

California Shield Law Fact Sheet

AUGUST 2024

For both reproductive and gender-affirming care, California's shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, and civil liability. Additionally, California's shield laws provide protections for health care providers' professional liability insurance and participation in health plans. California also provides extensive protections for medical information and other data related to reproductive and gender-affirming care, including specific protections against the sharing of electronic health record information related to reproductive or gender-affirming care through health information exchanges.

PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

Protection Barring State Agency/Employee Assistance

California employees, contractors, and agents may not cooperate, provide information, or expend resources in furtherance of an investigation of an individual for reproductive health care services or gender-affirming health care services that occurred in California or that would be legal if they occurred in California.¹

Protection against Extradition and Arrests

Law enforcement may not knowingly arrest and the Governor has committed not to surrender any person for providing, supporting, aiding, or obtaining a lawful abortion in California.² Additionally, law enforcement may not knowingly arrest or extradite an individual for violation of another

¹ SB 345 (Cal. 2023) (Cal. Penal Code § 13778.3); *see also* AB 1242 (Cal. 2022) (Cal. Penal Code § 13778.2(b)); Cal. Executive Order N-12-22 (June 27, 2022), available at: <https://www.gov.ca.gov/wp-content/uploads/2022/06/6.27.22-EO-N-12-22-Reproductive-Freedom.pdf>.

² AB 1242 (Cal. 2022) (Cal. Penal Code § 13778.2(a)); Cal. Executive Order N-12-22 (June 27, 2022) (stating that the Governor shall decline to arrest or surrender any person charged with a criminal violation of another state's law involving provision, receipt, or assistance with reproductive health care services unless required by the U.S. Constitution).

state's law against providing, receiving, or allowing a child to receive gender-affirming health care.³ Further, judges may not issue an arrest warrant and bail fugitive recovery agents may not apprehend individuals for alleged violation of another state's laws criminalizing abortion, contraception, and gender-affirming health care services legal in California, regardless of the patient's location.⁴

Protection against Issuance of Search Warrants, Subpoenas, and Witness Summons

Search warrants and subpoenas may not be issued for any item pertaining to an investigation into providing, facilitating, or obtaining a lawful abortion in California.⁵ Additionally, a subpoena may not be issued if based on violation of another state's laws that interfere with the right to allow a child to receive gender-affirming health care, or if the subpoena would require disclosure of reproductive or gender-affirming health care services related to another state's civil action penalizing that care.⁶ Any out-of-state subpoena, warrant, or other legal process must include an affidavit under penalty of perjury that the request is not in connection with a proceeding related to reproductive or gender-affirming health care services permitted under California law.⁷

Judges may not order a witness to appear in an out-of-state criminal prosecution based on laws authorizing a criminal penalty for performing, receiving, supporting, or aiding in abortion, contraception, or gender-affirming care.⁸

PROTECTION FROM PROFESSIONAL DISCIPLINE

Protection against Adverse Actions related to Providers' Licenses and Board Discipline

Boards that certify health professionals may not deny an application for licensure or suspend, revoke, or otherwise impose discipline upon a health care provider based on providing reproductive or gender-affirming health care services lawful in California or based on a civil judgment, criminal conviction, or disciplinary action in another state applying law that interferes with a person's right to receive sexual and reproductive health and gender affirming care in California, regardless of the patient's location.⁹

³ SB 107 (Cal. 2022) (Cal. Penal Code § 819(b)).

⁴ SB 345 (Cal. 2023) (Cal. Penal Code § 847.5(b)-(c)).

⁵ AB 1242 (Cal. 2022) (Cal. Penal Code § 1524(h); Cal. Penal Code § 13778.2(c)).

⁶ SB 107 (Cal. 2022) (Cal. C.C.P. § 2029.300(e)).

⁷ SB 345 (Cal. 2023) (Cal. Penal Code § 13778.3(d)).

⁸ SB 345 (Cal. 2023) (Cal. Penal Code § 1334.2(f)).

⁹ SB 345 (Cal. 2023) (Cal. Bus. & Prof. Code § 852); SB 345 (Cal. 2023) (Cal. Bus. & Prof. Code § 850.1); *see also* AB 2626 (Cal. 2022) (Cal. Bus. & Prof. Code §§ 2253 (physicians and surgeons), 2746.6 (nurse midwives), 2761.1 (nurse practitioners), 3502.4 (physician assistants)).

