

**Department of Legislative Services**  
 Maryland General Assembly  
 2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 947 (Senator Kelly)  
 Finance and Budget and Taxation

**Abortion Care Access Grant Program and Fund - Establishment**

This bill establishes the Abortion Care Access Grant Program (and the Abortion Care Access Grant Program Fund) to provide grants to improve access to abortion care services in the State. By October 1, 2024, the Governor must allocate by budget amendment \$1.0 million of the fund for the program in fiscal 2025. The bill requires that specified premiums collected by insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) be used to provide coverage for abortion care services. Excess funds in carriers’ segregated accounts for abortion care services under the federal Patient Protection and Affordable Care Act (ACA) must be used to support improving access to abortion care services in the State. Beginning in fiscal 2026, the Governor must include in the annual budget bill an appropriation of at least 75% of the funds transferred to the fund in the immediately preceding fiscal year.

**Fiscal Summary**

**State Effect:** General fund expenditures are assumed to increase by \$1,047,400 in FY 2025 – for staff and to allocate \$1.0 million by budget amendment to capitalize the fund, as discussed below; special fund revenues increase by \$1.0 million accordingly. Special fund revenues may increase by an additional amount beginning as early as FY 2025 to the extent carriers must remit specified premiums to the fund (or premiums are otherwise able to be transferred). To the extent special fund revenues are received, special fund expenditures increase by an indeterminate amount beginning in FY 2025 to provide grants. General fund expenditures for staff continue in the out-years and reflect annualization.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$1,000,000	-	-	-	-
GF Expenditure	\$1,047,400	\$51,900	\$54,200	\$56,400	\$58,800
SF Expenditure	-	-	-	-	-
Net Effect	(\$-)	(\$-)	(\$-)	(\$-)	(\$-)

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

**Local Effect:** The bill is not anticipated to affect local government finances or operations.

**Small Business Effect:** Potential meaningful.

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## **Analysis**

### **Bill Summary:**

#### *Abortion Care Access Grant Program*

The Secretary of Health must provide operating and capital grants to abortion care providers to protect the security of their patients, staff, and volunteers. Grant funds may be used for (1) collaboration with federal, State, and local law enforcement agencies to ensure that appropriate measures are undertaken to protect patients, staff, and volunteers under existing federal, State, and local laws; (2) security staffing services; (3) equipment and capital improvements; and (4) other measures that improve safety and security.

#### *Abortion Care Access Grant Program Fund*

The Secretary of Health must administer the fund. The fund is a special, nonlapsing fund that consists of (1) money transferred to the fund from carriers as specified under the bill; (2) money appropriated in the State budget to the fund; (3) interest earnings; and (4) any other money from any other source accepted for the benefit of the fund. The fund may be used only for the program. Expenditures from the fund may be made only in accordance with the State budget.

#### *Carrier Premiums*

The bill requires that any premium funds collected by a carrier for abortion coverage in accordance with the ACA must be used to provide coverage for abortion care services for insureds or enrollees, as specified. If the amount of the ending balance of a carrier's segregated account exceeds disbursements by more than 10% after the 12-month period following the end of a plan year, any excess premiums collected by a carrier must be used to support improving access to abortion care services in the State.

By March 1 each year, a carrier must submit to the Commissioner an accounting of receipts, disbursements, and the year-end balance for segregated accounts established by the carrier under the ACA. Submissions must be on a form approved by the Commissioner and include any related documentation required by the Commissioner.

### *Additional Requirements*

Uncodified language requires the Maryland Department of Health (MDH) to collaborate with federal, State, and local law enforcement agencies to evaluate if further actions are needed to ensure the safety of the patients, staff, and volunteers of abortion care providers in the State.

