

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 843
Finance

Perinatal Care – Drug and Alcohol Testing and Screening – Consent

This bill prohibits a physician, nurse practitioner, social worker, hospital personnel, or any other health care provider from administering a drug or alcohol test or screen to a pregnant or perinatal patient or to a newborn infant unless the provider obtains written consent. Consent must be from the pregnant or perinatal patient or a parent or assigned legal guardian of the newborn infant and on a form provided by the Maryland Department of Health (MDH). The form must describe the potential medical, legal, and collateral consequences of a positive drug or alcohol test or screen result in relation to the patient or newborn infant. For a pregnant or perinatal patient, the administration of a drug or alcohol test or screen must be within the scope of the perinatal care provided to the patient.

Fiscal Summary

State Effect: MDH can develop the required form with existing budgeted resources. Revenues are not affected.

Local Effect: None likely, as existing provisions for intervention by local departments of social services continue to apply, and exposed newborns may still be identified, without consent to a test or screen, by observation of effects of withdrawal or fetal alcohol spectrum disorder.

Small Business Effect: None.

Analysis

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 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 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. A report is also not required if the health care 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.

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, the local department must (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 further intervention is necessary, the 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.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1335 (Delegates Williams and Charles) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of State Police; Department of Legislative Services

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