

HB

440

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STATE OF ALASKA  
THE LEGISLATURE

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May, 1988

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Mary Van Nimwegen

*House Hess:*

*April 7, 1988*

*April 21, 1988*

*April 26, 1988*

*April 28, 1988*

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+ft

## Anchorage Obstetrics & Gynecology

Richard T. Nist, M.D.  
Diplomate of the American Board  
Fellow, American College  
of Obstetrics and Gynecology

Robert G. Thompson, M.D.  
Diplomate of the American Board  
of Obstetrics & Gynecology

March 16, 1988

The Honorable Dave Donnelly  
P.O. Box V  
Juneau AK 99811

RECEIVED  
MAR 22 1988

RE: House Bill No. 440

Dear Representative Donnelly:

I am sending this letter as a physician's statement in support of House Bill No. 440 entitled "An Act Relating to Insurance Company Coverage for the Treatment of Infertility", which is currently before the Alaska State Legislature.

WHEREAS one out of every six couples of childbearing age in the State of Alaska, consistent with elsewhere in the United States, is currently unable to conceive for one year of regular sexual relations, defined as infertility or having an infertility problem, and

WHEREAS 15% of couples of usual childbearing age from 22-40 are currently unable to conceive after one year of effort, and

WHEREAS over 90% of single mothers today are retaining their babies instead of considering adoption, making less babies available for adoption as an option for the fertility or completion of families in these particular couples, and

WHEREAS most of these couples are currently employed and paying for insurance with pregnancy-related coverage which they may never be able to utilize, and

WHEREAS the diagnosis and treatment of infertility is no longer considered experimental in any way, shape, or form in modern medical practice with overall success rates of 70-80% in treatment of some medical problems related to fertility including a 50% success rate after three attempts of in-vitro fertilization, indicating a significant resolution of a large number of fertility cases, and

WHEREAS involuntary childlessness creates a tremendous social impact on society, pervading every waking moment, making the couples' decisions for the future nearly impossible, and creating stressful events that significantly threaten their well-being and psychosocial health, and

WHEREAS most problems related to infertility or inability to conceive are related to specific medical treatments that may otherwise be covered in most circumstances or specific medical instances, e.g. endometriosis; however, in the case of the patient trying to conceive where her chart reveals that the treatment of this condition is related to fertility, insurance companies may

The Honorable Dave Donnelly

March 16, 1988

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have the right or the option to deny payment or reimbursement for such treatment, and

WHEREAS the insurance companies' current ability to discriminate against the patients with a diagnosis of infertility in selective payment of their medical costs represents an outright injustice in their fair treatment of medical problems which may normally be covered and may have come to light only with the onset of evaluation for fertility reasons in many cases, in addition to the fact mentioned above that these patients are paying for coverage which they are not able to utilize, i.e. pregnancy-related coverage.

BE IT RESOLVED THEREFORE, that it is my opinion that the legislators of the State of Alaska should strongly consider support of House Bill No. 440, which is receiving the same overwhelming support in other states as it originally received in the State of Massachusetts where a similar bill was passed in 1987. This bill states that infertility is defined, and correctly so, that basically the individual who is unable to conceive and has been attempting to do so for at least one year and is now under medical treatment, which may in some cases be required to achieve a successful conception, must be covered by her insurance company to the same extent that she would be covered for the cost of medical care that she would be receiving if she were pregnant and under a physician's care.

LET IT BE FURTHER RESOLVED that these patients, as stated above, are currently paying for pregnancy-related coverage which they may not be able to utilize in many cases. Medical insurance companies' ability to discriminate against these people in regards to receiving medical care for the diagnosis and treatment of their fertility-related condition is an outright injustice and implies discrimination, specifically against these couples.

LET IT BE FURTHER RESOLVED that it is quite clear that any choice but to support this legislation would be considered supporting the discrimination of selective reimbursement by insurance companies against one-sixth of couples in the State of Alaska whose mere problem is that they want to have a baby.

FINALLY, LET IT BE RESOLVED that the diagnosis and treatment of infertility or fertility problems does not imply specifically that there is a serious or life threatening problem for this particular couple but merely a problem with which medical therapy or specific treatment, and in some cases surgery, may help them to successfully enjoy the blessings of completing their Alaskan family. I encourage you to consider this bill carefully and hope that you will arrive at the same conclusion that I have outlined above, that this bill needs to be supported and passed.

Sincerely,

  
Robert G. Thompson, M.D.

