

California Signs into Law Legislative Package Expanding Access and Protections for Reproductive and Gender-Affirming Health Care

Insights

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On Wednesday, September 27, 2023, California Governor Gavin Newsom signed into law nine bills intended to enhance protections for providers offering reproductive and gender-affirming services and increase protections for patient reproductive health care information.

Following [California's initial legislative response](#) to the U.S. Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization*, the new slate of bills continue to support increasing access to reproductive health services within the state. Many of the new laws bolster the state's ongoing efforts to limit enforcement by California courts of other states' laws restricting the provision of abortion and gender-affirming care. Other laws in the package expand privacy protections for reproductive and sexual health information for both California residents and visitors. The bill package also includes measures intended to, among other things, protect reproductive service providers from adverse licensure actions, increase access to reproductive medical education in California, and expand the state's reproductive health care workforce.

Below we summarize the new laws.

Protections from Out-of-State Anti-Abortion Laws:

Three of the new laws protect health care providers and facilities from adverse out-of-state consequences for providing reproductive and gender affirming care in California.

- **SB 345** expands protections from civil or criminal liability in states that ban or restrict reproductive care, and extends such protection to medical providers providing gender affirming healthcare and mental health care. In particular, the new law:
 - Establishes that interference with the right of a person to receive gender-affirming healthcare and mental health care violates California public policy. Also Prohibits judges from ordering a witness to appear in a criminal prosecution where the prosecution is based on laws that conflict with protections afforded in California related to sexual and reproductive healthcare.
 - Protects healthcare professionals that provide gender-affirming care from civil and criminal liability based on providing healthcare that is legal in California, as well as individuals seeking that care. It also creates a cause of action for "abusive

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litigation” based on attempts to infringe or interfere with a person’s right to receive reproductive care and gender-affirming care.

- Permits California judges to stay civil enforcement actions of out-of-state judgements based on violations of that state’s law that are inconsistent with California law and public policy, such as laws that make it a crime to provide, receive, or assist with the provision of sexual or reproductive healthcare, including abortion, contraception, or gender-affirming care.
- Prohibits healing arts licensing boards from denying an application for licensure or suspending, revoking, or imposing discipline on the health care provider based on a civil, criminal, or disciplinary action from a jurisdiction outside of California based solely on a law that interferes with the provider’s ability to provide sexual and reproductive health care.
- Prohibits “family planning centers” from collecting, using, disclosing, or retaining personal information of any person, except as necessary to provide services.
- Prohibits a charge of murder for any person that solicited, aided, abetted, or consented to a legal abortion and the provider of the legal abortion, as well as any physician and surgeon providing an abortion when the birth of the fetus would result in the death of the mother from childbirth with substantial medical certainty.
- Establishes a number of procedural protections applicable where providers face criminal prosecution related to sexual or reproductive health care services, such as protections around subpoenas, warrants, and wiretaps; bail protections; and prohibitions on fugitive recovery for bail violations.
- **AB 1707** prohibits the Medical Board of California, Osteopathic Medical Board, Board of Registered Nursing, and the Physician Assistant Board from denying an application for licensure or imposing discipline against a provider based on a civil judgement, criminal conviction, or disciplinary action in another state for providing reproductive care that may be illegal that state but that it otherwise legal in California. Similarly, under the new law, health care facilities, as defined by Health & Safety Code Division 2, are prohibited from denying an application for medical staff privileges, or from restricting or termination medical staff privileges based on civil judgements, criminal convictions, or disciplinary action in another state if that action is based solely on the other’s states law that interfere with a person’s right to obtain reproductive care and or gender-affirming care.
- **SB 487** protects providers that provide reproductive health care in California from termination or non-renewal of a contract based on civil judgements, criminal convictions, or disciplinary action in another state based on conduct that is otherwise legal in California. Furthermore, the Medi-Cal program may elect not to suspend a provider participating in the program based on the revocation, suspension, or loss of license, certification, or approval authority, based on conduct that would not be considered unprofessional conduct in California.

It remains to be seen how courts will clarify the conflict between California’s protective laws and other states’ provisions criminalizing and restricting abortion.

Protections for Reproductive Health Information:

Two measures restrict third-party access to an individual’s reproductive and sexual health data and medical records.

