

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE

Senate Bill 457 (Senator Jacobs, *et al.*)
 Education, Health, and Environmental Affairs

Public Health - Abortion - Parental Notice

This bill expands the current parental notification requirement for a physician when a minor seeks an abortion. The bill includes conditions for a circuit court to grant waivers for parental notification and sets forth appeal procedures for denied waiver petitions. It also requires the Department of Health and Mental Hygiene (DHMH) to develop and provide a fact sheet on the notification procedures to physicians, agencies, and family planning service facilities for free distribution to unmarried pregnant minors who seek abortion services. Violators of any provision of the bill are guilty of a misdemeanor and subject to a maximum fine of \$1,000.

Fiscal Summary

State Effect: General fund expenditures increase by \$8,700 in FY 2004 for DHMH to prepare and distribute a fact sheet. General fund expenditures for the Judiciary could increase beginning FY 2004. Future year expenditures reflect inflation. Minimal increase in general fund revenues due to the bill's penalty provision.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenue	-	-	-	-	-
GF Expenditure	8,700	2,100	2,100	2,100	2,100
Net Effect	(\$8,700)	(\$2,100)	(\$2,100)	(\$2,100)	(\$2,100)

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

Local Effect: None.

Small Business Effect: Minimal. Small business physicians could incur additional administrative costs from the notification requirements or be subject to fines if not in compliance with the bill's provisions.

Analysis

Bill Summary: A physician is prohibited from performing an abortion on an unmarried minor until 48 hours after the physician gives actual notice or constructive notice of the pending procedure to the parent of the minor. Actual notice is defined as the parent has accompanied the minor to a physician consultation during which the abortion decision is considered and notice is given directly to the parent from the physician. Constructive notice is defined as notice that has been sent by certified mail to the last known address of a parent with return receipt requested and restricted delivery to the addressee. The 48-hour period begins at noon on the next regular mail delivery day after the day the notice is postmarked by the U.S. Postal Service.

The physician may perform the procedure without giving notice to a parent if: (1) the parent or guardian signs a notarized acknowledgment within the past 30 days that the parent was aware of the pending procedure; (2) if the physician certifies in the minor's medical record that a medical emergency exists and there is not enough time to provide the required notice; or (3) notice is waived. A minor may seek waiver of parental notification from a circuit court. The court may appoint an attorney for the minor or permit the minor to represent herself. The court is prohibited from charging the minor a filing fee or costs for the proceeding. Such a court proceeding is to be confidential and take precedence over other pending matters of the court.

The court must make written factual findings within 48 hours of the filing of the motion for waiver of parental notification. If the court fails to rule within 48 hours, the petition is granted, the notice requirement is waived. The court must authorize a waiver of parental notification if the court finds by clear and convincing evidence that: (1) there is evidence of a pattern of physical, sexual, or emotional abuse of the minor by the parent; (2) the minor is sufficiently mature to decide whether to have an abortion; or (3) the parental notification is not in the best interests of the minor. If such a finding is not made by the court, the petition for waiver must be dismissed and parental notification must be given.

The bill requires that an expedited confidential appeal be available to a minor denied a notification waiver.

DHMH must prepare a fact sheet for distribution to unmarried pregnant minors who seek abortion services. The fact sheet must contain an explanation of: (1) the option to seek waiver of parental notification; (2) the rights of the minor to participate in the proceedings; (3) the right to court-appointed counsel; (4) petitioning procedures; and (5) the court's decision must be reached within 48 hours of the petition's filing. DHMH is required to distribute the fact sheet, at no charge, to specified medical facilities, agencies, and physician's offices. The physician who is responsible for providing parental notification must provide a copy of this fact sheet to the minor when the minor initially requests abortion services.

A physician may not be held liable if the physician establishes by written evidence that the physician made every effort, with reasonable diligence, to deliver notice, but was unable to do so.

A person who violates any provision of this bill is guilty of a misdemeanor and subject to a fine of up to \$1,000.

The bill redefines parent to mean a natural or adoptive parent whose rights have not been terminated, or a legal guardian.

Current Law: 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 physician may perform the abortion without notice to a parent or guardian if the minor does not live with the parent or guardian and a reasonable effort to give notice to the parent or guardian is unsuccessful.

The physician may perform the abortion, without notifying the parent or guardian, if, in the physician's professional judgment: (1) notice may lead to physical or emotional abuse of the minor; (2) the minor is mature and capable of giving informed consent to an abortion; or (3) notification would not be in the minor's best interest. The physician is not liable for civil damages or subject to a criminal penalty for a decision not to give notice. A certified mail postal receipt showing the parent or guardian's last known address attached to a copy of the notice letter is conclusive evidence of notice or a reasonable effort to give notice.

A physician may not provide notice to the parent or guardian if the minor decides not to have an abortion.

Background: After remaining fairly steady for most of the 1980s, the number of abortions in the U.S. declined from a high of 1.61 million in 1990 to 1.31 million in 2000. For women ages 15-44, the abortion rate declined from its highest rate (29.3 per 1,000 women) in 1981 to 21.3 per 1,000 women in 2000. Six states that account for 40% of women ages 15-44 (California, Florida, Illinois, New Jersey, New York, and Texas) accounted for 55% of all abortions in 2000. In Maryland, however, the abortion rate has increased, from 26.2 abortions per 1,000 women in 1996 to 29.0 abortions per 1,000 women in 2000. There were 34,560 abortions performed in Maryland in 2000. Approximately one-fifth of all abortions performed in the U.S. are provided to women younger than 20.

State Fiscal Effect:

DHMH: General fund expenditures could increase by \$8,700 in fiscal 2004 to prepare a fact booklet for distribution to unmarried pregnant minors who seek abortion services.

The estimate reflects the bill's October 1, 2003 effective date and includes the cost of printing, in both Spanish and English, and postage. Future year expenditures reflect annualization and inflation.

Judiciary (Administrative Office of the Courts): Expenditures for the Administrative Office of the Courts (AOC) could increase beginning fiscal 2004. There are insufficient data at this time to reliably estimate the number of minors who would seek a waiver of the parental notification requirement in the circuit court. AOC advises it would forego \$100 filing fees in each case and possibly incur an additional \$1,500 per case in attorneys fees for providing counsel to the minor.

Additional Information

Prior Introductions: A similar bill, SB 643, was introduced in 2001 but was not reported by the Senate Judicial Proceedings Committee. Another similar bill, SB 758, was introduced in 2000. The bill was not reported by the Senate Judicial Proceedings Committee.

Cross File: HB 772 (Delegate Amedori, *et al.*) – Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); “Abortion Incidence and Services In the United States in 2000,” in *Perspectives on Sexual and Reproductive Health*, January/February 2003; Department of Legislative Services

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