CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 2, 2017

H.R. 36
Pain-Capable Unborn Child Protection Act

As introduced in the Committee on the Judiciary on January 3, 2017

SUMMARY

H.R. 36 would ban abortions from being performed 20 weeks or more after fertilization, except when the pregnancy is a result of reported rape or reported incest against a minor, or is necessary to save the life of the mother. Violators of the act's provisions would be subject to a criminal fine or imprisonment, or both.

CBO estimates that enacting H.R. 36 would increase direct spending, primarily for Medicaid in order to cover the costs of additional births under the act. Because the number of abortions that would be averted due to the act is very uncertain, the extent of that additional Medicaid spending is also very uncertain. Depending on the number of additional births under H.R. 36, such Medicaid costs could range from about $65 million over the next 10 years to about $335 million over that period. Using an assumption that, under the act, about three-quarters of the abortions that would occur 20 weeks or more after fertilization under current law would instead occur earlier, and the remaining one-quarter would not occur so those pregnancies would be taken to term, CBO estimates that federal spending for Medicaid would rise by $175 million over the 2018-2027 period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues; however, H.R. 36 would have a negligible effect on revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 36 would impose both intergovernmental and private-sector mandates on physicians who perform abortions and would preempt state and local laws that regulate abortions. The bill also would impose a mandate on women seeking abortions. CBO estimates that the direct costs of the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates. (Adjusted for inflation, those thresholds are $78 million and $156 million in 2017, respectively.)

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 36 is shown in the following table. The costs of this legislation fall within budget function 550 (health). CBO estimates that enacting H.R. 36 would generate changes in direct spending that would increase federal budget deficits by $55 million over the 2018-2022 period and $175 million over the 2018-2027 period.

	By Fiscal Year, in Millions of Dollars											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-2022	2018-2027
INCREASES IN DIRECT SPENDING[a]												
Estimated Budget Authority	5	10	10	15	15	20	20	25	25	30	55	175
Estimated Outlays	5	10	10	15	15	20	20	25	25	30	55	175

Note: * = between $0 and $500,000.

a. Enacting the legislation also could affect revenues, but CBO estimates those changes would be negligible for each year.

BASIS OF ESTIMATE

H.R. 36 would ban abortions from being performed 20 weeks or more after fertilization, except when the pregnancy is a result of a reported rape or reported incest against a minor, or is necessary to save the life of the mother. Violators of the act's provisions—those performing prohibited abortions—would be subject to a criminal fine or imprisonment, or both. Women receiving those abortions may not be prosecuted under the act. For this estimate, CBO assumes that the legislation would be enacted near the beginning of fiscal year 2018.

Under H.R. 36, some abortions would be averted: some women who would have sought an abortion 20 weeks or more after fertilization under current law would instead carry those pregnancies to term (while other women would have abortions earlier in their pregnancies). Because the costs of about 45 percent of all births are paid for by the Medicaid program, CBO estimates that federal spending for Medicaid will rise to the extent that enacting H.R. 36 results in additional births relative to current law. In addition, some of those children would themselves qualify for Medicaid and possibly for other federal programs as well.

Based on data compiled by the Centers for Disease Control and Prevention (CDC), CBO estimates that, each year, about 10,000 abortions take place 20 weeks or more after

fertilization.[1] The number of those abortions that would be averted and therefore result in additional births under H.R. 36 is highly uncertain. That number would depend on how the women who would otherwise have such abortions responded to the restriction. If almost all of those women responded by having abortions before 20 weeks, there would be few additional births relative to current law. On the other hand, if the majority of women who would have sought abortions after 20 weeks chose instead to carry their pregnancies to term, then the number of additional births would be greater.

CBO expects that most women who would be affected by H.R. 36 would seek earlier abortions. But how many women would do so is an important determinant of additional federal costs. For example, if 90 percent of women who would have sought an abortion 20 weeks or more after fertilization instead were to seek earlier abortions, federal spending would rise by about $65 million over 10 years. If only half of those women were to obtain earlier abortions, then federal spending would rise by nearly $335 million over 10 years.

For this estimate, CBO assumes that around three-quarters of abortions that would occur 20 weeks or more after fertilization under current law would take place earlier, before the 20th week restriction is triggered, under the act. As a result, we estimate that the increase in federal costs for Medicaid would total $175 million over the 2018-2027 period. However, there is a wide range of uncertainty around that central estimate. CBO estimates that the budgetary effects on other programs would be negligible.

Under H.R. 36, those individuals who are found to be in violation of its provisions and are prosecuted and convicted could be subject to criminal fines. As a result, if the legislation is enacted, the federal government might collect additional fines. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts would be negligible for each year and over the 2018-2027 period because the number of cases involved would probably be small.

Because H.R. 36 would establish a new federal crime, the government would be able to pursue cases it otherwise would not be able to prosecute. However, CBO expects that any increase in costs for law enforcement, court proceedings, or prison operations would not be significant because of the small number of cases likely to be affected. Any such additional costs would be subject to the availability of appropriated funds.

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1. Nineteen states currently prohibit abortions past 20 weeks. Some additional states prohibit abortions occurring at later points during a pregnancy.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending as shown in the following table. (In addition, there would be a negligible effect on revenues from new fines collected.)

CBO Estimate of Pay-As-You-Go Effects for H.R. 36, as introduced in the House of Representatives on October 3, 2017

	By Fiscal Year, in Millions of Dollars											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-2022	2018-2027
NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	5	10	10	15	15	20	20	25	25	30	55	175

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2028.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 36 would impose intergovernmental and private-sector mandates as defined in UMRA. CBO estimates that the direct cost of the mandates would fall below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates. (Adjusted annually for inflation, those thresholds are $78 million and $156 million in 2017, respectively.)

H.R. 36 would impose both intergovernmental and private-sector mandates on physicians who perform abortions. Physicians would be prohibited, with some exceptions, from either terminating or attempting to terminate pregnancies 20 weeks or more after fertilization. To qualify for the exceptions, physicians would need to meet administrative and care requirements set forth in the bill such as a requirement to have a second physician present in some cases. The costs of those mandates would be the net income forgone by public and private physicians and clinics. Forty-three states currently prohibit abortions after some point in a pregnancy, and 19 states restrict them after 20 weeks. Information from the CDC and other industry experts indicates that only a relatively

small number of abortions would be prohibited. Based on information about the cost of abortions, CBO estimates that the net income forgone would be small.

The bill would impose an additional intergovernmental mandate by preempting state and local laws that regulate abortions. The preemption itself would impose no duty on state or local governments that would result in additional spending or a loss of revenues, but states would face additional Medicaid spending for their portion of costs as described in the federal estimate and below. The bill also would impose an additional private-sector mandate by requiring women seeking abortion at 20 weeks or more after fertilization to sign a consent form the includes the age of the fetus and information about federal laws.

Other Impacts

H.R. 36 would result in increased spending for Medicaid. Since a portion of Medicaid is paid for by state governments, CBO estimates that state spending on the program would increase by about $132 million over the 2018-2027 period. Because states have broad flexibility to alter optional benefits and eligibility to offset such costs, the increased spending would not result from an intergovernmental mandate as defined in UMRA.