

JAN 21 2022

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 further finds that the current unequal
2 treatment of individuals seeking medical fertility assistance
3 constitutes discrimination on the basis of sex, sexual
4 orientation, and marital status. In vitro fertilization
5 procedures are expensive, costing \$10,000 to \$15,000 per cycle,
6 which is approximately half of the average annual disposable
7 income in the United States. Same-sex couples, unmarried women,
8 and male-female couples affected by male infertility must
9 unreasonably bear the full cost of the procedures while male-
10 female married couples for whom female infertility is the
11 relevant factor do 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 dependent spouse are of the
14 same sex;

15 (5) The [~~patient~~] insured or the insured's dependent
16 spouse has been unable to attain a successful
17 pregnancy through other applicable infertility
18 treatments for which coverage is available under the
19 insurance contract; and

20 (6) The in vitro fertilization procedures are performed at
21 medical facilities that conform to the American



1 College of Obstetricians and Gynecologists guidelines
2 for in vitro fertilization clinics or to the American
3 Society for Reproductive Medicine minimal standards
4 for programs of in vitro fertilization.

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

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

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

20 (1) Benefits under this section shall be gender neutral,
21 meaning any benefit available for a married couple of



1 the opposite sex shall also be available for same-sex
2 couples and for women regardless of their marital
3 status;

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

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

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

14 (4) The:

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

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



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



1 The benefits available under this subsection shall be covered
2 expenses directly related to in vitro fertilization services and
3 shall not include other pregnancy-related or other post-in vitro
4 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, 2022.

11 INTRODUCED BY:



S.B. NO. 2669

Report Title:

In Vitro Fertilization; Mandatory Insurance Coverage; Parity

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.

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