

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 891  
Finance

(Senator Carozza, *et al.*)

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Public Health - Medical Procedures - Parent or Guardian Notice (Maryland  
Parental Involvement Enhancement Act)

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This bill repeals existing provisions relating to parental or guardian notification for abortions sought by minors. Instead, the bill (1) prohibits a physician from performing an abortion on a pregnant woman who is either a minor or disabled and has had a guardian appointed for her, unless the physician first gives specified notice to a parent or guardian (with limited exception) and (2) establishes new requirements regarding notification of a parent or guardian before performing a medical procedure. A pregnant woman who is a minor or has a guardian due to a disability may request a judicial waiver to the notice requirement from the appropriate circuit court. A circuit court may order an evaluation and counseling session for the individual and must either grant the petition, if specified findings are made by clear and convincing evidence, or dismiss the petition.

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**Fiscal Summary**

**State Effect:** The Maryland Department of Health (MDH) and the Department of Human Services (DHS) can likely implement the bill's requirements within existing budgeted resources, as discussed below. Revenues are not affected.

**Local Effect:** Minimal increase in local expenditures to the extent that petitions for judicial waivers are filed in circuit courts. Revenues are not materially affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** If a physician is required to provide notice to a parent or guardian of an individual before performing a medical procedure, the physician may perform the medical procedure without notice to a parent or guardian if:

- the physician obtains a notarized written statement, dated within 30 days of the medical procedure, from a parent or guardian waiving the parent or guardian's right to notice of the medical procedure;
- the physician obtains (1) government-issued proof of identity of the parent or guardian; (2) written documentation stating that the parent or guardian is the lawful parent or guardian of the individual; and (3) a signed statement from the parent or guardian stating that the parent or guardian is aware that the medical procedure is to be performed on the individual; or
- the physician certifies in a document maintained in the medical record of the individual that a medical emergency exists and there is insufficient time to provide the notice and the physician notifies the parent or guardian within 24 hours after the procedure both verbally and through certified mail with restricted delivery and return receipt requested (unless the individual provides notice of the intent to seek a judicial waiver, as specified) including (1) that a medical procedure was performed due to a medical emergency; (2) the nature of the medical procedure; (3) the circumstances of the medical emergency; and (4) any additional risks to the individual.

A physician who receives parental notice must execute and include in the medical record a specified affidavit. A physician must keep a copy of any documents related to parental notice in the medical record of the individual for the later of five years after the date the individual turns age 18 or seven years after the medical procedure.

### *Judicial Waiver*

An individual may file a petition in the circuit court for the county where the individual resides or where the physician's office is located to seek an order waiving the requirement to provide notice to a parent or guardian. The court must issue an order authorizing the individual to consent to a medical procedure without a parent or guardian being notified if the court finds (by clear and convincing evidence) that (1) the individual is sufficiently mature and well-informed enough to decide whether to have the medical procedure, as specified; (2) the individual is a victim of physical or sexual abuse by a parent or guardian; or (3) that providing notification to a parent or guardian would not be in the best interest of the individual (without providing consideration to the potential financial impact on the

individual or the individual's family from not having the procedure). Otherwise, the court must dismiss the petition.

*Counseling Session:* The court may order the petitioner to participate in an evaluation and counseling session before issuing a ruling. The session must be promptly scheduled with a mental health professional from MDH or DHS. The mental health professional must develop an expert opinion on (1) the sufficiency of knowledge, insight, judgment, and maturity of the individual with regard to the decision to have the procedure and (2) whether the individual is seeking the procedure of the individual's own free will without coercion, intimidation, threats, abuse, undue pressure, or extortion. The results of the session must be reported to the court expeditiously in a confidential and secure manner before a hearing on the petition.

*Notice to Seek a Judicial Waiver:* If an individual gives notice to a physician of an intent to seek a judicial waiver from notice requirements after an emergency procedure (as specified above), the physician (1) may not notify the parent or guardian of the medical procedure before the time for which an individual may file a petition expires or the court makes a ruling regarding the judicial waiver and (2) must file a notice with the circuit court in the jurisdiction in which the medical procedure was performed stating that the individual has indicated an intent to seek a judicial waiver and that the medical procedure was performed due to a medical emergency (including the nature of the procedure, the circumstances of the emergency, and any additional risks to the individual within 24 hours after the procedure).

*Confidential Conference:* If a court receives notice from a physician regarding an individual's intent to seek a judicial waiver, the court must promptly schedule a confidential conference and provide notice of the conference to the physician and the individual. If the individual is able to participate in the conference, the court must advise the individual of the right to court-appointed counsel and provide counsel if the individual requests. If the individual is unable to participate in the conference, the court must appoint counsel on behalf of the individual.

After the confidential conference, the court must set a deadline for the individual to file a petition for judicial waiver. The court must take into account the medical condition of the individual in setting the filing deadline and may extend the deadline based on that condition. If the individual fails to file a petition or motion by the deadline, the court must provide the physician's notice (and information contained in the notice) to the individual's parent or guardian.

**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.

With specified exceptions, a physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor. The postal receipt that shows an article of mail was sent by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service, to the last known address of a parent or guardian and that is attached to a copy of the notice letter that was sent in that article of mail must be conclusive evidence of notice or a reasonable effort to give notice.

**State Expenditures:** MDH and/or DHS must provide mental health professionals to conduct an evaluation and counseling session on a petitioner when ordered to do so by the court. However, the evaluation and counseling session is only provided if (1) a minor or a disabled person for whom a guardian has been appointed seeks a medical procedure *and* petitions for a judicial waiver and (2) the court, at its own discretion, orders the session. The Department of Legislative Services advises that the number of evaluation and counseling sessions that MDH and/or DHS must provide is assumed to be minimal and absorbable within existing budgeted resources.

**Small Business Effect:** The bill has meaningful operational impacts on physicians who must comply with the bill's notice requirements. Further, litigation costs may increase for physicians against whom civil actions are brought.

**Additional Comments:** The bill repeals existing provisions of law specifying that a physician is not liable for civil damages or subject to criminal penalties for a decision not to give required notice. However, the bill does not establish specific exemptions from liability for failing to give proper notice in accordance with the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Disabilities; Maryland Department of Health; Department of Legislative Services

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Analysis by: Amber R. Gundlach

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