

SENATE BILL REPORT

SB 5576

As of February 4, 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: Senators Hobbs, Litzow, Keiser, Kohl-Welles, Ranker, Harper, Chase, Nelson, Conway, Eide, Hasegawa, Schlicher, Rolfes, Kline, Mullet, McAuliffe, Darneille, Cleveland, Frockt, Fraser, Murray, Billig and Hatfield.

Brief History:

Committee Activity: Law & Justice: 2/08/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Insurance Coverage of Abortion Under State Law. 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

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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.

Insurance Coverage of Abortion under Federal Law. *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, 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. A health care entity includes both health maintenance organizations and health insurance plans.

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 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.

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 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.

Appropriation: None.

Fiscal Note: Requested on February 4, 2013.

Committee/Commission/Task Force Created: No.

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