Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 952 (Delegate Kelly, *et al.*)
Health and Government Operations

Access to Abortion Care and Health Insurance Act

This bill establishes requirements regarding how an insurer, nonprofit health service plan, and health maintenance organization (collectively known as carriers), as well as Medicaid must cover abortion care services. By January 1, 2023, the Maryland Health Benefit Exchange (MHBE) must adopt regulations to provide a subsidy to cover 100% of the cost of premiums for individuals in the State-Based Young Adult Health Insurance Subsidies Pilot Program for calendar 2023 and track the impact of such subsidies. MHBE must convene a workgroup on consumer information about abortion care coverage, conduct a study on extending last dollar coverage, and submit specified reports. The Maryland Insurance Administration (MIA) must collect specified data from State-regulated plans and submit a series of reports to specified committees of the General Assembly. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: Minimal increase in special fund revenues for MIA from the $125 rate and form filing fee; review of filings can be handled with existing budgeted resources. MIA can collect and report the required data using existing budgeted resources. Expenditures increase for the State Employee and Retiree Health and Welfare Benefits Program by an indeterminate amount beginning in FY 2023. MHBE special fund expenditures increase by $125,000 in FY 2023 for information technology changes that can likely be absorbed within existing budgeted resources.

Local Effect: Potential increase in the cost of health insurance beginning in FY 2023 for local governments that purchase fully insured plans.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Medicaid Coverage of Abortion Care Services

Medicaid must provide coverage of abortion care services without restrictions that are inconsistent with the protected rights under Title 20, Subtitle 2 of the Health-General Article and provide information to enrollees about abortion care coverage using the term "abortion care" to describe coverage.

Insurance Coverage of Abortion Care Services

A carrier that provides labor and delivery coverage must cover abortion care services without (1) a deductible, coinsurance, copayment, or any other cost-sharing requirement and (2) restrictions that are inconsistent with the protected rights under Title 20, Subtitle 2 of the Health-General Article. A carrier must provide information to consumers about abortion care coverage using the terminology "abortion care" to describe coverage.

These requirements do not apply to (1) a religious organization that obtains an exclusion from a carrier for coverage of contraceptive drugs or devices if the required coverage conflicts with the religious organization's *bona fide* religious beliefs and practices; (2) a multistate plan that does not provide coverage for abortions in accordance with federal law; or (3) a high-deductible plan, unless the Insurance Commissioner determines that abortion care is not excluded from the safe harbor provisions for preventive care under federal law.

If the Commissioner determines that enforcement of these provisions may adversely affect the allocation of federal funds to the State, the Commissioner may grant an exemption for these requirements to the minimum extent necessary to ensure the continued receipt of federal funds.

State-Based Young Adult Health Insurance Subsidies Pilot Program

By January 1, 2023, MHBE must adopt regulations to provide a subsidy to cover 100% of the cost of the premium for young adults who meet subsidy eligibility and payment parameters for the pilot program for calendar 2023. MHBE must track the impact of covering 100% of the cost of premiums for qualified participants on effectuation rates and termination for nonpayment rates, and the information must be posted on MHBE's website and included in MHBE's annual report.

Workgroup on Consumer Information about Abortion Care Coverage

Uncodified language requires MHBE, in consultation with MIA, to convene a workgroup to make recommendations to improve the transparency and accessibility of consumer information about abortion care coverage for consideration for plan certification standards beginning in plan year 2024. By January 1, 2023, MHBE must report the recommendations made by the workgroup to specified committees of the General Assembly.

Collection of Data from State-regulated Plans

MIA must collect data from State-regulated plans on receipts, disbursements, and ending balances for segregated accounts established under the federal Patient Protection and Affordable Care Act (ACA) and related federal regulations. MIA must report to specified committees of the General Assembly annually by January 1, 2023, through January 1, 2026, on aggregate data collected for specified periods.

Maryland Health Benefit Exchange Study

MHBE must study extending last dollar coverage to other enrollees in addition to the enrollees receiving last dollar coverage through the State-Based Young Adult Health Insurance Subsidies Pilot Program. By January 1, 2023, MHBE must report to specified committees of the General Assembly on the findings of the study.

