

California Enacts Legislative Package Expanding Protections and Access to Abortion Services

Insights

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On Tuesday, September 27, 2022, California Governor Gavin Newsom signed into law several bills intended to establish and enhance protections for individuals and entities providing abortions and reproductive health care services in light of the increasing number of states restricting abortion in response to the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*.

Many of the new California laws are designed to counter or preclude enforcement of another state's abortion-restricting laws. However, it remains to be seen if or how a court would reconcile them with contradictory laws from other states. Also included in this slate of new laws are those that seek to: preserve the privacy of abortion-related patient data; protect practitioners who have provided abortions in other states from adverse licensure actions in California; expand the scope of practice for nurse practitioners and certified nurse midwives to provide abortion services; seek to expand the health care provider workforce; and increase access to and information about contraception and abortion. Below we summarize the new laws relevant to health care providers.

Protections from Anti-Abortion Law Enforcement

Two of the new laws focus specifically on the power of law enforcement to prosecute or investigate another state's anti-abortion laws.

- AB 1242 prohibits out-of-state law enforcement from using California laws to execute search warrants on California companies that provide electronic communication services or remote computing service to enforce or investigate anti-abortion crimes. The law also requires out-of-state law enforcement to provide an attestation that their investigation does not involve a crime related to an abortion that is lawful in California. It also prohibits California law enforcement from knowingly arresting someone for aiding a lawful abortion in California and prohibits state or local public agencies from cooperating with or providing information to an individual or agency from another state or a federal law enforcement agency regarding a lawful abortion. In addition, it sets a \$0 bail for individuals arrested in connection with an out-of-state proceeding regarding an individual performing, assisting in, or helping one obtain an abortion in California.
- AB 2223 protects anyone choosing to terminate a pregnancy from prosecution, including abortions which are self-induced or happen

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outside of the medical system. It also protects anyone assisting another person to end their pregnancy voluntarily from criminal or civil liability, and abolishes the requirement that coroners investigate stillbirths as well as the requirement that an unattended fetal death be handled as a death without medical attendance.

Given the deliberate conflict between these two new California laws, on the one hand, and certain other state's existing and emerging legal restrictions on abortion, on the other hand, providers may get caught in the middle trying to assess operational compliance in both California and elsewhere. Ultimately, such clashes will not be easily resolved and will likely require clarity from the courts.

Patient Privacy

In the aftermath of *Dobbs*, many health care providers and patients alike have identified limitations in HIPAA's ability to protect the privacy of persons seeking abortions and abortion-related care, particularly as it relates to requests from state and local law enforcement agencies. In response, California lawmakers passed AB 2091, which aims to protect the privacy of out-of-state patients who seek abortion services in California by prohibiting health plans, health care providers, and their contractors from disclosing their medical information in response to a subpoena based on the alleged violation of another state's law. The new law also protects such entities and individuals from being compelled to disclose information that would identify an individual who sought or obtained an abortion. As an urgency statute, the law went into effect immediately upon its passage. However, as with AB 1242 and AB 2223, the ramifications of AB 2091 and its interaction with other state's contradictory laws, remain untested.

Practitioner Licensing and Scope of Practice

Three of the new laws are aimed at state licensing agencies, and protect California licensed health care providers who provide abortions.

- AB 2626 prohibits the Medical Board, Osteopathic Medical Board, Board of Registered Nursing, and Physician Assistant Board, from taking disciplinary action, including denying application for licensure, based on a provider performing an abortion in conformity with standards of care, the respective practice act, and the Reproductive Privacy Act (Health and Safety Code section 123460 et seq.). These licensing Boards are also prohibited from taking disciplinary action against a provider based on disciplinary action taken by another state solely for performing an abortion.
- AB 657 addresses the influx of patients coming into California to access reproductive health care because of abortion restrictions in other states. It expedites the licensure process by the Medical Board, Osteopathic Medical Board, Board of Registered Nursing, and Physician Assistant Board for applicants demonstrating their intention to provide abortions in California within their scope of practice and competency.
- AB 1375 allows Nurse Practitioners ("NPs") and Certified Nurse Midwives ("CNMs") who have completed an approved state program to provide abortions by aspiration during the first trimester. Additionally, NPs functioning pursuant to Business and Professions Code, Sections 2837.103 or 2837.104 are permitted to provide aspiration abortions without physician supervision, subject to complying with standards of care, scope of clinical practice and training. The law also prohibits NPs or CNMs that provide abortions from being held liable for civil damages for providing those services.

Workforce and Provider Funding

Another set of new laws focuses on increasing the number of reproductive health care providers, particularly providers in low-income and underserved areas.

- AB 1918 creates the California Reproductive Health Scholarship Corps to recruit, train and retain a diverse workforce of health care professionals providing reproductive health services in underserved areas. Among other things, the Corps will be responsible for administering scholarships, stipends and loan forgiveness for reproductive health

professional school students and graduates in exchange for a three-year term of service providing reproductive health services in underserved areas.

- AB 2134 establishes the California Reproductive Health Equity Program to provide grants to providers of abortion and other reproductive health care services regardless of the patient's ability to pay for care. The program specifically provides financial support for safety net providers to offset the costs of uncompensated care. Medi-Cal providers may apply for grants.
- AB 2586 establishes the California Reproductive Justice and Freedom Fund to provide grants to community based organizations dismantling reproductive and sexual health inequities through education and outreach targeted at communities that have experienced significant reproductive or sexual health inequities or disparities.

Expanded Access to Birth Control

In an effort to expand patient access to contraception, SB 523 requires a health care service plan or health insurer to provide certain over-the-counter birth control without cost to the insured. Health care service plans and insurance policies offered by public and private institutions of higher learning must also provide certain over-the-counter birth control, and cover vasectomy services without cost to the insured. It also revises the California Fair Employment and Housing Act to prohibit employment-related discrimination based on reproductive health decision making.

Research and Reporting on Abortion Care

Finally, the last set of new laws establish ways to track, report and share information about the provision and funding for abortion services.

- SB 1142 requires the California Department of Public Health to manage an abortion care services website to connect patients with nearby and cost accessible abortion providers, and provide information on financial services available to help individuals access abortions. In addition, it requires annual evaluations of grants funded by the Abortion Practical Support Fund to increase access to abortion.
- SB 1245 establishes a reproductive health pilot project, the Los Angeles County Abortion Access Safe Haven Pilot Program, to expand and improve access to reproductive and sexual health care, including abortion, in the County of Los Angeles.

Hooper, Lundy & Bookman, P.C. is monitoring developments closely as federal agencies issue further guidance and states enact new laws in response to the Supreme Court's decision in *Dobbs*. We have launched the [Reproductive Health practice group](#) to assist providers seeking to understand their legal obligations as the legal landscape shifts rapidly. Please reach out to [Stephanie Gross](#) or [Charles B. Oppenheim](#) in Los Angeles, [Andrea L. Frey](#), [Emily L. Brinkman](#), [Erin R. Sclar](#), or [Jeffrey Lin](#) in San Francisco or any other member of our Hooper, Lundy, and Bookman team.

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