**HB 937**

# Department of Legislative Services

Maryland General Assembly
2022 Session

## FISCAL AND POLICY NOTE
**Third Reader - Revised**

House Bill 937 (Delegate Kelly, *et al.*)
Health and Government Operations Finance and Budget and Taxation

**Abortion Care Access Act**

This bill establishes the Abortion Care Clinical Training Program and a related special fund, for which the Governor must include an appropriation of $3.5 million annually. The bill specifies that a "qualified provider" may perform an abortion and establishes requirements for how a health insurance carrier and Medicaid must cover abortion care services. By January 1, 2023, the Maryland Health Benefit Exchange (MHBE) must provide a specified subsidy for individuals in the State-Based Young Adult Health Insurance Subsidies Pilot Program. MHBE also must convene a workgroup, conduct a study, and submit reports. The Maryland Insurance Administration (MIA) must collect specified data from State-regulated plans and submit a series of reports. **The bill takes effect July 1, 2022; insurance provisions apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2023.**

## Fiscal Summary

**State Effect:** General fund expenditures and special fund revenues and expenditures increase by $3.5 million annually beginning in FY 2023, as discussed below. MIA can collect and report data with existing budgeted resources. Expenditures also increase for the State Employee and Retiree Health and Welfare Benefits Program by an indeterminate amount beginning in FY 2023 (not shown below). **This bill establishes a mandated appropriation beginning in FY 2024.**

| (in dollars) | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|---|---|---|---|---|---|
| SF Revenue | $3,500,000 | $3,500,000 | $3,500,000 | $3,500,000 | $3,500,000 |
| GF Expenditure | $3,500,000 | $3,500,000 | $3,500,000 | $3,500,000 | $3,500,000 |
| SF Expenditure | $3,500,000 | $3,500,000 | $3,500,000 | $3,500,000 | $3,500,000 |
| Net Effect | ($3,500,000) | ($3,500,000) | ($3,500,000) | ($3,500,000) | ($3,500,000) |

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

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

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:**

*Abortion Care Clinical Training Program*

The purpose of the program is to protect access to abortion care by ensuring that there are enough health professionals to provide abortion care. MDH must contract with a coordinating organization to administer the program using funds appropriated in the budget for the program. The coordinating organization must:

- have demonstrated experience in coordinating abortion care training programs at community-based and hospital-based provider sites;
- be a nonprofit entity;
- be in good standing in any state or jurisdiction in which the organization is registered or incorporated;
- submit an annual report to MDH on the performance of the program; and
- meet any other requirements established by MDH, as specified.

The coordinating organization must perform the following functions:

- administer grants to develop and sustain abortion care training programs, as specified;
- if funding is available, administer grants to other community-based sites, hospital-based provider sites, continuing education programs for qualified providers, and establish training program requirements, as specified;
- support abortion care clinical training to qualified providers and their clinical care teams, as specified; and
- support the identification, screening, and placement of qualified providers at training sites.

MDH must release the name of the coordinating organization and any entity receiving funds through the coordinating organization. MDH may not release the name of any individual or person administering services through or participating in the program.

By July 1 each year, MDH must submit an annual report on the program to the Governor and the General Assembly.

*Abortion Care Clinical Training Program Fund*

MDH must administer the Abortion Care Clinical Training Program Fund, which is a special, nonlapsing fund that consists of any money appropriated in the State budget to the fund, interest earnings, and any other money from any other source accepted for the benefit of the fund. The fund may be used only for the program. No part of the fund may revert or be credited to the general fund or any other special fund. Expenditures from the fund may be made only in accordance with the State budget.

*Qualified Provider*

The bill specifies that an abortion must be performed by a "qualified provider" rather than only by a licensed physician and makes numerous conforming changes.

With respect to an abortion for an unmarried minor, "qualified provider" means a physician, nurse practitioner, nurse-midwife, licensed certified midwife, physician assistant, or any other individual who is licensed, certified, or otherwise authorized by law to practice in the State and for whom the performance of an abortion is within the scope of the individual's license or certification.

For purposes of who may perform an abortion generally, "qualified provider" means an individual who is licensed, certified, or otherwise authorized by law to practice in the State and for whom the performance of an abortion is within the scope of the individual's license or certification.