DIST: Editor, Anchorage Times  
Editor, Daily News

RGT:smc

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/26/88

FURTHER REFERRALS: Judiciary

DATE: 4-28-88

The Health, Education and Social Services Committee has considered HB 440

"An Act relating to insurance coverage for treatment of infertility."

**RECOMMENDS:**

- replace with CS HB 440 (HESS)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

*[Signature]*  
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**SIGNING OTHER RECOMMENDATIONS:**

*[Signature]* - no rec  
 \_\_\_\_\_  
*Mr. [Signature] do pass with amendment #4*  
 \_\_\_\_\_  
*David Duley (no rec)*  
 \_\_\_\_\_  
*Hy Ellis (no rec)*  
 \_\_\_\_\_  
*Raymond [Signature] (no-rec)*  
 \_\_\_\_\_  
 \_\_\_\_\_

*[Signature]*  
 \_\_\_\_\_  
 Co Chairman's signature  
*[Signature]*

AMENDMENT # 1 TO CSHB 440 (HESS)

Page 3, line 1

Delete the "infertility" insert infertility and pregnancy

AMENDMENT # 2 TO CSHB 440 (HESS)

Page 1, line 23

after the word "hospital" insert service corporation

Page 2, 8

after the word "hospital" insert service corporation

Page 2, line 22

after the word "hospital" insert service

after the words "medical service" insert  

Page 4, line 16

after the word "hospital" insert service subscriber

AMENDMENT # 3 TO CSHB 440 (HESS)

Page 3, line 7-8

delete "the American Infertility Society or"

Page 3, line 15-16

delete "the American Infertility Society or"

AMENDMENT #1 TO CSHB 440 (HESS)

Page 3, Lines 10-13

(e) (3) Delete this subsection

**Insert**

(3) "infertility" means the condition of a presumably healthy individual who is unable to conceive or produce conception. It shall be conclusively presumed that a person is infertile if they have been unable to conceive or produce conception after a year of unprotected intercourse, or if they are diagnosed by a physician as being unable to conceive or produce conception without treatment.

AMENDMENT # 5 TO CSHB 440 (HESS)

Page 1, line 12

After "renew a" insert group

Page 2, lines 20-26 through "(2)"

Delete all language

AMENDMENT # 6 TO CSHB 440 (HESS)

Page 2, line 2

after the word "period" insert  
regarding fertility benefits

Page 2, line 4

after the word "coverage" insert  
regarding infertility benefits

5-1772X ✓  
Ford  
4/21/88

Original sponsor: Menard

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 440 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance coverage for pregnancy  
7 and infertility."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 21.42 is amended by adding a new section to read:

10 Sec. 21.42.365. COVERAGE FOR PREGNANCY AND INFERTILITY. (a) An  
11 insurer authorized under AS 21.09 to offer, issue for delivery, de-  
12 liver, or renew a disability insurance policy for medical coverage on  
13 an expense incurred basis in the state, or a hospital or medical ser-  
14 vice corporation authorized under AS 21.87 to offer or renew a sub-  
15 scriber's contract for medical coverage in the state, that provides  
16 coverage for hospital and surgical expenses, shall also provide, to  
17 the same extent that benefits are provided for medical conditions  
18 other than pregnancy and infertility, coverage for

19 (1) medically necessary expenses of prenatal care, child-  
20 birth, and postpartum care; and

21 (2) all nonexperimental infertility procedures, including  
22 artificial insemination, in vitro fertilization, and embryo placement.

23 (b) The insurer, hospital, or medical service corporation pro-  
24 viding benefits to a covered person under this section may not

25 (1) limit coverage for pregnancy or infertility-related  
26 drugs unless the limitation is imposed on other prescription drugs;

27 (2) exclude from coverage costs associated with sperm, egg,  
28 or inseminated egg procurement, processing, and banking, if the donor  
29 is the covered spouse;

1 (3) impose a preexisting condition exclusion or preexisting  
2 condition waiting period;

3 (4) use a prior diagnosis of, or prior treatment for infer-  
4 tility to exclude, limit, or restrict coverage;

5 (5) impose a deductible, copayment, coinsurance, benefit  
6 maximum, or waiting period that is different than that imposed on  
7 benefits provided for coverage of other medical expenses.

