

**Department of Legislative Services**  
 Maryland General Assembly  
 2011 Session

**FISCAL AND POLICY NOTE**

House Bill 23 (Delegates Eckardt and Beidle)  
 Health and Government Operations

**Freestanding Ambulatory Care Facilities - Licensing - Abortion Services**

This bill alters the definition of “ambulatory surgical facility” as it pertains to licensing to include any entity that provides abortion through the use of surgical services. The bill further alters the definition of “surgical services” to include the use of two types of instruments: uterine curettes and manual vacuum aspirator curettes introduced into the uterus for the purpose of abortion.

**Fiscal Summary**

**State Effect:** Total expenditures increase by \$57,600 in FY 2012 to hire one full-time health facility surveyor to conduct surveys and assist with the licensure process. The estimate assumes a federal participation rate of 40% toward total expenditures and includes a general fund expenditure increase of \$34,600 and a federal fund expenditure increase of \$23,000. Future year expenditures reflect annualization and inflation. General fund revenues increase by \$23,800 in FY 2012 due to fees paid by newly licensed ambulatory surgical facilities. Future year revenues reflect triennial licensure. Federal fund revenues increase in accordance with the 40% federal participation in licensing costs.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$23,800	\$0	\$0	\$23,800	\$0
FF Revenue	\$23,000	\$29,100	\$30,600	\$32,200	\$33,800
GF Expenditure	\$34,600	\$43,700	\$45,900	\$48,200	\$50,700
FF Expenditure	\$23,000	\$29,100	\$30,600	\$32,200	\$33,800
Net Effect	(\$10,800)	(\$43,700)	(\$45,900)	(\$24,400)	(\$50,700)

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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## **Analysis**

**Current Law:** Doctors' offices and freestanding health care clinics, where abortions are performed, are not licensed by the Department of Health and Mental Hygiene (DHMH), although the State does license "freestanding ambulatory care facilities." "Freestanding ambulatory care facilities" include ambulatory surgical facilities, freestanding endoscopy facilities, freestanding facilities utilizing major medical equipment, kidney dialysis centers, and freestanding birthing centers.

If an abortion is provided, it must be performed by a licensed physician. 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 the fetus is affected by a genetic defect or serious deformity or abnormality. (A viable fetus is one that has a reasonable likelihood of surviving outside of the womb.) 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 following accepted standards of medical practice.

**Background:** In 2008, 1.2 million American women obtained abortions, producing a rate of 19.6 abortions per 1,000 women of reproductive age. (This represents a 1% increase since 2005, when the abortion rate was 19.4 abortions per 1,000 women.) In Maryland in 2008, 34,290 women obtained abortions at a rate of 29 abortions per 1,000 women of reproductive age. (This represents an 8% decrease in abortions performed in Maryland since 2000, when the rate was 31.5 abortions per 1,000 women.) However, 87% of U.S. counties had no abortion provider in 2008 and one-third of American women lived in these counties. Therefore, it is likely that some women who received abortions in Maryland were from other states, while some Maryland residents received abortions in other states. For this reason, the Maryland rate may not accurately reflect the abortion rate of State residents. Nationally, fewer than 0.3% of abortion patients experience a complication that requires hospitalization.

A uterine curette is an instrument used in an abortion procedure to scrape fetal tissue from the uterine walls. A manual vacuum aspirator is used to suction out any remaining material.

In December 2010, the Maryland Board of Physicians permanently revoked the license of a physician who worked for an abortion clinic that allegedly started abortion procedures

in Voorhees, New Jersey before transporting patients to Elkton, Maryland, where the procedures were completed. One of these procedures – which could not be completed in New Jersey because the physician’s clinic did not meet safety requirements mandated by New Jersey law – resulted in a teenaged patient’s need for emergency surgery at Johns Hopkins.

New Jersey law requires that, if an abortion is provided, it must be performed by a physician licensed to practice in New Jersey. Certain abortion procedures must be performed in a licensed hospital or a licensed ambulatory care facility authorized to perform surgical procedures by the Department of Health.

Fifteen states require abortion providers to either be licensed as ambulatory surgical centers or meet similar requirements: Alabama, Arizona, Arkansas, Illinois, Indiana, Kansas, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, and Tennessee. Another five states require abortion providers to have a transfer agreement with a nearby hospital but do not require them to meet surgical center requirements: California, Nebraska, Pennsylvania, Utah, and Wisconsin.

**State Revenues:** Any facility that provides abortions through the use of surgical services is required to be licensed on or after October 1, 2011. Legislative Services assumes that each of the 34 abortion providers currently operating in the State becomes licensed for a three-year period in fiscal 2012 at a fee of \$700. Thus, new general fund revenues in fiscal 2012 total \$23,800, although revenues could be lower should some abortion providers elect to cease providing surgical abortions rather than become licensed as ambulatory surgical facilities. Future year revenues reflect triennial licensure.

Federal fund revenues increase by \$23,044 due to expected federal participation in the new licensure activities.

**State Expenditures:** General and federal fund expenditures increase by \$57,610 in fiscal 2012, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring of one full-time health facility surveyor to conduct surveys and assist with the licensure process. DHMH advises that the unit that surveys ambulatory surgical facilities currently has a staffing deficit of 19 positions; thus, the bill’s requirements cannot be handled with existing resources. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The department further advises that increased expenditures associated with surveying the facilities are anticipated to be funded by the federal government at a rate of approximately 40%.

Health Facility Surveyor	1
Salary and Fringe Benefits	\$52,241
Operating Expenses	<u>5,369</u>
<b>Total FY 2012 State Expenditures</b>	<b>\$57,610</b>
General Fund Expenditures	\$34,566
Federal Fund Expenditures	\$23,044

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, 1% annual increases in ongoing operating expenses, and continued federal participation.

**Small Business Effect:** In addition to paying the \$700 licensing fee, an abortion provider must pay potentially significant costs associated with meeting the requirements for licensing. These costs may include purchasing major equipment, altering office layouts, and hiring additional personnel. Furthermore, any abortion provider that becomes licensed as an ambulatory surgical facility must obtain federal accreditation in order to accept payment from Medicare or Medicaid. DHMH advises that the fees and requirements for accreditation are substantial. However, the bill's effect on small businesses, though potentially meaningful, is indeterminate because it is unknown how many of the State's abortion providers (1) are considered small businesses; and (2) will elect to become licensed as ambulatory surgical facilities rather than cease to provide surgical abortion services.

### Additional Information

**Prior Introductions:** SB 471 of 2004, a similar bill, was heard in the Senate Education, Health, and Environmental Affairs Committee but received no further action.

**Cross File:** None.

**Information Source(s):** Guttmacher Institute, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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mlm/mwc

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