

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1744
Judiciary

(Delegate Wilson)

Judicial Proceedings

Child Abuse and Neglect - Substance-Exposed Newborns - Reporting

This bill alters conditions under which a newborn is considered to be substance-exposed and conditions under which a health care practitioner is exempt from making a report concerning a substance-exposed newborn to a local department of social services. **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: The bill is not anticipated to materially impact the workload of the Department of Human Services (DHS). The bill protects significant federal fund revenues by ensuring that the State is in compliance with federal law, as discussed below.

Local Effect: The bill does not materially impact the workload of local health departments.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill repeals a provision establishing that a newborn is “substance-exposed” if the newborn’s mother had a positive toxicology screen for a controlled drug at the time of delivery. It also alters reporting requirements by establishing that a health care practitioner is exempt from making a report to the local department of social services if the practitioner has verified that, at the time of delivery (1) the mother was using a controlled substance as currently prescribed for the mother by a licensed health care practitioner; (2) the newborn does not display the effects of withdrawal from controlled substance exposure as determined by medical personnel; (3) the newborn does

not display the effects of fetal alcohol spectrum disorder; and (4) the newborn is not affected by substance abuse. The bill repeals a provision that exempted the reporting requirement if a health care practitioner has verified that, at the time of the delivery, the presence of the controlled substance was consistent with a prescribed medical or drug treatment administered to the mother of the newborn. A health care practitioner continues to be exempt from the reporting requirement if the practitioner has knowledge that another individual has already made a report, as specified.

Current Law: Statutory provisions set forth a process by which local departments of social services are notified of “substance-exposed” newborns. 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 Schedules I through 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 of social services 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 specified information in the report, including information regarding the nature and extent of the impact of the prenatal alcohol or drug exposure on the mother’s ability to provide proper care and attention to the newborn and the risk of harm to the newborn. Within 48 hours after receiving the notification, for a local department to (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, a 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.

Background: Chapter 90 of 2013 established the existing reporting requirements relating to substance-exposed newborns. However, to be in compliance with the federal Child Abuse Prevention and Treatment Act (CAPTA), State law must ensure that health care practitioners report all substance-exposed newborns to local departments of social services. CAPTA does not provide an exception to this reporting requirement for circumstances involving prescribed drugs, as is permitted under State law. The State receives at least \$750,000 in CAPTA funds annually. DHS distributes a portion of the funds to local departments of social services to support child protective services. In addition, the Governor's Office of Crime Control and Prevention administers approximately \$306,000 of the funds and provides grants to local, State, and nonprofit entities to improve the administrative, investigative, and judicial handling of child abuse and neglect cases. DHS advises that the U.S. Department of Health and Human Services has confirmed that the bill meets federal requirements as specified in CAPTA.

Additional Information

Prior Introductions: SB 27 of 2017, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Montgomery County; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Governor's Office of Crime Control and Prevention; U.S. Department of Health and Human Services; Department of Legislative Services

Fiscal Note History:
mm/kdm

First Reader - March 12, 2018

Third Reader - March 26, 2018

Revised - Amendment(s) - March 26, 2018

Revised - Updated Information - March 26, 2018

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