



REPRODUCTIVE HEALTH AND EQUITY Fact Sheet

United We Stand: How Some States Are Protecting Access to Gender Affirming Care and Abortion in a Single Legislative Act

Background


The United States Supreme Court in [Dobbs v. Jackson Women's Health Organization](#) held there is no constitutional right to abortion. The decision upended fifty years of precedent and has led to partial or near total bans on abortion in many parts of the country, putting the health of people with the potential for pregnancy at risk. At the same time, transgender people find themselves under attack from state legislatures. [By one estimate](#), thirty-five percent of transgender youth find themselves in a state with laws banning gender affirming care. Some states are fighting back in support of the health of people with the potential for pregnancy and transgender individuals in one legislative strike. The Network has identified at least thirteen laws across ten states and the District of Columbia that seek to protect access to gender-affirming care as well as reproductive health care in the same act. A further two laws add protections for consumer health data, which, in both cases, expressly includes gender-affirming and reproductive health care data. This factsheet takes a closer look at this legislative pattern that, in the context of health, couples transgender rights with reproductive rights, rather than its traditional grouping with the rights of lesbian, gay, bisexual and other identities.

State-by-State Review

California

On September 27, 2022, California Governor Gavin Newsom signed into law Assembly Bill (AB) 2091. The law prohibits a person from being compelled in any proceeding to provide information that would be used to interfere with a person's right to obtain an abortion. The bill also prohibits courts from issuing a subpoena based on an out-of-state subpoena related to an out-of-state civil action that would involve release of information concerning "sensitive services," including reproductive health and gender-affirming care.

One year later, on September 27, 2023, Governor Newsom signed AB 254, amending the state's Confidentiality of Medical Information Act (CMIA). The law expands which businesses are subject to the privacy restrictions of the CMIA to include any business that offers a mobile app or web site that collects reproductive or sexual health information. AB 254



expands the definition of “sensitive services” within the CMIA to include sexual and reproductive health and gender affirming care. As a result, the CMIA now prohibits a health care service plan from requiring a protected individual, including a minor who can legally consent to treatment, to obtain authorization from the policyholder to receive reproductive or gender affirming care. And a health care service plan may not disclose medical information related to such care to the policyholder or primary subscriber without authorization from the protected person.

Also on September 27, 2023, Governor Newsom signed AB 352. The bill requires businesses that maintain electronic health record (EHR) systems storing medical information on the provision of sensitive services, again including reproductive health and gender-affirming care, to enable certain security features. For example, these systems must have features that limit access to such information to authorized individuals and to segregate such medical information within the EHR.

Colorado

On April 14, 2023, Colorado Governor Jared Polis signed Senate Bill (SB) 188. The law prohibits malpractice insurers from taking adverse action against applicants, or those who are insured, solely because they have participated in “legally protected health-care activities,” which are defined to include both gender-affirming care and abortion. It similarly prohibits an insurance carrier from imposing fees on a provider for participating in such care. The law further bars carriers from refusing to credential applicants or terminating a provider’s participation in a provider network for participating in the same types of care.

Senate Bill 188 further prohibits courts and attorneys from issuing subpoenas for an out-of-state proceeding relating to legally protected health-care activities, although it does not prohibit investigations into criminal activity. The law also bars Colorado courts from applying the laws of other states that authorize civil actions against an individual for engaging in such health-care activities. The law further bars evidence in malpractice actions of professional discipline, criminal charges or civil actions, relating to provision of gender-affirming care or abortion. Under the law, police are prohibited from arresting a person who engages in such care, unless the act constitutes a crime in Colorado. The law generally prohibits search warrants, summonses, and ex parte orders for wiretapping relating to investigations or proceedings involving reproductive and gender affirming care. It further prohibits extradition of a person charged in another state relating to engaging in such care unless the accused was in the other state at the time of the commission of the act. The law generally prohibits expending public time or resources on, or providing information to, out-of-state investigations relating to participation in such care.


While the rights of transgender people have, in the minds of many, been traditionally grouped with the cause of lesbian, gay, bisexual and other sexual identity rights, at least ten states around the country and the District of Columbia have recently grouped gender affirming care with abortion care to achieve greater access to both types of care.

District of Columbia

The District of Columbia’s DC Law 24-257, known as the [Human Rights Sanctuary Amendment Act of 2022](#), was signed on November 21, 2022. The law prohibits District officers and employees from expending resources in relation to an interstate criminal or civil investigation or proceeding targeting any person generally for receiving, seeking or providing an abortion, contraception or gender-affirming care, except where the activity would violate District law.