8 (c) The insurer, hospital, or medical service corporation may

9 (1) deny coverage for

10 (A) an experimental infertility procedure, including  
11 but not limited to, gamete intra-fallopian transfer;

12 (B) surrogacy;

13 (C) reversal of voluntary sterilization;

14 (D) the fourth or greater in vitro fertilization  
15 cycle;

16 (2) establish eligibility requirements related to the  
17 covered person's medical history;

18 (3) establish standards relating to provider contracts.

19 (d) Notwithstanding (a) of this section

20 (1) if the disability insurance policy is not a group  
21 insurance policy but is provided to an individual, the insurer, hospi-  
22 tal, or medical service corporation is not required to provide infer-  
23 tility or pregnancy coverage specified in (a) of this section to the  
24 insured or subscriber but shall offer that coverage to the insured or  
25 subscriber; and

26 (2) if the disability insurance is a group policy and the  
27 insured is an employer with fewer than 15 permanent, full-time employ-  
28 ees for each working day during each of at least 20 calendar work-  
29 weeks in the preceding 12 months, the insurer is not required to

1 provide the infertiltiy coverage specified in (a) of this section to  
2 the insured but shall offer that coverage to the insured.

3 (e) In this section

4 (1) "covered person" means the insured or subscriber or the  
5 insured or subscriber's covered spouse or dependent child;

6 (2) "experimental infertility procedure" means a procedure  
7 not yet recognized as generally accepted or nonexperimental by the  
8 American Fertility Society or the American College of Obstetrics and  
9 Gynecology;

10 (3) "infertility" means the condition of a presumably  
11 healthy individual who is unable to conceive or produce conception for  
12 a period of at least one year of unprotected intercourse before diag-  
13 nosis and treatment for infertility;

14 (4) "nonexperimental infertility procedure" means a proce-  
15 dure recognized as generally accepted or nonexperimental by the Ameri-  
16 can Fertility Society or the American Society of Obstetrics and Gyne-  
17 cology.

18 \* Sec. 2. AS 21.87.340 is amended to read:

19 Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the  
20 provisions contained or referred to previously in this chapter, the  
21 following chapters and provisions of this title also apply with re-  
22 spect to service corporations to the extent applicable and not in  
23 conflict with the express provisions of this chapter and the reason-  
24 able implications of the express provisions, and for the purposes of  
25 the application the corporations shall be considered to be mutual  
26 "insurers":

27 (1) AS 21.03

28 (2) AS 21.06

29 (3) AS 21.09, except AS 21.09.090

- 1 (4) AS 21.18.010  
2 (5) AS 21.18.030  
3 (6) AS 21.18.040  
4 (7) AS 21.18.120  
5 (8) AS 21.21.321  
6 (9) AS 21.36  
7 (10) AS 21.69.400  
8 (11) AS 21.69.520  
9 (12) AS 21.69.600, 21.69.620, and 21.69.630  
10 (13) AS 21.78  
11 (14) AS 21.90  
12 (15) AS 21.42.345 - 21.42.365 [AS 21.42.345 AND 21.42.355]  
13 (16) AS 21.89.040  
14 (17) AS 21.89.050.

15 \* Sec. 3. AS 21.42.365, enacted by sec. 1 of this Act, applies to  
16 disability insurance policies and to hospital or medical service subscriber  
17 contracts entered into or renewed on or after the effective date of this  
18 Act.

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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

April 25, 1988

MEMORANDUM

TO: Representative Niilo Koponen

ATTN: Lisa McLaren

FROM: Patricia Brawley *pb*  
Legislative Analyst

RE: Infertility Treatments--Costs and Success Rates  
Research Request 88.222 (Supplemental Information)

You wished to know 1) if those states which mandated maternity coverage after the federal Pregnancy Discrimination Act of 1978 extended that coverage to groups of 15 or fewer employees (small groups), 2) if states which mandate coverage for infertility and maternity extend that coverage to small groups, and 3) if coverage in those states extends to costs of surrogacy and/or adoption.

As you may know, the federal Pregnancy Discrimination Act of 1978 is an amendment to the Civil Rights Act of 1964. As a result of its placement in that law, the Pregnancy Discrimination Act contains three significant loopholes: it applies only to employment related group policies and does not apply to self-insured groups or to individuals; it applies only to employees and spouses and thereby excludes coverage for dependents; and it applies only to groups of more than 15 employees and thereby excludes coverage for small groups.

