

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 449
Finance

(Senator Waugh, *et al.*)

Public Health - Abortions - Viability

This bill alters the definition of a “viable” fetus in relation to the obtainment or performance of an abortion to mean the stage beginning at 24 weeks gestation.

Fiscal Summary

State Effect: General fund expenditures for Medicaid decrease under the bill to the extent that fewer abortions are performed. Department of Budget and Management (DBM) expenditures may also decrease (75% general funds, 25% special funds). Revenues are not affected.

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

Small Business Effect: Potential meaningful.

Analysis

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.

Background: According to the Guttmacher Institute, medical professionals customarily date a pregnancy from the first day of the woman's last menstrual period, because it is an easier date for a woman to pinpoint; fertilization usually takes place two weeks after the first day of a woman's last menstrual period. The normal gestational length of a pregnancy is 40 weeks from the beginning of a woman's last menstrual period, or about 38 weeks postfertilization. The Guttmacher Institute reports that, as of March 1, 2018, five states (Florida, Nevada, New York, Pennsylvania, and Rhode Island) ban abortions past 24 weeks postfertilization or after the woman's last menstrual period.

According to the Guttmacher Institute, in 2014, approximately 926,200 abortions occurred in the United States, producing a rate of 14.6 abortions per 1,000 women of reproductive age. (This represents a 14% decrease since 2011, when the abortion rate was 16.9 abortions per 1,000 women.) In Maryland in 2014, 28,140 abortions were provided at a rate of 23.4 abortions per 1,000 women of reproductive age. (This represents an 18% decrease since 2011, when the rate was 28.6 abortions per 1,000 women.) However, 90% of U.S. counties had no abortion clinic in 2014 and 39% of American women of reproductive age lived in these counties. In 2014, 67% of Maryland counties had no clinics that provided abortions and 24% of Maryland women lived in these counties. Therefore, it is likely that some women who received abortions in Maryland were from other states, while some Maryland residents received abortions in other states. For this reason, the Maryland rate may not accurately reflect the abortion rate of State residents.

In 2014, there were 41 abortion providers in Maryland, of which 25 were clinics. (This represents a 21% increase in overall providers and a 19% increase in clinics since 2011, when there were 34 overall providers, of which 21 were clinics.)

State Fiscal Effect: Women eligible for Medicaid solely due to a pregnancy do not currently qualify for a State-funded abortion. Additionally, based on language in the federal budget, federal funds may not be used for an abortion unless the life of the woman is endangered. Language attached to the Medicaid budget since the late 1970s authorizes the use of State funds to pay for abortions under specific circumstances. Similar language has been attached to the appropriation for the Maryland Children's Health Program since its advent in fiscal 1999. According to information obtained from MDH, in fiscal 2017, 8,798 abortions were funded through Medicaid. This reflects the number of claims Medicaid received through October 2017; the actual number of abortions may be slightly higher, as providers have 12 months to bill Medicaid for a service. None of these abortions

was eligible for federal matching funds (no abortions were performed under the specified federal exception).

Therefore, DLS advises that general fund expenditures for Medicaid decrease under the bill to the extent that fewer abortions are performed and, therefore, funded by Medicaid. Similarly, DBM general and special fund expenditures also decrease to the extent fewer abortions are performed under the State Employee and Retiree Health and Welfare Benefits Program. The exact amount of any decrease depends on the proportion of abortions that would be prohibited under the bill and cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful for physicians whose practices currently include abortions at 24 weeks gestation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; Guttmacher Institute; Department of Legislative Services

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nb/jc

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