

STATE OF NEW YORK

1709--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

Introduced by M. of A. REYES, PAULIN, OTIS, DINOWITZ, BURGOS, RAGA, SHRESTHA, FORREST, DICKENS, O'DONNELL -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the executive law, the civil practice law and rules, the insurance law and the education law, in relation to legally protected health activity providers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 570.17 of the criminal procedure law, as added by
2 chapter 219 of the laws of 2022, is amended to read as follows:

3 § 570.17 Extradition [~~of abortion providers~~] for legally protected
4 health activity.

5 [~~No~~] 1. For purposes of this section, the following terms shall have
6 the following meanings:

7 (a) "Reproductive health services" shall mean and include all
8 services, care, or products of a medical, surgical, psychiatric, thera-
9 peutic, diagnostic, mental health, behavioral health, preventative,
10 rehabilitative, supportive, consultative, referral, prescribing, or
11 dispensing nature relating to the human reproductive system provided in
12 accordance with the constitution and the laws of this state, whether
13 provided in person or by means of telehealth or telehealth services,
14 which includes, but is not limited to, all services, care and products
15 relating to pregnancy, assisted reproduction, contraception, miscarriage
16 management or the termination of a pregnancy, and self-managed termi-
17 nations.

18 (b) "Legally protected health activity" shall mean and include the
19 following acts and omissions by providers and facilitators of reproduc-
20 tive health services, to the extent they are not in violation of the
21 constitution or the laws of this state, provided that such provider is
22 physically present in the state:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (i) the exercise or attempted exercise by any person of rights to
2 reproductive health services as secured by the constitution or laws of
3 this state or the provision of insurance coverage for such services or
4 care; and

5 (ii) any act or omission undertaken to aid or encourage, or attempt to
6 aid or encourage, any person in the exercise or attempted exercise of
7 rights to reproductive health services as secured by the constitution or
8 laws of this state, or to provide insurance coverage for such services
9 or care; provided, however, that the provision of such reproductive
10 health services by a person duly licensed under the laws of this state
11 and physically present in this state and the provision of insurance
12 coverage for such services or care shall be a legally protected health
13 activity if the service or care is permitted under the laws of this
14 state, regardless of the patient's location.

15 2. Except as required by federal law, no demand for the extradition of
16 a person charged with [~~providing an abortion~~] any legally protected
17 health activity, shall be recognized by the governor unless the execu-
18 tive authority of the demanding state shall allege in writing that the
19 accused was physically present in the demanding state at the time of the
20 commission of the alleged crime, and that thereafter he, she or they
21 fled from that state.

22 § 2. Subdivision 3-a of section 140.10 of the criminal procedure law,
23 as added by chapter 219 of the laws of 2022, is amended to read as
24 follows:

25 3-a. A police officer may not arrest any person for [~~performing or~~
26 ~~aiding in the performance of an abortion~~] any legally protected health
27 activity within this state, [~~or in procuring an abortion in this state,~~
28 ~~if the abortion is performed in accordance with the provisions of arti-~~
29 ~~cle twenty-five A of the public health law or any other applicable law~~
30 ~~of this state~~] as defined in section 570.17 of this chapter.

31 § 3. Section 837-w of the executive law, as added by chapter 219 of
32 the laws of 2022, is renumbered section 837-x and amended to read as
33 follows:

34 § 837-x. Cooperation with certain out-of-state investigations. 1. For
35 purposes of this section, the following terms shall have the follow-
36 ing meanings:

37 (a) "Reproductive health services" shall have the same meaning as
38 paragraph (a) of subdivision one of section 570.17 of the criminal
39 procedure law; and

40 (b) "Legally protected health activity" shall have the same meaning as
41 paragraph (b) of subdivision one of section 570.17 of the criminal
42 procedure law.

43 2. No state or local [law enforcement agency] government employee or
44 entity or other person acting on behalf of state or local government
45 shall cooperate with or provide information to any individual or out-of-
46 state agency or department regarding [~~the provision of a lawful abortion~~
47 ~~performed~~] any legally protected health activity occurring in this
48 state, or otherwise expend or use time, moneys, facilities, property,
49 equipment, personnel or other resources in furtherance of any investi-
50 gation or proceeding that seeks to impose civil or criminal liability or
51 professional sanctions upon a person or entity for any legally protected
52 health activity occurring in this state. Nothing in this section shall
53 prohibit the investigation of any [~~criminal activity in this state which~~
54 ~~may involve the performance of an abortion~~] reproductive health services
55 rendered in violation of the laws of this state, provided that no infor-
56 mation relating to any medical procedure performed on a specific indi-

vidual may be shared with an out-of-state agency or any other individual. Nothing in this section shall prohibit compliance with a valid, court-issued subpoena or warrant which does not relate to a law seeking to impose civil or criminal liability or professional sanctions for a legally protected health activity, or in response to the written request of a person who is the subject of such an investigation or proceeding, to the extent necessary, in each case, to fulfill such request.

