

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1369 (Delegate Cox, *et al.*)
 Health and Government Operations

Public Health - Abortions - Standards and Reporting

This bill authorizes a woman to terminate a pregnancy (1) before the gestational age of the fetus is 24 weeks or (2) if after conducting a specified examination, a physician does not detect a fetal heartbeat and termination is necessary to protect the life or health of the woman. Accordingly, the bill repeals the definition of viable and the ability to terminate a pregnancy if the fetus is affected by a genetic defect or serious deformity or abnormality. The bill prohibits a physician from performing an abortion (1) before conducting a physical examination of the pregnant woman and her unborn child to determine if there is a fetal heartbeat present; (2) if a fetal heartbeat is detected; (3) if the gestational age of the unborn child is at least 24 weeks; or (4) if no fetal heartbeat is detected, unless necessary to save the life of the pregnant woman, as specified. A physician must report each abortion performed to the Maryland Department of Health (MDH) on a form required by MDH.

Fiscal Summary

State Effect: MDH general fund expenditures increase by \$41,300 in FY 2023 for personnel; future years reflect annualization and termination of the position in FY 2024. Medicaid general fund expenditures decrease by up to \$5.1 million in FY 2023 and up to \$6.8 million on an annualized basis thereafter (not shown). Department of Budget and Management (DBM) expenditures for the State Employee and Retiree Health and Welfare Benefits Program decrease beginning in FY 2023 (not shown). The overall net fiscal effect on Medicaid and DBM is indeterminate, as discussed below.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	41,300	10,700	0	0	0
Net Effect	(\$41,300)	(\$10,700)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government operations and finances are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A physician must use the physician's best clinical judgment to determine (1) that an abortion is necessary to save the life of the pregnant woman; (2) whether a fetal heartbeat is present; and (3) the gestational age of the unborn child.

The form that a physician must use to report each abortion performed to MDH (1) may not identify the individual who received the abortion by name; (2) must identify the physician who performed the abortion; and (3) must identify any other physician consulted regarding or involved in any of the actions required before performing an abortion or in the performance of an abortion.

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. 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.

State Expenditures:

Administrative Costs

MDH advises that it must hire one full-time administrative officer to develop and maintain a statewide list of facilities that perform abortions, prepare instructional materials for physicians on procedures for using an electronic reporting system, distribute those instructional materials, review completed records, and follow-up as necessary. MDH further advises that development of an electronic reporting system costs \$700,000 with ongoing maintenance costs of \$90,000 annually. The Department of Legislative Services

(DLS) advises that the bill only requires MDH to develop a form that a physician must use to make a report. Thus, DLS advises that the creation of an electronic reporting system is not required under the bill, but one full-time contractual employee is necessary.

General fund expenditures increase by \$41,285 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring one contractual administrative officer to develop the reporting form and establish procedures for receiving and filing the form. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$33,942
Operating Expenses	<u>7,343</u>
Total FY 2023 State Expenditures	\$41,285

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and termination of the contractual position on September 30, 2023 (fiscal 2024).

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Medicaid

MDH advises that Medicaid paid for 10,163 abortions in fiscal 2021 at an average cost of \$668 per abortion for a total cost of \$6.8 million. Thus, general fund expenditures decrease by up to \$5.1 million in fiscal 2023, based on fiscal 2021 claims. This estimate reflects the bill's October 1, 2022 effective date. Based on fiscal 2021 claims, general fund expenditures decrease by up to \$6.8 million annually thereafter. However, Medicaid has previously noted that any savings may be offset by an increase in costs for labor and delivery services provided to Medicaid eligible women to the extent that births increase under the bill. The approximate average cost for prenatal care, labor/delivery, and postpartum care for Medicaid beneficiaries is \$36,000. Moreover, newborns born to Medicaid-eligible mothers are deemed automatically eligible for Medicaid benefits for their first year and typically retain eligibility for subsequent years.

On average, Medicaid pays \$9,700 for health care per eligible newborn annually (50% general funds and 50% federal funds). The extent of any increase in expenditures cannot be reliably estimated at this time. Federal fund revenues increase accordingly.

Department of Budget and Management

DBM oversees the State Employee and Retiree Health and Welfare Benefits Program. The bill results in a significant decrease in the number of abortions covered under the program. Thus, DBM expenditures for the program (general, federal, and special funds) decrease. Any potential reduction in expenditures cannot be reliably estimated as DBM has previously advised that it does not monitor claims data for abortion procedures. To the extent that births increase among individuals covered by the program, there is likely an offsetting increase in expenditures (and potentially an overall increase in expenditures) for labor and delivery costs and to cover additional dependents. The extent of any increase cannot be reliably estimated at this time.

Small Business Effect: Small businesses that currently provide abortion services are prohibited from doing so if a fetal heartbeat is detected unless necessary to save the life of the pregnant woman.

Additional Comments: The bill affirms that the State may not interfere with the decision of a woman to terminate a pregnancy (1) before the gestational age of the fetus is 24 weeks or (2) if a physician does not detect a fetal heartbeat and termination is necessary to protect the life or health of the woman. However, the bill explicitly prohibits a physician (the only provider in the State authorized to perform an abortion) from performing an abortion unless no fetal heartbeat is detected *and* the abortion is required to save the life of the pregnant woman, as specified.

According to the American Pregnancy Association, a fetal heartbeat can be detected by an ultrasound as early as six weeks gestation (or six weeks after a patient's last menstrual period).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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