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:

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

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

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

(a) "Reproductive health services" shall mean and include all services, care, or products of a medical, surgical, psychiatric, therapeutic, diagnostic, mental health, behavioral health, preventative, rehabilitative, supportive, consultative, referral, prescribing, or dispensing nature relating to the human reproductive system provided in accordance with the constitution and the laws of this state, whether provided in person or by means of telehealth or telehealth services, which includes, but is not limited to, all services, care and products relating to pregnancy, assisted reproduction, contraception, miscarriage management or the termination of a pregnancy, and self-managed terminations.

(b) "Legally protected health activity" shall mean and include the following acts and omissions by providers and facilitators of reproductive health services, to the extent they are not in violation of the constitution or the laws of this state, provided that such provider is 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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(i) the exercise or attempted exercise by any person of rights to reproductive health services as secured by the constitution or laws of this state or the provision of insurance coverage for such services or care; and

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

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

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

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

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

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

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

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

2. No state or local [~~law enforcement agency~~] government employee or entity or other person acting on behalf of state or local government shall cooperate with or provide information to any individual or out-of-state agency or department regarding [~~the provision of a lawful abortion performed~~] any legally protected health activity occurring in this state, or otherwise expend or use time, moneys, facilities, property, equipment, personnel or other resources in furtherance of any investigation or proceeding that seeks to impose civil or criminal liability or professional sanctions upon a person or entity for any legally protected health activity occurring in this state. Nothing in this section shall prohibit the investigation of any [~~criminal activity in this state which may involve the performance of an abortion~~] reproductive health services rendered in violation of the laws of this state, provided that no information 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-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 15. This act shall take effect immediately.