WEST VIRGINIA CODE CHAPTER 33 ARTICLE 42

WV Legislature

§33-42-1. Short title.

This article shall be known and may be cited as the "Women's Access To Health Care Act."

WV Legislature

§33-42-2. Legislative findings and purpose.

The Legislature finds and declares that adequate delivery of health care services to women requires direct access to primary and preventative obstetrical and gynecological services, which services may be provided as "well woman examinations", direct access without prior authorization to prenatal and obstetrical services for pregnant women and access to certain services essential to the physical and psychological integrity of women.

WV Legislature

§33-42-3. Definitions.

For purposes of this article:

(1) "Advanced nurse practitioner" means a certified nurse-midwife, or an advanced nurse practitioner certified to practice in family practice, women's health (ob/gyn), or primary care adult, geriatric or pediatric practice, practicing within the lawful scope of that provider's practice.

(2) "Health benefits policy" means any individual or group plan, policy or contract for health care services issued, delivered, issued for delivery or renewed in this state by a health care corporation, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity, when the policy or plan covers hospital, medical or surgical expenses.

(3) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(4) "Physician performing a partial-birth abortion" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery in West Virginia, or any other individual who is legally authorized by the state to perform abortions: Provided, That any individual who is not a physician or not otherwise legally authorized by the state to perform abortions, but who nevertheless directly performs a partial-birth abortion, is subject to the provisions of this article.

(5) "Vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure that the physician or person delivering the living fetus knows will kill the fetus, and kills the fetus.

(6) "Women's health care provider" means an obstetrician/ gynecologist, advanced nurse practitioner certified to practice in women's health (ob/gyn), certified nurse-midwife or physician assistant-midwife practicing within the lawful scope of that provider's practice.

WV Legislature

§33-42-4. Limitations on conditions of coverage.

No health benefits policy may require as a condition to the coverage of basic primary and preventative obstetrical and gynecological services that a woman first obtain a referral from a primary care physician: Provided, That for a health maintenance organization authorized under article twenty-five-a of this chapter, direct access, at least annually, to a women's health care provider for purposes of a well woman examination shall satisfy the foregoing requirement. No health benefits policy may require as a condition to the coverage of prenatal or obstetrical care that a woman first obtain a referral for those services by a primary care physician. No health benefits policy providing coverage for surgical services in a hospital inpatient or outpatient setting may deny coverage for: (1) Reconstruction of the breast following mastectomy; or (2) reconstructive or cosmetic surgery required as a result of an injury caused by an act of family violence as defined in section three, article two-a, chapter forty-eight of this code, when the person inflicting the injury was convicted of a felony, a lesser included misdemeanor offense, or a charge of domestic battery for inflicting the injury.

WV Legislature

§33-42-5. Required disclosure.

Every health benefits policy that is issued, delivered, issued for delivery or renewed in this state on or after July 1, 1998, shall disclose in writing to enrollees, subscribers and insureds, in clear and accurate language, the female enrollee's right of direct access to a women's health care provider of her choice. The information required to be disclosed shall include, at a minimum, any specific women's health care services that are excluded from coverage and the health benefits policy's right to limit coverage to medically necessary and appropriate women's health care services.

WV Legislature

§33-42-6. Certain cost-sharing prohibited.

No health benefits policy may impose additional copayments or deductibles for female enrollees' direct access to in-network, participating women's health care providers unless the same additional cost-sharing is imposed for other types of health care services not delineated in this article.

WV Legislature

§33-42-7. Limitation on number of women's health care providers.

A health benefits policy may limit the number of women's health care providers in a network: Provided, That a sufficient number of providers are available to serve a defined population or geographic service area so that female enrollees will have direct and timely access to women's health care providers.

WV Legislature

§33-42-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state Board of Medicine.

(a) Any person who knowingly performs a partial-birth abortion and thereby kills a human fetus is guilty of a felony and, shall be fined not less than $10,000, nor more than $50,000, or imprisoned not more than two years, or both fined and imprisoned. This section does not apply to a partial-birth abortion that is necessary to save the life of a mother when her life is endangered by a physical disorder, illness or injury.

(b) A physician charged pursuant to this section may seek a hearing before the West Virginia Board of Medicine on the issue of whether the physician's act was necessary to save the life of a mother pursuant to the provisions of subsection (a) of this section. The findings of the Board of Medicine are admissible on this issue at the trial of the physician. Upon a motion by the defendant, the court shall delay the beginning of trial for not more than thirty days to permit the Board of Medicine hearing to take place.

(c) No woman may be prosecuted under the provisions of this section for having a partial-birth abortion, nor may she be prosecuted for conspiring to violate the provisions of this section.

(d) Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq*. of this code is judicially determined to be unconstitutional.

WV Legislature