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# 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

17  
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

29  
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

37  
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  
14

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  
13

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;  
25  
26 (3) Upon a donor's death:  
27  
28 (A) Who has ownership rights of the cryopreserved  
29 material;  
30  
31 (B) Who pays for the storage of the cryopreserved  
32 material; and  
33  
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;  
37  
38 (4) What will happen to the cryopreserved material if the  
39 donor and their spouse separate; and  
40  
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.