### **Current Law:**

#### *Status of Federal Abortion Law*

In June 2022, the U.S. Supreme Court overturned precedent regarding abortion access in *Dobbs v. Jackson Women's Health Organization*. Before this decision, abortions prior to viability were constitutionally protected based on *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. The petitioners in *Dobbs* sought to overturn the invalidation of Mississippi's Gestational Age Act, which prohibited abortions after 15 weeks gestation except for medical emergencies or severe fetal abnormalities. The U.S. Supreme Court upheld the Mississippi law by overturning *Roe* and *Casey*, holding that there is no constitutionally protected right to an abortion as it is not a right explicitly granted by the Constitution or a right "deeply rooted" in the country's history and tradition. The *Dobbs* decision leaves states to decide how to regulate abortion access, resulting in a patchwork of state laws with varying degrees of access to abortion care.

#### *Maryland Abortion Law*

The *Dobbs* decision does not impact Maryland law as § 20-209 of the Health-General Article codifies the protections of *Roe* and *Casey* by prohibiting the State from interfering with an abortion conducted (1) before viability or (2) at any point, if the procedure is necessary to protect the health or life of the woman and in cases of fetal defect, deformity, or abnormality.

If an abortion is provided, it must be performed by a qualified provider, which includes 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.

A qualified provider 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 qualified provider's best clinical judgment using accepted standards of clinical practice.

MDH may adopt regulations consistent with established clinical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

Chapter 56 of 2022, in addition to other changes, established the Abortion Care Clinical Training Program to ensure there are a sufficient number of health care professionals to provide abortion services in the State, and requires health insurers and Maryland Medicaid to cover abortion services without a deductible, coinsurance, copayment, or other cost-sharing requirement.

### *Reproductive Health Protection Act*

Chapters 246 and 247 of 2023 (the Reproductive Health Protection Act) establish additional protections for information related to “legally protected health care” when that information is sought by another state. The Acts also prohibit (1) a health occupations board from taking specified disciplinary actions related to the provision of legally protected health care; (2) a medical professional liability insurer from taking specified adverse actions against a practitioner related to the practice of legally protected health care; and (3) specified State entities, agents, and employees from participating in any interstate investigation seeking to impose specified liabilities or sanctions against a person for activity related to legally protected health care (with limited exception).

Under § 2-312 of the State Personnel and Pensions Article, “legally protected health care” means all reproductive health services, medications, and supplies related to the direct provision or support of the provision of care related to pregnancy, contraception, assisted reproduction, and abortion that is lawful in the State.

### *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 Insurance 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.

### *Federal Abortion Provisions and Related State Reporting Requirements*

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.

Under Maryland law, the Maryland Insurance Administration (MIA) must collect data from State-regulated plans on receipts, disbursements, and ending balances for the segregated accounts established under the 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.

### **State Revenues:**

#### *Budget Amendment for Fiscal 2025*

Special fund revenues for the Abortion Care Access Grant Program Fund are assumed to increase by \$1.0 million in fiscal 2025 due to the bill's requirement that \$1.0 million be allocated by budget amendment *by October 1, 2024*. Although the bill may be attempting to mandate an appropriation of \$1.0 million in *special funds* for use by the program (as it specifies that the Governor must allocate, by budget amendment, \$1.0 million *of* the fund for the program, which implies monies are assumed to be available in the new fund for appropriation), no such special funds are available for that purpose, at least not in that timeframe. Moreover, funding cannot be mandated for fiscal 2025. Even so, this analysis assumes that discretionary funding is provided and that, since no other funding source is available at that time, the source for such capitalization is general funds.

#### *Future Funding for the Program*

Beginning in fiscal 2026, the bill establishes that the Governor must include in the annual budget bill an appropriation of at least 75% of the funds transferred to the fund under § 15-147 of the Insurance Article in the immediately preceding fiscal year. However, the Department of Legislative Services (DLS) notes that § 15-147 does not include a provision authorizing or requiring the transfer of funds.

Under the bill, § 15-147 of the Insurance Article requires that, if premium funds collected by a carrier for abortion coverage in a segregated account per the ACA exceed

disbursements from the account by more than 10% after the 12-month period following the end of a plan year, such funds must be used to support improving access to abortion care services in the State.

