

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1193 (Delegate Cox, *et al.*)
Health and Government Operations

Health - Abortion - Facility Requirements

This bill requires each facility in the State where an abortion is performed to meet the standards required for an ambulatory surgical facility.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: “Ambulatory surgical facility” means any center, service, office facility, or other entity that (1) operates exclusively for the purpose of providing surgical services to patients requiring a period of postoperative observation but not requiring hospitalization and in which the expected duration of services is less than 24 hours after admission and (2) seeks reimbursement from payers as an ambulatory surgery center. “Ambulatory surgical facility” does not include:

- the office of one or more health care practitioners seeking only professional reimbursement for the provision of medical services, unless the office operates under contract or agreement with a payer as an ambulatory surgical facility (regardless of whether it is paid a technical or facility fee) or the office is designated to receive ambulatory surgical referrals in accordance with utilization review or other policies;

- any facility or service owned or operated by a hospital;
- the office of a health care practitioner or group of health care practitioners with up to one operating room if the office does not receive a technical or facility fee and the operating room is used exclusively by the health care practitioner or members of the group of health care practitioners for their own patients; or
- an office owned or operated by one or more licensed dentists.

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 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.

Under Maryland regulations (COMAR 10.12.01.01, *et seq.*), surgical abortion providers must be licensed by the Office of Health Care Quality. A “surgical abortion facility” is defined as an outpatient facility that provides surgical termination of pregnancy as a regular service, except if the facility is regulated as a hospital, freestanding medical facility, or freestanding ambulatory care facility. “Freestanding ambulatory care facility” includes an ambulatory surgical facility.

Background: The Guttmacher Institute reports that 17 states have licensing standards for abortion providers that are comparable or equivalent to the state’s licensing standards for ambulatory surgical centers: Alabama, Arizona, Arkansas, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Utah.

However, in 2016, the U.S. Supreme Court held that two provisions of a Texas law – including one requiring that abortion clinics in the state have facilities comparable to an ambulatory surgical center – place a substantial obstacle in the path of women seeking an abortion, constitute an undue burden on abortion access and, therefore, violate the U.S. Constitution.

Small Business Effect: Facilities for physicians whose practices encompass performing abortions already generally meet the *standards* for an ambulatory surgical facility.

However, by definition, an “ambulatory surgical facility” must have more than one operating room. It is unclear whether the bill imposes this requirement on physicians whose practices encompass performing abortions. If it does, at least some of them will need to add another operating room and fully equip it.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; U.S. Supreme Court; Guttmacher Institute; Department of Legislative Services

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mm/jc

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