

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 423
Finance

(Senator Salling)

**Public Health - Federal and State Funding for Abortions - Prohibition and
Exceptions**

This bill prohibits the use of federal or State funds to pay for an abortion procedure or health benefits coverage that includes coverage of abortion procedures unless (1) the woman's pregnancy is the result of an act of rape or incest or (2) the woman has a life-endangering physical condition resulting from the pregnancy that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

Fiscal Summary

State Effect: General fund expenditures for Medicaid decrease by \$4.9 million in FY 2022 and \$6.5 million on an annualized basis thereafter, as discussed below. General and special fund expenditures for the Department of Budget and Management (DBM) also decrease by an indeterminate amount beginning in FY 2022. However, the overall net effect on Medicaid and DBM expenditures and federal matching revenues is indeterminate, as discussed below.

Local Effect: None.

Small Business Effect: Minimal. Health care practices that offer abortion services may perform fewer abortions under the bill.

Analysis

Current Law: 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 if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme Court's

holding in *Roe v. Wade*. A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. The Maryland Department of Health (MDH) may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman. If an abortion is provided, it must be performed by a licensed physician. 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 using accepted standards of medical practice.

Women eligible for Medicaid solely due to a pregnancy do not currently qualify for a State-funded abortion. Additionally, language included in the federal budget since 1977, commonly referred to as the Hyde amendment, forbids the use of federal funds for abortions except in cases of life endangerment, rape or incest.

Language attached to the Medicaid budget since the late 1970s authorizes the use of State funds to pay for abortions under specific circumstances. Similar language has been attached to the appropriation for the Maryland Children's Health Program since fiscal 1999.

Specifically, a physician or surgeon must certify that, based on his or her professional opinion, the procedure is necessary due to one of the following conditions:

- continuation of the pregnancy is likely to result in the death of the woman;
- the woman is a victim of rape, sexual offense, or incest that has been reported to a law enforcement agency or a public health or social agency;
- it can be ascertained by the physician with a reasonable degree of medical certainty that the fetus is affected by genetic defect or serious deformity or abnormality;
- it can be ascertained by the physician with a reasonable degree of medical certainty that termination of pregnancy is medically necessary because there is a substantial risk that continuation of the pregnancy could have a serious and adverse effect on the woman's present or future physical health; or
- the physician or surgeon certifies in writing that in his or her professional judgment there exists medical evidence that continuation of the pregnancy is creating a serious effect on the woman's present mental health, and if carried to term there is a substantial risk of a serious or long-lasting effect on the woman's future mental health.

State Fiscal Effect: The prohibition on the use of federal funds to pay for an abortion is effectively the same under the bill as it is under current federal law. However, the bill further limits the use of State funds for abortion services to two specified circumstances: (1) the pregnancy is the result of rape or incest; or (2) the woman has a life-endangering physical condition resulting from the pregnancy that would place the woman in danger of death unless the abortion is performed.

Maryland Department of Health

MDH advises that Medicaid paid for 9,864 abortions in fiscal 2020 based on claims through November 2020. Of those, less than 10 qualified for the exceptions specified under the bill. MDH also advises that the average Medicaid payment per abortion in fiscal 2020 was \$660. Thus, general fund expenditures decrease by \$4.9 million in fiscal 2022 based on fiscal 2020 claims. This estimate reflects the bill's October 1, 2021 effective date. Based on fiscal 2020 claims, general fund expenditures decrease by \$6.5 million annually thereafter.

However, Medicaid has previously noted that any savings may be offset by an increase in costs for labor and delivery services provided to Medicaid eligible women to the extent that births increase as a result of the bill's prohibition on State funding of abortion procedures. The approximate average cost for labor and delivery services is currently \$15,000. Moreover, newborns born to Medicaid-eligible mothers are deemed automatically eligible for Medicaid benefits for their first year and typically retain eligibility for subsequent years. On average, Medicaid pays \$2,352 for health care per eligible child annually (50% general funds and 50% federal funds). The extent of any increase in expenditures cannot be reliably estimated at this time. Federal fund revenues increase accordingly.

Department of Budget and Management

DBM advises that the bill prohibits the coverage of elective abortions under all State-funded health care benefit plans, including the State Employee and Retiree Health and Welfare Benefits Program. However, any potential reduction in general and special fund expenditures for the program cannot be reliably estimated as DBM advises that it does not monitor claims data for abortion procedures.

To the extent that births increase among individuals covered by the State Employee and Retiree Health and Welfare Benefits Program due to the bill's prohibition on the use of State funds to pay for abortion procedures, there may be an offsetting increase in expenditures for labor and delivery costs and to cover additional dependents (75% general funds, 15% special funds, and 10% federal funds). The extent of any increase in expenditures cannot be reliably estimated at this time. Federal fund revenues increase accordingly.

Additional Information

Prior Introductions: Similar legislation, HB 1357 of 2016, received an unfavorable report from the House Appropriations Committee.

Cross File: HB 834 (Delegate Metzgar) - Appropriations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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