

Department of Legislative Services  
Maryland General Assembly  
2025 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 95 (Delegate Allen)  
Health and Government Operations

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Health Care Providers - Assisted Reproductive Treatment - Informed Consent  
and Fraud

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This bill (1) imposes consent requirements before a health care provider can provide assisted reproductive treatment; (2) prohibits a health care provider from intentionally or knowingly using the provider’s own sperm or ovum to provide assisted reproductive treatment to a patient without the patient’s informed consent; (3) prohibits a health care provider from making certain misrepresentations or providing assisted reproductive treatment using donor material without meeting specified consent-related criteria; and (4) establishes civil and criminal liability for violations of the bill’s prohibitions.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

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

**Small Business Effect:** Minimal, as discussed below.

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Analysis

**Bill Summary:**

*Obtaining Consent from Donors and Recipients of Reproductive Material*

Before providing an assisted reproductive treatment, a health care provider must (1) obtain a donor’s written consent to use the donor’s reproductive material; (2) obtain a recipient’s

consent to use a specific donor's reproductive material; (3) ensure that consent for the use of human reproductive material is provided on a form that is distinct and separate from any other consent form; and (4) maintain a copy of the written consent obtained in the provider's patient records.

### *Informed Consent*

A health care provider must (1) use human reproductive material from a donor with the recipient's informed consent to use that donor's reproductive material during assisted reproductive treatment; (2) use a donor's human reproductive material for assisted reproductive treatment with the donor's informed consent and in a manner that is consistent with the donor's consent; (3) inform the recipient of any misuse, misrepresentation, or error involving reproductive material used in the assisted reproductive treatment; and (4) report misuse, misrepresentation, or error involving the reproductive material used in the treatment to the health care provider's licensing board.

### *Prohibited Acts and Civil and Criminal Liability*

A health care provider may not intentionally or knowingly provide assisted reproductive treatment to a patient using the health care provider's sperm or ovum without the patient's informed consent to do so. Violators are guilty of felony, punishable by imprisonment for up to 10 years and/or a \$5,000 maximum fine.

Health care providers who violate this prohibition are also liable for civil damages in an action brought by (1) the woman who gave birth to a child after receiving the assisted reproductive treatment; (2) the spouse or domestic partner of the woman who gave birth to a child after receiving treatment; or (3) the child born as a result of the assisted reproductive treatment. An individual who brings an action may assert a separate cause of action for each child born as a result of the violation. A child born as a result of assisted reproductive treatment in violation of this prohibition is entitled to a qualified protective order allowing the child access to the personal medical records and health history of the health care provider.

A health care provider may not provide assisted reproductive treatment using a donor's sperm or ovum if the health care provider knows or reasonably should know that the human reproductive material was used without the donor's consent or in a manner inconsistent with the donor's consent. A health care provider who violates this prohibition is liable for civil damages in an action brought by a donor whose reproductive material was used in this manner. An individual who brings an action may assert a separate cause of action for each individual who received assisted reproductive treatment with the donor's human reproductive material.

A health care provider or an employee of a health care provider who handles human reproductive material may not misrepresent (1) the quality of the material to the recipient of an assisted reproductive treatment or (2) any information about the donor's identity, genetic characteristics, or medical history to the recipient of an assisted reproductive treatment.

### *Civil Statute of Limitations and Damages*

A civil action brought under the bill must be filed within 10 years after the child who was born as a result of the assisted reproductive treatment reaches age 18, within 20 years after the day the treatment was provided, or within 2 years after the day on which an individual first discovers sufficient evidence through DNA analysis that an individual has a cause of action against a health care provider under the bill. A plaintiff who prevails must be entitled to the costs of the treatment (if the health care provider used their own sperm or ovum), liquidated damages up to \$50,000, compensatory damages, and reasonable attorney's fees and costs.

**Current Law:** Under Maryland law, there are more than 50 mandated health insurance benefits that certain carriers must provide to their enrollees, including coverage for in vitro fertilization (IVF). The federal Patient Protection and Affordable Care Act requires nongrandfathered health plans to cover 10 essential health benefits (EHBs), which include items and services in the following categories: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including dental and vision care.

Under § 31-116 of the Insurance Article, EHBs must be included in the State benchmark plan and, notwithstanding any other benefits mandated by State law, must be the benefits required in (1) all individual health benefit plans and health benefit plans offered to small employers (except for grandfathered health plans) offered outside the Maryland Health Benefit Exchange (MHBE) and (2) all qualified health plans offered in MHBE.

Carriers that provide pregnancy-related benefits are required to cover outpatient expenses arising from IVF performed on a policyholder or subscriber or the dependent spouse of the policyholder or subscriber. IVF benefits may be limited to three IVF attempts per live birth, not to exceed a maximum lifetime benefit of \$100,000. Carriers are not responsible for any costs incurred by a policyholder or subscriber to obtain donor sperm.

To qualify for IVF benefits, a married patient and the patient's spouse must have a history of involuntary infertility of at least one year's duration or infertility associated with

endometriosis, diethylstilbestrol exposure, blockage or removal of one or both fallopian tubes, or abnormal male factors. An unmarried patient must have (1) had three attempts of artificial insemination over the course of one year failing to result in pregnancy or (2) infertility associated with endometriosis, diethylstilbestrol exposure, blockage or removal of one or both fallopian tubes, or abnormal male factors. The patient must have been unable to attain a successful pregnancy through a less costly infertility treatment available under the policy or contract, and IVF must be performed at specified medical facilities. In addition, for a married patient whose spouse is of the opposite sex, the patient's eggs must be fertilized with the spouse's sperm unless (1) the spouse is unable to produce and deliver functional sperm and (2) the inability does not result from a vasectomy or other method of voluntary sterilization.

**Small Business Effect:** While the bill contains extensive civil and criminal liability provisions, the requirements and prohibitions under the bill that are the basis for this liability appear to reflect best practices and standards of care in reproductive health. Assuming this is the case, the bill is likely to have a minimal impact on small businesses.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Health Care Alternative Dispute Resolution Office; Department of Legislative Services

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