



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 351

130th General Assembly  
(As Introduced)

**Reps.** Becker, Hood, J. Adams, Young, Buchy

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## BILL SUMMARY

- Prohibits certain health insurance policies and insurers from offering a health insurance plan that covers abortion services.
- Limits to ectopic pregnancies the exception to the prohibition against using state funds to pay for or reimburse the cost of abortion services.
- Prohibits state funds from being used for the reimbursement of drugs or devices to prevent the implantation of a fertilized ovum.
- Expands the prohibition against state funds being used for nontherapeutic abortion coverage in a state employee benefit plan by limiting the definition of "nontherapeutic abortion" to abortions that are performed when the patient has not been diagnosed with an ectopic pregnancy.
- Removes the current law exception to the immediately preceding prohibition that permits a plan to include a rider that, if accepted by an individual, covers nontherapeutic abortions if the covered individual pays all of the costs associated with the rider.

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## CONTENT AND OPERATION

### Prohibition on insurance benefits for abortion services

The bill prohibits health care policies, contracts, agreements, and plans of health insuring corporations, sickness and accident insurers, multiple employer welfare arrangements, and public employee benefit plans from providing health care benefits for abortion services.

Under the bill, "abortion services" includes drugs or devices used to prevent the implantation of a fertilized ovum. It does not include treatment or services related to an ectopic pregnancy (commonly referred to as a "tubal pregnancy").

The bill does not prohibit coverage, or enable an insurer to deny coverage, for the treatment of any post-abortion complication.<sup>1</sup>

This prohibition applies to policies, contracts, agreements, and plans that are issued, delivered, modified, or renewed on or after the bill's effective date.<sup>2</sup>

## **State funds**

### **Prohibition**

Continuing law prohibits state or local funds from being used for payment or reimbursement of the costs of abortion services unless required by the U.S. Constitution or federal statute, regulation, or court decision or unless certain circumstances exist. The bill reduces these excepted circumstances to one: ectopic pregnancies.

Under current law, unless required by the U.S. Constitution or federal statute, regulation, or court decision, state or local funds may not be used for payment or reimbursement of abortion services unless a certification is made (see "**Certification**" below) and one of three circumstances exists:

- The woman suffers from a physical disorder, injury, or illness, including life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed;
- The pregnancy was the result of an act of rape and the patient, the patient's legal guardian, or the person who made the report to the law enforcement agency, certifies in writing that prior to the performance of the abortion a report was filed with a law enforcement agency having the requisite jurisdiction, unless the patient was physically unable to comply with the reporting requirement and that fact is certified by the physician performing the abortion;
- The pregnancy was the result of an act of incest and the patient, the patient's legal guardian, or the person who made the report certifies in writing that prior to the performance of the abortion, a report was filed

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<sup>1</sup> R.C. 1739.05, 1751.68, and 3923.591.

<sup>2</sup> Section 3.



with either a law enforcement agency having the requisite jurisdiction, or, in the case of a minor, with a county children services agency, unless the patient was physically unable to comply with the reporting requirement and that fact is certified by the physician performing the abortion.

Under the bill, state or local funds may not be used for payment or reimbursement of abortion services unless a certification is made (see "**Certification**" below) and the woman is diagnosed with an ectopic pregnancy. This prohibition does not apply to treatments for incomplete, missed, or septic abortions under current law and the bill.<sup>3</sup>

### **Certification**

Under the bill and current law, before payment of or reimbursement for an abortion can be made with state funds, the physician performing the abortion must certify that the patient in question meets the exception or exceptions, described above.

The certification must (1) be made on the Department of Job and Family Services "Abortion Certification Form," (2) include the physician's handwritten signature, (3) list the name and address of the patient, and (4) be attached to the billing invoice.

Under the bill, the certification form must state that the patient in question was diagnosed with an ectopic pregnancy. Under current law, eliminated by the bill, the certification form must state one of the following:

- The woman suffers from a physical disorder, injury, or illness, including a life-endangering physical condition caused by or arising from the woman's pregnancy, that would place the woman in danger of death unless an abortion was performed;
- The pregnancy was the result of an act of rape or incest and the patient, the patient's legal guardian, or the person who made the report certified in writing that prior to the performance of the abortion a report was filed with a law enforcement agency having the requisite jurisdiction, or in the case of incest with a minor with a county children services agency.
- The pregnancy was the result of an act of rape or incest and in the physician's professional opinion, the patient was physically unable to comply with the reporting requirement.