According to Greg Scandlen's "State Mandated Health Care Coverage Laws (Enacted Through June, 1987)," Office of Government Relations, State Services Department, Blue Cross and Blue Shield Association, four states--Massachusetts, Ohio, Tennessee, and Wisconsin--have mandated maternity coverage since passage of the 1978 act. Discussions with Mr. Scandlen and Department of Insurance representatives from the states have shown that the chart is misleading in its lack of specificity. Guy Ford, Legislative Liaison for Ohio's Division of Insurance, checked with the Ohio Civil Rights Commission and indicated that, to the best of his knowledge,

Representative Koponen

April 25, 1988

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Ohio has no specific maternity laws. Sharon Robeson of the Tennessee Division of Insurance indicated that Tennessee requires that maternity coverage be offered to all groups of eight employees or more. Wisconsin law, according to a representative of the Wisconsin Division of Insurance, provides that for all groups with maternity benefits, coverage will extend to spouses and dependent children. Massachusetts law, by all accounts, extends maternity benefits to all groups and to individuals. Information on which states have mandated maternity coverage for small groups has proven elusive within the time frame of this request; nevertheless, an interesting statistic was supplied by Rachel Gold, Associate for Policy Analysis with the Alan Guttmacher Institute: a Small Business Administration survey conducted in 1987 showed that only 18 percent of small group policies offered nationwide do not include maternity coverage.

Representatives from each of the five states which currently mandate insurance coverage for in vitro fertilization--Arkansas, Hawaii, Maryland, Massachusetts, and Texas--indicated that though no specific language addresses coverage for small groups, in each state, all groups are covered.

Laws in Arkansas, Hawaii, Maryland, and Texas are silent on the questions of coverage for adoption and/or surrogacy expenses, and benefits are considered not included. The law in Massachusetts does not address adoption expenses, and benefits are considered not included; in recent regulations, however, Massachusetts specifically excluded surrogacy from the list of covered benefits.

HEALTH INSURANCE ASSOCIATION OF AMERICA  
POSITION PAPER IN OPPOSITION TO HB440

April 21, 1988

My name is Gordon Evans and I represent the Health Insurance Association of America ("HIAA"), which is a national trade association of the private health insurance industry. Its members include more than 330 companies writing over 85% of the health insurance policies written by private insurance companies in the United States. Blue Cross and Blue Shield plans are not HIAA members.

HIAA opposes enactment of HB440, which would mandate coverage of in vitro fertilization. While it is true that in vitro fertilization procedures have advanced in the past five years to the point where they are no longer considered experimental or investigational, requiring insurance coverage of this procedure just isn't good public policy -- particularly in light of increased public concern over health care costs.

HIAA strongly opposes mandated coverage of in vitro fertilization for a number of reasons:

\* First, passage of an in vitro fertilization mandate would increase health care costs for employers, employees and other consumers while benefiting only a very small segment of the population. As with all mandates, this mandate would deny consumers the right to purchase coverages that conform with their values and with their ability to pay.

\* In vitro fertilization procedures are expensive, particularly since, in most cases, multiple attempts are needed to achieve pregnancy and live birth. Success rates differ among facilities performing in vitro fertilization, but the average success rate is estimated at between 21 to 25 percent. Tests and treatment involved can cost between \$3,000 and \$7,000 per procedure. Thus, considering the cost of each procedure and the number of procedures required before successful pregnancy is achieved, the cost per couple could reach between \$12,000 and \$35,000 for the procedures alone.

\* An even more important reason for opposing mandated coverage of in vitro fertilization is that it is not really treatment of an illness or injury. Rather it is an elective procedure. The five-step procedure -- patient selection, induction of ovulation and monitoring, ova aspiration or retrieval, fertilization of the ova under strictly controlled laboratory conditions, and transfer of the embryo into the uterus -- is considered primarily a service procedure.

\* Finally, mandating coverage of in vitro fertilization is contrary to the continuing efforts on the part of labor, business, health insurers, consumer groups, and local, state and federal government bodies to contain health care costs. Mandating coverage of this procedure could motivate

employers to self-insure in order to avoid the added costs imposed by mandates. Essentially, when state law requires the purchase of certain benefits, whether they are wanted or not, the cost of those benefits becomes a non-negotiable item. The employee must take them, the employer must buy them, and the carrier must sell them, even if nobody wants them. The amount of money thus committed by law is unavailable to pay for other benefits which employees may want much more and which employers may feel are more important to provide. In other words, the added cost of requiring certain benefits in group health insurance policies could force employers either to drop other benefits for which there is greater demand or to become self insured and therefore exempt from providing the mandated levels.

