

HOUSE BILL REPORT

EHB 1044

As Passed House:
February 22, 2013

Title: An act relating to preserving health insurance coverage for the voluntary termination of a pregnancy by requiring health plans issued or renewed on or after January 1, 2014, that provide coverage for maternity care or services to provide a covered person with substantially equivalent coverage to permit the voluntary termination of a pregnancy, by prohibiting a health plan from limiting in any way a woman's access to services related to the voluntary termination of a pregnancy other than terms and conditions generally applicable to the health plan's coverage of maternity care or services including applicable cost sharing, by not limiting in any way a woman's constitutionally or statutorily protected right to voluntarily terminate a pregnancy, by clarifying that health plans are not required to cover abortions that would be unlawful under RCW 9.02.120, by providing an exemption for a multistate plan that does not cover the voluntary termination of pregnancies under federal law, by making the provisions of this act inapplicable to the minimum extent necessary to avoid noncompliance with federal requirements that are a prescribed condition to the allocation of federal funds to the state, and by clarifying that nothing in this act affects the statutory right of objection based on conscience or religion as set forth in RCW 48.43.065 or 70.47.160

Brief Description: Concerning health plan coverage for the voluntary termination of a pregnancy.

Sponsors: Representatives Cody, Jinkins, Takko, Blake, Maxwell, Lytton, Moscoso, Fitzgibbon, Tharinger, Bergquist, Clibborn, Pollet, Goodman, Appleton, Reykdal, Kirby, Green, Van De Wege, Pettigrew, Sells, Springer, Hunt, Moeller, Carlyle, Ryu, Haigh, Liias, Kagi, Tarleton, Pedersen, McCoy, Stanford, Hunter, Hudgins, Farrell, Ormsby, Upthegrove, Riccelli, Stonier, Fey and Santos.

Brief History:

Committee Activity:

Health Care & Wellness: 1/31/13, 2/8/13 [DP].

Floor Activity:

Passed House: 2/22/13, 53-43.

Brief Summary of Engrossed Bill

- Requires health plans that cover maternity care or services to cover the voluntary termination of pregnancy.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 9 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Moeller, Morrell, Riccelli, Tharinger and Van De Wege.

Minority Report: Do not pass. Signed by 7 members: Representatives Schmick, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Angel, Harris, Manweller, Ross and Short.

Staff: Jim Morishima (786-7191).

Background:

I. Insurance Coverage of Abortion Under State Law.

Under state law, the state may not deny or interfere with a woman's right to choose to have an abortion prior to viability or to protect the woman's life or health. All other types of abortions are unlawful and any person who performs such an abortion is guilty of a class C felony.

If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered by the state, the state must also provide women otherwise qualified for the program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies.

A religiously sponsored health carrier is not required to pay for a specific service if it objects to doing so by reason of conscience or religion. Similarly, no individual or organization with a religious or moral tenet opposed to a specific service is required to purchase coverage for that service if they object to doing so because of conscience or religion. However, an employer's exercise of the right of conscience may not result in an enrollee being denied coverage of, and timely access to, the excluded services.

II. Insurance Coverage of Abortion under Federal Law.

A. Federal Funding of Abortion.

Under the federal "Hyde Amendment," a provision that has historically been added to most federal appropriations bills, federal funds may not be used for abortions, except for pregnancies resulting from rape or incest or if the pregnancy would endanger the woman's life. Most abortions are therefore not covered by federal programs such as Medicaid. However, states have the option to cover abortions under Medicaid as long as only state funds are used for such coverage.

The federal "Weldon Amendment," which has also historically been added to federal appropriations bills, prohibits federal funds from going to a state that subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions. "Health care entity" includes both health maintenance organizations and health insurance plans.

B. Abortion under the Patient Protection and Affordable Care Act.

Under the federal Patient Protection and Affordable Care Act (PPACA), each state must establish a Health Benefit Exchange (Exchange) in which consumers will be able to compare and purchase individual and small group market health insurance. Individuals between 134 and 400 percent of the federal poverty level will be eligible for federal premium and cost-sharing subsidies in the Exchange on a sliding scale.

Under the PPACA, a state has the option to prohibit coverage of abortions in its Exchange. If a state chooses to allow coverage for abortions in the Exchange, at least one federally designated multi-state plan must not provide coverage for abortions beyond what is allowed by the Hyde Amendment. Premium and cost sharing subsidies may not be used to purchase abortion coverage.

The PPACA does not preempt or affect state laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortion. Any plan in the Exchange that covers abortions must collect two separate payments, one for the abortion services and one for all other benefits. A plan that covers abortions must segregate the funds attributable to the abortion benefit in a separate account. The actuarial value of the abortion benefit must be at least \$1 per month and may not take into account any savings that may accrue due to an abortion.

