

- SUBJECT:** Prohibiting elective abortion coverage under certain health benefit plans
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 9 ayes — Cook, Craddick, Geren, Guillen, K. King, Kuempel, Meyer, Paddie, Smithee
- 2 nays — Oliveira, E. Rodriguez
- 2 absent — Giddings, Farrar
- WITNESSES:** For — Joe Pojman, Texas Alliance for Life; John Seago, Texas Right to Life; Nicole Hudgens, Texas Values Action; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Salvador Ayala, Empower Texans; Jason Vaughn, Pro-Life Texas; Kyleen Wright, Texans for Life; Jenny Andrews, Texas Alliance for Life; Jennifer Allmon, Texas Catholic Conference of Bishops; Emily Horne, Texas Right to Life; Thomas Parkinson)
- Against — Brenda Koegler, League of Women Voters of Texas; Amanda Williams, Lilith Fund; Blake Rocap, NARAL Pro-Choice Texas; Shanna Lea, Planned Parenthood; Bianca Mason; (*Registered, but did not testify*: Rebecca Marques, ACLU of Texas; Juliana Kerker, American Congress of Obstetricians and Gynecologists-Texas District; Heather Busby and Zoraima Pelaez, NARAL Pro-Choice Texas; Addie Alexander, Chin, Jenna Pagel, L. Pagel, and Victoria Tisor, Planned Parenthood; Elodia Rodriguez and Sarah Wheat, Planned Parenthood Greater Texas; Sadie Hernandez, Planned Parenthood Texas Votes; Lucy Stein, Progress Texas; Lee Daugherty, Stonewall Democrats of Dallas; John Burleson, Travis County Resistance, and 65 individuals)
- On — Amy Dowd; Amy Hedtke; (*Registered, but did not testify*: Doug Danzeiser and Jan Graeber, Texas Department of Insurance)
- BACKGROUND:** 42 U.S. Code sec. 18023 provides that a state may elect to prohibit abortion coverage in qualified health plans offered through a health

benefit exchange in the state if the state enacts a law to provide for such a prohibition.

A qualified health plan under the federal Patient Protection and Affordable Care Act (ACA) is a health insurance plan that provides federally required essential health benefits, follows federally established limits on cost-sharing (such as deductibles, copayments, and out-of-pocket maximum amounts), and is certified by a health benefit exchange. Qualified health plans are made available to consumers in Texas through a federal health benefit exchange, also known as a health insurance marketplace.

Health and Safety Code, sec. 245.002(1) defines "abortion" as an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. The term does not include birth control devices or oral contraceptives.

Sec. 171.002(3) defines "medical emergency" as a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

DIGEST:

HB 214 would prohibit certain health insurance plans from providing coverage for an elective abortion. The bill would not prevent a person from purchasing optional or supplemental coverage for elective abortion under a health benefit plan other than a qualified health plan offered through a health benefit exchange.

The bill would define "elective abortion" as an abortion in Health and Safety Code, sec. 245.002, other than an abortion performed due to a medical emergency as specified in sec. 171.002.

Affected health benefit plans. The bill would apply to a health benefit plan that is offered by: an insurance company, a group hospital service

corporation, a fraternal benefit society, a stipulated premium company, a reciprocal exchange, a health maintenance organization, an Employee Retirement Income Security Act (ERISA) group health plan that holds a certificate of authority, or a nonprofit health corporation that holds a certificate of authority.

It also would apply to:

- group health coverage made available by a school district;
- a basic coverage plan under the Texas Employees Group Benefits Act;
- a basic plan under the Texas Public School Employees Group Benefits Program;
- a primary care coverage plan under the Texas School Employees Uniform Group Health Coverage Act;
- basic coverage under the Uniform Insurance Benefits Act for employees of the University of Texas and Texas A&M systems;
- a small or large employer health benefit plan subject to the Health Insurance Portability and Availability Act (HIPAA) in Insurance Code, ch. 1501; and
- a consumer choice of benefits plan issued under Insurance Code, ch. 1507.

