

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 858 (Delegate Ciliberti, *et al.*)
Health and Government Operations

Health - Abortion - Ultrasound and Waiting Period

This bill generally prohibits a qualified provider from performing or inducing an abortion on a pregnant woman (1) within 24 hours after the woman receives specified transabdominal ultrasound imaging or (2) if the woman resides at least 100 miles from the facility, within two hours after the woman receives specified transabdominal ultrasound imaging. Violators are subject to a penalty of up to \$2,500.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations and finances, including for the District Court.

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

Small Business Effect: Meaningful.

Analysis

Bill Summary: The medical professional performing the transabdominal ultrasound imaging must (1) be trained in sonography and working under the supervision of a qualified provider; (2) if possible, determine the gestational age of the fetus; (3) if gestational age cannot be determined, verbally offer to the woman other ultrasound imaging to determine the gestational age of the fetus; (4) if present and viewable, include in the ultrasound image the dimensions of the fetus and an accurate portrayal of the presence of external members and internal organs of the fetus; (5) make a print of the ultrasound image to document any measurements taken to determine the gestational age of the fetus; (6) verbally offer to the

woman during the transabdominal ultrasound imaging the option to view the ultrasound image, receive a printed copy of the ultrasound image, and hear the fetal heartbeat; and (7) obtain from the woman specified written certification.

A woman is not required to accept anything offered during the transabdominal ultrasound imaging performed.

The facility in which an abortion is performed must maintain a printed copy of the ultrasound image for the greater of seven years or an amount of time as required by federal or State law.

These requirements do not apply to a woman seeking an abortion if (1) the woman is the victim of an alleged rape or of incest and (2) the incident of rape or incest is reported to law enforcement.

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.

Pursuant to Chapter 56 of 2022, if an abortion is provided, it must be performed by a "qualified provider," which includes 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 individuals' 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.

The Maryland Department of Health 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 also 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 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.

Small Business Effect: Meaningful for qualified providers whose practices currently encompass performing abortions to comply with the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1161 of 2022 and HB 1109 of 2021.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2024
km/jc

Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510