Illinois

On January 13, 2023, Governor JB Pritzker signed House Bill (HB) 4664, which affords protections for reproductive and gender affirming care (referred to collectively within the law as “lawful health care”). The bill clarifies that an Illinois law



requiring notification by medical facilities to local law enforcement of an individual presenting with injuries sustained as a result of a crime does not require reporting of lawful health care, even if the activity violates another state's laws. The law bars the state from revoking or suspending the license of a physician, registered nurse, advanced practice nurse, pharmacist, and certain other health care professionals based only on participating in any health care service, so long as the care was not unlawful under Illinois law. Under the law, a pharmacy may not take adverse action against a pharmacist for participating in such care.

HB 4664 bars health care institutions and professional liability carriers from taking adverse action against certain health care professionals based on discipline in another state for health care that was unlawful in that state but is lawful in Illinois. The law limits issuance of a subpoena, summons or order for a witness to testify in cases involving reproductive or gender affirming care. The law also prohibits extradition of a person where the charge is based on providing health care that is lawful in Illinois. The law further amends the insurance code to require coverage for abortifacients (medication-assisted abortion), hormonal therapy, and PrEP on accident and health insurance policies. Finally, the law prohibits issuance of a subpoena based on a foreign subpoena related to lawful health care activity and requires submission of an attestation if an exception to the prohibition applies.

Massachusetts

Massachusetts Governor Charlie Baker signed H 5090 on July 29, 2022. Under the law, providers of reproductive health care and gender affirming care—referred to as “legally-protected health care activity”—may apply to have an address designated to serve as the provider’s address, promoting the privacy of addresses more directly tied to the provider. Also under the law, a genetic counselor, physician assistant, nurse, physician, and certain other health professionals may not be disciplined by the professional licensing board for participation in legally-protected health care activity.

Under H 5090, an individual may bring a civil action against a party engaging in abusive litigation aimed at interfering with the right to legally-protected health care activity. Officers and employees of law enforcement agencies are prohibited, under the law, from assisting in an investigation into lawfully obtained reproductive health care or gender affirming care services. The law requires that every public institution of higher education maintain a medication abortion readiness plan. And the law bars issuance of a summons or court order to testify out of state in a case related to providing legally-protected health care and prohibits the governor from surrendering a person for engaging in such care.


Under Massachusetts’s H 5090, an individual may bring a civil action against a party engaging in “abusive litigation” aimed at interfering with the right to reproductive health care and gender affirming care.

Michigan

On May 17, 2023, Michigan Governor Gretchen Whitmer signed S 147 amending Michigan’s Civil Rights Act to reaffirm the prohibition of discrimination on the basis of sexual orientation and expand that protection to prohibit discrimination based on gender identity and expression. The act also extends protections from employment discrimination for individuals with medical conditions related to pregnancy, childbirth, the termination of a pregnancy, or a related medical condition.

Nevada

Senate Bill 370 was signed by Nevada Governor Joe Lombardo on June 16, 2023. The law regulates collection and sharing of consumer health data, which expressly includes reproductive health data and gender affirming care data. The law requires privacy policies that disclose how a consumer’s health data is collected and shared, which must be posted conspicuously for consumers to access. The law also limits collection and use of consumer health data to where it is necessary to provide services requested by the consumer or where the consumer has provided consent. Also under the law, regulated entities must, on request, confirm whether they are collecting, sharing or selling a consumer’s health data



and must delete the consumer's data on request. The law does not apply to entities subject to the Health Insurance Portability and Accountability Act (HIPAA) nor to information that is used only for public health.

New Mexico

On April 5, 2023, Governor Michelle Lujan Grisham signed SB 13. The law prohibits public entities from expending public resources to support an out-of-state proceeding or disciplinary matter relating to “protected health care activity,” which is defined to include reproductive health care and gender affirming care. It requires public entities to move to quash subpoenas they receive relating to protected health care activity and to notify the subject of the information, except where the alleged act would be subject to liability in New Mexico. The law prohibits submission of a foreign subpoena relating to an interstate investigation or proceeding relating to protected health care activity unless the request is accompanied by an attestation. The attestation must state that the proceeding is based on a claim that would also be recognized under New Mexico law.

The New Mexico law creates a cause of action for individuals who are the victims of “abusive litigation” intended to interrupt protected health care activity. The law further prohibits requests for, or provision by third parties of, information relating to protected health care activity with the intent to harass the individual. The law further bars extradition of an individual for engaging in protected health care activity in many instances. Finally, the law prohibits adverse action by licensing boards against a licensee or applicant merely for participation in protected health care activity.