At a time when the marketplace is involved in cost containment activities, it is disturbing and counter productive for the State Legislature to foster cost increases by mandating health care benefits.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

April 19, 1988

MEMORANDUM

TO: Representative Niilo Koponen

ATTN: Lisa McLaren

FROM: Patricia Brawley *pb*  
Legislative Analyst

RE: Infertility Treatments--Costs and Success Rates  
Research Request 88.222 (Revised)

You asked this agency to provide information on the success rates of various infertility treatments, the success rates of individual clinics offering such treatments, and the costs involved. You also requested a comparison of costs and coverage for states which mandate infertility insurance coverage. Finally, you wished to know which states mandate pregnancy/maternity insurance.

Infertility Treatments--Success Rates of Procedures and Clinics

Several procedures for the treatment of infertility are currently being tested, many of them involving donors or surrogates. The most common nonexperimental procedures which do not necessarily involve donors of sperm or eggs are hormonal treatments, in vitro fertilization (IVF) and artificial insemination by husband (AIH). Neither IVF nor AIH will be successful, of course, if the fertility problem is with the male. According to current data, "when the causes of a couple's infertility are investigated, a male problem is found primarily responsible forty percent of the time, a female problem forty percent of the time, and a combination twenty percent of the time."<sup>1</sup>

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<sup>1</sup>Lori B. Andrews, J.D., New Conceptions: A Consumer's Guide to the Newest Infertility Treatments, Including In Vitro Fertilization, Artificial Insemination, and Surrogate Motherhood (New York: St. Martin's, 1984), p. 3.

The American Fertility Society recently established a national registry of IVF, embryo transfer (ET), and related practices. The main purpose of the IVF/ET Registry is to document pregnancy and birth outcomes (not, however, by individual clinic). Accurate, meaningful statistics would enable providers to identify optimal treatments for different patient groups, and to detect and measure possible adverse health effects on patients and their offspring. "In Vitro Fertilization/Embryo Transfer in the United States: 1985 and 1986 Results from the National IVF/ET Registry," published in the February 1988 issue of Fertility and Sterility, summarizes the first data collected and analyzed through a survey of clinics which perform these procedures in the U.S. (Attachment A). Forty-one clinics supplied the voluntary data and therefore serve as the basis for the result summary. Participation is voluntary, criteria may vary, and there is no form of peer review involved at any level. According to the author, Richard P. Marrs, M.D., the "statistics . . . should be interpreted with caution, due mainly to the restrictive nature of the data collection forms used."

Because there are no federal standards for IVF programs and no reporting requirements, establishing meaningful success rates for either individual treatments or for individual clinics is not currently possible. Criteria for judging success rates may differ with each clinic.

The figures a clinic quotes can be misleading in a number of ways. Some cite success rates achieved by the best IVF programs instead of their own. Others may state the number of 'chemical' pregnancies, determined by a very early blood test; many of these never go on to become 'clinical' pregnancies, which involve the presence of a fetal heartbeat. Even when success rates are described in terms of live births, it is crucial to know the denominator for that figure: is it the total number of women who have been accepted by the program? [And what are the acceptance criteria?] Is it only the group from whom eggs have been retrieved? Those in whom an embryo has been implanted? The same clinic's success rate can vary tremendously--from perhaps five percent to almost thirty percent--depending on which criteria are used... 'IVF has become a terribly competitive field,' says Dr. Alan DeCherney, director of reproductive endocrinology at Yale University Hospital's IVF clinic, 'and the means by which the clinics compete is by statistics.'<sup>2</sup>

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<sup>2</sup>"The Grueling Baby Chase," Newsweek, November 30, 1987, pp. 79-81. For an excellent discussion of the issue of success rates, see Chris Anne Raymond's "In Vitro Fertilization Enters Stormy Adolescence as Experts Debate the Odds," Journal of the American Medical Association, January 22 - 29, 1988, p. 464 (3)--Attachment B.

Joyce Zeitz, Public Relations Coordinator of the American Fertility Society, indicates that there are approximately 260 clinics worldwide which are actively engaged in providing IVF treatments; 170 of them are in the U.S. (Attachment C). Of these, the American Fertility Society recognizes 64 as "accepted"--or meeting their minimal standards criteria. (See Attachment D for list and minimal standards.) Criteria include that at least one staff member has the "experience and training required for board certification in reproductive endocrinology." The American Board of Obstetrics and Gynecology lists 262 individuals as having reproductive endocrinology subspecialty certification (Attachment E).

