STATE OF NEW YORK

7918

2023-2024 Regular Sessions

IN ASSEMBLY

August 4, 2023

Introduced by M. of A. SIMON, DICKENS, BURDICK, SILLITTI, DAVILA, DINOWITZ, JACOBSON, STECK -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, the criminal procedure law and the executive law, in relation to the provision of protections for persons receiving and providing reproductive health care services in the state and access to reproductive health care services in the state

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

Section 1. The civil practice law and rules is amended by adding a new section 5108 to read as follows:

§ 5108. Relief from judgment related to reproductive health care services. 1. As used in this section:

(a) "Reproductive health care services" includes all medical, surgical, counseling or referral services relating to the human reproductive system, including, but not limited to, services relating to pregnancy, contraception or the termination of a pregnancy; and

(b) "Person" includes an individual, a partnership, an association, a limited liability company or a corporation.

2. When any person has had a judgment entered against such person, in any state, where liability, in whole or in part, is based on the alleged provision, receipt, assistance in receipt or provision, support for, or any theory of vicarious, joint, several or conspiracy liability derived therefrom, for reproductive health care services that are permitted under the laws of this state, such person may recover damages from any party that brought the action leading to that judgment or has sought to enforce that judgment. Recoverable damages shall include:

(a) just damages created by the action that led to that judgment, including, but not limited to, money damages in the amount of the judgment in that other state and costs, expenses and reasonable attorneys'

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

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fees spent in defending the action that resulted in the entry of a judgment in another state; and

(b) costs, expenses and reasonable attorneys' fees incurred in bringing an action under this section as may be allowed by the court.

3. The provisions of this section shall not apply to a judgment entered in another state that is based on:

(a) an action founded in tort, contract or statute, and for which a similar claim would exist under the laws of this state, brought by the patient who received the reproductive health care services upon which the original lawsuit was based or the patient's authorized legal representative, for damages suffered by the patient or damages derived from an individual's loss of consortium of the patient;

(b) an action founded in contract, and for which a similar claim would exist under the laws of this state, brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the judgment entered in another state; or

(c) an action where no part of the acts that formed the basis for liability occurred in this state.

§ 2. The civil practice law and rules is amended by adding a new section 3119-a to read as follows:

§ 3119-a. Disclosure of information related to reproductive health care services. 1. Except as otherwise provided by law or by subdivision three of this section, in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, no covered entity, as defined in 45 CFR 160.103, shall disclose:

(a) any communication made to such covered entity, or any information obtained by such covered entity from, a patient or the conservator, guardian or other authorized legal representative of a patient relating to reproductive health care services as defined in section fifty-one hundred eight of this chapter, that are permitted under the laws of this state; or

(b) any information obtained by personal examination of a patient relating to reproductive health care services, as defined in section fifty-one hundred eight of this chapter, that are permitted under the laws of this state, unless the patient or the patient's conservator, guardian or other authorized legal representative explicitly consents in writing to such disclosure.

2. A covered entity, as defined in 45 CFR 160.103, shall inform the patient or the patient's conservator, guardian or other authorized legal representative of the patient's right to withhold such written consent.

3. Written consent of the patient or the patient's conservator, guardian or other authorized legal representative shall not be required for the disclosure of such communication or information:

(a) pursuant to the laws of this state or the rules of the court;

(b) by a covered entity against whom a claim has been made, or there is a reasonable belief will be made, in such action or proceeding, to the covered entity's attorney or professional liability insurer or such insurer's agent for use in the defense of such action or proceeding;

(c) to the commissioner of health for records of a patient of a covered entity in connection with an investigation of a complaint, if such records are related to the complaint; or

(d) if child abuse, abuse of an elderly individual, abuse of an individual who is physically disabled or incompetent or abuse of an individual with intellectual disability is known or in good faith suspected.

4. Nothing in this section shall be construed to impede the lawful sharing of medical records as permitted by state or federal law or the

rules of the court, except in the case of a subpoena commanding the production, copying or inspection of medical records relating to reproductive health care services, as defined in section fifty-one hundred eight of this chapter.

§ 3. Section 3119 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(i) Subpoenas related to reproductive health care services. Notwithstanding any other provision of law, no court or county clerk shall issue a subpoena requested by a commissioner, appointed according to the laws or usages of any other state or government, or by any court of the United States or of any other state or government, when such subpoena relates to reproductive health care services, as defined in section fifty-one hundred eight of this chapter, that are permitted under the laws of this state, unless the subpoena relates to:

(1) an out-of-state action founded in tort, contract or statute, for which a similar claim would exist under the laws of this state, brought by a patient or the patient's authorized legal representative, for damages suffered by the patient or damages derived from an individual's loss of consortium of the patient; or

(2) an out-of-state action founded in contract, and for which a similar claim would exist under the laws of this state, brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the subpoena requested by a commissioner appointed according to the laws or usages of another state.

§ 4. The criminal procedure law is amended by adding a new section 570.15 to read as follows:

§ 570.15 Extradition of reproductive health care providers or recipients.

No judge shall issue a summons in a case where prosecution is pending, or where a grand jury investigation has commenced or is about to commence for a criminal violation of a law of such other state involving the provision or receipt of or assistance with reproductive health care services, as defined in section fifty-one hundred eight of the civil practice law and rules, that are legal in this state, unless the acts forming the basis of the prosecution or investigation would also constitute an offense in this state.

§ 5. Section 570.06 of the criminal procedure law is amended to read as follows:

§ 570.06 Fugitives from justice; duty of governor.

Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state; provided the acts for which extradition is sought would be punishable by the laws of this state, if the consequences claimed to have resulted from those acts in the demanding state had taken effect in this state.

§ 6. The executive law is amended by adding a new section 170-g to read as follows:

§ 170-g. Investigation of information pertaining to reproductive health care services. 1. No public agency, division or office, or employee, appointee, officer or official thereof or any other person acting on behalf of a public agency, division or office, may provide any information or expend or use time, money, facilities, property, equip-

ment, personnel or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil or criminal liability upon a person or entity for:

(a) the provision, seeking or receipt of or inquiring about reproductive health care services, as defined in section fifty-one hundred eight of the civil practice law and rules, that are legal in this state; or

(b) assisting any person or entity providing, seeking, receiving or responding to an inquiry about reproductive health care services, as defined in section fifty-one hundred eight of the civil practice law and rules, that are legal in this state.

2. This section shall not apply to any investigation or proceeding where the conduct subject to potential liability under the investigation or proceeding would be subject to liability under the laws of this state if committed in this state.

§ 7. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.