Protection against Denial or Restriction of Facility Privileges

Health facilities may not deny or restrict a provider’s staff privileges based on a civil judgment, criminal conviction, or disciplinary action imposed by another state applying law that interferes with a person’s right to receive sexual and reproductive health or gender-affirming care services that would be lawful if provided in California.¹⁰

PROTECTION AGAINST CIVIL LIABILITY

Protection against Application or Enforcement of Another State’s Laws or Judgments in California State Court

Another state’s laws authorizing a civil action for receiving, seeking, performing, providing, inducing, or knowingly aiding or abetting an abortion are contrary to state policy—California courts may not apply those laws in cases or controversies before them, or enforce civil judgments under such laws.¹¹ Courts must grant a stay of enforcement against a judgment or lien obtained for exercising or aiding and abetting the exercise of a right guaranteed under the California Constitution.¹²

Additionally, another state’s laws authorizing removal of a child from their guardians based on allowing the child to receive gender-affirming health care is against state public policy—California courts may not apply or enforce such laws.¹³

Protection Applying California Law to Actions in State Court Involving Provision by Telehealth

California law governs in any action heard in California against a person who provides or receives—including by telehealth—reproductive health care services or gender-affirming health care services if the provider was located in California or any other state where the care was legal at the time of the challenged conduct.¹⁴

Provision of a “Clawback Lawsuit” to Recover Damages from Litigation related to Protected Care

A person or entity may institute a civil action against a person who engages in “abusive litigation”—litigation or other legal action to deter, prevent, sanction, or punish a person involved in reproductive or gender-affirming health care services if any act or omission was legal in the state in which it occurred.¹⁵

¹⁰ AB 1707 (Cal. 2023) (Cal. Bus. & Prof. Code § 805.9). Additionally, a health facility’s license cannot be denied, revoked, or suspended based on a civil judgment, criminal conviction, or disciplinary action imposed by another state applying law that interferes with a person’s right to receive sexual and reproductive health or gender-affirming care services that would be lawful if provided in California. AB 1707 (Cal. 2023) (Bus. & Prof. Code § 1220.1).

¹¹ AB 1666 (Cal. 2022), SB 487 (Cal. 2023) (Cal. Health & Safety Code § 123467.5).

¹² SB 345 (Cal. 2023) (Cal. C.C.P. § 1710.50).

¹³ SB 107 (Cal. 2022) (Cal. Fam. Code § 3453.5).

¹⁴ SB 345 (Cal. 2023) (Cal. Health & Safety Code § 123468.5).

¹⁵ SB 345 (Cal. 2023) (Cal. Civ. Code §§ 1798.303, 1798.300). A person or entity aggrieved by “abusive litigation” may also move to

PROTECTION OF PROFESSIONAL LIABILITY INSURANCE AND PROTECTION RELATED TO HEALTH PLANS

Protection against an Insurer's Refusal to Issue Insurance, Increase in Premiums, or Denial of Coverage Based Solely on Providing Protected Care

An insurer may not terminate or refuse to issue or renew professional liability insurance or increase the premium or deductible for health care providers based solely on their provision of abortion, contraception, or gender-affirming care lawful in California but unlawful in another state, including based on any legal action taken against the provider in another state for such care.¹⁶ An insurer also may not deny coverage for liability for damages arising from offering or performing abortion, contraception, or gender-affirming care otherwise covered by the policy if those services are within the scope of the insured's license and are lawful in the state where they are offered or performed.¹⁷

Protection of Contracts with Health Plans and Insurers

A contract issued, amended, or renewed on or after January 1, 2024 between a provider and a health care service plan or a health insurer cannot contain any term that would result in termination or nonrenewal of the contract based on a civil judgment, criminal conviction, or professional disciplinary action applying another state's laws that interfere with care that would be lawful if provided in California.¹⁸

PRIVACY OF MEDICAL INFORMATION AND OTHER DATA RELATED TO ABORTION AND GENDER-AFFIRMING CARE

Protection Against Disclosure of Medical Information

Health care providers, health care service plans, contractors, and employers may not release medical information related to abortion or gender-affirming health care in response to a subpoena or request related to an investigation seeking to impose liability under another state's law for the receipt of an abortion lawful in California or for allowing a child to receive gender-affirming health care.¹⁹

modify or quash a subpoena issued in connection with abusive litigation. Cal. Civ. Code § 1798.304.

