
SENATE 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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1 WHEREAS, at the time the report was written, no state
 2 required insurance coverage for infertility treatments for
 3 people who may become infertile as a result of cancer
 4 treatments; further, the Auditor found that insurance coverage
 5 for the two fertility preservation procedures proposed in H.B.
 6 No. 2105, was not generally available in Hawaii or in other
 7 states; and

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 9 WHEREAS, the report found that "there is insufficient data
 10 to assess the social and financial impacts of mandating
 11 insurance coverage. Individuals diagnosed with cancer, who may
 12 want to preserve their reproductive ability, must seek the
 13 service on their own and bear the full costs, which could be
 14 upwards of \$10,000. . . . [B]ut we conclude that the number of
 15 people generally utilizing the procedures is unknown and the
 16 level of public demand is low"; and

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 18 WHEREAS, since that time, more fertility preservation
 19 options have been developed and improved and are now recognized
 20 as part of the standard of care in oncology treatment; and

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 22 WHEREAS, due to significant advances in cancer treatment
 23 over the past generation, cancer patients eligible for these
 24 treatments, meaning patients ages zero to forty-five, have
 25 extremely good chances of survival, often above eighty percent,
 26 and therefore deserve mitigation of side effects such as
 27 infertility that could adversely impact their subsequent quality
 28 of life; and

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 30 WHEREAS, in the past four years, eleven states have
 31 recognized the need for this coverage and have therefore enacted
 32 laws mandating insurance coverage for fertility preservation
 33 procedures for cancer patients and others facing potential
 34 infertility as result of medical treatment, which include:
 35 California, Colorado, Connecticut, Delaware, Illinois, Maryland,
 36 New Hampshire, New Jersey, New York, Rhode Island, and Utah; and

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 38 WHEREAS, now, with experience in other states of various
 39 size, geography, and demographics; published, detailed reports
 40 from California and Connecticut; and potentially more fertility
 41 preservation options available now than were available ten years
 42 ago, this body finds that the Auditor should be able to evaluate



1 additional experiential data and better assess the social and
2 financial impacts of mandating insurance coverage for fertility
3 preservation procedures for those who have been diagnosed with
4 cancer and whose cancer or cancer treatment may adversely affect
5 their fertility; and

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7 WHEREAS, House Bill No. 2242 and Senate Bill No. 3308,
8 introduced during the Regular Session of 2022, require insurers,
9 mutual benefit societies, and health maintenance organizations
10 to provide coverage for fertility preservation procedures for
11 those who have been diagnosed with cancer or other medical
12 condition or disease and whose cancer or cancer treatment may
13 adversely affect their fertility; and

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15 WHEREAS, pursuant to section 23-51, Hawaii Revised
16 Statutes, before any legislative measure that mandates health
17 insurance coverage for specific health services, specific
18 diseases, or certain providers of health care services as part
19 of individual or group health insurance policies, can be
20 considered, concurrent resolutions shall be passed that
21 designate a specific legislative bill for the Auditor to review
22 and prepare a report for submission to the Legislature that
23 assesses both the social and financial effects of the proposed
24 mandated coverage under that legislative bill; and

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26 WHEREAS, section 23-52, Hawaii Revised Statutes, further
27 specifies the minimum information required for assessing the
28 social and financial impact of the proposed health coverage
29 mandate in the State Auditor's report; now, therefore,

