

HOUSE BILL REPORT

ESHB 2330

As Passed House:
February 13, 2012

Title: An act relating to preserving health insurance coverage for the voluntary termination of a pregnancy by requiring health plans issued on or after June 7, 2012, 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, and by providing an exemption for a multistate plan that does not cover the voluntary termination of pregnancies under federal law

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

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Jinkins, Darneille, Pollet, Wylie, Appleton, Goodman, Pedersen, Roberts, Van De Wege, Carlyle, Maxwell, Fitzgibbon, Hudgins, Reykdal, Santos, McCoy, Clibborn, Kagi, Lytton, Moscoso, Springer, Eddy, Liias, Hunt, Moeller, Tharinger, Billig, Kenney, Ryu, Dickerson, Stanford and Ormsby).

Brief History:

Committee Activity:

Health Care & Wellness: 1/19/12, 1/26/12 [DPS];
Ways & Means: 2/6/12 [DPS(HCW)].

Floor Activity:

Passed House: 2/13/12, 52-46.

Brief Summary of Engrossed Substitute Bill

- Requires health plans that cover maternity care or services to cover the voluntary termination of pregnancy.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Kelley, Moeller and Van De Wege.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Harris.

Staff: Jim Morishima (786-7191).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Erik Cornellier (786-7116).

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. Private insurance carriers are not required to cover the voluntary termination of a pregnancy under state law.

A religiously sponsored health carrier may not be 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 may be required to purchase coverage for that service if they object to doing so because of conscience or religion.

II. Insurance Coverage of Abortion under Federal Law.

A. Federal Funding of Abortion.

Under the "Hyde Amendment," federal law bans the use of federal funds 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.

Under the "Weldon Amendment," 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 as amended by the Health Care and Education Reconciliation Act of 2010 (ACA), each state must establish a Health Benefit Exchange (Exchange). The federal government will operate an Exchange in a state that elects not to establish its own Exchange. Plans sold in the Exchange (and in the small group and individual markets outside the Exchange) will be required to offer an "essential health benefits" package, which will initially be established using a "benchmark" insurance plan selected by the state. Individuals between 134 percent and 400 percent of the federal poverty level will be eligible for federal premium and cost sharing subsidies 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. Coverage of abortions may not be part of the essential health benefits package and premium and cost sharing subsidies may not be used to purchase abortion coverage.

The ACA 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.

Summary of Engrossed Substitute Bill:

If a health plan issued or renewed on or after June 7, 2012, 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 Legislature intends that nothing in the act affect:

- the statutory right of a religiously sponsored health carrier to refuse to pay for a specific service if it objects to doing so by reason of conscience or religion; or
- the statutory right of an individual or organization with a religious or moral tenet opposed to a specific service to refuse to purchase coverage for that service if they object to doing so because of conscience or religion.

A health plan is not required to cover abortions to the extent that such coverage would result in noncompliance with the Weldon Amendment.

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 (Health Care & Wellness):

(In support) In Washington, abortion is legal, safe, and accessible to women of all income levels. This bill aligns the state with federal law and preserves the status quo. It is only fair that if an insurer covers maternity services that it also cover abortions, which is basic health care. This bill prevents any barriers that may be imposed on women's access to abortion coverage because of federal health care reform. Women should have access to all of their options when they become pregnant. Women already face barriers and pay more for health care; no woman should be forced to carry a baby to term because she is poor. This bill will level the playing field and ensure that women get the coverage for which they pay. Women should make decisions based on what is best for them and their families, not because of insurance. Women should be free to choose abortion free from government interference.

(Opposed) Women currently have access to abortion coverage, so this bill is unnecessary. The bill also limits choice by forcing all people to pay for this coverage and all insurers to provide this coverage, which will also infringe on religious liberty. Many Washington citizens feel that it is morally abhorrent to compare abortion to health care. This bill mandates no choice for Washington citizens.

Staff Summary of Public Testimony (Ways & Means):

(In support) This bill is about preserving parity in pregnancy choices and preserving the access to abortion services that women have enjoyed for over 20 years. There is a history of access in Washington. An initiative required state programs to provide these services, and state costs are due to existing law, not this bill. Today every insurance carrier and plan covers abortion. During implementation of the Affordable Care Act, insurers may drop coverage due to administrative burdens. The state should take action now to make sure coverage is available and choices not coerced.

This bill will not jeopardize federal funding under the Weldon amendment. The bill recognizes existing conscience clauses in state law and those clauses remain intact. An

explicit rule from the federal Department of Health and Human Services (HHS) set out a process for enforcing the Weldon amendment. If the HHS Office of Civil Rights receives complaints it will work with the state to bring it into compliance. There is no private right of action so the amendment does not have the same force of law as provisions of the U.S. Code.

(Opposed) By mandating that health plans cover abortion the state would be in direct violation of the federal Weldon amendment. This is not a close question. This conclusion follows from the plain language of the amendment. The Weldon amendment has been reiterated by federal executive actions and by the HHS. Its terms forbid states from receiving federal education, labor, and health and human services funds if the states discriminate by requiring payment for abortion. This jeopardizes federal funding at a time when the state cannot afford it.

This legislation also violates peoples' constitutional rights to exercise their faith because it forces people to buy products that violate their deeply held beliefs. It also violates the rights of business owners by forcing them to sell a product that violates their beliefs. The state does not have the right to force people to buy or sell a product if it violates their consciences.

All insurance companies cover abortion now so the bill is unnecessary.

Persons Testifying (Health Care & Wellness): (In support) Lisa Stone, Legal Voice; Christine Koesis; Art Wang and Laura Ellsmirth, Planned Parenthood; Judy Kimelman, American Congress of OB/GYN; and Elaine Rose, Planned Parenthood Votes.

(Opposed) John Geis, Family Policy Institute of Washington.

Persons Testifying (Ways & Means): (In support) Elaine Rose, Planned Parenthood Votes Northwest; and Janet Chung, Legal Voice.

(Opposed) Sharon Park, Washington Catholic Conference; and John Geis, Family Policy Institute of Washington.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.