

# HOUSE BILL REPORT

## SSB 5140

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**As Reported by House Committee On:**  
Health Care & Wellness

**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 Care & Wellness: 3/11/21, 3/17/21 [DPA].

**Brief Summary of Substitute Bill**  
**(As Amended By Committee)**

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

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Riccelli, Simmons, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Maycumber, Rude and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Kim Weidenaar (786-7120).

**Background:**

Access to Care Policies.

In 2019 the Legislature passed Second Substitute Senate Bill 5602, which requires hospitals to submit access to care policies to the Department of Health (DOH) related to admissions, nondiscrimination, and reproductive health care. The DOH developed a form for hospitals to use when submitting their policies, which are also posted on the DOH's website.

Provision of Health Care Information.

In 2020 the Legislature passed Engrossed Substitute House Bill 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. The DOH developed information for health care entities and providers about implementing the law, which are available on the DOH's website.

Scope of Practice.

Scope of practice is the procedures, actions, and 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 (commonly known as EMTALA), 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.

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**Summary of Amended Bill:**

A health care entity may not prohibit a health care provider that is acting in good faith, within the provider's scope of practice, experience, training, education, and the accepted standard of care, from providing services related to complications of pregnancy, including miscarriage management health services and treatment for ectopic pregnancies, if:

- failure to provide these services would violate the accepted standard of care; or
- the patient's acute symptoms present with sufficient severity that the absence of

medical attention could reasonably be expected to pose a risk: to the patient's life; or of irreversible complications or impairment to the patient's bodily functions or any bodily organ or part.

A health care entity is not prohibited from limiting a health care provider's practice for purposes of:

- complying with network or utilization review requirements;
- quality control; and
- patient safety.

A health care entity may not discharge, demote, suspend, discipline, or otherwise discriminate against a health care provider for providing services in compliance with these provisions. A patient, health care provider, or individual, who is aggrieved by violation of these provisions, may bring a civil action against a health care entity to enjoin further violations and recover damages. The prevailing party may in the discretion of the court recover litigation costs and reasonable attorneys' fees.

By December 31, 2021, the Department of Health (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, a health care entity must provide the information prepared by the 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.

"Health care entity" is defined as an entity that supervises, controls, grants privileges to, directs the practice of, or directly or indirectly restricts the practice of, a health care provider.

#### **Amended Bill Compared to Substitute Bill:**

The amended bill 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) Health care in Washington is not equal. The health care that a patient receives should not depend on their Zip code.

Board certified providers are often put into a position where they cannot provide care to their patients at the standard of care because care may be delayed or denied due to hospital policies. Health care providers have a responsibility to treat patients in a timely manner. Providers take an oath to do no harm, but by prolonging care, it increases the potential of complications.

For example, a patient whose water bag broke at 16 weeks was told at a hospital that the pregnancy tissue could not be removed because there was still a heartbeat, even though leaving the tissue would increase the patient's risk of infection. Other providers have had to wait to treat patients in emergency conditions while the hospital's board of ethics met to approve a procedure. While patients are ultimately able to receive the necessary care, there is a greatly increased risk of complications. Delays in care or not being able to provide care can lead to catastrophic conditions. Hospital policies should not interfere with timely, necessary patient care. Hospital policies must reflect the best standard of care to ensure that pregnant patients get the help they need when they need it.

(Opposed) The language of this bill is too broad as it goes beyond pregnancy complications that threaten a pregnant woman's life. Rather the bill almost forces a religious-based hospital to perform abortions. There are also questions about the accepted standard of care mentioned in the bill and whether that is a statewide standard or a standard for one hospital or another. There are also concerns about the civil action that is open to anyone, which does not make sense. It should be limited to the patient and their family. There were several amendments offered in the Senate that would be prudent.

There has been a lot of work done on this bill in the last few years and the hospitals appreciate that the bill is narrower in scope this year. However, the private cause of action in the bill is too broad. There are already a number of existing avenues available for individuals who are aggrieved by a violation of this bill, such as medical malpractice suits and licensure complaints to the Department of Health. Additionally, there are already whistleblower protections for providers and employee grievance processes. Establishing a separate private cause of action is a departure for how these types of things are currently handled.

**Persons Testifying:** (In support) Keely Robinson; Jennifer Chin and Annie Iriye, American College of Obstetricians and Gynecologists; Lin Skavdahl; Christie Miles, Washington Association of Family Physicians; Leah Rutman, American Civil Liberties Union of Washington; and Aubrey Lawlor, Washington Affiliate of American College of Nurse Midwives and Advanced Registered Nurse Practitioners United.

(Opposed) Sarah Davenport-Smith, Family Policy Institute of Washington; and Zosia Stanley, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.