HB 1198

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1198 (Delegate Cox)
Health and Government Operations

Public Health - Abortion - Drug-Induced Abortions

This bill specifies that only a "qualified physician" may prescribe an "abortion-inducing drug" subject to specified criteria and requirements. A physician who intentionally, knowingly, or recklessly violates the bill's provisions regarding the prescribing of an abortion-inducing drug is guilty of a felony. Failure to comply with the bill's requirements must provide a basis for (1) a civil malpractice action for actual and punitive damages; (2) a professional disciplinary action against the physician; and (3) if a woman dies as a result of a violation, recovery for wrongful death. By November 1, 2021, the Maryland Department of Health (MDH) must develop specified forms for informed consent and for reporting by facilities and qualified physicians. By July 1, 2022, and annually thereafter, MDH must compile the information received from such reports and (1) provide a comprehensive annual report to the General Assembly; (2) make the report available to the public in a downloadable format; and (3) summarize and submit the data to the U.S. Centers for Disease Control and Prevention.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures for Medicaid to the extent that fewer Medicaid-funded abortions occur under the bill. MDH can handle the bill's requirements with existing budgeted resources. The State Board of Physicians (MBP) can handle enforcement with existing budgeted resources. The bill's penalty provisions are not expected to materially affect State finances.

Local Effect: The bill's penalty provisions are not expected to materially affect local finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman known to be pregnant, with knowledge that the termination will cause the death of the unborn child with reasonable likelihood, including the use of off-label drugs known to have abortion-inducing properties if the drugs are prescribed specifically with the intent of causing an abortion. Abortion-inducing drug does not include the use of drugs that may be known to cause pregnancy loss, but that are prescribed to the patient for medical indications other than abortion.

A "qualified physician" means any individual, including a doctor of osteopathy, licensed to practice medicine in the State who is qualified to:

- identify and document a viable intrauterine pregnancy;
- assess the gestational age of pregnancy and inform the patient of gestational age-specific risks of a drug-induced abortion;
- diagnose ectopic pregnancy;
- determine blood type and administer Rh immunoglobulin;
- assess a patient for signs of domestic abuse, reproductive control, human trafficking, and other signals of coerced abortion;
- provide surgical intervention or enter into a contract with another qualified physician to provide surgical intervention; and
- supervise and bear legal responsibility for any agent, employee, or contractor who is participating in any part of the abortion procedure, including preprocedure evaluation and care.

Requirements for Prescribing an Abortion-inducing Drug

A qualified physician who prescribes an abortion-inducing drug in the State must either be (1) credentialed and competent to handle complication management, including emergency transfer or (2) have a signed contract, which can be produced on demand by a pregnant woman or MDH, with an associated physician who is credentialed to handle complications. If a qualified physician has such a contract, the qualified physician must provide the name and phone number of the associated physician to the patient.

Before prescribing an abortion-inducing drug to a woman, a qualified physician must (1) independently verify that the woman is currently pregnant with a viable pregnancy; (2) determine the blood type of the woman and offer to administer Rh immunoglobulin if the woman is Rh negative; (3) inform the woman that she may see the remains of her unborn child following the completion of the abortion; (4) document the gestational age

and intrauterine location of the pregnancy and whether the woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care; and (5) obtain a completed consent form at least 24 hours before prescribing the abortion-inducing drug, unless compliance poses a substantial risk of the death of the woman or irreversible physical impairment of a major bodily function (with the exception of psychological or emotional conditions).

Immediately following the prescription of an abortion-inducing drug, a qualified physician must schedule a follow-up visit for the woman approximately 7 to 14 days after the anticipated administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications. The qualified physician must make all reasonable efforts to ensure the woman returns for the appointment and document such efforts in the woman's medical record, as specified.

Prohibitions

A person may not prescribe, distribute, or otherwise provide abortion-inducing drugs (1) via courier, delivery, or mail service; (2) in a school facility, including elementary schools, secondary schools, and institutions of higher education; or (3) on State property.

Adverse Events – Reporting

If a qualified physician prescribes or otherwise provides an abortion-inducing drug to a patient and discovers that the patient has suffered an adverse event during or after use of the abortion-inducing drug, the qualified provider must report the adverse event within three days of discovery to (1) the federal Food and Drug Administration through the Medwatch Reporting System; (2) MDH; and (3) MBP.

Consent Form and Informational Materials

By November 30, 2021, MDH must develop a specified standardized consent form, as well as informational materials regarding informed consent for drug-induced abortions, and make the materials accessible to the public both in printed form and on the MDH website. Consent is not considered complete unless the patient has (1) initialed each item on the consent form and (2) signed an "acknowledgement of risks and consent statement" and the qualified physician signs the qualified physician statement. The informed consent materials must include a specified statement regarding the potential ability of qualified medical professionals to reverse the effects of an abortion-inducing drug. MDH must review the materials each year and update if necessary.

Reporting Requirements

By November 30, 2021, MDH must develop a facility reporting form regarding drug-induced abortions, as specified and a qualified physician reporting form, as specified.

Beginning January 1, 2022, and each year thereafter:

- each facility at which an abortion-inducing drug was given, sold, administered, or otherwise provided or prescribed in the immediately preceding calendar year must submit a report on the MDH-developed reporting form regarding the use of drug-induced abortions; and
- each health care provider, regardless of the health care provider's status as a qualified physician, who has treated an individual for an adverse event related to a drug-induced abortion in the immediately preceding calendar year must report the adverse event to MDH using the required reporting form.

Each year, MDH must compile the information received from the reporting forms for facilities and qualified physicians. The report is considered a public record, and an original copy must be made available to MBP, the State Board of Pharmacy, State law enforcement offices, and child protective services for use in the performance of their official duties.

MDH or another unit of State government (or an employee of either) may not compare data concerning abortions or abortion complications in a manner that could result in identifying a woman obtaining or seeking to obtain a drug-induced abortion unless there is a court order or a judicial subpoena to do so. In addition, MDH or another unit of State government (or an employee of or entity contracting with either) may not maintain statistical information that could reveal the identity of a woman obtaining or seeking to obtain a drug-induced abortion.

MDH must provide information on the reporting requirements of the bill to all medical professional organizations, licensed physicians, hospitals, emergency departments, facilities in which an abortion is performed, local health departments, ambulatory surgical facilities, and other health care facilities in the State.

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*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. 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.

Additional Comments: Although the bill establishes that a qualified physician who intentionally, knowingly, or recklessly violates the bill's provisions regarding the prescribing an abortion-inducing drug is guilty of a felony, the bill does not specify a penalty for the established felony offense.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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rh/jc

Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510