

STATE OF NEW YORK

6904

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. LAVINE, CRUZ, DINOWITZ, KELLES, JACOBSON, SIMON, THIELE -- read once and referred to the Committee on Health

AN ACT to amend the public officers law, in relation to defense and indemnity of certain officers and employees; and to create a state-regulated program for expanding abortion services in New York state for the benefit of out-of-state patients

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York Santoro provider protection act of 2023".

3 § 2. Legislative intent. (a) Because access to reproductive and
4 abortion care and personal autonomy over reproductive decisions are
5 fundamental human rights, it is the intent of the New York legislature
6 to create a state-funded and regulated program to allow providers within
7 New York state to provide abortions and telehealth services to patients
8 who reside outside of New York.

9 (b) Because cross-border medical services implicate and involve inter-
10 state commerce, as U.S. citizens often travel between the states to
11 obtain such services, it is the intent of the New York legislature to
12 protect interstate travel and commerce, such as telehealth, for the
13 provision of abortion services in this state.

14 (c) Because strict limitations or bans on abortions infringe upon the
15 free exercise of religion, and other constitutional rights, it is the
16 intent of the New York legislature to protect those constitutional
17 rights.

18 (d) Because every year approximately 20 million women worldwide risk
19 their lives to undergo unsafe abortions, and understanding that persons
20 who reside in states that have restricted or intend to restrict access
21 to necessary abortions are more likely, as Geraldine Santoro did, to
22 seek unsafe methods or procedures to terminate pregnancies from unquali-
23 fied individuals, including themselves, it is the intent of the New York

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

LBD10312-01-3

1 legislature to prevent further physical harm to such persons from both
2 unsafe procedures and from dangerous complications related to pregnancy.

3 (e) Because strict limitations or bans on abortions will adversely
4 affect the rights of Americans in the exercise of personal control over
5 their bodies and health care decisions, and because these limitations
6 and bans will have a disproportionate impact on indigent persons and
7 persons of color, it is the intent of the New York legislature to
8 protect even persons outside the state of New York, in coordination with
9 other like-minded states.

10 (f) A specific legislative intent for this act is to protect commerce
11 within New York, and between New York and other states, including by (1)
12 protecting consumers of abortion-related services in New York or, if
13 appropriate, helping consumers find and obtain abortion-related services
14 in other states, (2) using common carriers, hotel chains, and transport
15 companies to facilitate consumer choice, (3) providing financial incen-
16 tives for new providers to enter the market for abortion-related
17 services, (4) thereby increasing competition between providers, which
18 will encourage higher-quality service at lower prices, (5) eliminating
19 barriers to market entry for such new providers, and (6) creating
20 protections and incentives for existing providers to expand coverage and
21 service for consumers of abortion-related services.

22 (g) Another specific intent of this act is to accord all patients who
23 travel to New York, and the abortion-service providers in New York, the
24 constitutional protections of Article VI of the United States Constitu-
25 tion, section 2, clause 1 (the Privileges and Immunities Clause), and of
26 the due process clause of the fourteenth amendment, which prohibits
27 states where abortion is either illegal or restricted from either (1)
28 punishing its residents who travel out-of-state for such services, or
29 (2) restraining or seeking to punish providers, or others who assist or
30 facilitate lawful abortions in New York, as well as the equal protection
31 clause of the fourteenth amendment which prohibits states from denying
32 to any person within its jurisdiction the equal protection of the laws.
33 "The tradition of American federalism stands squarely against efforts by
34 states to punish their citizens for conduct that is protected in the
35 sister state where it occurs."

36 (h) Because providers and common carriers who participate in this
37 newly enacted program are acting at the behest of New York state, under
38 duly executed contracts with the state to perform public service on a
39 temporary or occasional basis, and in compliance with New York state
40 regulations, and because using existing providers will create less
41 burden to New York taxpayers than increasing abortion services already
42 provided by the state-run healthcare facilities, and because the threat
43 of liability has the effect of deterring skilled and qualified individ-
44 uals from public service, it is the intent of the legislature to afford
45 immunity from suit or prosecution to any abortion-service provider with-
46 in New York state who provides abortion services to an out-of-state
47 patient, whether through telehealth or in-person, as well as to common
48 carriers and hotels, who participate in this program under contracts
49 with the state.

50 § 3. Travel to New York for abortions and related care. (a) Patients
51 living in the 50 U.S. States and territories, who (1) seek an abortion
52 that is unlawful or unavailable in their state of residence but is legal
53 and available in New York, and (2) declare financial need to pay for
54 such medical care or travel to New York, are eligible to apply for
55 financial assistance to travel to New York to obtain such medical
56 services referred to in this act as "the travel program" or "program".

