

# SENATE BILL REPORT

## ESHB 2330

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As of May 13, 2013

**Title:** An act relating to preserving health insurance coverage for the voluntary termination of a pregnancy by requiring health plans issued on or after June 7, 2012, 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, and by providing an exemption for a multistate plan that does not cover the voluntary termination of pregnancies under federal law

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

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Jinkins, Darneille, Pollet, Wylie, Appleton, Goodman, Pedersen, Roberts, Van De Wege, Carlyle, Maxwell, Fitzgibbon, Hudgins, Reykdal, Santos, McCoy, Clibborn, Kagi, Lytton, Moscoso, Springer, Eddy, Liias, Hunt, Moeller, Tharinger, Billig, Kenney, Ryu, Dickerson, Stanford and Ormsby).

**Brief History:** Passed House: 2/13/12, 52-46.

**Committee Activity:** Health & Long-Term Care: 2/16/12, 2/20/12 [DP, DNP].

Ways & Means: 2/22/12.

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### SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

**Majority Report:** Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Frockt, Kline and Pridemore.

**Minority Report:** Do not pass.

Signed by Senators Becker, Ranking Minority Member; Carrell and Parlette.

**Staff:** Mich'l Needham (786-7442)

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### SENATE COMMITTEE ON WAYS & MEANS

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*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.*

**Staff:** Steve Jones (786-7440)

**Background:** 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. Private insurance carriers are not required to cover the voluntary termination of a pregnancy under state law.

A religiously sponsored health carrier may not be 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 may be required to purchase coverage for that service if they object to doing so because of conscience or religion.

Insurance Coverage of Abortion under Federal Law. *Federal Funding of Abortion.* Under the Hyde Amendment, federal law bans the use of federal funds 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.

Under the Weldon Amendment, in the appropriations act, federal funds are prohibited 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 health maintenance organizations and health insurance plans.

*Abortion under the Patient Protection and Affordable Care Act.* Under the federal Affordable Care Act of 2010 (ACA), each state must establish a Health Benefit Exchange (Exchange). The federal government will operate an Exchange in a state that elects not to establish its own Exchange. Plans sold in the Exchange (and in the small group and individual markets outside the Exchange) will be required to offer an essential health benefits package, which will initially be established using a benchmark insurance plan selected by the state. Individuals between 134 percent and 400 percent of the federal poverty level will be eligible for federal premium and cost-sharing subsidies on a sliding scale.

Under ACA, 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. Coverage of abortions may not be part of the essential health benefits package, and premium and cost-sharing subsidies may not be used to purchase abortion coverage.

ACA states that it 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.

**Summary of Bill:** If a health plan issued or renewed on or after June 7, 2012, 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. A health plan is not required to cover abortions to the extent that such coverage would result in noncompliance with the Weldon Amendment.

The Legislature intends that nothing in the act affects:

- the statutory right of a religiously sponsored health carrier to refuse to pay for a specific service if it objects to doing so by reason of conscience or religion; or
- the statutory right of an individual or organization with a religious or moral tenet opposed to a specific service to refuse to purchase coverage for that service if they object to doing so because of conscience or religion.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Health & Long-Term Care):** PRO: This bill does not change anything. It aligns Initiative 120 passed by the voters in 1991 with the federal ACA to carry forward the status quo and maintain the access we have today. This bill maintains the existing conscience clause that we have never had a problem with. We have never had a problem with the Weldon amendment but it is now referenced in the bill for added comfort for some. There will still be a choice for a business owner to purchase coverage without these services. Washington has a long history of placing these decisions in the hands of women. Initiative 120 passed in 1991 affirmed those rights and ensured parity in maternity services is available to women of all incomes. This bill ensures that parity in maternity services remains intact and that Washington maintains existing access to services. This bill preserve the existing laws and recognizes the conscience clause, while ensuring women of all incomes have equity in access to all maternity services. The decisions should remain in the hands of women as personal health decisions and they need to have access to information about the full range of options. I have a moral obligation to help women make

serious moral choices and not allow them to be coerced by others. Women need equal access to pregnancy care and abortion care, and to be allowed to make personal choices. The federal ACA may introduce barriers to access for some women unless we ensure we maintain the access we have today for all women.

CON: Health care should ensure longer, healthier lives. Abortion services are not an essential part of health care and are not about saving lives. We believe this bill violates the constitutional freedom of religion, and violates the federal appropriations act with the Weldon amendment. Pregnancy is not a disease and abortion services are not basic health care. This violates the conscience of those opposed to abortions. This benefit design limits the ability of employers to attract like-minded employees. Catholic teachings says it is never ok to take the life of another and this bill conflicts with those teachings and forces employers to offer coverage that conflicts with their beliefs. Limiting the choices of benefit plans will not encourage entrepreneurs to start a business if they are forced to purchase something they disagree with. This is a move to put more money into the hands of Planned Parenthood and take innocent life. We believe this forces religious people to refer mothers to death clinics, and we will not support providing any information to women that promotes mothers killing their babies, nor force any employers to provide information or access.

**Persons Testifying (Health & Long-Term Care):** PRO: Representative Cody, prime sponsor; Jane Chung, Legal Voice; Christine Koscis, Seattle resident and patient; Elizabeth Patrick, Baptist Minister.

CON: Pia De Solenny, Diothima Consulting; John Geis, Family Policy Institute of WA; Ed Stanley, Human Life of WA; Paul Robertson, Mercer Island resident; Bob Struble, Knights of Columbus.

**Staff Summary of Public Testimony (Ways & Means):** PRO: The bill protects women's reproductive autonomy. The state is protected from any loss of federal funds. Loss of federal funds is remote, if nonexistent. Insurance costs will not increase; savings will result. By Initiative 120 in 1991, the voters of the state established state policy on this subject. The bill is necessary to guarantee access to services.

CON: This bill will increase insurance premiums to pay for the mandated coverage. Six billion dollars of federal funds are at risk. This is a nonessential and voluntary service. This legislation violates religious beliefs and the U.S. Constitution. Abortion devastates our families and our society. Expanding insurance mandates will increase public costs. This violates faith, freedom of religion and conscience, and federal law. The bill is unnecessary because all current insurance policies in the state cover this service. This new insurance mandate will discourage the location of new businesses in this state.

**Persons Testifying (Ways & Means):** PRO: Melanie Smith, NARAL Pro Choice WA; Lisa Stone, Legal Voice.

CON: John Geis, Family Policy Institute; Jeanne Belmonte, Julie Covell, Gellert Dornay, Della O'Halloran, Paul Robertson, citizens.