Current Law:

State Abortion Provisions

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.

With specified exceptions, a physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor. The postal receipt that shows an article of mail was sent by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service, to the last known address of a parent or guardian and that is attached to a copy of the notice letter that was sent in that article of mail must be conclusive evidence of notice or a reasonable effort to give notice.

Federal Abortion Provisions

Section 1303 of the ACA requires insurers that cover certain abortion services to segregate funds for those services in a separate account and then use that account to pay for all services for these abortions.

Medicaid Coverage for Abortion

Women eligible for Medicaid solely due to a pregnancy do not currently qualify for a State-funded abortion. Additionally, language included in the federal budget since 1977, commonly referred to as the Hyde amendment, forbids the use of federal funds for abortions except in cases of life endangerment, rape, or incest.

Language attached to the Medicaid budget since 1979 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 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 the 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.

State-Based Young Adult Health Insurance Subsidies Pilot Program

Chapters 777 and 778 of 2021 require MHBE to establish and implement the State-Based Young Adult Health Insurance Subsidies Pilot Program for calendar 2022 and 2023 to help make health insurance more affordable for uninsured young adults. Subject to available funds, in fiscal 2022 through 2024, MHBE may designate funds from the MHBE Fund to be used for the pilot program so that no more than $20.0 million in annual subsidies may be provided in calendar 2022 and 2023. Under the program, young adults ages 18 to 34 with incomes between 138% and 400% of the federal poverty level are eligible for State premium assistance subsidies. Subsidies will be allocated to reduce the maximum expected premium contribution of individuals ages 18 to 30 by 2.5%. For individuals ages 31 to 34, the subsidy is progressively lower for each age, reducing the maximum expected contribution by 0.5% each year.

Essential Health Benefits

The ACA requires nongrandfathered health plans to cover 10 essential health benefits (EHBs), which include items and services in the following categories: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including dental and vision care.

State Fiscal Effect:

State Employee and Retiree Health and Welfare Benefits Program

The State Employee and Retiree Health and Welfare Benefits Program is largely self-insured for its medical contracts and, as such, except for the one fully insured integrated health model medical plan (Kaiser), is not subject to the insurance requirements under the bill. However, the program generally provides coverage as required under State law. The Department of Budget and Management advises that the bill's requirement that abortion care services be covered without a deductible, coinsurance, copayment, or any other cost-sharing requirement increases expenditures for the program by an indeterminate amount beginning in fiscal 2023.

Maryland Health Benefit Exchange

MHBE advises that currently, federal advanced premium tax credits and the State-based young adult subsidy are based on the percentage of premiums attributable to benefits defined as EHBs under the ACA. If non-EHB benefits are covered by the plan, the

consumer is responsible for that portion of the premium even if they are eligible for a $0 premium for the EHB portion of benefits. To alter the young adult subsidy per the bill, MHBE must update the code used to calculate the subsidy based on the full premium rather than just the percent of the premium that is based on non-EHBs. Thus, MHBE special fund expenditures increase by $125,000 in fiscal 2023. This estimate reflects the cost of one-time only programming changes to enable the system to recalculate the young adult subsidy. These administrative costs can likely be absorbed within the existing $32.0 million annual appropriation for MHBE as the mandated appropriation has not been fully spent in recent years.

As no more than $20.0 million in young adult subsidies can be provided in calendar 2022 and 2023, the bill's requirement that MHBE provide a subsidy to cover 100% of the cost of the premium for young adults does not impact overall special fund expenditures. Instead, subsidy eligibility and payment parameters for calendar 2023 are altered to ensure that the enhanced subsidies do not exceed the cap, which likely reduces the number of young adults that receive a subsidy.

MHBE advises that it can track and report on the impact of the enhanced subsidies, convene the workgroup (in consultation with MIA) on consumer information about abortion care coverage, and conduct the study on extending last dollar coverage using existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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