HB 245

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 245 (Chair, Judiciary Committee)(By Request - Departmental - Human Resources)

Judiciary Judicial Proceedings

Family Law - Substance-Exposed Newborns

This departmental bill requires each health care practitioner involved in the delivery or care of a substance-exposed newborn to make a report to the local department of social services. The local department must assess the safety of the newborn and provide any necessary services. The Department of Human Resources (DHR) must submit a preliminary report on the bill's implementation to the General Assembly by October 1, 2014, and a final report by October 1, 2015. The Secretary of Human Resources must adopt implementing regulations.

Fiscal Summary

State Effect: DHR can handle the bill's requirements using existing resources.

Local Effect: None.

Small Business Effect: DHR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill establishes that a newborn is "substance-exposed" if the newborn displays (1) a positive toxicology screen for a controlled drug as evidenced by any appropriate test after birth; (2) the effects of controlled drug use or symptoms of withdrawal resulting from prenatal controlled drug exposure as determined by medical personnel; or (3) the effects of a fetal alcohol spectrum disorder. A newborn is also "substance-exposed" if the newborn's mother had a positive toxicology screen for a

controlled drug at the time of delivery. A "newborn" is a child younger than the age of 30 days who is born or receives care in the State. A "controlled drug" means a controlled dangerous substance included in Schedule I through Schedule V as established under Title 5, Subtitle 4 of the Criminal Law Article.

A health care practitioner involved in the delivery or care of a substance-exposed newborn must make an oral report to the local department as soon as possible and make a written report to the local department not later than 48 hours after the contact, examination, attention, treatment, or testing that prompted the report. If the substance-exposed newborn is in the hospital or birthing center, a health care practitioner must instead notify and provide the information to the head of the institution or that person's designee.

A health care practitioner is not required to make a report if the health care practitioner (1) has knowledge that the head of an institution or the designee of the head or another individual at that institution has made a report regarding the newborn; (2) has verified that, at the time of delivery, the mother was using a controlled substance as currently prescribed for the mother by a licensed health care practitioner; or (3) has verified that, at the time of delivery, the presence of the controlled substance was consistent with a prescribed medical or drug treatment administered to the mother or the newborn.

To the extent known, an individual must include the following information in the report: (1) the name, date of birth, and home address of the newborn; (2) the names and home addresses of the newborn's parents; (3) the nature and extent of the effects of the prenatal alcohol or drug exposure on the newborn; (4) the nature and extent of the impact on the prenatal alcohol or drug exposure on the mother's ability to provide proper care and attention to the newborn; (5) the nature and extent of the risk of harm to the newborn; and (6) any other information that would support a conclusion that the needs of the newborn require a prompt assessment of risk and safety, the development of a plan of safe care for the newborn, and referral of the family for appropriate services.

Within 48 hours after receiving the notification, the local department must (1) see the newborn in person; (2) consult with a health care practitioner with knowledge of the newborn's condition and the effects of any prenatal alcohol or drug exposure; and (3) attempt to interview the newborn's mother and any other individual responsible for care of the newborn.

Promptly after receiving a report, a local department must assess the risk of harm to and the safety of the newborn to determine whether any further intervention is necessary. If the local department determines that further intervention is necessary, the local department must (1) develop a plan of safe care; (2) assess and refer the family for appropriate services, including alcohol or drug treatment; and (3) as necessary, develop a

plan to monitor the safety of the newborn and the family's participation in appropriate services. A report made under these provisions does not create a presumption that a child has been or will be abused or neglected.

By October 1, 2014, and by October 1, 2015, DHR must report to the General Assembly on the bill's implementation. The reports must include (1) the number of assessments conducted by the department in response to reports under the Act; (2) the outcomes of those assessments; (3) the number of mothers referred to substance abuse treatment; and (4) the number of cases that resulted in a termination of parental rights.

Current Law: Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An "educator or human service worker" includes any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to abuse or neglect. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. A copy of the written report must be provided to the local State's Attorney. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child's parent or other person responsible for the child's care; the whereabouts of the child; and the nature and extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, and any information that would help to determine the cause of the suspected abuse or neglect and the identity of any person responsible for the abuse or neglect.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute. Individuals (other than those who are required to report because of

their professional capacity) who in good faith make or participate in making a report of abuse or neglect, or participate in an investigation or resulting judicial proceeding, are immune from civil liability or criminal penalties.

Background: DHR advises that the bill promotes the safety and care of infants born with signs of exposure to illegal drugs, prescription drugs, or alcohol abuse. It also creates an opportunity to identify parents in need of treatment and other services and to help those parents seek those services while implementing a plan of safe care for the substance-exposed infant as well as other children in the home.

The bill is also intended to bring Maryland into compliance with the requirements of the Child Abuse Prevention and Treatment (CAPTA) Reauthorization Act of 2010, which is partially intended to promote a more consistent approach to states' responses to infants exposed to alcohol and drugs. Under CAPTA, a governor must certify that the state has in effect and is enforcing a state law or has in effect and is operating a statewide program relating to referrals made to child protective services systems to address the needs of alcohol and substance-exposed newborns. According to DHR, 29 states have enacted legislation providing for the reporting of substance-exposed infants and 19 of those states, including Virginia, mandate the reporting.

Establishing required reporting mandates for health practitioners who suspect risk of harm to newborns exposed to illegal drugs, prescription drugs, or alcohol will promote the safety and care for these newborns who may otherwise go unreported and the risk factors unresolved. DHR advises that while a positive toxicology screen for alcohol or drugs at the time of delivery is widely regarded as a significant problem, there is little consensus among hospitals and health practitioners as to how it should be addressed, and this has resulted in inconsistency in whether the cases are reported. DHR also reports that the lack of consensus has created inequity in terms of the population of mothers more often targeted for reporting. As a result, many women who have used alcohol and drugs prenatally are not identified and provided with appropriate treatment. This inconsistency has also made it difficult to collect adequate prevalence data to develop and evaluate appropriate resources, utilization of services, and outcomes.

DHR also reports that Chapter 367 of 1997 (SB 512) required it, in collaboration with the Department of Health and Mental Hygiene, to establish a pilot intervention program that included substance abuse treatment for the mother of an infant born drug-exposed and provided supportive services for the families of the infant. The pilot program is still in effect in Baltimore City and Dorchester, Prince George's, Somerset, Washington, Wicomico, and Worcester counties. More than 4,500 drug-exposed newborns have been identified and referred to child protective services in the local departments of social services.

DHR has also developed statewide policies and procedures modeled on the pilot program. Each jurisdiction developed a multi-disciplinary team to collaborate on the identification, referral, and provision of services to the newborn, mother, and family. However, as referenced above, there is still wide variation between hospitals and among health practitioners about how to identify these infants and what to do when they are identified.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Family Law – Substance-Exposed Newborns

BILL NUMBER: HB 245

PREPARED BY: Maryland Dept of Human Resources

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.