

HOUSE BILL REPORT

HB 2148

As Passed House:
February 5, 2014

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, 2015, 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

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

Sponsors: Representatives Cody, Pollet, Senn, Appleton, S. Hunt, Takko, Sells, Carlyle, Fitzgibbon, Springer, Green, Reykdal, Lytton, Tharinger, Jinkins, Roberts, Goodman, Liias, Kagi, Van De Wege, Clibborn, Ryu, Ormsby, Fey, Walkinshaw, Farrell, Hudgins, Santos, Bergquist, Pettigrew and Riccelli.

Brief History:

Committee Activity:

Health Care & Wellness: 1/13/14, 1/23/14 [DP].

Floor Activity:

Passed House: 2/5/14, 54-44.

Brief Summary of 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; Riccelli, Vice Chair; Clibborn, Green, Jinkins, Moeller, Morrell, Tharinger and Van De Wege.

Minority Report: Without recommendation. Signed by 8 members: Representatives Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; DeBolt, G. Hunt, Manweller, Rodne, 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.

II. Right of Conscience Under State Law.

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 (OIC) 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.

In 2006 the Attorney General issued an opinion regarding an OIC rule that required carriers that cover prescription drugs to also cover contraceptives. According to the Attorney General's opinion, the rule did not supersede the statutory right of conscience; it only limited one of the ways in which the right could be exercised. This is because the rule did not require prescription drug coverage and did not apply directly to employers.

III. 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 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 rules defining Washington's essential health benefits package, although it is currently an optional benefit under those rules.

Summary of Bill:

If a health plan issued or renewed on or after January 1, 2015, 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.

The requirement that a health plan that covers maternity care or services must 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.

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 OIC 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) Washington has a long history of empowering women to make their own choices; the state leads the nation in ensuring that all maternity options are open to women. No one but the woman should decide what's best for her. The right of reproductive privacy was put in place by initiative, and state-funded health coverage must cover the voluntary termination of a pregnancy. Low-income women can therefore make their own choices instead of having the choice made for them by an insurance company. This right should be extended to women statewide; the state should be expanding coverage, not restricting it. The interactions between state law and the Patient Protection and Affordable Care Act (PPACA) are complex; this is a time of great transition. The PPACA put many obstacles in the way of insurers who wish to cover the voluntary termination of a pregnancy. Under the PPACA, states can choose to bar abortion coverage; Washington should not be one of those states. This bill preserves the statutory right of conscience, which protects freedom of religion and freedom from religion. The bill does not apply to self-insured plans and multi-state plans in Washington's health benefit exchange (Exchange). Unplanned pregnancies can happen to all kinds of women. There are many reasons that continuing the pregnancy is not the best option for a woman. Whether to continue a pregnancy is a difficult and personal decision that should be left to the woman to decide with the assistance of family, the clergy, and physicians; the decision should not be made by an insurance company. It is difficult for women purchasing insurance in the exchange to know whether they are purchasing a product that covers abortions. If you do not believe in abortions, do not have one. If you do not want insurance that covers abortions, do not buy it. This is not a decision for politicians.

(Opposed) Life is sacred from the moment of conception until natural death. This bill makes it seem like all women who want prenatal care also want coverage for abortions; this is not the case. There is no access problem for abortion coverage. The poor are covered by Medicaid, which already covers abortion, and most health plans offered both inside and outside of the Exchange also cover abortion. There is only one plan that does not cover abortion in the Exchange. The conscience protections in this bill are illusory. The conscience protection language in the bill states that abortion coverage does not have to be offered while also stating that enrollees cannot be denied access to the coverage; this language is a shell game, providing the right to conscience while also taking it away. These clauses are in conflict and the Insurance Commissioner has not adopted rules to operationalize the language as is required by law. This bill is anti-woman; it may cause women and businesses to forego insurance out of conscience. People want insurance coverage that conforms to their beliefs. There are already lots of options for abortion coverage. The law should protect both those who want the coverage and those who do not. It is a waste of time and resources to mandate abortion coverage. This bill will result in protracted, expensive litigation. Neither any other state nor the federal government has this type of law in place. The citizens of Washington do not want to feel forced into buying abortion coverage, regardless of their beliefs on the issue. We should not force businesses to pay for abortions when it is against their religious beliefs. It is currently difficult for small businesses to opt out of abortion coverage. Businesses should not have to bear this burden; it should be up to our elected officials. This bill is not about access to abortion. It is about

denying civil rights. We should respect differences, not erase them. This bill takes away people's choices and is oppressive. A mandate is not a choice. People have a constitutional right to own a gun, but should other people have to pay for your gun? This bill should be called conscience coercion.

Persons Testifying: (In support) Janet Chung, Legal Voice; Dr. Annie Iriye, American Congress of Obstetrics and Gynecology; Rabbi Seth Goldstein; Hannah Britt; and Dr. Jane Dimer, Group Health Cooperative; Rev. Eric Kaminetzky; Lily King; and Elaine Rose, Planned Parenthood Votes Northwest.

(Opposed) Bishop Eusebio Elizondo, Archdiocese of Seattle; Dr. Susan Rutherford; Jessica Reeves; Rachel Georgeson; Michael J. Norton, Alliance Defending Freedom; Carrie Anderson; Angela Connelly; Veronica Zepeda, Vocare; Aaron Michelle; and Peggy O'Ban, Human Life of Washington.

Persons Signed In To Testify But Not Testifying: Rebecca Faust; Alice Hari and Bea Christophersen, Washington Women's Network; Aaron Mischel; Helen Gilbert, Radical Women; Erin Kennedy; Chris Sharpe, Chris Hudson, Tim Turner, Staci Andersen, and Quentin Mylet, Subsplash; Ann Kelly, Vocare; John Zyrkowski; Christina Lucyk; Randall Leskovar and Mary Leskovar, Calvary Chapel; and Nancy Zyrkowski.