

SENATE BILL REPORT

EHB 1044

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

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

Committee Activity: Health Care: 4/01/13.

SENATE COMMITTEE ON HEALTH CARE

Staff: Mich'l Needham (786-7442)

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.

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.

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. *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 is also historically 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.

Abortion Under the Affordable Care Act. Under the federal Affordable Care Act (ACA), 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 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. Premium and cost-sharing subsidies may not be used to purchase abortion coverage. The ACA does not preempt or affect state laws regarding, the prohibition 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 ACA requires individual and small-group market health plans to offer the essential health benefits both inside and outside of the Exchange. The final federal regulations issued February 25, 2013, indicate a health carrier cannot be required to offer abortion coverage as part of its essential health benefits inside or outside the Exchange. 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; however, carriers are not required to include it in the essential health benefits under the proposed state rules issued by the Office of Insurance Commissioner (OIC).

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.

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 the individual's own 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 enrolled with plans containing the Basic Health Plan services to receive the full range of services covered under the 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 services. 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.

OIC must establish a mechanism to recognize the right of conscience while ensuring enrollees timely access to services and to ensure prompt payment to service providers.

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: PRO: This bill is not about whether abortion is legal or not, it has been since 1970 by a vote of the people in this state. This is a simple bill to ensure coverage continues with the implementation of the Affordable Care Act. Health care decisions should be personal decisions left to the choices of women. The new coverage options coming should be as good as the current insurance options and they should cover the full range of services a woman might need. Pregnancy care is complex and the health care decisions around it can be complex. Health care is expensive and when women do not have coverage for services it is a barrier to care. We need to retain access to affordable, high-quality health care for all the services women might need. To date, 21 states have imposed a ban on coverage of abortions and ten more are considering legislation that restricts access. Washington has always had access and it is the time to act to ensure access is retained. The federal law ensures that plan choices without abortion coverage will be available through the multi-state plans. This bill incorporates a comprehensive conscience clause that covers health plans, providers, employers, and individuals. All women should be treated fairly in health care. The conscience clause does provide freedom for religion and freedom from religion so one church's decisions are not imposed on another. Women should be able to make personal, difficult decisions without worrying about the ability to afford care. Women should retain continued access to make their own choices and access the full range of services. This is not a morality issue but an economic issue. Abortions must remain safe and legal, and legal medical care should be covered by insurance. Reproductive justice calls for a woman's right to make her own medical decisions and retain options for the full range of choices. This land protects my religious liberty and my rights to maintain my own faith. No religious group has the right to define what is right for me and I should have access to personal medical procedures no matter who I work for. Women have a divine right to self-determination and we should not deny women the right to access services they determine are appropriate. Health insurance is very complicated and it should be clear that all the reproductive services are covered since decisions need to be made timely. Move this bill and allow women the full range of maternity services to retain what we have now. I had a kidney transplant and a pregnancy would threaten my life. All legal options to protect my health should remain available.

CON: The Catholic Church opposes the intent of this bill and all abortions, as life is sacred. The conscience clause in this bill fails to provide the protection the church needs. The clause is ineffective with the second portion of the clause that allows the employee to access the services that are not included in the package. The irreconcilable differences in the language and lack of precision leave employers open to risk of lawsuits. The conscience clause is not effective and became an all-or-nothing approach. The top-leading causes of death for women

are heart disease and cancer, and health bills should focus on these top health issues. This bill does nothing to improve health care for women. The Constitution guarantees religious liberties – do not take away my right to purchase coverage that does not pay for abortions. It violates our conscience to be forced to provide coverage that includes some services. OIC was not helpful in pursuing our legal right to find coverage that excludes these services. It is an injustice for employers to be forced to violate our religious beliefs. This bill is anti-women and it continues the violence against women with the psychological and emotional damage that result from an abortion. Post-abortion stress can result from an abortion, and years later women can be struck by deeply destructive tendencies and become suicidal. This bill results in no choice and no freedom. It is a second amendment right for citizens to bear arms but I am not required to pay for your gun, and I should not be required to pay for an abortion. I should not be forced to go to court to trigger my right not to pay. This is a mandate for me to pay for another person's choice. In my years working with women in the Navy I did not see women have trouble accessing an abortion despite the lack of federal coverage under the Hyde Amendment. There is no reason to force coverage since planned parenthood can afford to give away the services based on the CEO salary. Women who have abortions are significantly more likely to be suicidal and have other psychological problems. The rate of death is higher for women having an abortion than a delivery. The average cost of an abortion is \$500 and most women that cannot afford that will qualify for some public assistance. We should not be forced to pay for a baby death. Why force insurance to cover this if they already do? The young people most want the maternity services and are the most fiscally challenged so do not add to their costs with a mandate. The Department of Health data reports that there are over 22,500 abortions annually in Washington. Nonprofit faith-based charities will be adversely impacted by this mandate and it could force them to close the doors to those in need of food, clothing, and medical care. The right of conscience is a red herring – I should not be forced to jump through hoops to object to something. All life must be protected. I chose insurance that values life and does not cover, and I want to run my business consistently with my choices to promote life. My freedom of choices should not be taken away. Abortion is an elective surgery, only a small percentage are related to health problems. I should not need to pay for elective surgery and it should not be covered just like liposuction. I am angry the Legislature is using time to address this issue when a problem does not exist. This bill bullies those who support life. There is no parity for a live baby and a murdered baby. This is similar to developments in pre-Nazi Germany that stressed the economic advantages of killing people. Do not force us to provide coverage for the murder of a baby and violate my conscience. Maternity care is not commensurate with abortion. Essential health care is provided for pregnancy, we even pay for it for our immigrants that are pregnant. Wait for experience and protect our choice without a mandate.

Persons Testifying: PRO: Representative Cody, prime sponsor; Senator Hobbs, prime sponsor of companion bill; Dr. Kate McLean, American Congress of Obstetrics and Gynecology; Janet Chung, Legal Voice; Rabbi Seth Goldstein, Temple Beth Hatfiloh; Lonnie Johns-Brown, League of Women Voters, National Organization for Women; Elaine Rose, Planned Parenthood Votes NW; Rachel Berkson, National Assn. for the Repeal of Abortion Laws Pro-Choice WA; Reverend Eric Kaminetzky, Edmonds Unitarian Church; Rabbi Yohanna Kinberg, Temple B'nai Torah; Jacob Jacob, Doctor Reverend Monica Corsaro, Kayla Potts, Dr. Deb Oyer, Reverent Vincent Lachina, Tiffany Hankins, Krystal Starwich, Diana Roberts, Ron Morrison, Bronwyn Lewis, Stephanie Morton, Cal Roberts, Christina Frye, Lily King, Laura Ellsworth, Amanda Stoddard, citizens.

CON: Peter Sartain, Archbishop of Western WA; Shelly Cook, Care Net; Peggy O'Ban, Human Life of WA; Jim Mischel, Electric Mirror; Dr. Patricia O'Halloran, Christina Lucyk, Alice Hori, Debra Ummel, Megan McDaniel, Angela Connelly, WA Women's Network; Carol Hendrickson, Ernest Ryan, Our Lady Star of the Sea Catholic Church; Jonathan Bloedow, Kari Johnson, Linda Morell, Eddie Hamilton, Megan Reese, Vivian Stubbers, Bill Leath, Joanne Mullally, Ray Boatman, Kimmie Jones, Pia de Solenni, Carrie Anderson, Kate Anderson, Colleen Walker, Dr. Susan Rutherford, Judith Nichols, citizens.