Oregon


On July 13, 2023, Oregon Governor Tina Kotek signed H 2002, under which a public body may not deprive an individual of exercising reproductive health rights or subject an individual to criminal or civil liability for exercising such rights. The law provides that a minor under 15 years of age may generally consent to an abortion. Also under the law, a health benefit plan may not limit coverage for medically necessary gender affirming care. The law prohibits the Oregon Health Authority and coordinated care organizations from denying treatment or coverage for medically necessary gender affirming treatment.

The law in many instances prohibits adverse action by a malpractice insurance carrier or licensing board for participation in reproductive or gender affirming care. The law also aims to bolster privacy by (1) excluding from release under FOIA the names and addresses of health care providers who provide reproductive or gender affirming care, (2) applying the state's address confidentiality program to providers of reproductive and gender affirming care and (3) barring health professional regulatory boards from releasing confidential information to another public body if it relates to reproductive or gender affirming care. The law includes a crime of interfering with a health care facility and creates a private cause of action for violation thereof.

Vermont

On May 10, 2023, Vermont Governor Phil Scott approved H 89, which prohibits the enforcement of foreign judgments in abusive litigation interfering with reproductive and gender affirming care—collectively “legally-protected health care.” The law allows patients and providers targeted by such abusive litigation to bring an action for injunctive or monetary relief. Additionally, the law generally prohibits courts from ordering a person to give testimony in abusive litigation. The law also bars state agencies from providing information to an interstate investigation imposing liability for participating in legally protected health care activity. Finally, the law puts privacy protections into place for providers of legally-protected health care, such as enabling state and local agencies to withhold the location of providers and patients in response to a request for public records.

On May 10, 2023, Governor Scott signed S 37. The law protects providers from certain adverse actions by malpractice insurance carriers and disciplinary boards for providing reproductive or gender-affirming care. The law also prohibits crisis



pregnancy centers from engaging in false or misleading advertising, including through lack of transparency or ambiguous terminology. Also, under the law, pharmacists are allowed to prescribe and administer emergency contraception, and emergency contraception may be made available by vending machine. Under the law, health insurance plans may not apply greater cost-sharing burdens for gender-affirming care services and abortion than for other diagnoses and treatment.

Washington

Washington's Engrossed Substitute House Bill (ESHB) 1155, known as the My Health, My Data Act, was signed by Governor Jay Inslee on April 27, 2023. It preceded Nevada's SB 370 and is similar in many respects. The law limits how regulated entities use and share reproductive and gender affirming care and other consumer health data. The law does not apply to HIPAA covered entities or business associates, nor to information that is used only for public health activities.

Washington's H 1340, effective April 27, 2023, amends rules relating to health professional disciplinary authorities. Under the law, conviction or disciplinary actions for violation of another state's laws relating to reproductive or gender affirming care does not constitute unprofessional conduct if the actions would have met professional standards and been lawful if taken in Washington.

Washington's H 1469, signed April 27, 2023, amends the state's Interstate Depositions and Discovery Act. The law requires that any request for issuance of a subpoena under that Act be accompanied by an attestation confirming whether the request relates to gender affirming care or reproductive health care services lawfully performed in Washington. In relation to out-of-state investigations and proceedings concerning lawful reproductive and gender affirming care, the law prohibits courts from issuing (1) subpoenas based on foreign subpoenas, (2) orders for interception of communications and (3) orders for in-state witnesses to testify in another jurisdiction in a prosecution or grand jury investigation.

Conclusion

While the rights of transgender people have, in the minds of many, been traditionally grouped with the cause of lesbian, gay, bisexual and other sexual identity rights, at least ten states around the country and the District of Columbia have recently grouped gender affirming care with abortion care to achieve greater access to both types of care. The result is a long list of legislative strategies to protect both gender affirming care and abortion, including (1) restricting the use of state courts to support out-of-state proceedings seeking to impose civil or criminal liability for patients and providers engaged in these types of care; (2) prohibiting adverse action by malpractice insurance providers, licensing boards, and others against health care professionals merely for participating in these types of care; and (3) creating a cause of action for individuals who are the subject of abusive litigation that aims to interfere with seeking, receiving, facilitating, or providing these types of care. This trend suggests a growing acknowledgement not only of the many barriers to abortion and gender affirming care, but that the barriers to both types of care are not wholly distinctive. It suggests that, just as legislative attacks on reproductive health and gender affirming care have been woven together into a unified assault, there is opportunity to strengthen access to both types of care through unified policy solutions.

This document was developed by Stephen Murphy, JD, Deputy Director, Mid States and Marisa London, Law Clerk, Mid States. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

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