The insurance industry predicts that the number of clinics will continue to grow as the infertility rate continues to increase and insurance coverage becomes available. Without some form of standard accreditation and review, however, a ready availability may not truly serve consumers.

#### Cost of Infertility Treatments

Treatment expenses vary sharply. "A typical charge for one artificial insemination is \$75. Usually, two or three are performed during each monthly cycle, and four of every five couples achieve a pregnancy within six months. Women who take Pergonal, a fertility drug, are on a \$1,000-a-month regimen."<sup>3</sup> Each IVF procedure costs between \$4,000 and \$6,000, and several tries are often necessary. Also, IVF treatments frequently require that couples find lodging close to the clinic for the ten days required for each cycle.

#### Mandatory Insurance Coverage for Infertility by States--Costs and Coverage

In spite of the success rate dilemma, three clinics are generally considered to be responsible for the majority of all IVF live births in this country: the Jones Institute for Reproductive Medicine in Norfolk, Virginia; the Cedars-Sinai Medical Center in Los Angeles; and the Northern Nevada Fertility Center in Reno, Nevada. Monash University's Queen Victoria Medical Centre in Melbourne, Australia, is frequently cited as the world's most successful IVF center. According to a December, 1985 interview with Alan Trounson, lead researcher at the clinic, research

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<sup>3</sup>Lewis J. Lord, et al., "Desperately Seeking Baby: Ten Million Americans are Struggling to Have Children," U.S. News & World Report, October 5, 1987, p. 58 (6).

techniques--including embryo freezing--used in Australia were at that time far in advance of those being used in the United States, and success rates were also far higher. At that time, the Queen Victoria clinic reportedly had produced more live IVF births than all of the IVF clinics in the U.S.<sup>4</sup> I was unable to locate statistics on the current Australian success rates, but as with the U.S. clinics, criteria used are determined by the clinic, and comparisons may not be useful.

Arkansas, Hawaii, Maryland, Massachusetts, and Texas all currently mandate insurance coverage for infertility. (California is once again considering the possibility.) In 1985 Maryland became the first state to mandate coverage for infertility; the other states enacted such legislation in 1987, and are currently in the process of incorporating the coverage. Because statistics on costs and utilization of coverage are not available for states other than Maryland, I will provide the available Maryland figures and a brief comparative analysis of the coverage provided by the different states.<sup>5</sup>

The laws in each of these four states say that insurers will provide, to the same extent that benefits are provided for other pregnancy-related procedures, coverage for infertility. Beyond that, they vary in several ways. Texas law covers group, but not individual, policies; and coverage is not actually mandated, it is a mandated option. Insurers must offer the coverage; however, employers need not accept it. Coverage is for IVF only. To qualify, a couple must have a continuous five-year history of infertility, unless the infertility is associated with endometriosis, exposure in utero to diethylstilbestrol (DES), blockage or one or both fallopian tubes, or oligospermia (a scarcity of sperm in the semen). They must have tried less costly procedures. Treatments must be performed in medical facilities which conform to the American College of Obstetricians and Gynecologists' guidelines for such clinics, or to the American Fertility Society's minimal standards for such programs. (See Attachment F for full text.)

The law in Hawaii provides for both individual and group coverage. The condition of oligospermia is broadened to "abnormal male factors contributing to the infertility"; however, there is a restriction in IVF that the sperm must be supplied by the husband of the patient. Because "abnormal male factors" are the cause of 40 percent of couple infertility, this restriction may become a problem. The most distinctive feature of Hawaii's statute is its limiting of IVF coverage to one procedure. (See Attachment G for full text.)

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<sup>4</sup>Robert Weil, "Alan Trounson: Interview," Omni, December 1985, p. 82 (8).

<sup>5</sup>This comparison will exclude Arkansas: the Insurance Department Legislative Liaison was unable to provide any information about it within the time constraints of this project.

Unlike the laws in Texas and Hawaii, "infertility" in Massachusetts is defined as "the condition of a presumably healthy individual who is unable to conceive or produce conception during a period of one year." Thus, diagnosis and treatments are available to both sexes without the five year wait. Problems may arise due to the lack of limits to the number of IVF procedures allowed. Also of concern to insurers is the Division of Insurance regulation that procedures currently defined as experimental will automatically be covered at such time as their definitions are changed to nonexperimental. Procedures are defined as experimental or nonexperimental by the American College of Obstetricians and Gynecologists. Insurers believe that the connection between receiving payment for services and the classification of treatment is a conflict of interest situation, and they would prefer that treatments receive their classification from a more neutral party such as the Department of Public Health. (See Attachment H for full text.)