The PPACA requires individual and small group market health plans to offer the "essential health benefits" both inside and outside of the Exchange. A health carrier inside the Exchange cannot be required to offer abortion coverage as part of its essential health benefits. Under proposed federal rules implementing the PPACA, this prohibition would apply to health carriers outside the Exchange as well.

For 2014 and 2015, the essential health benefits will be established on a state-by-state basis using a benchmark plan. Washington's benchmark plan, the largest small group market plan in the state, covers abortion, so the termination of pregnancy is included in the proposed rules defining Washington's essential health benefits package.

Summary of Engrossed Bill:

If a health plan issued or renewed on or after January 1, 2014, provides coverage for maternity care or services, it must also provide substantially equivalent coverage to permit the voluntary termination of a pregnancy. The plan may not limit a woman's access to services related to the voluntary termination of a pregnancy, except for generally applicable terms and conditions, including cost sharing. A health plan is not required to cover abortions that would be illegal under state law. The coverage requirement does not apply to a federally designated multi-state plan that does not, under federal law, cover the voluntary termination of pregnancy. These requirements do not affect an individual or entity's statutory right of objection based on conscience or religion.

The requirement that a health plan that covers maternity care or services also cover the voluntary termination of pregnancy is inapplicable to the extent that it results in non-

compliance with federal requirements that are a prescribed condition for federal funds. In these cases, the requirement is inapplicable to the minimum extent necessary for the state to be in compliance. The inapplicability of the requirement to a specific health plan does not affect its applicability in other circumstances.

The Legislature expresses its intent to recognize that every individual possesses a fundamental right to exercise his or her religious beliefs and conscience and that conflicting religious and moral beliefs must be respected in developing policy. The state must recognize the right of individuals to receive the full range of services under the state's Basic Health Plan.

No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection. No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

The provisions allowing the exercise of conscientious objection are not intended to result in an enrollee being denied timely access to any services in the state's Basic Health Plan. A health carrier must:

- provide enrollees written notice of the services the carrier refuses to cover for reason of conscience or religion;
- provide written information describing how an enrollee may directly access services in an expeditious manner; and
- ensure that enrollees who are refused services have prompt access to information describing how they may directly access services in an expeditious manner.

The Office of the Insurance Commissioner must establish a mechanism to recognize the right of conscience while ensuring enrollees timely access to services and to ensure prompt payment to serviced providers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Unplanned pregnancies can happen to any woman. One in three women will have an abortion by the age of 45. Nearly one-half of all pregnancies are unplanned and 40 percent end in abortion. One-half of these women were using birth control when they conceived. An unplanned pregnancy can lead to financial, medical, and social hardships. The decision of whether to have an abortion is personal and should be made by the woman. Women should have the freedom to make decisions based on what is best for them, their

families, and their health. The decision should not be based on insurance coverage. Women purchase health insurance to cover all of their health needs, including abortion. The PPACA is changing the landscape of health care and may make it more burdensome for insurers to continue to cover abortions. This bill would ensure that abortion coverage remains available as federal health care reform implementation moves forward. Both state and federal law protects the right of conscience. This bill does not affect current state conscience protections. The PPACA ensures that at least one plan offered in the state will not cover abortions. Neither this bill nor the PPACA requires an employer to purchase this coverage. This bill will ensure that women are treated fairly in their personal reproductive decisions.

(Opposed) This bill is a significant departure from a national perspective; Washington would be the first state in the United States to require employers to cover abortions. Many religious employers provide coverage that excludes abortions. This bill would require these employers to cover abortions. Current conscience protections in state law are inadequate to protect employers from purchasing this coverage. This bill could have the unintended consequence of decreasing insurance coverage as employers drop all health coverage to escape the abortion mandate. The bill could also result in litigation. All life is sacred from birth to death. Direct attacks on innocent humans are never morally acceptable. The right of conscience is protected in both the state and federal constitutions. Forcing someone to take a human life violates this right of conscience; this bill therefore obliterates the freedom of conscience to protect human life. Women who do not want to purchase abortion coverage should have the same freedoms as the women who do. This bill places a burden on small businesses by limiting choice and placing legal burdens on small businesses who do not want abortion coverage. The state should be looking to decrease mandates, not increase them. This bill violates federal law by forcing insurers to cover abortions and could therefore result in the loss of federal funding. If a woman can be trusted to make her own reproductive decisions, she should also be trusted to purchase appropriate insurance coverage.

Persons Testifying: (In support) Judy Kimelman, American Congress of Obstetricians and Gynecologists; Christine Kocsis; Reverend Monica Corsaro; Janet Chung, Legal Voice; Kayla Potts; Reverend Dennis Hollinger Lant; and Elaine Rose.

(Opposed) David DeWolf; Peggy O'Ban, Human Life of Washington; Mark Miloscia, Washington State Catholic Conference; Rachel Georgeson; Carrie Anderson; Jonathon Bechtle; and Kimmy Jones.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.