



SPONSOR: Rep. Romer & Rep. Gorman & Sen. Sokola &
Sen. Townsend
Reps. Morrison, Osienski, Snyder-Hall, Minor-Brown,
Ortega, Bolden; Sens. Huxtable, Seigfried

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 205
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLES 10, 11, 18, 24, AND 29 OF THE DELAWARE CODE RELATING TO HEALTHCARE SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1702. Definitions.

The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:

(9) “Healthcare services” means any assessment, diagnosis, treatment, procedure, prescription, test, medication, advice, or other service by a healthcare professional who is licensed, certified, or otherwise legally authorized to provide care in the State, acting within the scope of that authorization. “Healthcare services” includes primary care, preventive care, the prescribing or administration of prescription drugs, therapeutic care, reproductive health services, mental health care, and surgical services.

(17) “Reproductive health services” includes are healthcare services and include all of the following:

- a. “Abortion” as defined in § 1782 of this title.
- b. “Termination of pregnancy” as authorized in § 1790 of this title.
- c. Emergency contraception that is approved by the Federal Drug Administration and available over-the-counter, with a prescription, or dispensed consistent with the requirements of Chapter 25 of this title.
- d. Services relating to pregnancy or the termination of pregnancy including medical, surgical, counseling, or referral services.
- e. Fertility treatment.

Section 2. Amend § 1731, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1731. Unprofessional conduct and inability to practice medicine.

(b) “Unprofessional conduct” includes any of the following acts or omissions:

(26) “Unprofessional conduct” under this subsection does not include the performance, recommendation, or provision of any ~~reproductive health~~ healthcare service that is lawful in this State even if such performance, recommendation, or provision is for a person who resides in a state where such performance, recommendation, or provision is illegal or considered to be unprofessional conduct or the unauthorized practice of medicine.

Section 3. Amend § 1773, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1773. Regulation of physician assistants.

(c) The Board or the Regulatory Council for Physician Assistants may not impose any sanction pursuant to subsection (b) of this section for the performance, recommendation, or provision of any ~~reproductive health~~ healthcare service that is lawful in this State even if such performance, recommendation, or provision is for a person who resides in a state where such performance, recommendation, or provision is illegal or considered to be unprofessional conduct or the unauthorized practice of a physician assistant.

Section 4. Amend § 1922, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1922. Disciplinary proceedings; appeal.

(d) The Board may not impose any sanction pursuant to subsection (b) of this section for the performance, recommendation, or provision of any ~~reproductive health service,~~ healthcare service, as defined in § 1702 of this title, that is lawful in this State even if such performance, recommendation, or provision is for a person who resides in a state where such performance, recommendation, or provision is illegal or considered to be unprofessional conduct or the unauthorized practice of nursing.

Section 5. Amend § 3928, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3928. Limitations and protections against actions relating to ~~reproductive health~~ healthcare services.

(a) A law of another state that authorizes a person to bring a civil action against a person that does any of the following is contrary to the public policy of this State:

(1) Terminates or seeks to terminate a pregnancy.

(2) Performs or induces the termination of pregnancy.

(3) Knowingly engages in conduct that aids or abets the performance or inducement of the termination of pregnancy.

(4) Attempts or intends to engage in the conduct described in paragraphs (a)(1) through (3) of this section.

(5) Provides “fertility treatment” as defined by § 1702 of Title 24.

(6) Attempts or intends to engage in conduct described in paragraph (a)(5) of this section.

(7) Provides any healthcare service, as defined by § 1702 of Title 24, that are unlawful in another state but are lawful in this State.

(8) Knowingly engages in conduct that aids or abets the provision of any healthcare service, as defined by § 1702 of Title 24, that are unlawful in another state but are lawful in this State.

(9) Attempts or intends to engage in the conduct described in paragraph (a)(7) or (a)(8) of this section.

(b) The State shall not do any of the following:

(1) Apply any law described in subsection (a) of this section to any case or controversy heard in any court.

(2) Issue a ~~summons~~ summons, subpoena, warrant, court order, or other legal process in a case where prosecution is pending, or where a grand jury investigation has commenced, or is about to commence, for a criminal violation of a law described in subsection (a) of this section unless the acts forming the basis of the prosecution or investigation would constitute a crime in this State.

(3) Issue or enforce a ~~subpoena~~ subpoena, summons, warrant, court order, or other legal process for information or testimony issued by another state or government relating to a civil action described in subsection (a) of this section.

Section 6. Amend § 3929, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3929. Recouperation of out-of-state judgments related to ~~reproductive health~~ healthcare services.

(a) As used in this section, “~~reproductive health~~ healthcare services” means as defined in § 1702 of Title 24.

(b) When any person has had a judgment entered against such person, in any state, where liability, in whole or in part, is based on the alleged provision, receipt, assistance in receipt or provision, material support for, or any theory of vicarious, joint, several, or conspiracy liability derived therefrom, for ~~reproductive health~~ healthcare services that are lawful in this State, such person may recover damages from any party that brought the action leading to that judgment or has sought to enforce that judgment.

(c) Damages include any of the following:

(1) Just damages created by the action that led to that judgment, including money damages in the amount of the judgment in that other state and costs, expenses and reasonable attorneys' fees spent in defending the action that resulted in the entry of a judgment in another state.

(2) Costs, expenses, and reasonable attorneys' fees incurred in bringing an action under this section as may be allowed by the court.

(d) This section shall not apply to a judgment entered in another state that is based upon any of the following:

(1) An action founded in tort, contract, or statute, and for which a similar claim would exist under the laws of this State, brought by the patient's legal representative or the patient who received the ~~reproductive health~~ healthcare services upon which the original lawsuit was based for any of the following:

a. Damages suffered by the patient.

b. Damages derived from an individual's loss of consortium of the patient.

(2) An action founded in contract, and for which a similar claim exists under the laws of this State, brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the judgement entered in another state.

(3) An action where no part of the acts that formed the basis for liability occurred in this state.

Section 7. Amend § 2535, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2535. Adverse actions on policies relating to the provision of ~~medical care for termination of pregnancy.~~ healthcare services.

No insurer may, in issuing or renewing an insurance policy to a ~~health-care~~ healthcare professional or ~~health-care~~ healthcare organization, increase the premium on such policy or take other adverse action against any ~~health-care~~ healthcare professional or ~~health-care~~ healthcare organization who because the healthcare professional or healthcare organization performs or assists in the provision of ~~reproductive health~~ healthcare services, as that term is defined in § 1702 of Title 24, that is legal in this State to an individual who is from out of the state. This section applies to a policy that covers any medical professional who prescribes medication for the termination of human pregnancy to an out-of-state patient by means of telehealth.

Section 8. Amend Chapter 6, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 611. Healthcare records.

Notwithstanding any law or court rule to the contrary and except as required by federal law, no officer or employee of a state or local agency, commission, board, or department, including any law-enforcement officer as defined in § 222 of Title 11, may provide information or assistance to a federal law-enforcement agency, another state's law-enforcement agency, a private citizen, or quasi-law-enforcement agency in relation to an investigation or inquiry concerning the lawfulness of healthcare services, if the healthcare services would be lawful as provided if they occurred entirely in the State. For purposes of this section, "healthcare services" means as defined in § 1702 of Title 24.