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<sup>3</sup> R.C. 5101.56(B) and (G).



The physician must keep any documentation supporting the certification in the patient's medical record.<sup>4</sup>

### **Associated services**

Under continuing law unchanged by the bill, state or local funds cannot be used for associated services, such as anesthesia, laboratory tests, or hospital services, if the abortion service itself cannot be paid or reimbursed with state or local funds. A physician seeking payment or reimbursement for such associated services must submit a hard-copy billing invoice.<sup>5</sup>

### **Drugs and devices designed to prevent implantation**

The bill prohibits state or local funds from being used for the reimbursement of drugs or devices used to prevent the implantation of a fertilized ovum. Current law does not prohibit the reimbursement of drugs or devices used to prevent the implantation of a fertilized ovum or for medical procedures to terminate an ectopic pregnancy.<sup>6</sup>

### **Severability**

Under continuing law unchanged by the bill, if enforcement of the prohibition, certification, associated services, and drugs and devices designed to prevent implantation requirements will adversely affect the state's eligibility to participate in a federal program, the requirements must be enforced to the extent permissible without preventing participation in that federal program.<sup>7</sup>

### **Benefit plans for state employees**

Continuing law prohibits state funds from being used, directly or indirectly, to pay the costs, premiums, or charges associated with a policy, contract, or plan if the policy, contract, or plan provides coverage, benefits, or services related to a nontherapeutic abortion. "Policy, contract, or plan" means a policy, contract, or plan of one or more insurance companies, medical care corporations, health care corporations, health maintenance organizations, preferred provider organizations, or other entities that provides health, medical, hospital, or surgical coverage, benefits, or services to

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<sup>4</sup> R.C. 5101.56(A), (C), and (E).

<sup>5</sup> R.C. 5101.56(D).

<sup>6</sup> R.C. 5101.56(F).

<sup>7</sup> R.C. 5101.56(H).



elected or appointed officers or employees of the state or any political subdivision of the state.

The bill narrows the definition of "nontherapeutic abortion" to mean an abortion that is performed or induced when the patient has not been diagnosed with an ectopic pregnancy. Under current law, "nontherapeutic abortion" means an abortion that is performed or induced when the life of the mother would not be endangered if the fetus were carried to term or when the pregnancy of the mother was not the result of rape or incest reported to a law enforcement agency.<sup>8</sup>

The bill removes the current law provision that permits a policy, contract, or plan to offer a rider or other provision that covers nontherapeutic abortions on an individual basis if the covered individual pays for all of the costs, premiums, or charges associated with the rider or other provision, including all administrative expenses related to the rider or provision and any claim made for a nontherapeutic abortion.<sup>9</sup>

These changes apply to policies, contracts, and plans that are issued, delivered, or renewed on or after the bill's effective date.<sup>10</sup>

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## COMMENT

The current standard for analyzing abortion regulations was laid out in *Planned Parenthood of Southeastern Pa. v. Casey*:<sup>11</sup> (1) a woman has the right to choose to have an abortion before fetal viability and to obtain it without undue interference from the State, (2) the State has the power to restrict abortions after viability, if the law contains exceptions for pregnancies endangering the woman's life or health, and (3) the State has legitimate interests from the pregnancy's outset in protecting the health of the woman and the life of the fetus that may become a child.<sup>12</sup>

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## HISTORY

| ACTION   | DATE     |
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| Introduced<br><small>H0351-I-130.docx/ks</small> | 11-13-13 |

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<sup>8</sup> R.C. 9.04.

<sup>9</sup> R.C. 9.04.

<sup>10</sup> Section 3.

<sup>11</sup> 505 U.S. 833 (1992), see also *Coe v. Melahn*, 958 F.2d 223 (8th Cir. 1992).

<sup>12</sup> *Casey*, 505 U.S. at 846.

