

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1335 (Delegate Parrott, *et al.*)
Health and Government Operations

Public Health - Abortions Sought by Minors - Parent or Guardian Consent

This bill repeals existing provisions relating to parental or guardian notification for abortions sought by minors. The bill instead prohibits a physician from performing an abortion on an unmarried minor without first obtaining *consent* from the minor's parent or guardian, unless (1) the minor provides the physician with a court order authorizing waiver of parental consent in accordance with the bill's procedures; (2) the minor declares that she was abused or neglected and the physician reports the suspected abuse or neglect in accordance with specified provisions of law; or (3) there is a medical emergency and the physician certifies the facts justifying the exception in the minor's medical record.

Fiscal Summary

State Effect: General fund expenditures for the Maryland Children's Health Program (MCHP) decrease under the bill to the extent that fewer abortions are performed. Revenues are not affected.

Local Effect: The bill's provisions are not expected to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Consent" means (1) a written statement from the minor's parent or guardian that was notarized within 30 days before receipt by the physician stating that the parent or guardian authorizes the abortion or (2) written authorization for the abortion

provided to the physician during a consultation by the minor's parent or guardian who accompanied the minor to the consultation with the physician.

"Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, complicates the minor's medical condition so as to necessitate an immediate abortion to avert her death or serious risk of substantial and irreversible impairment of a major bodily function.

"Notice" means notice given to the minor's parent or guardian by the physician or the physician's agent in person or by telephone at least 24 hours before the abortion is performed, or by certified mail if a reasonable effort was made to notify the parents in person or by telephone.

The bill authorizes a minor to file a circuit court petition seeking to obtain an order waiving the bill's consent requirements. The court must advise the minor of the minor's right to court-appointed counsel and must appoint counsel on the minor's request, or allow the minor to represent herself. The bill specifies additional requirements for such court proceedings, including confidentiality and precedence over other matters. A court must issue a final order within four days after the petition is filed, unless the time period is extended at the minor's request. Failure to issue an order within the required timeframe automatically grants the petition.

A court must issue an order waiving the parental consent requirement if the court finds by clear and convincing evidence that the minor is mature and informed to make such a decision or parental or guardian consent is not in the minor's best interest. If such consent is determined not to be in the minor's best interest, the court must order notice to be provided to the parent or guardian of the physician's intent to perform the abortion, unless the court finds that such notice is also not in the minor's best interest, as specified.

A minor may appeal a court's decision not to grant a petition to waive parental consent under the bill. Any appeal must be heard and decided within five days after the appeal is filed. Failure to decide an appeal within the required timeframe automatically reverses the lower court's order. However, an order authorizing an abortion without parental or guardian consent may not be appealed.

Current Law: The State may not interfere with a woman's decision to end a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme Court's holding in *Roe v. Wade*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. The Maryland Department of Health (MDH) may adopt regulations consistent with established medical

practice if they are necessary and the least intrusive method to protect the life and health of the woman.

If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

A physician may not perform an abortion on an unmarried minor without first giving notice to the minor's parent or guardian, unless (1) the minor does not live with a parent or guardian and a reasonable effort to give notice to a parent or guardian is unsuccessful; (2) in the physician's professional judgment, such notice may lead to physical or emotional abuse of the minor; (3) in the physician's professional judgment, the minor is mature and capable of giving informed consent; or (4) in the physician's professional judgment, notification would not be in the best interest of the minor.

A physician is not liable for civil damages or subject to a criminal penalty for a decision not to give notice. A physician may not provide such notice if the minor decides not to have the abortion.

Background: According to the Guttmacher Institute, as of March 1, 2018, 37 states require parental involvement in a minor's decision to have an abortion. Of these states:

- 21 states require only parental consent and 3 states require both parents' consent;
- 5 states require both parental notification and consent; and
- 11 states require only parental notification, while 1 state requires both parents to be notified.

The Guttmacher Institute also reports that all 37 states that require parental involvement also have an alternative process for a minor seeking an abortion. Specifically, of these states:

- 36 states include a judicial bypass procedure that allows a minor to obtain court approval;
- 7 states require judges to use specific criteria, such as the minor's intelligence or emotional stability, when deciding whether to waive parental involvement; and
- 15 states require a "clear and convincing" evidence standard to determine whether the minor is mature and the abortion is in her best interest when deciding whether to waive parental involvement.

Finally, most of the states requiring parental involvement also provide exceptions. Specifically:

- 34 states authorize a minor to obtain an abortion in a medical emergency; and
- 15 states authorize a minor to obtain an abortion in cases of abuse, assault, incest, or neglect.

State Expenditures: Women eligible for Medicaid solely due to a pregnancy do not currently qualify for a State-funded abortion. Additionally, based on language in the federal budget, federal funds may not be used for an abortion unless the life of the woman is endangered. Language attached to the Medicaid budget since the late 1970s authorizes the use of State funds to pay for abortions under specific circumstances. Similar language has been attached to the appropriation for MCHP since its advent in fiscal 1999. According to information obtained from MDH, in fiscal 2017, 8,798 abortions were funded through Medicaid. This reflects the number of claims Medicaid received through October 2017; the actual number of abortions may be slightly higher, as providers have 12 months to bill Medicaid for a service. None of these abortions were eligible for federal matching funds (no abortions were performed under the specified federal exception).

Medicaid advises that in fiscal 2017, 275 abortions were performed for individuals younger than age 18. No federal matching funds were used for any of these abortions.

Accordingly, the Department of Legislative Services advises that general fund expenditures for MCHP decrease under the bill to the extent that fewer abortions are performed and, therefore, funded by MCHP. The exact amount of any decrease depends on the proportion of abortions that would not be performed under the bill and cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful for physicians who must comply with the bill's notice requirements before performing an abortion on a minor. Litigation costs may increase for physicians against whom civil actions are brought.

Additional Comments: The bill repeals existing provisions of law specifying that a physician is not liable for civil damages or subject to criminal penalties for a decision not to give required notice. However, the bill does not establish specific exemptions from liability for failing to give proper notice in accordance with the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Guttmacher Institute; Department of Legislative Services

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