More narrow in its coverage than Massachusetts, Maryland law provides for IVF treatments and artificial insemination by husband (AIH) only. Criteria for eligibility are very strict and focus primarily on female infertility. Criteria include that the woman be married; that the sperm used be her husband's; and that she and her husband, as a couple, have a history of infertility of at least five years' duration unless the infertility is associated with endometriosis, exposure in utero to DES, and/or blockage or surgical removal of one or both fallopian tubes. Under this law, couples are denied treatment unless the fertility problem rests with the woman. In addition to discriminating against infertile men, this law appears to give preferential treatment to women who have undergone voluntary sterilization.<sup>6</sup> (See Attachment I for full text.)

Maryland's infertility benefits began in 1986. Since then, approximately 925 couples have submitted preauthorization forms (500 for IVF, 425 for AIH) through their physicians. These numbers, however, do not necessarily reflect the numbers of couples who have subsequently undergone treatment. Also, no statistics which reflect the number of procedures each couple received were available. Robert Sirian, Director of Actuarial Projects, Blue Cross-Blue Shield of Maryland--cautioning that his figures are both preliminary and tentative--indicated that in 1986 the total incurred cost had been about \$312,000, resulting in a seven cent increase per covered party per month.<sup>7</sup> This is far below even the most conservative overall

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<sup>6</sup>Gail Harris, Senior Analyst in Medical Policy Development, Blue Cross-Blue Shield of Maryland indicates that no charges of discrimination have yet arisen over either aspect of the law.

<sup>7</sup>This figure represents costs for IVF and AIH only. Services and treatments related to these procedures, such as blood work, ultrasound, and laparoscopy--each of which costs over \$1,000--would not be included in this figure because they are generally already covered and because there is no system to document the relationship to IVF or AIH.

Representative Koponen  
April 19, 1988  
Page 6

cost predictions made by the insurance industry. Mr. Sirian indicated, however, that the number of treatment facilities is expected to increase steadily, and utilization of coverage and cost are expected to rise proportionately to a level of between \$9 and \$13 million annually, resulting in an increase for covered parties of \$2 to \$3 per month. (I will forward a copy of their just-released "Mandated Benefits Summary" to you upon its arrival.)

While Maryland's inclusion of coverage for infertility treatments appears not to have had the financial impact sometimes predicted, the potential for significant impact is still present--as it is for any state which does not set some limit to the number of IVF procedures allowed, or to the number of other costly procedures which may at some future date gain nonexperimental classification and coverage. Insurance representatives in both Maryland and Massachusetts expressed concern over the lack of such limits. In addition, the lack of a standard accreditation and review process for clinics is of wide concern. Carefully worded laws, carefully designed systems for monitoring and evaluating procedure and clinic success rates, and carefully designed systems for tracking utilization and costs of both specific treatments and related procedures might mitigate problems experienced in other states which offer infertility insurance coverage.

I have provided a listing of which states mandate pregnancy/maternity insurance coverage, entitled, "State Mandated Health Care Coverage Laws (Enacted Through June, 1987)." (See Attachment J) I have also included a report by the Alan Guttmacher Institute, entitled "Infertility Services in the United States: Need, Accessibility and Utilization," (Attachment K); a Research Note from Family Planning Perspectives, entitled "The Need and Unmet Need for Infertility Services in the United States," (Attachment L); and "Desperately Seeking Baby," from U.S. News and World Report, (Attachment M).

\* \* \*

I hope this information is useful to you. If you have any questions, please contact this agency.

Attachments

NS SERVICE—

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or

ciliation assistance information as con- of investigative or penalties.

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**a. — Publishing**

Under this subchapter, Commission had jurisdiction over charges of sexually based discrimination by employee of non-profit corporation which was affiliated with a church and which operated as a public publishing house engaged in business of publishing, printing, advertising and selling religious and religiously oriented materials for purpose of carrying out church denomination's work. Equal Employment Opportunity Commission (U. S. A.) v. Pacific Press Pub. Ass'n, D.C. Cal.1979, 482 F.Supp. 1291.

discrimination occurring prior to effective date of amendment removing exemption for private universities from this subchapter an invidiously motivated refusal to reconsider her termination after the faculty senate hearing panel had issued a report was sufficient to make this subchapter applicable to the alleged discrimination. Weise v. Syracuse University, C.A.N.Y.1976, 522 F.2d 397.