A qualified health plan offered through an Affordable Care Act (ACA) health benefit exchange would be prohibited from providing coverage for an elective abortion.

Exceptions. The bill would exempt health benefit plan coverage provided to an enrollee for a non-elective abortion.

Authorized coverage. A health benefit plan could provide coverage for elective abortion only if:

- the coverage was provided to an enrollee separately from other health benefit plan coverage offered by the issuer;
- the enrollee paid a separate premium for elective abortion coverage

in addition to the premium for other health benefit plan coverage;
and

- the enrollee provided a signature for elective abortion coverage, separately and distinct from the signature required for other health benefit plan coverage provided by the issuer.

Calculating premiums. A health benefit plan issuer that provided coverage for elective abortion would have to calculate an enrollee's premium so that the premium fully covered the estimated cost of elective abortion per enrollee, determined on an actuarial basis. When calculating the premium, the issuer could not take into account any cost savings in other health benefit plan coverage that was estimated to result from coverage for elective abortion.

A health benefit plan issuer could not discount an enrollee's premium or reduce an enrollee's premium on the basis that the enrollee had health benefit plan coverage for elective abortion.

Notice. The bill also would require a health benefit plan issuer that provided coverage for elective abortion to provide each enrollee, upon plan enrollment, with notice that:

- coverage for elective abortion was optional and separate from other health benefit plan coverage offered by the health benefit plan issuer;
- the premium cost for coverage for elective abortion was a premium paid separately from and in addition to the premium for other health benefit plan coverage offered by the issuer; and
- the enrollee could enroll in a health benefit plan without obtaining coverage for elective abortion.

Effective date. The bill would take effect December 1, 2017, and would apply to a qualified health plan offered through a health benefit exchange or a health benefit plan issued on or after April 1, 2018.

SUPPORTERS

HB 214 would allow Texans individually to decide whether or not to pay

SAY: for health insurance coverage for elective abortions. Federal law allows states to opt out of paying for abortions under the federal health insurance exchange, which more than 20 states already have done.

Many Texans do not want to pay for abortion coverage as part of their basic health insurance plan for moral or other reasons. The bill would enhance transparency and help ensure that Texans were not paying for health insurance coverage that they did not want or need.

The bill would allow for qualified health plans under the Affordable Care Act (ACA) and other health benefit plans to cover elective abortions only in the case of a medical emergency, as currently defined in the Health and Safety Code. This provision would help ensure that women had coverage to terminate a pregnancy that was life-threatening and in certain other situations.

The bill would not ban elective abortions. Texans could choose to carry a supplemental insurance plan for elective abortion coverage, if needed, or they could choose a private insurance plan that provided that coverage separately from the issuer's other health coverage. Some organizations and abortion facilities offer financial assistance to low-income women who cannot afford to pay for abortions.

OPPONENTS SAY: HB 214 could create a situation in which a woman might not have insurance coverage if she and her doctor determined it was necessary to terminate a wanted, planned pregnancy. This could occur, for example, due to a woman's diagnosis with cancer or the development of a serious fetal abnormality that did not clearly meet the definition of a "medical emergency" under state law.

The bill would not include an exception for insurance to cover abortion in the case of rape or incest. Before being faced with such a situation, a woman might not have thought she would need supplemental abortion insurance, which is one reason abortion coverage should not be excluded from basic health insurance plans.

HB 214 disproportionately would affect low-income women who cannot afford to purchase supplemental insurance in addition to their basic health insurance plan. Increasing the financial burden on women could incentivize them to seek unsafe abortion methods, which could endanger their lives.

The bill would open the door to possible exclusions on other basic health insurance coverage. Insurance companies, not the state, should decide which benefits to include in standard health insurance coverage.

NOTES:

A companion bill, SB 8 by Creighton, was approved by the Senate on July 26.