STATE OF NEW YORK

2475

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sens. HOYLMAN-SIGAL, COONEY, HINCHEY, JACKSON, MAY, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, the executive law, the civil practice law and rules, the criminal procedure law, the education law, the public health law and the insurance law in relation to gender affirming care

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

Section 1. The family court act is amended by adding a new section 659 to read as follows:

§ 659. Consideration of law allowing gender affirming care. 1. A law of another state that authorizes a child to be removed from their parent or guardian based on the parent or guardian allowing their child to receive gender affirming care shall not be enforced or applied in a case pending in a court in this state.

2. No court in this state shall admit or consider a finding of abuse based on the parent or guardian allowing their child to receive or seek gender affirming care as evidence in any proceeding with respect to that parent or guardian and any of their children, unless such conduct would constitute abuse under the laws of this state if it occurred in this state.

§ 2. The executive law is amended by adding a new section 837-x to read as follows:

§ 837-x. Cooperation with certain out-of-state investigations. No state or local law enforcement agency shall cooperate with or provide information to any individual or out-of-state agency or department regarding the provision, seeking, or assistance in provision or seeking of lawful gender affirming care performed in this state. Nothing in this section shall prohibit the investigation of any criminal activity in this state which may involve the performance of gender affirming care

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

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provided that no information relating to any medical procedure performed on a specific individual may be shared with an out-of-state agency or any other individual.

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

(h) Subpoenas related to gender affirming care. Notwithstanding any other provisions of law, no court or county clerk shall issue a subpoena under this section in connection with an out-of-state proceeding relating to any gender affirming care which was legally performed, sought, received, or supported 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 the gender affirming care, or the patient's legal representative.

§ 4. 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 **or gender affirming care** which were legally performed 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, or the patient's legal representative.

§ 5. Section 140.10 of the criminal procedure law is amended by adding a new subdivision 3-b to read as follows:

3-b. A police officer may not arrest any person for performing or aiding in the performance of gender affirming care within this state, or in procuring or aiding in the procurement of gender affirming care in this state, if the gender affirming care is performed in accordance with the provisions of any other applicable law of this state.

§ 6. The criminal procedure law is amended by adding a new section 570.19 to read as follows:

§ 570.19 Extradition of gender affirming care providers, seekers, parents, guardians, and helpers.

No demand for the extradition of a person subject to criminal liability that is in whole or part based on the alleged provision or receipt of, support for, or any theory of vicarious, joint, several or conspiracy liability for gender affirming care lawfully performed in New York shall be recognized by the governor unless the executive authority of the demanding state shall allege in writing that the accused was present in the demanding state at the time of the commission of the alleged offense, and that thereafter he, she or they fled from that state.

§ 7. Subdivision 1 of section 6531-b of the education law is amended by adding a new paragraph (c) to read as follows:

(c) "Gender affirming care" means any type of care provided to an individual who has sought and initiated that care to affirm their gender identity or gender expression.

§ 8. 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 **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 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.

§ 9. 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 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 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.

§ 10. 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. 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, **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.

§ 11. 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. [~~1.~~] Adverse action against legal reproductive health care **or gender affirming care**. **1.** Every insurer which issues or renews medical malpractice insurance covering a health care provider licensed to practice in this state 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 **or gender affirming care** that is legal in the state of New York on someone who is from out of the state. 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.

§ 12. This act shall take effect immediately.