

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1139 (Delegate Adams, *et al.*)
Health and Government Operations

Public Funds - Prohibition on Expenditures for Abortion (Abortion Subsidy Prohibition Act)

This bill generally prohibits the use of public funds from any source (federal, State, or local) to subsidize abortion either directly or indirectly. A lawyer may not use an attorney trust account directly or indirectly to (1) advocate for a legal right to abortion; (2) provide legal assistance with respect to procuring an abortion or funding for an abortion; or (3) provide legal assistance to compel the performance or assistance in the performance of any abortion or the provision of facilities for the performance of any abortion. 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.

Fiscal Summary

State Effect: Federal fund revenues and expenditures decrease by \$3.0 million in FY 2023 and \$4.0 million annually thereafter, as discussed below. Medicaid general fund expenditures decrease by \$5.1 million in FY 2023 and \$6.8 million on an annualized basis thereafter. Department of Budget and Management (DBM) expenditures for the State Employee and Retiree Health and Welfare Benefits Program decrease by an indeterminate amount beginning in FY 2023. However, the overall net fiscal effect on Medicaid and DBM is indeterminate, as discussed below. Potential minimal increase in general fund expenditures for the Attorney Grievance Commission.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: Notwithstanding any other provision of law to the contrary, public funds (federal, State, or local) made available to any institution, board, commission, department, agency, official, or employee of the State (or of any local political subdivision) may not be used in any way for, to assist in, or to provide facilities for an abortion or for training to perform an abortion. This prohibition includes money paid by students as part of tuition or fees to a State college or university.

Public Property

Any public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by the State (or an agency or political subdivision in the State) may not be used to perform or assist in an abortion.

Public Schools and Public School Property

An applicant, student, teacher, or employee of a public school or university may not be required to pay any fees that would fund an abortion (in whole or in part) for any other applicant, student, teacher, or employee of that school or university.

A facility operated on public school property or operated by a public school district (including employees or contractors of the facility acting within the scope of employment or the contract) may not provide any of the following services to public school students: (1) performance of abortions; (2) counseling in favor of abortion; (3) referrals for abortion; (4) transportation services for purposes of obtaining an abortion; (5) telehealth services for the purpose of obtaining an abortion; or (6) dispensing drugs to induce abortions or otherwise classified as emergency contraception by the U.S. Food and Drug Administration (FDA).

The Maryland State Department of Education and local boards of education may not use State funds for the procurement of abortions or distribution of drugs intended to induce abortions or otherwise classified as emergency contraception by FDA.

Public Health Care Facilities

A hospital, clinic, health facility, or other community program owned or operated by the State (or any other governmental entity or local units) may not enter into any contract with any physician, nurse, health care worker, doula, midwife, health facility, or community program under the terms of which the person agrees to provide, induce, or perform abortions, or distribute abortion-inducing drugs.

Research Project Funding

Public funds may not be expended, paid, or granted to or on behalf of an existing or proposed research project that involves abortion, human cloning, or prohibited human research. A research project that receives an award of public funds must maintain financial records that demonstrate strict compliance with these provisions.

“Human cloning” means human asexual reproduction accomplished by (1) introducing the genetic material from one or more human somatic or embryonic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated before or after introduction to produce an organism at any stage of development with a human or predominately human genetic constitution; (2) artificially subdividing a human embryo at any time from the two-cell stage onward, such that more than one human organism results; or (3) introducing pluripotent cells from any source into a human embryo, nonhuman embryo, or artificially manufactured human embryo or trophoblast, under conditions where the introduced cells generate all or most of the body tissues of the developing organism.

“Prohibited human research” means (1) any medical procedures, scientific or laboratory research, or other kinds of investigation that kill or injure the human subject at any stage of development or (2) any scientific or laboratory research or other kinds of investigation conducted on fetal tissue obtained from an abortion, unless the research is done to obtain forensic or other evidence in a rape or incest investigation. “Prohibited human research” does not include (1) in vitro fertilization and accompanying embryo transfer to a woman’s body; (2) research in the use of nuclear transfer or other cloning techniques to produce molecules, DNA, or cells other than human embryos, tissues, organs, plants, or animals other than humans; or (3) any diagnostic procedure that benefits the human subject of such tests.

Legal Services

Federal and State funds appropriated by the State for the provision of legal services by private agencies may not be used directly or indirectly to (1) advocate for a legal right to abortion; (2) provide legal assistance with respect to procuring an abortion or funding for an abortion; or (3) provide legal assistance to compel the performance or assistance in the performance of any abortion or the provision of facilities for the performance of any abortion.

Inapplicability

Specified provisions of the bill do not apply to a licensed physician when inducing early birth when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from

the pregnancy itself, provided that all reasonable medical efforts are made to preserve the life of the fetal human being or infant.

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. 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.

The Attorney Grievance Commission, established under Maryland Rule 19-702, investigates and adjudicates complaints and violations of the Business Occupations and Professions Article against lawyers practicing in Maryland.

State Revenues: MDH advises that the Maryland Family Planning Program (MFPP) receives \$4.0 million annually in federal Title X funds to provide counseling to pregnant clients that includes information on all pregnancy options, including abortion. The bill's prohibition on public funds (including funds received from the federal government) being used for any abortion-related services, including counseling services, will make MFPP ineligible for Title X funds. Thus, federal fund revenues for MDH decrease by \$3.0 million in fiscal 2023, based on the bill's October 1, 2022 effective date. Federal fund revenues decrease by \$4.0 million annually thereafter.

State Expenditures:

Maryland Department of Health

As federal revenues are no longer available, federal fund expenditures for MFPP decrease by \$3.0 million in fiscal 2023 and \$4.0 million annually thereafter. MDH advises this eliminates five positions fully funded with federal monies. Expenditure of State general funds (\$6.0 million annually) is assumed to be unaffected; however, MFPP must revise award criteria and procedures to comply with the bill's provisions.

MDH advises that Medicaid paid for 10,163 abortions in fiscal 2021 at an average cost of \$668 per abortion for a total cost of \$6.8 million. Thus, general fund expenditures decrease by \$5.1 million in fiscal 2023 based on fiscal 2021 claims. This estimate reflects the bill's October 1, 2022 effective date. Based on fiscal 2021 claims, general fund expenditures decrease by \$6.8 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 because of the bill's prohibition on State funding of abortion procedures. The approximate average cost for prenatal care, labor/delivery, and postpartum care for Medicaid beneficiaries is \$36,100. 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 \$9,700 for health care per eligible newborn 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 oversees the State Employee and Retiree Health and Welfare Benefits Program, a State-funded health benefit plan. DBM advises that the bill prohibits coverage of abortions under the program. Thus, program expenditures (general, federal, and special funds) decrease by an indeterminate amount. DBM has previously advised that it does not monitor claims data for abortion procedures; thus, the amount of any such reduction cannot be reliably estimated.

To the extent that births increase among individuals covered by the program, there is likely an offsetting increase in expenditures (and potentially an overall increase in expenditures) for labor and delivery costs and to cover additional dependents. The extent of any increase cannot be reliably estimated at this time.

Attorney Grievance Commission and Office of Bar Counsel

The bill prohibits the use of funds from an attorney trust account for abortion-related legal expenses. Thus, general fund expenditures for the Attorney Grievance Commission increase to the extent that more investigations into the use of funds in an attorney trust account occur under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; Department of Budget and Management; Maryland Department of Health; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

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