§ 4. Subdivision (g) of section 3119 of the civil practice law and rules, as added by chapter 219 of the laws of 2022, is amended to read as follows:

(g) (1) Out-of-state [abortion] proceedings regarding legally protected health activities. Notwithstanding any other provisions of this section or any other law, no court or county clerk shall issue a subpoena under this section in connection with an out-of-state proceeding relating to any ~~[abortion services or procedures]~~ legally protected health activity which ~~[were legally performed]~~ occurred in this state, unless such out-of-state proceeding ~~[(1)]~~ (i) sounds in tort or contract~~[, or is based on statute]~~, ~~[(2)]~~ (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and ~~[(3)]~~ (iii) was brought by the patient who received reproductive ~~[healthcare]~~ health services as defined in paragraph (a) of subdivision one of section 570.17 of the criminal procedure law, or the patient's legal representative, so long as the patient gives express consent.

(2) For purposes of this subdivision, the terms "legally protected health activity" and "reproductive health services" shall have the same meanings as defined in subdivision one of section 570.17 of the criminal procedure law.

§ 5. Subdivision (e) of section 3102 of the civil practice law and rules, as amended by chapter 219 of the laws of 2022, is amended to read as follows:

(e) Action pending in another jurisdiction. Except as provided in section three thousand one hundred nineteen of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition; provided that no order may be issued under this section in connection with an out-of-state proceeding relating to any ~~[abortion services or procedures]~~ legally protected health activity, as defined in paragraph (b) of subdivision one of section 570.17 of the criminal procedure law which ~~[were legally performed]~~ occurred in this state, unless such out-of-state proceeding (1) sounds in tort or contract~~[, or is based on statute]~~, (2) is actionable, in an equivalent or similar manner, under the laws of this state, and (3) was brought by the patient who received reproductive ~~[healthcare]~~ health services, or the patient's legal representative.

§ 6. The civil practice law and rules is amended by adding a new section 4550 to read as follows:

§ 4550. Admissibility of evidence related to legally protected health activity. Evidence relating to the involvement of a party engaging in one or more legally protected health activity, as defined in paragraph (b) of subdivision one of section 570.17 of the criminal procedure law, relating to providing reproductive health services to persons not phys-

1 ically present in this state shall not be offered against such party as
2 evidence that such party has engaged in any wrongdoing, whether civil,
3 criminal, professional, or otherwise by virtue of such recipients of
4 such services not being physically present in this state. Nothing in
5 this section shall prevent a party from offering such evidence in a
6 proceeding that (i) sounds in tort or contract, (ii) is actionable, in
7 an equivalent or similar manner, under the laws of this state, and (iii)
8 was brought by the patient who received reproductive health services, or
9 the patient's legal representative.

10 § 7. Section 3436-a of the insurance law, as added by chapter 221 of
11 the laws of 2022, is amended to read as follows:

12 § 3436-a. Adverse action against legal reproductive health care. 1.
13 [~~Adverse action against legal reproductive health care.~~] (a) Every
14 insurer which issues or renews medical malpractice insurance covering a
15 health care provider licensed to practice in this state, whether the
16 health care provider is covered by a primary, excess or umbrella liabil-
17 ity policy, shall be prohibited from taking any adverse action against
18 a health care provider solely on the basis that the health care provider
19 [~~performs an abortion or provides reproductive health care~~] provides
20 reproductive health services, as defined in paragraph (a) of subdivision
21 one of section 570.17 of the criminal procedure law, that is legal in
22 the state of New York on someone who is from out of the state. The
23 superintendent is expressly authorized to interpret "reproductive health
24 services" as if such definition was stated within this article.

25 (b) Such policy shall include health care providers who legally
26 prescribe abortion medication to out-of-state patients by means of tele-
27 health.

28 2. As used in this section, "adverse action" shall mean but not be
29 limited to: (a) refusing to renew or execute a contract or agreement
30 with a health care provider; (b) making a report or commenting to an
31 appropriate private or governmental entity regarding practices of such
32 provider which may violate abortion laws in other states; and (c)
33 increasing in any charge for, or a reduction or other adverse or unfa-
34 vorable change in the terms of coverage or amount for, any medical malp-
35 ractice insurance contract or agreement with a health care provider.