*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 terminology "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 multistate plan that does not provide coverage for abortions in accordance with federal law or (2) 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.

A religious organization that is eligible to obtain an exclusion from the requirement to cover prescription contraceptive drugs or devices may obtain an exclusion from abortion care coverage and notice requirements if the requirements conflict with the organization's *bona fide* religious beliefs and practices.

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 have a 0% expected contribution under the subsidy eligibility and payment parameters for the pilot program in 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. 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, 2024, 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. 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.

*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 (FPL) 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:**

*Abortion Care Clinical Training Program*

The bill requires MDH to establish an Abortion Care Clinical Training Program, contract with a coordinating organization to administer the program, and administer the Abortion Care Clinical Training Program Fund.

*Restricted Funds in the Fiscal 2023 Budget:* The fiscal 2023 budget restricts $69.0 million in general funds that would otherwise be used to increase the fund balance in the Revenue Stabilization Account (Rainy Day Fund). Of these funds, $3.5 million may only be used for the Abortion Care Clinical Training Program Fund, contingent on the enactment of House Bill 937 or Senate Bill 890 of 2022. This analysis assumes that these funds are released to the Abortion Care Clinical Training Program Fund and used for any program expenditures in fiscal 2023. Thus, general fund expenditures and special fund revenues increase by $3.5 million in fiscal 2023.

*Personnel Expenditures:* MDH advises that additional personnel are required for the program. Thus, MDH special fund expenditures increase by $94,749 in fiscal 2023 for personnel. This estimate reflects the cost to hire two part-time (50%) positions beginning January 1, 2023, including one physician clinical specialist to provide clinical guidance and expertise in the development of program requirements and one program manager to administer the special fund, oversee the procurement process of the coordinating organization, coordinate with the physician clinical specialist to establish program requirements, and submit the annual report. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|---|
| Full-time Equivalent Positions | 1.0 |
| Salaries and Fringe Benefits | $74,438 |
| One-time Start-up Costs | 15,656 |
| Operating Expenses | 4,655 |
| **Total FY 2023 Personnel Expenditures** | **$94,749** |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate assumes that approximately $3.4 million is available in fiscal 2023 to cover the contract with the coordinating organization, grants, and related program services.

If the additional personnel are hired sooner, less funding is available for the contract in fiscal 2023. Conversely, if the restricted funds in the fiscal 2023 budget are not released,

these MDH personnel costs are incurred as general funds in fiscal 2023 or are delayed until fiscal 2024.

*Mandated Appropriation:* General fund expenditures and special fund revenues continue to increase by $3.5 million in fiscal 2024 and future years to reflect the mandated appropriation to the Abortion Clinical Care Program Fund. Special fund expenditures increase accordingly to reflect funding of the program. This estimate assumes that, beginning in fiscal 2024, the two MDH positions are funded from the mandated appropriation for the program, which leaves more than $3.3 million each year to cover the contract with the coordinating organization, grants, and related program services.

*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, for calendar 2022, parameters for the State-Based Young Adult Health Insurance Subsidies Pilot Program were set so that young adults with household incomes less than or equal to 200% of FPL have a 0% expected contribution for their premium. However, federal advanced premium tax credits cannot be used to cover non-EHBs (the most common of which are abortion, adult vision, and adult dental). The average cost of non-EHBs for a young adult enrollee is $1.27 per member per month. These costs must currently be paid separately by enrollees directly to the carrier. For MHBE to provide a subsidy to cover 100% of the cost of the premium for young adults who have a 0% expected contribution in calendar 2023 as required under the bill, MHBE special fund expenditures increase by approximately $15.24 per enrollee with incomes at or below 200% FPL, or an estimated $500,000. The pilot program is estimated to cost $14.0 million in calendar 2022; thus, there is sufficient funding allocated to the program to absorb any additional cost of covering non-EHBs with no overall impact on special funding.

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.

**Small Business Effect:** Any qualified provider, rather than only a physician, may perform an abortion.

## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 890 (Senator Kelley, *et al.*) - Finance and Budget and Taxation.

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

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