- **AB 254** amends the California Confidentiality of Medical Information Act (CMIA) to expressly include fertility and menstrual cycle tracking apps or websites as “providers of health care,” and to revise the definition of “medical information” to include reproductive and sexual health information collected by such companies. Many, if not most, reproductive health apps available to consumers are not subject to the federal HIPAA regulations, so AB 254 is designed to ensure these kinds of tracking apps are subject to the CMIA (California’s analogue to HIPAA). Under the CMIA, these apps will be prohibited from intentionally sharing, using for marketing, selling, or otherwise using medical information for any purpose not necessary to provide services to a consumer – such as by sharing it with law enforcement or government agencies.
- **AB 352** seeks to enhance the privacy protections for medical records related to abortion and abortion-related services, contraception, and gender-affirming care maintained by “businesses that electronically store or maintain

medical information” under the CMIA, like a health information exchange or electronic health record vendor. Specifically, the new law requires these kinds of businesses to enable certain security features that provide special protections for such information, including by limiting user access privileges and segregating medical information related to abortion, contraception, and gender-affirming care; these changes must be in place by July 1, 2024. Notably, the law also excludes such information from automatically being shared by participants of the [California Data Exchange Framework](#). Finally, the law restricts a health care provider, service plan, contractor or employer from cooperating with any inquiry or investigation conducted by another state or federal agency by providing medical information which could identify an individual as having sought or obtained lawful abortion services. This last addition closely mirrors the [proposed rule](#) issued by the U.S. Department of Health and Human Services this past spring aimed at bolstering the HIPAA Privacy Rule’s protections for reproductive health information by prohibiting its use or disclosure by covered entities in connection with an investigation, lawsuit, or prosecution of a patient or others involved in the provision of lawful reproductive health care.

Protections for Providers:

Another set of bills encourages the safe provision of abortion services by prohibiting insurers from discriminating against abortion providers and limiting the use of medical imaging devices to only licensed providers and facilities.

- **AB 571** prohibits a medical malpractice insurer from refusing to issue or renew or terminating a health care provider’s professional liability insurance, and from imposing a surcharge or increasing the premium or deductible amount, based solely on the provider’s offering or performing abortion, contraception, gender-affirming health care, or care related to these health care services, which are lawful in California but may be unlawful in another state. The bill also prohibits insurers from denying liability coverage for damages arising from these acts provided that such health care services are within the scope of the insured’s license, the services are lawful in the state where offered or performed, and the policy would otherwise cover liability for damages arising from performing or rendering other professional services within the insured’s scope of license.
- **AB 1720** seeks to ensure ethical and professional practices with respect to prenatal screenings by specifying the settings in which an ultrasound, or similar medical imaging device procedure may be offered. AB 1720 clarifies that such imaging devices, which are used for a medical, counseling, or diagnostic service or purpose, shall only be offered in the following settings: (1) a licensed clinic; (2) an outpatient setting; (3) a licensed health facility; (4) a practice of a licensed physician or surgeon, medical group practice, including a professional medical corporation; (5) a practice of a licensed chiropractor; (6) a practice of a licensed physical therapist; (7) a facility affiliated with these settings; and (8) any entity described in Health & Safety Code section 1206. The bill expressly exempts the practices of a licensed midwife and certified nurse-midwife, and imposes a civil penalty for a violation of its provisions.

Expanding California’s Reproductive Health Care Workforce:

Lastly, two laws aim to increase the number of reproductive health care providers in California.

- **AB 1646** removes certain barriers to allow residents in out-of-state residency programs to more easily participate in in guest rotations in California. The change in law is intended to allow trainees whose home states restrict reproductive health services to receive that training in California.
- In California, to perform an abortion a Physician Assistant, or PA, must meet certain requirements under the PA Practice Act to obtain such authority, including completion of training and compliance with certain protocols. **SB 385** revises the training requirements to (1) instead require a PA to achieve clinical competency through successful completion of training, as described in the bill, in performing an abortion by aspiration techniques, and (2) removes the requirement that a PA follow certain protocols to receive authority to perform abortions by aspiration techniques. PAs would be required to perform such procedures consistent with applicable standards of care, within the scope of their education and training, and pursuant to their practice agreement. SB 385 would also authorize PAs that have completed training and achieved clinical competency to perform abortions by aspiration techniques without the physical presence of a supervising physician and surgeon unless required to by their individual practice

agreement.

- **SB 385** also prohibits the Physician Assistant Board from suspending or revoking a PA's license solely for performing an abortion if the procedure was otherwise performed in accordance with the PA Practice Act and the Reproductive Privacy Act. Further, the Board is prohibited from denying an application or suspending, revoking, or otherwise disciplining a PA if the person is also licensed or certified as a PA in another state and was disciplined or convicted for an offense in that state solely for performing an abortion.

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