36 § 8. Paragraph 36 of subsection (i) of section 3216 of the insurance
37 law, as added by section 1 of part R of chapter 57 of the laws of 2022,
38 is amended to read as follows:

39 (36) (A) Every policy which provides hospital, surgical, or medical
40 coverage and which offers maternity coverage pursuant to paragraph ten
41 of this subsection shall also provide coverage for [~~abortion services~~]
42 legally protected health activity, as defined in paragraph (b) of subdivi-
43 vision one of section 570.17 of the criminal procedure law, for an
44 enrollee. The superintendent is expressly authorized to interpret
45 "legally protected health activity" as if such definition was stated
46 within this article.

47 (B) Coverage for [~~abortion~~] a legally protected health activity, as
48 defined in paragraph (b) of subdivision one of section 570.17 of the
49 criminal procedure law, shall not be subject to annual deductibles or
50 coinsurance, including co-payments, unless the policy is a high deduct-
51 ible health plan as defined in section 223(c)(2) of the internal revenue
52 code of 1986, in which case coverage for [~~abortion~~] a legally protected
53 health activity, as defined in paragraph (b) of subdivision one of
54 section 570.17 of the criminal procedure law may be subject to the
55 plan's annual deductible.

1 § 9. Paragraph 22 of subsection (k) of section 3221 of the insurance
2 law, as added by section 2 of part R of chapter 57 of the laws of 2022,
3 is amended to read as follows:

4 (22) (A) Every policy which provides hospital, surgical, or medical
5 coverage and which offers maternity care coverage pursuant to paragraph
6 five of this subsection shall also provide coverage for [~~abortion~~
7 ~~services~~] a legally protected health activity, as defined in paragraph
8 (b) of subdivision one of section 570.17 of the criminal procedure law,
9 for an enrollee. The superintendent is expressly authorized to inter-
10 pret "legally protected health activity" as if such definition was stat-
11 ed within this article.

12 (B) Coverage for [~~abortion~~] a legally protected health activity, as
13 defined in paragraph (b) of subdivision one of section 570.17 of the
14 criminal procedure law, shall not be subject to annual deductibles or
15 coinsurance, including co-payments, unless the policy is a high deduct-
16 ible health plan as defined in section 223(c)(2) of the internal revenue
17 code of 1986, in which case coverage for [~~abortion~~] legally protected
18 health activity, as defined in paragraph (b) of subdivision one of
19 section 570.17 of the criminal procedure law, may be subject to the
20 plan's annual deductible.

21 (C) Notwithstanding any other provision, a group policy that provides
22 hospital, surgical, or medical expense coverage delivered or issued for
23 delivery in this state to a religious employer, as defined in item one
24 of subparagraph (E) of paragraph sixteen of subsection (l) of this
25 section, may exclude coverage for [~~abortion~~] legally protected health
26 activity, as defined in paragraph (b) of subdivision one of section
27 570.17 of the criminal procedure law, only if the insurer:

28 (i) obtains an annual certification from the group policyholder that
29 the policyholder is a religious employer and that the religious employer
30 requests a policy without coverage for [~~abortion~~] legally protected
31 health activity, as defined in paragraph (b) of subdivision one of
32 section 570.17 of the criminal procedure law;

33 (ii) issues a rider to each certificate holder at no premium to be
34 charged to the certificate holder or religious employer for the rider,
35 that provides coverage for [~~abortion~~] legally protected health activity,
36 as defined in paragraph (b) of subdivision one of section 570.17 of the
37 criminal procedure law, subject to the same rules as would have been
38 applied to the same category of treatment in the policy issued to the
39 religious employer. The rider shall clearly and conspicuously specify
40 that the religious employer does not administer [~~abortion~~] benefits
41 regarding legally protected health activity, as defined in paragraph (b)
42 of subdivision one of section 570.17 of the criminal procedure law, but
43 that the insurer is issuing a rider for coverage of [~~abortion~~] legally
44 protected health activity, as defined in paragraph (b) of subdivision
45 one of section 570.17 of the criminal procedure law, and shall provide
46 the insurer's contact information for questions; and

47 (iii) provides notice of the issuance of the policy and rider to the
48 superintendent in a form and manner acceptable to the superintendent.

