

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1043

(Delegate Rosenberg, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Advance Directives - Immunity for Health Care Providers and Facilities

This bill provides that a health care provider or facility is not subject to criminal prosecution or civil liability and may not be deemed to have engaged in unprofessional conduct for disposition of cryopreserved eggs, sperm, or embryos in accordance with an advance directive. The advance directive must be authorized for use by the health care facility and consistent with American Society of Reproductive Medicine guidelines.

Fiscal Summary

State Effect: None. The bill would not directly affect State operations or finances.

Local Effect: None.

Small Business Effect: Potential minimal. Health care providers or facilities that provide in vitro or assisted reproductive services would be immune from civil suit or criminal charges arising from the improper disposal of cryopreserved eggs, sperm, or embryos if the providers or facilities comply with an advance directive.

Analysis

Current Law: When a person is admitted to a health care facility, the facility must provide information regarding the person's right to make decisions concerning health care, including the right to accept or refuse treatment, and the right to make an advance directive, including a living will.

Any competent individual can make a written advance directive regarding the provision of health care or the withholding or withdrawal of health care for themselves. A person may appoint an agent to make health care decisions for the person. A written advance directive must be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses.

Any competent individual may make an oral advance directive to authorize the providing, withholding, or withdrawing of any life-sustaining procedure or to appoint an agent to make health care decisions for the individual. An oral directive has the same effect as a written directive if it is made in the presence of the attending physician and one witness and if the substance of the oral directive is documented in the patient's medical record. The documentation must be dated and signed by the attending physician and witness.

An advance directive becomes effective when the declarant's attending physician and a second physician certify in writing that the patient is incapable of making an informed decision. If a patient is unconscious or unable to communicate, a second physician's certification is not required.

It is the declarant's responsibility to notify the attending physician that an advance directive was made. If the declarant becomes comatose, incompetent, or otherwise incapable of communication, any other person may notify the physician of the existence of the advance directive. The attending physician must make the advance directive a part of the patient's medical record.

Background: The Maryland Board of Physicians reports that there are approximately 670 obstetricians/gynecologists, 70 hospitals, and 350 ambulatory surgical centers in Maryland. It is unknown how many of these practitioners or facilities may be affected by the legislation's requirements.

A 2003 Centers for Disease Control and Prevention report on assisted reproductive technology shows eight fertility clinics in Maryland: three in Baltimore, one in Bethesda, two in Rockville, one in Lutherville, and one in Towson.

Couples undergoing in vitro fertilization regularly decide to cryopreserve "surplus" embryos that were created but not implanted. Most Maryland fertility clinics already require couples to sign a consent form before undergoing in vitro fertilization treatment and cryopreserving their embryos.

The American Society of Reproductive Medicine recommends that clinics obtain full written informed consent from each prospective patient couple. A couple should be informed of the program's time limit on storing frozen embryos and the disposition of

frozen embryos in the event of the death of one of the partners, divorce or dissolution of the partnership, and nonpayment of storage fees.

Florida and California have enacted legislation requiring a written agreement that provides for the disposition of a couple's embryos.

Additional Information

Prior Introductions: HB 481, introduced in the 2003 session, passed in the House but received an unfavorable report in the Senate Education, Health, and Environmental Affairs Committee. A similar bill, HB 723, was introduced in the 2001 session, but was reported unfavorably by the Environmental Matters Committee.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; *2001 Assisted Reproductive Technology Success Rates: National Summary and Fertility Clinic Reports*, Centers for Disease Control and Prevention, December 2003; Department of Legislative Services

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