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31 BE IT RESOLVED by the Senate of the Thirty-first
32 Legislature of the State of Hawaii, Regular Session of 2022, the
33 House of Representatives concurring, that the Auditor is
34 requested to assess, in accordance with sections 23-51 and 23-
35 52, Hawaii Revised Statutes, the social and financial effects of
36 mandating health insurance coverage for fertility preservation
37 procedures for certain persons who have been diagnosed with
38 cancer and whose cancer or cancer treatment may adversely affect
39 the person's fertility, as provided in House Bill No. 2242 and
40 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 in the United States that have implemented a mandate for
4 cryopreservation benefits for those diagnosed with cancer and to
5 examine what the social and financial impact has been in those
6 states; and
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8 BE IT FURTHER RESOLVED that the Auditor is requested to
9 research whether the proposed cryopreservation coverage for
10 those diagnosed with cancer constitutes benefits that are in
11 excess of the essential health benefits, thus requiring the
12 State to defray such costs; and
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14 BE IT FURTHER RESOLVED that the Auditor is requested to
15 research what is being used as the standard medical definition
16 of "reproductive age" that is best suited for the proposed
17 cryopreservation procedures for those diagnosed with cancer and
18 to examine the success rates for the different age groups to
19 determine coverage benefit limitations for this proposed covered
20 benefit, including an examination of whether different standards
21 of infertility treatments are applied to different age groups
22 for those diagnosed with cancer; and
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24 BE IT FURTHER RESOLVED that the Auditor is requested to
25 research public entities (including but not limited to Medicare
26 and Medicaid) and private entities that provide the proposed
27 coverage for cryopreservation procedures for those diagnosed
28 with cancer and to determine what is currently being used as a
29 standard for coverage, including what, if any, cost limitations
30 are placed on this coverage benefit; and
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32 BE IT FURTHER RESOLVED that the Auditor is requested to
33 examine current medically necessary standards of care used to
34 determine what types of infertility treatment options are
35 available, at a more cost-effective savings than the proposed
36 cryopreservation procedures, which may be best suited for
37 individuals diagnosed with cancer, and to examine the existing
38 technology in infertility procedures and possible future
39 technology; and
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41 BE IT FURTHER RESOLVED that the Auditor is requested to
42 examine current scientific studies and current medical



1 literature relating to the efficacy of the proposed
2 cryopreservation procedures for those diagnosed with cancer; and
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4 BE IT FURTHER RESOLVED that the Auditor is requested to
5 examine whether the scope of coverage for those "diagnosed with
6 a cancer that may, or whose treatment may, adversely affect the
7 fertility of the insured" is limited to medically necessary
8 fertility preservation treatments for "iatrogenic infertility",
9 meaning an impairment of fertility by surgery, radiation,
10 chemotherapy, or other medical treatment affecting reproductive
11 organs or processes; and
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13 BE IT FURTHER RESOLVED that the Auditor is requested to
14 research the ethical and legal issues surrounding the rights and
15 entitlements with respect to the cryopreserved material, as well
16 as the legal rights of offspring conceived posthumously,
17 including contract remedies (for example, cryobank agreements)
18 to address the storage and disposition of the cryopreserved
19 material, and to consider the following:
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- 21 (1) How long will the cryopreserved material be preserved;
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23 (2) When and how will the cryopreserved material be
24 destroyed;
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26 (3) Upon a donor's death:
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28 (A) Who has ownership rights of the cryopreserved
29 material;
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31 (B) Who pays for the storage of the cryopreserved
32 material; and
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34 (C) If the donor is married at the time, whether the
35 spouse can use the cryopreserved material to have
36 a baby after the donor's death;
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38 (4) What will happen to the cryopreserved material if the
39 donor and their spouse separate; and
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41 (5) Whether others can use cryopreserved material
42 posthumously and who has the legal decision-making



1 authority as to the storage or disposal of the
2 cryopreserved material posthumously; and
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4 BE IT FURTHER RESOLVED that the Auditor is requested to
5 submit a report of its findings and recommendations, including
6 any proposed legislation, to the Legislature no later than
7 twenty days prior to the convening of the Regular Session of
8 2023; and
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10 BE IT FURTHER RESOLVED that certified copies of this
11 Concurrent Resolution be transmitted to the Auditor and
12 Insurance Commissioner who, in turn, is requested to transmit
13 copies to each organization that issues health insurance
14 policies in the State that may be affected by this Concurrent
15 Resolution.