¹⁶ AB 571 (Cal. 2023) (Cal. Ins. Code § 11589.1).

¹⁷ AB 571 (Cal. 2023) (Cal. Ins. Code § 11589.1).

¹⁸ Health care service plans and insurers also may not discriminate against providers on this same basis. SB 487 (Cal. 2023) (Cal. Health & Safety Code § 1375.61; Cal. Ins. Code § 10133.641). Additionally, the State Department of Health may elect not to suspend a provider from the Medi-Cal program if action in another state is based solely on conduct not deemed unprofessional under California law, and the Director of Health Care Services may request a waiver under federal law from suspending a provider from the Medi-Cal program if the provider's suspension from the Medicare or Medicaid program was based solely on conduct not deemed unprofessional under California law. SB 487 (Cal. 2023) (Cal. Welf. & Inst. Code §§ 14123, 14043.6).

¹⁹ AB 2091 (Cal. 2022) (Cal. Civ. Code § 56.108); SB 107 (Cal. 2022) (Cal. Civ. Code § 56.109). Additionally, health insurers may not disclose information related to reproductive health and gender affirming care to the policyholder or any insured other than the protected individual receiving care without express written authorization from the protected individual. AB 2091 (Cal. 2022) (Cal. Ins. Code § 791.29).

Businesses that operate electronic health record systems must develop capabilities, policies, and procedures to segregate medical information related to abortion, contraception, and gender-affirming care from the rest of the patient's record, to limit access privileges only to authorized users, and to prevent the disclosure, access, transfer, transmission or processing of such medical information outside of California.²⁰ Health information related to abortion is excluded from the required exchange of information under the California Health and Human Services Data Exchange Framework.²¹

Protection Against Disclosure of Data by Businesses Providing Electronic Communications

Corporations based in or with principal executive offices in California that provide electronic communication services may not provide information in response to requests issued in another state related to an investigation of abortion lawful in California.²² These corporations also may not comply with a warrant issued by another state to produce records revealing the identity of customers or the recipients or content of communications unless the warrant includes an attestation that the evidence sought is not related to an investigation or action imposing liability for lawful abortion in California.²³

Protection Against Disclosure of Data by Reproductive Health Apps

Businesses that provide a reproductive or sexual health digital service may not intentionally share, sell, or otherwise use the medical information collected for any purpose not necessary to provide health care services to a patient.²⁴

Protection of Location Data

A person or entity may not collect, use, disclose, or retain the personal information of a person who is located at a family planning center, except as necessary to perform the services requested by the person.²⁵

²⁰ AB 352 (Cal. 2023) (Cal. Civ. Code § 56.101).

²¹ AB 352 (Cal. 2023) (Health & Safety Code § 130290).

²² AB 1242 (Cal. 2022) (Cal. Pen. Code § 1546.5).

²³ AB 1242 (Cal. 2022) (Cal. Pen. Code § 1524.2).

²⁴ AB 254 (Cal. 2023) (Cal. Civ. Code §§ 56.05).

²⁵ SB 345 (Cal. 2023) (Cal. Civ. Code § 1798.99.90).

ABOUT THE CENTER ON REPRODUCTIVE HEALTH, LAW, AND POLICY (CRHLP)

CRHLP is a nationwide think tank and research center created to meet the current national crisis in access to abortion while working towards long-term solutions to advance reproductive justice. CRHLP conducts analysis and research for legal, policy, and narrative change and serves as a trusted hub for convening and engaging academics, advocates, health care providers, policy makers, and community members to reimagine the landscape of reproductive health law and policy. CRHLP also trains the reproductive law and policy leaders of tomorrow. CRHLP is committed to the highest standards of independent inquiry, academic excellence, and rigor. Research findings and conclusions are never altered to accommodate other interests, including those of funders, other organizations, or government bodies and officials.

For more information

law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy

crhlp@law.ucla.edu

To receive pro bono legal assistance on questions related to the shield laws or other reproductive rights or justice issues, email: larj@law.ucla.edu