

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1360 (Delegate Cox, *et al.*)
 Health and Government Operations

Public Health - Abortion-Inducing Drugs

This bill specifies that only a “qualified physician” may prescribe an “abortion-inducing drug” subject to specified criteria and requirements. Failure to comply with the bill provides a basis for specified civil and disciplinary actions. By November 30, 2022, the Maryland Department of Health (MDH) must develop specified forms for informed consent and reporting on drug-induced abortions; the bill’s reporting requirement does not take effect until 10 days after MDH establishes and distributes the forms. 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; and (3) summarize and submit the data to the U.S. Centers for Disease Control and Prevention (CDC). If the constitutionality of the bill is challenged, the General Assembly may appoint one or more members who sponsored or cosponsored the bill to intervene as a matter of right. The Attorney General may bring an action to enforce compliance or intervene in a case that challenges the bill’s constitutionality. The bill’s provisions are severable such that the invalidity of any provision does not affect other provisions.

Fiscal Summary

State Effect: General fund expenditures for MDH increase by \$889,100 in FY 2023 for staff and one-time information technology (IT) costs. Future years reflect annualization and elimination of one-time costs. General fund expenditures for the Judiciary may increase by an additional amount to the extent additional civil actions are filed. Revenues are not materially affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	889,100	312,100	318,400	324,400	330,800
Net Effect	(\$889,100)	(\$312,100)	(\$318,400)	(\$324,400)	(\$330,800)

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

Local Effect: Minimal increase in expenditures for circuit courts to the extent that additional civil actions are filed. Revenues are not materially affected.

Small Business Effect: Potential meaningful.

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 – with reasonable likelihood – cause the death of the unborn child, including the use of an off-label drug known to have abortion-inducing properties if the drug is prescribed specifically with the intent of causing an abortion. “Abortion-inducing drug” does not include a drug that may be known to cause an abortion but that is prescribed for other medical indications.

A “qualified physician” means a physician who has the ability to:

- identify and document a viable intrauterine pregnancy;
- assess the gestational age of pregnancy and inform the patient of gestational age-specific risks;
- 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 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) examine the woman in person; (2) independently verify that a pregnancy exists; (3) determine the blood type of the woman and offer to administer Rh immunoglobulin if the woman is Rh negative; (4) inform the woman that she may see the remains of her unborn child following the completion of the abortion; (5) 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 (6) obtain a completed informed consent form at least 24 hours before the abortion-inducing drug is provided, 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. Each qualified physician who performs a drug-induced abortion in the State must report the abortion to MDH on a form that MDH develops, as specified.

Prohibitions

A person may not prescribe, distribute, or otherwise provide abortion-inducing drugs (1) unless the person is a qualified physician who complies with specified procedures; (2) via courier, delivery, or mail service; (3) in a school facility, including elementary schools, secondary schools, and institutions of higher education; or (4) 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 abortion complication or 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 the U.S. Food and Drug Administration through the MedWatch Reporting System and to MDH. In addition, any health care provider who diagnoses or treats a woman, at any time after a drug-induced abortion procedure for an adverse event or abortion complication, must report the adverse event or complication to MDH by the fifteenth day of the following month.

Consent Form and Informational Materials, and Abortion Reporting Form

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 (1) the patient has initialed each item on the consent form and signed an “acknowledgment of risks and consent statement” and (2) the qualified physician signs the “qualified physician declaration.” 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.

MDH must also develop a form for a qualified physician to report each drug-induced abortion to MDH, as specified. The report may not contain (1) the name of the pregnant woman; (2) common identifiers including a Social Security number or driver’s license number; or (3) any other information or identifiers that would make it possible to identify a woman who has obtained or seeks to obtain a drug-induced abortion. MDH must update the reporting form as needed to reflect changes to diagnostic and reimbursement coding classifications.

If a drug-induced abortion is for a minor, the qualified physician who provided the abortion-inducing drug must submit the reporting form to MDH and as a report of child abuse in accordance with the Family Law Article.

Reporting Requirements

Each year, MDH must compile a comprehensive statistical analysis based on the data gathered from reports submitted in the immediately preceding 12 months and submit the report to the General Assembly. MDH must publish aggregated data gathered from the reports on its website in a downloadable format. MDH must also summarize the aggregated data and submit the summary to the CDC as required to include the summary in the annual Vital Statistics Report.

The above reports (1) may not contain information that could identify a woman who sought or received an abortion and (2) are considered public records, and copies must be made available to MDH, a health occupations board, 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 an abortion.

MDH must provide information on the reporting requirements of the bill to all medical professional organizations, licensed physicians, hospitals, emergency departments, abortion facilities, State health clinics, ambulatory surgical facilities, and other health care facilities in the State that may perform an abortion and are operating in the State.

Failure to Comply

Civil Remedy: In addition to the remedies available under the common or statutory law, failure to comply with the requirements under the bill (1) provides a basis for a civil malpractice action for actual and punitive damages, as well as injunctive, declaratory, or any other appropriate relief and (2) provides a basis for recovery for the woman's family for the wrongful death of the woman pursuant to the Courts and Judicial Proceedings Article. An action, as specified, may be filed within three years of either the date of the alleged violation or the date that the harm is discovered.

Disciplinary Action: Failure to comply with the bill's requirements is a basis for a professional disciplinary action by a health occupations board.

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.

State Expenditures: MDH general fund expenditures increase by \$889,109 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring (1) one administrative officer to develop, distribute, and update the forms as required; (2) one IT functional analyst to provide technical assistance and support for the newly developed data system; and (3) one epidemiologist to analyze the data and prepare the required comprehensive data analyses and reports. It includes salaries, fringe benefits,

one-time start-up costs, ongoing operating expenses, and development of a new IT system at a cost of \$700,000.

Position	3.0
One-time IT System Development	\$700,000
Salaries and Fringe Benefits	167,080
Operating Expenses	<u>22,029</u>
Total FY 2023 State Expenditures	\$889,109

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, termination of one-time expenses, and \$90,000 in ongoing annual maintenance and software license renewals for the IT system.

Small Business Effect: Small business providers that perform drug-induced abortions must meet additional requirements under the bill and are exposed to potential civil litigation and disciplinary action for failing to do so.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Health Care Alternative Dispute Resolution Office; Department of Legislative Services

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