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Senate Bill No. 443

(By Senators Kessler (Acting President), Beach, Green, Minard,
Prezioso, Tucker, Plymale and Klempa)

[Introduced February 7, 2011; referred to the Committee on Health
and Human Resources; and then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §9-2-11a, relating to
preventing taxpayer subsidization of health insurance covering
elective abortions; prohibiting all qualified health plans
offered through a state exchange from including abortion
coverage except to prevent the death of the mother; preventing
all other health plans, including health insurance contracts,
plans or policies, offered outside of the exchange, but within
the state, from providing coverage for elective abortions
except by optional separate supplemental coverage for
abortion.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §9-2-11a, to read as
follows:

1 **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND**
2 **RESPONSIBILITIES GENERALLY.**

3 **§9-2-11a. Preventing taxpayer subsidization of health insurance**
4 **covering elective abortions; abortion coverage only**
5 **offered through supplemental policies.**

6 (1) Pursuant to the Patient Protection and Affordable Care
7 Act, Pub. L. No. 111-148, all qualified health plans offered
8 through an Exchange established in the state are prohibited from
9 including elective abortion coverage. Nothing in this section
10 prevents anyone from purchasing optional supplemental coverage for
11 elective abortions for which there is paid a separate premium in
12 accordance with subsection (4) of this section in the health
13 insurance market outside of the Exchange.

14 (2) No health plan, including health insurance contracts,
15 plans or policies, offered outside an Exchange but within the
16 state, may provide coverage for elective abortions except by
17 optional separate supplemental coverage for abortion for which
18 there is paid a separate premium in accordance with subsection (4)
19 of this section.

20 (3) For purposes of this section, an "elective abortion" means
21 an abortion for any reason other than to prevent the death of the
22 mother; provided, that an abortion is not one to prevent the death
23 of the mother based on a claim or diagnosis that she will engage in
24 conduct that will result in her death.

1 (4) The issuer of any health plan providing elective abortion
2 coverage:

3 (a) Shall calculate the premium for coverage so that it fully
4 covers the estimated cost of covering elective abortions, per
5 enrollee, determined on an average actuarial basis, and the issuer
6 of the plan may not take into account any cost reduction in a
7 health plan covering an enrollee estimated to result from the
8 provision of abortion coverage, including prenatal care, delivery,
9 or postnatal care;

10 (b) If the enrollee is enrolling in a health plan providing
11 other coverage at the same time as the enrollee is enrolling in a
12 plan providing elective abortion coverage, shall require a separate
13 signature, distinct from that to enroll in the health plan
14 providing other coverage, in order to enroll in the separate
15 supplemental plan providing elective abortion coverage.

16 (c) Shall provide a notice to enrollees, at the time of
17 enrollment, that:

18 (i) Specifically states the cost of the separate premium for
19 coverage of elective abortions, distinct and apart from the cost of
20 the premium for a health plan providing other coverage and this
21 cost shall be agreed with a separate signature,

22 (ii) States that enrollment in elective abortion coverage is
23 optional, and

24 (iii) If the enrollee is enrolling in a health plan providing

1 other coverage at the same time the enrollee is enrolling in a plan
2 providing elective abortion coverage, states that the enrollee may
3 choose to enroll in the plan providing other coverage without
4 enrolling in the plan providing elective abortion coverage.

5 (5) The issuer of a health plan providing coverage other than
6 elective abortion shall not discount or reduce the premium for such
7 coverage on the basis that an enrollee has elective abortion
8 coverage.

9 (6) Any employer who offers employees a health plan providing
10 elective abortion coverage shall, at the time of beginning
11 employment and at least once in each calendar year thereafter,
12 provide each employee the option to choose or reject the separate
13 supplemental elective abortion coverage, verified yearly with a
14 separate signature.

15 (7) Any entity offering a group health plan providing separate
16 supplemental elective abortion coverage, other than employers
17 offering such a plan to their employees, shall, at the time each
18 group member begins coverage and at least once in each calendar
19 year thereafter, provide each group member the option to choose or
20 reject the separate supplemental elective abortion coverage.

21 (8) Nothing in this section applies in circumstances in which
22 federal law preempts state health insurance regulation.

23 (9) No funds from the Medicaid program account may be expended
24 for an abortion or for any related expenses except to the extent

1 required by federal law or necessary for continued participation in
2 a federal program.

3 (10) Severability. If any one or more provision, section,
4 subsection, sentence, clause, phrase or word of this section or the
5 application thereof to any person or circumstance is found to be
6 unconstitutional, the same is hereby declared to be severable and
7 the balance of this section remains effective notwithstanding such
8 unconstitutionality. The Legislature hereby declares that it would
9 have passed this section, and each provision, section, subsection,
10 sentence, clause, phrase or word thereof, irrespective of the fact
11 that any one or more provision, section, subsection, sentence,
12 clause, phrase, or word be declared unconstitutional.

NOTE: The purpose of this bill is to limit health insurance coverage for elective abortions to coverage provided through supplemental policies.

This section is new; therefore, strike-throughs and underscoring have been omitted.