

SENATE BILL REPORT

SSB 5140

As Amended by House, March 24, 2021

Title: An act relating to protecting pregnancy and miscarriage-related patient care.

Brief Description: Protecting pregnancy and miscarriage-related patient care.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Kuderer, Frockt, Conway, Das, Dhingra, Hasegawa, Hunt, Lovelett, Randall, Saldaña, Stanford, Wellman and Wilson, C.).

Brief History:

Committee Activity: Health & Long Term Care: 1/20/21, 2/01/21 [DPS, DNP].

Floor Activity: Passed Senate: 2/17/21, 29-20.

Passed House: 3/24/21, 57-41.

Brief Summary of First Substitute Bill

- Prohibits health care entities from restricting health care providers from providing services related to pregnancy complications.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5140 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Conway, Keiser, Randall, Robinson and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Muzzall, Ranking Member; Holy, Padden, Rivers and Wilson, J.

Staff: LeighBeth Merrick (786-7445)

Background: Scope of Practice. Scope of practice is the procedures, actions, and

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

processes a health care provider is permitted to undertake in keeping with the terms of the provider's professional license. These may include diagnosis, treatment, surgical procedures, and authority to prescribe drugs to treat a patient's condition. Scope of practice is limited to that which the law allows for specific education and experience, and specific demonstrated competency. Health care facilities may grant privileges to a health care provider to admit patients and to provide services to patients in that facility.

Emergency Medical Treatment and Active Labor Act. Under the federal Emergency Medical Treatment and Active Labor Act, which was passed by Congress in 1986, a hospital may not turn away a patient who comes to the emergency department with an emergency medical condition. The hospital must screen and evaluate the patient and provide treatment necessary to stabilize them.

Eliminating Barriers to Reproductive Health Care for All Act. In 2019, the Legislature passed 2SSB 5602 which requires hospitals to submit access to care policies to the Department of Health (DOH) related to admissions, nondiscrimination, and reproductive health care. DOH developed a form for hospitals to use when submitting their information. Each hospital's reproductive health policy and reproductive health services provided are posted on DOH's website.

Protecting Patient Care Act. In 2020, the Legislature passed ESHB 1608 which prohibits health care entities from limiting health care providers from providing accurate and comprehensive information to patients about the patient's health status and treatment options, including information about available services and what relevant resources are available in the community and how to access those resources. DOH developed information for health care entities and providers about implementing the law, which are available on DOH's website.

Summary of First Substitute Bill: If a health care provider is acting in good faith, within their scope of practice, education, training, and experience, and within the accepted standard of care, a health care entity may not prohibit the health care provider's provision of health care services related to complications of pregnancy in cases when not providing the service would violate the accepted standard of care, or could pose a risk to the patient's life or irreversible complications, or impairment to the patient's body. Health care services related to complications of pregnancy includes, but it is not limited to, services related to miscarriage management and treatment for ectopic pregnancies. An individual who is aggrieved by a violation of these requirements may take civil action against a health care entity. The prevailing party in the civil action is entitled to recover litigation costs and reasonable attorneys' fees. A health care entity may not discharge, demote, suspend, discipline, or otherwise discriminate against a health care provider for providing services in this manner. This does not prohibit a health care entity from limiting a health care provider's practice for purposes of complying with network or utilization review requirements, quality control, or patient safety, including when quality control or patient safety issues are identified through peer review.

By December 31, 2021, DOH must design, prepare, and make available online materials to inform health care providers and staff of the authority to act under these provisions. Beginning March 1, 2022, the health care entity must provide the information prepared by DOH to health care providers and staff at the time of hiring, contracting, or privileging, and on an annual basis. If any provision is found to be in conflict with federal requirements prescribed as a condition to receive federal funds, the conflicting provision is inoperative to the extent of the conflict for agencies directly affected.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This bill addresses a problem that is currently happening. Hospitals are turning away women who are experiencing miscarriages or pregnancy complications and making them go to another hospital to get the necessary care. These are life or death situations. Allowing religiously affiliated hospitals to deny care to women experiencing miscarriages or ectopic pregnancies puts patient's lives in dangers and is discriminatory. This bill empowers providers to provide proper care without fearing retaliation from their employers. Some hospitals' policies deem an unviable pregnancy worth more than the person carrying the embryo. This is degrading and dismissive. This bill protects patients and providers. It ensures patients get care when they need it, and allows providers to provide evidence based care and to maintain their Hippocratic oath to do no harm. It is not an individual mandate and would not require a health care provider to do anything a provider objects to for reason of conscience or religion. All care is not equal in our state. Patients should have access to safe and standard care. Transferring patients and delaying care causes more harm. It can lead to infection, added stress and puts patients through more trauma on one of the worst days of a person's life. Ectopic pregnancies are dangerous and can lead to infertility. Washington stands out as one of the states with most issues related to hospitals not treating ectopic pregnancies.

CON: We have worked with the advocates for several years on this bill and were pleased with the bill that was introduced. However, we have some concerns about the proposed substitute that was heard today.

The services should be limited to treatment for miscarriage management and ectopic pregnancies. Otherwise, it is too broad. The peer review and credentialing requirements should be restored. These are important tools to monitor and educate providers. We do not

believe the private cause of action is the appropriate remedy. We appreciate the time to implement the DOH form.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Marley Banker; Leah Rutman, ACLU of Washington; Dr. Laura Sienas, American College of Obstetricians and Gynecologists; Caitlin Lombardi, citizen; Dr. Erin Berry, Planned Parenthood of the Great Northwest and the Hawaiian Islands; Dr. Annie Iriye, American College of Obstetricians and Gynecologists; David Wells, King County Academy of Family Physicians, Chapter Executive.

CON: Zosia Stanley, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes the provision that entitles the prevailing party to recover costs of litigation and reasonable attorneys' fees and instead permits the court to allow the prevailing party to recover costs of litigation and reasonable attorneys' fees.