

SB 25

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 25

(By Senator BOLEY, ET AL)



PASSED MARCH 14, 1998
In Effect NINETY DAYS FROM Passage

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FOR

Senate Bill No. 25

(SENATORS BOLEY, HUNTER, MINEAR, DEEM,
WHITE AND SCOTT, *original sponsors*)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-two, relating to women's access to health care; defining terms; legislative findings and purpose; requiring providers of health benefits policies to provide coverage for direct access to women's health care providers and specified services without referral or additional deductibles or copayments; disclosure of female enrollees' rights to direct access to certain health care services; disclosure of certain exclusions from coverage; disclosure of right to limit coverage to medically necessary and appropriate services;

prohibiting certain cost-sharing; permitting limitations on the number of women's health care providers in a network under certain conditions; prohibiting partial-birth abortions; definition of terms; establishing criminal penalties; creating exceptions; and short title.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article forty-two, to read as follows:

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-1. Short title.

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

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

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

§33-42-3. Definitions.

1 For purposes of this article:
2 (1) "Advanced nurse practitioner" means a certified
3 nurse-midwife, or an advanced nurse practitioner certified
4 to practice in family practice, women's health (ob/gyn), or
5 primary care adult, geriatric or pediatric practice, practicing
6 within the lawful scope of that provider's practice.
7 (2) "Health benefit policy" means any individual or
8 group plan, policy or contract for health care services
9 issued, delivered, issued for delivery or renewed in this

10 state by a health care corporation, health maintenance
11 organization, accident and sickness insurer, fraternal
12 benefit society, nonprofit hospital service corporation,
13 nonprofit medical service corporation or similar entity,
14 when the policy or plan covers hospital, medical or
15 surgical expenses.

16 (3) "Partial-birth abortion" means an abortion in which
17 the person performing the abortion partially vaginally
18 delivers a living fetus before killing the fetus and complet-
19 ing the delivery.

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

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

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

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

1 No health benefits policy may require as a condition to
2 the coverage of basic primary and preventative obstetrical
3 and gynecological services that a woman first obtain a
4 referral from a primary care physician: *Provided*, That for

5 a health maintenance organization authorized under
6 article twenty-five-a of this chapter, direct access, at least
7 annually, to a women's health care provider for purposes
8 of a well woman examination shall satisfy the foregoing
9 requirement. No health benefits policy may require as a
10 condition to the coverage of prenatal or obstetrical care
11 that a woman first obtain a referral for those services by
12 a primary care physician. No health benefit policy provid-
13 ing coverage for surgical services in a hospital inpatient or
14 outpatient setting may deny coverage for: (1) Reconstruc-
15 tion of the breast following mastectomy; or (2) reconstruc-
16 tive or cosmetic surgery required as a result of an injury
17 caused by an act of family violence as defined in section
18 three, article two-a, chapter forty-eight of this code, when
19 the person inflicting the injury was convicted of a felony,
20 a lesser included misdemeanor offense, or a charge of
21 domestic battery for inflicting the injury.

§33-42-5. Required disclosure.

1 Every health benefits policy that is issued, delivered,
2 issued for delivery or renewed in this state on or after the
3 first day of July, one thousand nine hundred ninety-eight,
4 shall disclose in writing to enrollees, subscribers and
5 insureds, in clear and accurate language, the female
6 enrollee's right of direct access to a women's health care
7 provider of her choice. The information required to be
8 disclosed shall include, at a minimum, any specific
9 women's health care services that are excluded from
10 coverage and the health benefits policy's right to limit
11 coverage to medically necessary and appropriate women's
12 health care services.

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

1 No health benefits policy may impose additional
2 copayments or deductibles for female enrollees' direct
3 access to in-network, participating women's health care
4 providers unless the same additional cost-sharing is
5 imposed for other types of health care services not delin-

6 eated in this article.

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

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

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

1 (a) Any person who knowingly performs a partial-birth
2 abortion and thereby kills a human fetus is guilty of a
3 felony and shall be fined not less than ten thousand
4 dollars, nor more than fifty thousand dollars, or imprisoned
5 not more than two years, or both fined and imprisoned.
6 This section does not apply to a partial-birth
7 abortion that is necessary to save the life of a mother
8 when her life is endangered by a physical disorder, illness
9 or injury.

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rand Schorauer
.....
Chairman Senate Committee

Nick Santoro
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Cassie Holmes
.....
Clerk of the Senate

Bryony M. Day
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

John H. Harman
.....
Speaker House of Delegates

The within *approved*..... this the *8th*.....
day of *April*....., 1998.

Jim Owens
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/90

Time

9:20 am