

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 180 (Delegate Nathan-Pulliam, *et al.*)  
Health and Government Operations

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Coverage of Donor Breast Milk - Infant Survival Act

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This bill requires the Maryland Medical Assistance Program (Medicaid) to reimburse a hospital for donor human breast milk provided to infants who are younger than three months of age, critically ill, and in the neonatal intensive care unit of a hospital. A physician must order the milk, and the Department of Health and Mental Hygiene (DHMH) must determine that the milk is medically necessary. The milk must be obtained from a donor human milk bank that meets quality guidelines established by DHMH.

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Fiscal Summary

**State Effect:** Potential minimal increase in general and federal fund expenditures for Medicaid beginning in FY 2012 to determine medical necessity as required under the bill. Beyond this requirement, the bill codifies existing practice.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Currently, Medicaid reimburses hospitals for dietary charges for infants, including donor human breast milk, if ordered by a physician, at 94% of allowable charges through the established hospital rate-setting system. However, Medicaid does not determine the medical necessity of donor human breast milk.

In Maryland, human milk banks are regulated as tissue banks by the Office of Health Care Quality (OHCQ). A person must hold a permit issued by OHCQ before operating a tissue bank. An inspection is conducted of each tissue bank in Maryland before a permit is issued. An out-of-state tissue bank must submit the latest inspection report and certification from the appropriate accrediting agency or another state licensing entity.

Code of Maryland Regulations 10.50.01.01 requires that all tissue banks operating or providing services in Maryland operate under qualified supervision, reliable procedures, and appropriate quality assurance.

### **Background:**

*Human Milk Banks:* Since the mid-1980s, a network of human milk banks has developed in the United States. Most banks voluntarily follow a set of guidelines established by the Human Milk Banking Association of America. These banks pool, process, and distribute donated human milk from lactating women for use in other infants when their mothers' own milk is unavailable.

In the absence of milk from an infant's mother, donor milk offers many of the benefits of human milk for the infant. Human milk contains growth factors that can protect immature tissue, promote maturation, particularly in the gastrointestinal tract, and promote healing of tissue damaged by infection.

A January 2011 report issued by the U.S. Surgeon General notes that "growing evidence supports the role of donated human milk in assisting infants with special needs, such as infants in newborn intensive care units who are unable to receive their own mothers' milk, to achieve the best possible health outcome." The report concludes that a national strategy is needed to efficiently and effectively address the issues involved in providing banked donor milk to vulnerable infant populations.

As of February 2011, three human milk banks hold tissue bank permits from OHCQ: Johns Hopkins Hospital, Saint Agnes Healthcare, and Mother's Milk Bank at San Jose in San Jose, California.

*Medicaid and the Maryland Children's Health Program (MCHP):* Medicaid provides health care coverage to children, pregnant women, elderly or disabled individuals, and indigent parents who pass certain income and asset tests. Eligibility for MCHP currently extends to individuals younger than age 19 with family incomes up to 300% of the federal poverty guidelines (FPG). Children in families with incomes above 200% but at or below 300% FPG are enrolled in the MCHP Premium Plan. Children and pregnant women who have not been legal immigrants for at least five years are ineligible for federal Medicaid and MCHP benefits. The State currently provides Medicaid benefits to

legal immigrant pregnant women and children who have been in the country for less than five years using general funds only. Emergency services are provided to all financially eligible individuals regardless of immigration status.

In calendar 2009, there were 1,591 infant Maryland Medicaid recipients younger than 28 days of age with stays of one or more days in the neonatal intensive care unit of a hospital.

**State Fiscal Effect:** Medicaid expenditures (50% general funds/50% federal funds) increase beginning in fiscal 2012 to the extent that additional resources are needed to determine the medical necessity of donor human breast milk through prior authorization or post-payment review. The amount of any increase cannot be reliably estimated at this time but is anticipated to be minimal.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** U.S. Food and Drug Administration; U.S. Department of Health and Human Services, *The Surgeon General's Call to Action to Support Breastfeeding*, January 2011; Human Milk Banking Association of America; Department of Health and Mental Hygiene; Department of Legislative Services

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