As amended, this subchapter proscribes discriminatory preference on the basis of sex by institutions of higher learning in their hiring, compensation, promotion and termination practices with respect to faculty members. Equal Employment Opportunity Commission v. Tufts Ins. of Learning, D.C.Mass.1976, 421 F.Supp. 152.

**b. Nonreligious educational institutions**

University teacher who was not rehired allegedly as a result of sex discrimination, who alleged, in addition to acts of

**§ 2000e-2. Unlawful employment practices**

**Employer practices**

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

**Employment agency practices**

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

**Labor organization practices**

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer

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 or would limit such employment opportunities or otherwise ad-  
 versely affect his status as an employee or as an applicant for  
 employment, because of such individual's race, color, religion,  
 sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate  
 against an individual in violation of this section.

#### Training programs

(d) It shall be an unlawful employment practice for any employ-  
 er, labor organization, or joint labor-management committee control-  
 ling apprenticeship or other training or retraining, including on-  
 the-job training programs to discriminate against any individual be-  
 cause of his race, color, religion, sex, or national origin in admission  
 to, or employment in, any program established to provide appren-  
 ticeship or other training.

#### Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

(e) Notwithstanding any other provision of this subchapter, (1)  
 it shall not be an unlawful employment practice for an employer to  
 hire and employ employees, for an employment agency to classify, or  
 refer for employment any individual, for a labor organization to  
 classify its membership or to classify or refer for employment any  
 individual, or for an employer, labor organization, or joint labor-  
 management committee controlling apprenticeship or other training  
 or retraining programs to admit or employ any individual in any  
 such program, on the basis of his religion, sex, or national origin in  
 those certain instances where religion, sex, or national origin is a  
 bona fide occupational qualification reasonably necessary to the  
 normal operation of that particular business or enterprise, and (2)  
 it shall not be an unlawful employment practice for a school, col-  
 lege, university, or other educational institution or institution of  
 learning to hire and employ employees of a particular religion if  
 such school, college, university, or other educational institution or  
 institution of learning is, in whole or in substantial part, owned,  
 supported, controlled, or managed by a particular religion or by a  
 particular religious corporation, association, or society, or if the  
 curriculum of such school, college, university, or other educational  
 institution or institution of learning is directed toward the propaga-  
 tion of a particular religion.

#### Members of Communist Party or Communist-action or Communist-front organizations

(f) As used in this subchapter, the phrase "unlawful employment  
 practice" shall not be deemed to include any action or measure tak-  
 en by an employer, labor organization, joint labor-management com-  
 mittee, or employment agency with respect to an individual who is a

dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Pub.L. 88-352, Title VII, § 701, July 2, 1964, 78 Stat. 253; Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub.L. 92-261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub.L. 95-555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub.L. 95-598, Title III, § 330, Nov. 6, 1978, 92 Stat. 2679.

#### Historical Note

**References in Text.** The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is Act July 5, 1935, c. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (section 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables volume.

The Railway Labor Act, as amended, referred to in subsec. (e)(1), is Act May 20, 1926, c. 347, 44 Stat. 577, as amended, which is classified principally to chapter

8 (section 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub.L. 86-257, Sept. 14, 1959, 73 Stat. 519, which is classified principally to chapter 11 (section 401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables volume.



# Alaska State Legislature

Please enter into the record my testimony to the Health, Education & Social Services  
committee name

committee on H.B. 440 infertility, dated April 7, 1988

My husband and I whole-heartedly support <sup>bill/subject</sup> H.B. 440. I have been diagnosed as having endometriosis and my husband and I have been trying to conceive for 3 1/2 years. We are candidates for the G.I.F.T. program. Our income is slightly over \$20,000/year and the total expenses for this procedure would be around \$10,000. Without help from insurance to participate in this program would be an extraordinary burden or an impossibility for us.

As Dr. Robert Thompson said, children are a very important thing, and in our lives, our greatest hope is to have our own child. As was mentioned, today medical advances have made it possible for those like myself to conceive, where in the past there was no hope. I would deeply regret having to pass up this precious opportunity for lack of funds.

I sincerely hope for myself, and others in this situation that the bill goes through.

Thanks You.

Signed: Deanna G. Cooper  
Testifier

Representing (Optional)

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Address

486-6143

Phone No.