(b) On an annual basis, the department of health, in consultation with the not-for-profit corporation created for this purpose, as provided in subdivision (c) of section four of this act, shall promulgate rules setting forth the financial qualifications for obtaining such financial assistance.

(c) Such rules shall be based upon the patient's declaration of financial means.

(d) Such rules shall aim to maximize the availability of funds from all sources.

(e) To the extent permitted by law, such rules shall seek to obtain reimbursement from the patient's health insurance.

(f) Immigration status shall not be a consideration in determining financial eligibility or participation in the program in any way. No information on legal immigration or residency status may be collected in connection with this program.

§ 4. Administration. (a) The department of health shall promulgate rules and regulations consistent with this act within 60 days of the effective date of this act.

(b) The travel program shall be funded through an annual appropriation beginning in fiscal year 2023-2024.

(c) The department of health shall create a not-for-profit corporation, to be known as the "New York sanctuary project", to administer the travel program and shall issue regulations to:

(1) Administer the travel program, including facilitating travel arrangements and medical appointments for persons who declare the need for them, and paying the costs when funds are available.

(2) Protect the personally identifiable data of any person or entity that contacts, applies for, or receives assistance from the travel program, in perpetuity and collect as little personally identifiable data as practicable. All travel program partners shall take all necessary steps to ensure the confidentiality of the individuals and entities receiving services or funds from the travel program.

(3) Enter into contracts with providers of abortion services (whether in-person or through telehealth options), which will require the providers to act in conformance with contractual requirements, comply with all applicable laws or regulations, and certify compliance with same.

(4) Issue certificates of immunity to all providers and common carriers who provide abortion services on a temporary or occasional basis under the travel program.

(5) Raise private money to help pay for the travel program.

(6) Enter into partnerships, separately or in cooperation with other sanctuary states, with existing, privately run not-for-profit corporations that can contribute funds or other resources to the travel program.

(7) Maximize the availability of funds from sources other than New York, such as, where eligible, the patient's private insurance or private donations.

(8) Enter into agreements with common carriers, hotel chains, and other service providers, separately or in cooperation with other sanctuary states, for the purpose of administering the travel program resources in a cost-efficient and compassionate manner.

(9) Broadly advertise the availability of, and the application process for, the travel program in all 50 states and territories.

(10) Provide a fast-track option, in which applicants for financial assistance receive notice of the determination on their application within 48 hours of the application's receipt, or such other time limita-

tion as determined by the department of health or in cooperation with other sanctuary states.

(11) Advertise the availability of the program, including within states that have or will restrict or ban access to abortion services.

(12) Establish a panel of qualified pro bono lawyers, in coordination with the existing reproductive legal defense networks, to defend persons and providers sued or charged with abortion-related claims or crimes, wherever those suits are brought.

§ 5. Telehealth provisions. (a) As part of the program, the department of health's regulations shall permit, to the maximum extent permitted by state and federal law, health care practitioners within New York to provide medical abortions to out-of-state residents through mail-order pharmacies and telehealth consultations, in which the patient would use the abortifacient medication in their home state, or in a nearby state (the "telehealth option").

(b) All medical services provided by New York health care practitioners and their staff, including the services of pharmacies where applicable, for the telehealth option are hereby deemed to be provided within the state of New York, regardless of where the patient resides.

(c) All protections that have been enacted to protect patients and health care practitioners engaged in abortion care within New York shall also apply to telehealth abortions, including protections from acts against health care practitioners' licenses, against health care practitioners' liability insurance, against health care practitioners' property, and involving any criminal complaints or extradition attempts related to abortion care.

§ 6. Subdivision 1 of section 17 of the public officers law is amended by adding a new paragraph (aa) to read as follows:

(aa) For the purposes of this section, the term "employee" shall include employees, officers, and members of the board of the travel program, and all providers and common carriers who provide abortion services under the travel program, as established by a chapter of the laws of two thousand twenty-three which added this paragraph.

§ 7. Severability. If any provision, section, subsection, or clause of this act or its application to any person or circumstance is held invalid, it is the legislature's intent that the invalidity does not affect other provisions, sections, subsections, clauses or applications of this act which can be given effect without the invalid provision, section, subsection, or clause or application, and to this end the provisions of this act are severable.

§ 8. This act shall take effect immediately.