STATE OF NEW YORK

5636

2023-2024 Regular Sessions

IN SENATE

March 10, 2023

Introduced by Sen. WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law and the public health law, in relation to providing an exception from professional misconduct for the performance, recommendation, or provision of any reproductive health services or gender-affirming care by a health care practitioner

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

Section 1. Section 6531-b of the education law, as added by chapter 220 of the laws of 2022, is amended to read as follows:

§ 6531-b. Exceptions; reproductive health services **and gender-affirming care**. 1. As used in this section, the following terms shall have the following meanings:

(a) "Reproductive health services" shall include[~~:~~

~~(i) abortion pursuant to section twenty-five hundred ninety-nine-bb of the public health law;~~

~~(ii) emergency contraception as defined in section twenty-eight hundred five-p of the public health law; and~~

~~(iii)~~] **all services, care, or products of a** medical, surgical, **psychiatric, therapeutic, mental health, behavioral health, diagnostic, preventative, rehabilitative, supportive,** counseling [~~or~~]**,** referral [~~services relating to the human reproductive system, including~~]**, prescribing, or dispensing nature relating to the human reproductive system provided in accordance with the laws of this state, including, but not limited to, all** services**, care and products** relating to pregnancy**, assisted reproduction, contraception, miscarriage management** or the termination of a pregnancy**, including self-managed terminations**.

(b) **"Gender-affirming care" shall mean any type of care provided to an individual to affirm their gender identity or gender expression, provided that surgical interventions on minors with variations in their**

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

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sex characteristics that are not sought and initiated by the individual patient are not gender-affirming care.

(c) "Health care practitioner" means a person who is licensed, certified, or authorized under this title and acting within their lawful scope of practice.

2. The performance, recommendation, or provision of any reproductive health services **or gender-affirming care** as defined in subdivision one of this section, 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 **or gender-affirming care** 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 **or gender-affirming care** for a patient who resides in a state wherein the performance, recommendation, or provision of such reproductive health services **or gender-affirming care** is illegal.

3. Nothing in this section shall be construed to expand the scope of practice of any individual licensed, certified or authorized under this title, nor does this section give any such individual the authority to act outside their scope of practice, as defined in this title.

§ 2. Subdivision 9-c of section 230 of the public health law, as added by chapter 220 of the laws of 2022, is amended to read as follows:

9-c. (a) Neither the board for professional medical conduct nor the office of professional medical conduct shall charge a licensee, acting within their scope of practice, with misconduct as defined in sections sixty-five hundred thirty and sixty-five hundred thirty-one of the education law, or cause a report made to the director of such office to be investigated beyond a preliminary review as set forth in clause (A) of subparagraph (i) of paragraph (a) of subdivision ten of this section, where such report is determined to be based solely upon the performance, recommendation, or provision of any reproductive health services **or gender-affirming care** as defined in section sixty-five hundred thirty-one-b of the education law for a particular patient by such licensee where such patient resides in a state wherein the performance, recommendation or provision of such reproductive health services **or gender-affirming care** is illegal.

(b) When a licensee, acting within their scope of practice, and in accordance with paragraph e of subdivision four of section sixty-five hundred twenty-seven of the education law, performs, recommends or provides any reproductive health services **or gender-affirming care** for a patient who resides in a state wherein the performance, recommendation, or provision of any such reproductive health services **or gender-affirming care** is illegal, such performance, recommendation, or provision of such reproductive health services **or gender-affirming care** for such patient, shall not, by itself, constitute professional misconduct. The licensee shall otherwise abide by all other applicable professional requirements.

§ 3. Section 6505-d of the education law, as added by chapter 220 of the laws of 2022, is amended to read as follows:

§ 6505-d. Evaluation of prior disciplinary history for authorization to practice. 1. An applicant seeking licensure, certification, or authorization pursuant to this title who has been subject to disciplinary action by a duly authorized professional disciplinary agency of another jurisdiction solely on the basis of having performed, recommended, or provided [~~an abortion pursuant to section twenty-five hundred ninety-nine-bb of the public health law,~~] reproductive health services or gender-affirming care shall not be denied such licensure, certification, or authorization, unless the department determines that such action would have constituted professional misconduct in this state. Provided however, that nothing in this section shall be construed as prohibiting the department from evaluating the conduct of such applicant and making a determination to be licensed, certified, or authorized to practice a profession under this title.

2. As used in this section, the following terms shall have the following meanings:

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

(b) "Gender-affirming care" shall mean any type of care provided to an individual to affirm their gender identity or gender expression, provided that surgical interventions on minors with variations in their sex characteristics that are not sought and initiated by the individual patient are not gender-affirming care.

§ 4. Subdivision 1 of section 6510 of the education law is amended by adding a new paragraph b-1 to read as follows:

b-1. The department shall not charge a licensee, acting within their scope of practice, with misconduct as defined in section sixty-five hundred nine of this subarticle, or cause a complaint made by any person to the department to be investigated beyond a preliminary review when such report is determined to be based solely upon the performance, recommendation, or provision of any reproductive health services or gender-affirming care as defined in section sixty-five hundred nine-f of this subarticle for a particular patient by such licensee where such patient resides in a state wherein the performance, recommendation or provision of such reproductive health services or gender-affirming care is illegal. The preliminary review shall determine if such report reasonably appears to reflect conduct warranting further investigation pursuant to this paragraph.

§ 5. The education law is amended by adding a new section 6509-f to read as follows:

§ 6509-f. Limited exemption from professional misconduct; reproductive health services and gender-affirming care. 1. As used in this section, the following terms shall have the following meanings:

(a) "Reproductive health services" shall include all services, care, or products of a medical, surgical, psychiatric, therapeutic, mental health, behavioral health, diagnostic, preventative, rehabilitative, supportive, counseling, referral, prescribing, or dispensing nature relating to the human reproductive system provided in accordance with the laws of this state, including, but not limited to, all services,

care and products relating to pregnancy, assisted reproduction, contraception, miscarriage management or the termination of a pregnancy, including self-managed terminations.

(b) "Gender-affirming care" shall mean any type of care provided to an individual to affirm their gender identity or gender expression, provided that surgical interventions on minors with variations in their sex characteristics that are not sought and initiated by the individual patient are not gender-affirming care.

(c) "Health care practitioner" means a person who is licensed, certified, or authorized under this title and acting within their lawful scope of practice.

2. The performance, recommendation, or provision of any reproductive health services or gender-affirming care as defined in subdivision one of this section, 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 or gender-affirming care is illegal, shall not, by itself, constitute professional misconduct under this title, 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 or gender-affirming care is illegal.

3. Nothing in this section shall be construed to expand the scope of practice of any individual licensed, certified or authorized under this title, nor does this section give any such individual the authority to act outside their scope of practice, as defined in this title.

§ 6. This act shall take effect immediately.