

Department of Legislative Services  
 Maryland General Assembly  
 2016 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1357 (Delegate Glass)  
 Appropriations

Public Health - State Funding for Abortions - Prohibition and Exceptions

This bill prohibits the use of State funds to pay for an abortion procedure or health benefits coverage that includes coverage of abortion procedures unless (1) the woman’s pregnancy is the result of an act of rape or incest or (2) the woman has a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

Fiscal Summary

**State Effect:** General fund expenditures for Medicaid decrease by approximately \$3.8 million in FY 2017 and by \$5.0 million annually thereafter due to the bill’s prohibition on the use of State Medicaid funds for abortions, except under specified circumstances. Likewise, Department of Budget and Management (DBM) expenditures decrease by approximately \$350,000 in FY 2017 and by \$500,000 annually thereafter (75% general funds, 25% special funds) due to the prohibition on coverage of elective abortions under the State Employee and Retiree Health and Welfare Benefits Program, except under specified circumstances. Revenues are not affected.

| (in dollars)   | FY 2017     | FY 2018     | FY 2019     | FY 2020     | FY 2021     |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues       | \$0         | \$0         | \$0         | \$0         | \$0         |
| GF Expenditure | (4,061,000) | (5,414,600) | (5,414,600) | (5,414,600) | (5,414,600) |
| SF Expenditure | (93,800)    | (125,000)   | (125,000)   | (125,000)   | (125,000)   |
| Net Effect     | \$4,154,700 | \$5,539,600 | \$5,539,600 | \$5,539,600 | \$5,539,600 |

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

**Local Effect:** None.

**Small Business Effect:** Minimal. Health care practices may perform fewer abortions under the bill.

## Analysis

**Current Law/Background:** Under State 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*. A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. The Department of Health and Mental Hygiene (DHMH) 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.

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 the Maryland Children's Health Program since its advent in fiscal 1999.

Specifically, a physician or surgeon must certify that, based on his or her professional opinion, the procedure is necessary due to one of the following conditions:

- continuation of the pregnancy is likely to result in the death of the woman;
- the woman is a victim of rape, sexual offense, or incest that has been reported to a law enforcement agency or a public health or social agency;
- it can be ascertained by the physician with a reasonable degree of medical certainty that the fetus is affected by genetic defect or serious deformity or abnormality;
- it can be ascertained by the physician with a reasonable degree of medical certainty that termination of pregnancy is medically necessary because there is a substantial risk that continuation of the pregnancy could have a serious and adverse effect on the woman's present or future physical health; or
- the physician or surgeon certifies in writing that in his or her professional judgment there exists medical evidence that continuation of the pregnancy is creating a serious effect on the woman's present mental health, and if carried to term there is a substantial risk of a serious or long-lasting effect on the woman's future mental health.

According to information obtained from DHMH, in fiscal 2015, 6,866 abortions were funded through Medicaid. This reflects the number of claims Medicaid received through August 2015; the actual number of abortions may be slightly higher, as providers have 12 months to bill Medicaid for a service. Of these, 6,844 were performed under the mental health exception; 20 were performed under the genetic defect or abnormality exception; and 2 were performed under the physical health exception.

**State Expenditures:** Under the bill, no State funds may be used to fund an abortion except under two specified circumstances: (1) the pregnancy is the result of rape or incest; or (2) the woman has a life-endangering physical condition caused by or arising from the pregnancy that would place the woman in danger of death unless the abortion is performed. Two of the current exceptions under State law are similar, but not identical, to the bill's exceptions: (1) continuation of the pregnancy is likely to result in the death of the woman; or (2) the woman is a victim of rape, sexual offense, or incest that has been reported to a law enforcement agency or a public health or social agency. None of the 6,866 abortions funded through Medicaid in fiscal 2015 was performed under these two existing similar exceptions.

In fiscal 2015, the average Medicaid payment per abortion was \$734. Therefore, under the bill, general fund expenditures for Medicaid decrease by approximately \$3,779,733 in fiscal 2017 and by \$5,039,644 annually thereafter. This estimate reflects the bill's October 1, 2016 effective date. However, Medicaid notes that savings may be offset by an increase in costs for newborns born to Medicaid-eligible mothers (50% general funds, 50% federal funds) who are deemed automatically eligible for Medicaid benefits for their first year and typically retain eligibility for subsequent years. The extent of any increase in expenditures cannot be reliably estimated at this time.

DBM additionally advises that the bill prohibits the coverage of elective abortions under all State-funded health care benefits, including the State Employee and Retiree Health and Welfare Benefits Program. DBM estimates that the bill results in program savings of approximately \$500,000 annually (75% general funds, 25% special funds). Therefore, general fund expenditures decrease by approximately \$281,250 in fiscal 2017 and by \$375,000 annually thereafter. Special fund expenditures decrease by approximately \$93,750 in fiscal 2017 and by \$125,000 annually thereafter. This estimate again reflects the bill's October 1, 2016 effective date.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Budget and Management, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2016  
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