49 § 10. Subsection (ss) of section 4303 of the insurance law, as added
50 by section 3 of part R of chapter 57 of the laws of 2022, is amended to
51 read as follows:

52 (ss)(1) Every policy which provides hospital, surgical, or medical
53 coverage and which offers maternity care coverage pursuant to subsection
54 (c) of this section shall also provide coverage for [~~abortion—services~~]
55 legally protected health activity, as defined in paragraph (b) of subdi-
56 vision one of section 570.17 of the criminal procedure law, for an

1 enrollee. The superintendent is expressly authorized to interpret
2 "legally protected health activity" as if such definition was stated
3 within this article.

4 (2) Coverage for [~~abortion~~] legally protected health activity, as
5 defined in paragraph (b) of subdivision one of section 570.17 of the
6 criminal procedure law, shall not be subject to annual deductibles or
7 coinsurance, including co-payments, unless the policy is a high deduct-
8 ible health plan as defined in section 223(c)(2) of the internal revenue
9 code of 1986, in which case coverage for [~~abortion~~] legally protected
10 health activity, as defined in paragraph (b) of subdivision one of
11 section 570.17 of the criminal procedure law, may be subject to the
12 plan's annual deductible.

13 (3) Notwithstanding any other provision, a group policy that provides
14 hospital, surgical, or medical expense coverage delivered or issued for
15 delivery in this state to a religious employer, as defined in paragraph
16 five of subsection (cc) of this section, may exclude coverage for
17 [~~abortion~~] legally protected health activity, as defined in paragraph
18 (b) of subdivision one of section 570.17 of the criminal procedure law,
19 only if the insurer:

20 (A) obtains an annual certification from the group policy holder that
21 the policy holder is a religious employer and that the religious employ-
22 er requests a contract without coverage for [~~abortion~~] legally protected
23 health activity, as defined in paragraph (b) of subdivision one of
24 section 570.17 of the criminal procedure law;

25 (B) issues a rider to each certificate holder at no premium to be
26 charged to the certificate holder or religious employer for the rider,
27 that provides coverage for [~~abortions~~] legally protected health activ-
28 ity, as defined in paragraph (b) of subdivision one of section 570.17 of
29 the criminal procedure law, subject to the same rules as would have been
30 applied to the same category of treatment in the policy issued to the
31 religious employer. The rider shall clearly and conspicuously specify
32 that the religious employer does not administer [~~abortion~~] benefits
33 regarding legally protected health activity, as defined in paragraph (b)
34 of subdivision one of section 570.17 of the criminal procedure law, but
35 that the insurer is issuing a rider for coverage of [~~abortion~~] legally
36 protected health activity, as defined in paragraph (b) of subdivision
37 one of section 570.17 of the criminal procedure law, and shall provide
38 the insurer's contact information for questions; and

39 (C) provides notice of the issuance of the policy and rider to the
40 superintendent in a form and manner acceptable to the superintendent.

41 § 11. Subdivision 2 of section 6531-b of the education law, as added
42 by chapter 220 of the laws of 2022, is amended to read as follows:

43 2. The performance, recommendation, or provision of any reproductive
44 health services as defined in subdivision one of this section, or any
45 legally protected health activity as defined in paragraph (b) of subdi-
46 vision one of section 570.17 of the criminal procedure law, by a health
47 care practitioner acting within their scope of practice, for a patient
48 who resides in a state wherein the performance, recommendation, or
49 provision of such reproductive health services is illegal, shall not, by
50 itself, constitute professional misconduct under this title, or title
51 two-A of article two of the public health law, or any other law, rule or
52 regulation governing the licensure, certification, or authorization of
53 such practitioner, nor shall any license, certification or authorization
54 of a health care practitioner be revoked, suspended, or annulled or
55 otherwise subject to any other penalty or discipline provided in the
56 public health law or this title solely on the basis that such health

1 care practitioner performed, recommended, or provided any such reproduc-
2 tive health services for a patient who resides in a state wherein the
3 performance, recommendation, or provision of such reproductive health
4 services is illegal.

5 § 12. Severability. If any provision of this act, or any application
6 of any provision of this act, is held to be invalid, that shall not
7 affect the validity or effectiveness of any other provision of this act,
8 any other application of any provision of this act, or any other
9 provision of any law or code amended by this act.

10 § 13. Choice of laws. This act shall be exclusively governed by and
11 construed pursuant to the laws of the state of New York, without giving
12 effect to any choice of law principles thereunder.

13 § 14. Conflict of laws. To the extent that any laws in the state of
14 New York conflict with this act, this act shall govern.

15 § 15. This act shall take effect immediately.