. 3308,
9 introduced during the Regular Session of 2022, require insurers,
10 mutual benefit societies, and health maintenance organizations
11 to provide coverage for fertility preservation procedures for
12 those who have been diagnosed with cancer or other medical
13 condition or disease and whose cancer or cancer treatment may
14 adversely affect their fertility; and
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16 WHEREAS, pursuant to section 23-51, Hawaii Revised
17 Statutes, before any legislative measure that mandates health
18 insurance coverage for specific health services, specific
19 diseases, or certain providers of health care services as part
20 of individual or group health insurance policies, can be
21 considered, concurrent resolutions shall be passed that
22 designate a specific legislative bill for the Auditor to review
23 and prepare a report for submission to the Legislature that
24 assesses both the social and financial effects of the proposed
25 mandated coverage under that legislative bill; and
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27 WHEREAS, section 23-52, Hawaii Revised Statutes, further
28 specifies the minimum information required for assessing the
29 social and financial impact of the proposed health coverage
30 mandate in the State Auditor's report; now, therefore,
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32 BE IT RESOLVED by the House of Representatives of the
33 Thirty-first Legislature of the State of Hawaii, Regular Session
34 of 2022, the Senate concurring, that the Auditor is requested to
35 assess, in accordance with sections 23-51 and 23-52, Hawaii
36 Revised Statutes, the social and financial effects of mandating
37 health insurance coverage for fertility preservation procedures
38 for certain persons who have been diagnosed with cancer and
39 whose cancer or cancer treatment may adversely affect the
40 person's fertility, as provided in House Bill No. 2242 and
41 Senate Bill No. 3308, Regular Session of 2022; and
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1 BE IT FURTHER RESOLVED that the Auditor is requested to
2 include in the impact assessment report a survey of other states
3 that have implemented a mandate for cryopreservation benefits
4 for those diagnosed with cancer, including any social and
5 financial impacts to those states; and
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7 BE IT FURTHER RESOLVED that the Auditor is requested to
8 research:
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10 (1) If the proposed cryopreservation coverage for those
11 diagnosed with cancer constitutes benefits in excess
12 of the essential health benefits, thus requiring the
13 State to defray such costs;
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15 (2) The standard medical definition of "reproductive age"
16 that is best suited for the proposed cryopreservation
17 procedures for those diagnosed with cancer, including
18 an examination of:
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20 (A) The success rates for different age groups, to
21 determine coverage benefit limitations for this
22 covered benefit; and
23

24 (B) Whether different standards of infertility
25 treatments are applied to different age groups
26 for those diagnosed with cancer;
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28 (3) Public entities, including but not limited to Medicare
29 and Medicaid, and private entities that provide the
30 proposed coverage for cryopreservation procedures for
31 those diagnosed with cancer to determine what is
32 currently being used as a standard for coverage, and
33 what, if any, cost limitations are placed on this
34 coverage benefit; and
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36 (4) The ethical and legal issues surrounding the rights
37 and entitlements with respect to the cryopreserved
38 material, as well as the legal rights of offspring
39 conceived posthumously, including contract remedies
40 such as a cryobank agreement, to address the storage
41 and disposition of the cryopreserved material; and
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1 BE IT FURTHER RESOLVED that the Auditor is requested to
2 examine:

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4 (1) Current medically necessary standards of care used to
5 determine what types of infertility treatment options
6 are available, at a more cost-effective savings than
7 the proposed mandated coverage of cryopreservation
8 procedures provided in House Bill No. 2242 and Senate
9 Bill No. 3308, Regular Session of 2022, that may be
10 best suited for those individuals diagnosed with
11 cancer;

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13 (2) Existing technology in infertility procedures and
14 possible future technology;

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16 (3) Current scientific studies and current medical
17 literature relating to the efficacy of the proposed
18 mandated coverage of cryopreservation procedures for
19 those diagnosed with cancer; and

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21 (4) Whether the scope of coverage for those diagnosed with
22 a cancer that may, or whose cancer treatment may,
23 adversely affect the fertility of the insured should
24 be limited to medically necessary fertility
25 preservation treatments for iatrogenic infertility,
26 meaning an impairment of fertility by surgery,
27 radiation, chemotherapy, or other medical treatment
28 affecting reproductive organs or processes; and

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30 BE IT FURTHER RESOLVED that the Auditor is requested to
31 consider the following questions when researching the ethical
32 and legal issues surrounding rights and entitlements of
33 cryopreserved materials:

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35 (1) How long will the cryopreserved material be preserved;

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37 (2) When and how will the cryopreserved material be
38 destroyed;

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40 (3) Upon the donor's death, who has ownership rights of
41 the cryopreserved material;

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- 1 (4) At the time of the donor's death, who pays for the
- 2 storage of the cryopreserved material;
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- 4 (5) If the donor is married at the time, can the spouse
- 5 use the cryopreserved material to have a baby after
- 6 the donor's death;
- 7
- 8 (6) What will happen to the cryopreserved material if the
- 9 donor and the spouse separate;
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- 11 (7) Can others, such as a spouse, use the cryopreserved
- 12 material posthumously; and
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- 14 (8) Who has legal decision-making authority regarding the
- 15 storage or disposal of the cryopreserved material
- 16 posthumously; and
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18 BE IT FURTHER RESOLVED that the Auditor is requested to
 19 submit a report of its findings and recommendations, including
 20 any proposed legislation, to the Legislature no later than
 21 twenty days prior to the convening of the Regular Session of
 22 2023; and

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 24 BE IT FURTHER RESOLVED that certified copies of this
 25 Concurrent Resolution be transmitted to the Auditor and
 26 Insurance Commissioner who, in turn, is requested to transmit
 27 copies to each organization that issues health insurance
 28 policies in the State that may be affected by this Concurrent
 29 Resolution.

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