



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 27, 2013

### **H.R. 1797** **Pain-Capable Unborn Child Protection Act**

*As passed by the House of Representatives on June 18, 2013*

#### **SUMMARY**

H.R. 1797 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. 1797 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. 1797, such Medicaid costs could range from about \$75 million over the next 10 years to more than \$400 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 \$225 million over the 2014-2023 period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues; however, H.R. 1797 would have a negligible impact on revenues.

H.R. 1797 would impose both intergovernmental and private-sector mandates on physicians who perform abortions and would preempt state and local laws that regulate abortions. However, 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 \$75 million and \$150 million in 2013, respectively.)

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1797 is shown in the following table. The costs of this legislation fall within budget function 550 (health). CBO estimates that enacting H.R. 1797 would generate changes in direct spending that would increase federal budget deficits by \$75 million over the 2014-2018 period and \$225 million over the 2014-2023 period.

|   | By Fiscal Year, in Millions of Dollars |      |      |      |      |      |      |      |      |      |      | 2014- | 2014- |  |
|---|--|------|------|------|------|------|------|------|------|------|------|-------|-------|--|
|   | 2014                                   | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2018 | 2023  |       |  |
| <b>CHANGES IN DIRECT SPENDING<sup>a</sup></b> |  |      |      |      |      |      |      |      |      |      |      |       |       |  |
| Estimated Outlays <sup>b</sup>                | 5                                      | 15   | 15   | 20   | 20   | 25   | 25   | 30   | 35   | 35   | 75   | 225   |       |  |

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

b. Changes in budget authority would be similar to changes in outlays for each year.

## BASIS OF ESTIMATE

H.R. 1797 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 in the fall of 2013 and become effective January 1, 2014.

Under H.R. 1797, 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 40 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. 1797 results in additional births and deliveries 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 11,000 abortions take place 20 weeks or more after fertilization.<sup>1</sup> The number of those abortions that would be averted and therefore result in additional births under H.R. 1797, however, is highly uncertain. That number would depend on how women responded to the restriction. If almost all 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 seeking 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. 1797 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 \$75 million over 10 years. If only half of those women were to obtain earlier abortions, then federal spending could rise by more than \$400 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 \$225 million over the 2014-2023 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. 1797, 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 2014-2023 period because the number of cases involved would probably be small.

Because H.R. 1797 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. Eight states already 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.)

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### CBO Estimate of Pay-As-You-Go Effects for H.R. 1797, as passed by the House of Representatives on June 18, 2013

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|                                    | By Fiscal Year, in Millions of Dollars |      |      |      |      |      |      |      |      |      |      |      | 2013- | 2013- |
|------------------------------------|--|------|------|------|------|------|------|------|------|------|------|------|-------|-------|
|                                    | 2013                                   | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2018 | 2023  |       |
| <b>NET INCREASE IN THE DEFICIT</b> |  |      |      |      |      |      |      |      |      |      |      |      |       |       |
| Statutory Pay-As-You-Go Impact     | 0                                      | 5    | 15   | 15   | 20   | 20   | 25   | 25   | 30   | 35   | 35   | 75   | 225   |       |

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## INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1797 would impose both intergovernmental and private-sector mandates on physicians who perform abortions and would preempt state and local laws that regulate abortions. Physicians would be prohibited, with some exceptions, from either terminating or attempting to terminate pregnancies 20 weeks or more after fertilization. The costs of those mandates would be the net income forgone by public and private physicians and clinics. Forty-one states currently prohibit abortions after some point in a pregnancy, but only eight states prohibit them after 20 weeks. Information from the CDC and other industry experts indicates that only a relatively small number of abortions would be prohibited. Therefore, 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, the thresholds are \$75 million and \$150 million in 2013 for intergovernmental and private-sector mandates, respectively.)

H.R. 1797 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 \$170 million over the 2014-2023 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.