Nevertheless, this analysis assumes that if the fund balance in a carrier's segregated account exceeds disbursements by more than 10% for a plan year, one year after the end of the plan year, any fund balance remaining from that year is transferred to the Abortion Care Access Grant Program Fund. Accordingly, should the fund balance of any carriers' segregated accounts exceed 10% in calendar 2023, this analysis assumes that funds would be transferred to the Abortion Care Access Grant Program Fund in fiscal 2025 (and that this transfer would happen *after* January 1, 2025).

Further, DLS notes that the requirement that the Governor appropriate at least 75% of the funds transferred to the fund in the immediately preceding fiscal year does not meet the requirements of a mandated appropriation in that it does not include an exact dollar figure or a funding formula that makes it possible to compute the level of funding required (or, in this case, such information is not available in time for introduction of the budget). The availability of revenues from carriers cannot be calculated until 12 months after the end of a plan year, which will not occur until, at the earliest, January 1 of the same year in which the budget is introduced. Thus, future year special fund revenues are indeterminate and depend on revenues received from carriers and appropriated to the fund.

### **State Expenditures:**

#### *Budget Amendment for Fiscal 2025*

As the bill requires the Governor, by October 1, 2024, to allocate by budget amendment at least \$1.0 million for the Abortion Care Access Grant Program, general fund expenditures are assumed to increase by at least \$1.0 million to provide this discretionary allocation of funding in fiscal 2025.

#### *Administrative Costs*

MDH general fund expenditures increase by \$47,400 in fiscal 2025, which reflects the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring one part-time (50%) grants specialist to implement the Abortion Care Access Grant Program, administer the special fund, and provide operating and capital grants to abortion care providers. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. As the bill does not authorize the special fund to be used for administrative expenses, these costs are assumed to be funded with general funds.

Position	0.5
Salary and Fringe Benefits	\$36,471
One-time Start-up Costs	7,719
Ongoing Operating Expenses	<u>3,210</u>
<b>Total FY 2025 State Administrative Expenditures</b>	<b>\$47,400</b>

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

*Special Fund Expenditures for Grants*

Special fund expenditures from the Abortion Care Access Grant Program Fund increase beginning in fiscal 2025 to provide grants. Due to bill’s requirement that \$1.0 million be allocated by budget amendment to the fund, expenditures may be *as much as* \$1.0 million in fiscal 2025.

Beginning in fiscal 2026, special fund expenditures are indeterminate and depend on any fund balance remaining as well as any revenues received from carriers and appropriated to the fund.

*Other Assumptions*

The bill requires a carrier to submit to the Insurance Commissioner an accounting of receipts, disbursements, and the year-end balance for segregated accounts established by the carrier under the ACA. As MIA already collects this information under current law (through plan year 2025), this analysis assumes that MIA can continue to collect this information using existing budgeted resources.

This analysis also assumes that MDH can collaborate with federal, State, and local law enforcement agencies to evaluate if further actions are needed to ensure the safety of the patients, staff, and volunteers of abortion care providers in the State using existing budgeted resources.

**Small Business Effect:** A small business abortion care provider benefits to the extent that it applies for and receives a grant under the bill.

**Additional Comments:** Based on the most recent [Abortion Care Access Data Report](#) issued by MIA in December 2023, all four carriers that issue qualified health plans in Maryland have segregated accounts under the ACA. The calendar 2022 ending balance for all four carriers was well in excess of disbursements for that year, with ending balances ranging from 89% to 96% of disbursements. The ending balance for all four accounts totaled \$2.2 million.

The analysis above discusses issues related to provision of funding for the program and makes assumptions that funding, as intended in the bill, is able to be provided. Under an alternative set of assumptions, the bill has no fiscal effect unless general funds are used as the only source of capitalization of the new special fund.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 1412 (Delegate Lopez) - Health and Government Operations.

**Information Source(s):** Department of Budget and Management; Maryland Department of Health; Department of State Police; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2024  
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