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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 455

AN ACT TO AMEND TITLES 24, 10, 11, AND 18 RELATING TO THE WOMEN'S REPRODUCTIVE HEALTH.

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

1 Section 1. Amend Chapter 17, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 1702. Definitions.

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

5 (14) "Registration" means the entry of a certificate to practice medicine into the records of the Board of
6 Medical Licensure and Discipline pursuant to the regulations of the Board.

7 () "Reproductive health services" includes all of the following:

8 a. "Abortion" as defined in § 1782 of this title.

9 b. "Termination of pregnancy" as authorized in § 1790 of this title.

10 c. Emergency contraception that is approved by the Federal Drug Administration and available over-the-
11 counter, with a prescription, or dispensed consistent with the requirements of Chapter 25 of this title.

12 d. Services relating to pregnancy or the termination of pregnancy including medical, surgical, counseling,
13 or referral services.

14 (15) "Store and forward transfer" means the transmission of a patient's medical information either to or from
15 an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it
16 be in real time.

17 § 1731. Unprofessional conduct and inability to practice medicine.

18 (a) A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the
19 Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the
20 restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by
21 other appropriate action, which may include a requirement that a person who is disciplined must complete specified

continuing education courses. The Board shall permanently revoke the certificate to practice medicine in this State of a person who is convicted of a felony sexual offense.

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

(19) Suspension or revocation of a certificate to practice medicine or of the authorizing document to practice another profession or occupation regulated under this chapter, or other disciplinary action taken by the regulatory authority in another state or territory. In making its determination, the Board may rely upon decisions made by the appropriate authorities in other states and may not permit a collateral attack on those decisions;

() "Unprofessional conduct" under subsection (b) of this section does not include the performance, recommendation, or provision of any reproductive health 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.

§ 1773. Regulation of physician assistants.

(b) (1) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall suspend, revoke, or restrict the license of a physician assistant or take disciplinary action or other action against a physician assistant for engaging in unprofessional conduct as defined in § 1731(b) of this title; or for the inability to render medical acts with reasonable skill or safety to patients because of the physician assistant's physical, mental, or emotional illness or incompetence, including but not limited to: deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol; or for representing himself or herself as a physician, or for knowingly allowing himself or herself to be represented as a physician; for failing to report in writing to the Board within 30 days of becoming aware of any physician, physician assistant, or healthcare provider who the licensee reasonably believes has engaged in unprofessional conduct as defined in § 1731(b) of this title or is unable to act with reasonable skill or safety to patients because of the physician's, physician assistant's, or other healthcare provider's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol for failing to report child abuse and neglect as required by § 903 of Title 16. The license of any physician assistant who is convicted of a felony sexual offense shall be revoked. Disciplinary action or other action undertaken against a physician assistant must be in accordance with the procedures, including appeal procedures, applicable to disciplinary actions against physicians pursuant to subchapter IV of this chapter, except that a hearing panel for a complaint against a physician assistant consists of 3 unbiased members of the Regulatory Council, the 3 members being 2 physician assistant members and 1 physician or pharmacist member if practicable.

(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 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.

§ 1790. Termination of pregnancy before viability not prohibited; termination of pregnancy after viability limited.

(a) ~~A physician~~, Any of the following may terminate, assist in the termination of, or attempt the termination of a human pregnancy before ~~viability~~: viability:

(1) A physician.

(2) A physician assistant with a collaborative agreement with an appropriately trained physician.

(3) A certified nurse midwife or certified nurse practitioner who demonstrates knowledge and competency including successful completion of a training or certification approved by the Board of Nursing.

Section 2. Amend Chapter 19, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1902. Definitions.

() “Reproductive health services” means as defined in § 1702 of this title.

§ 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 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.

§ 1935. Advanced Practice Registered Nurse (APRN) — Authority and duties.

(b) An APRN licensed by the Board of Nursing with full-practice authority is authorized within the APRN’s role and population foci to:

(1) Prescribe, procure, administer, store, dispense, and furnish over the counter, legend and controlled substances pursuant to applicable state and federal laws and within the APRN’s role and population foci.

(2) Plan and initiate a therapeutic regimen within the APRN’s role and population foci that includes ordering and prescribing nonpharmacological interventions, including:

a. Medical devices and durable medical equipment, nutrition, blood, and blood products.

b. Diagnostic and supportive services including home health care, hospice, and physical and occupational therapy.

(3) Diagnose, prescribe and institute therapy or referrals of patients within the APRN’s role and population foci to health-care agencies, health-care providers and community resources.

(4) Sign death certificates.

(5) Terminate a human pregnancy in accordance with § 1790 of this title.

Section 3. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3926A. Production of reproductive health services records.

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

(b) Notwithstanding any law or court rule to the contrary, in any civil action or proceeding, no health care provider may disclose any of the following unless authorized in writing by the patient, the patient’s guardian, or legal representative:

(1) Any communication made to such health care provider relating to reproductive health services from a patient or anyone acting on behalf of the patient including a legal representative or a parent of the patient.

(2) Any information obtained by personal examination of a patient relating to reproductive health services.

(c) Subsection (b) of this section does not apply under any of the following circumstances:

(1) If the records relate to a patient who is a plaintiff in a complaint pending before a court of competent jurisdiction alleging health care negligence and the request for records has been served on a named defendant(s) in that litigation.

(2) If the records are requested by a health care licensing board and such request is made in connection with an investigation of a complaint to such licensing board and such records are related to such complaint.

(3) If the records are requested by the Department of Justice, a law-enforcement agency, or an agency charged with investigating child abuse, elder abuse, or abuse of a disabled person, incompetent person, or person with an intellectual disability if such request is made in connection with an investigation of abuse and such records are related to such investigation.

(c) Nothing in this section shall be construed to impede the lawful sharing of medical records amongst health care providers as permitted by state or federal law.

§ 3928. Limitations and protections against actions relating to the termination of pregnancy.

(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.

(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 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 for information or testimony issued by another state or government relating to a civil action described in subsection (a) of this section.

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

(a) As used in this section, “reproductive health 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 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 attorney’s fees spent in defending the action that resulted in the entry of a judgment in another state.

(2) Costs, expenses, and reasonable attorney’s 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 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 4. Amend Chapter 25, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2506. Persons absent at time of commission of crime.

The Governor of this State may surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 2503 of this title with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled ~~therefrom~~ therefrom, provided the acts for which extradition is sought would be punishable by the laws of this state, if the consequences claimed to have resulted from those acts in the demanding state had taken effect in this state.

Section 5. Amend Chapter 25, 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 provision of medical care for termination of pregnancy.

No insurer may, in issuing or renewing an insurance policy to a health care professional or health care organization, increase the premium on such policy or take other adverse action against any health care professional or health care organization who performs or assists in the provision of reproductive health 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.

SYNOPSIS

Section 1 and 2. These sections defines “reproductive health services” for the Board of Medical Practice, the Board of Nursing, and Regulatory Council for Physician Assistants, and makes clear that physicians, physician assistants and nurses who perform, recommend, or provide reproductive health services, if such services are lawful in this State, do not engage in unprofessional conduct and cannot be disciplined for such services even if such services are illegal or considered to be unprofessional conduct or the unauthorized practice of medicine or nursing in another state. This section also authorizes the following to terminate pregnancy before viability: (1) A physician assistant with a collaborative agreement with an appropriately training physician; and (2) A certified nurse midwife or certified nurse practitioner who demonstrates knowledge and competency, including successful completion of a training or certification approved by the Board of Nursing.

Section 3. This section prohibits a health care provider from disclosing communications and records concerning reproductive health services, but does provide exceptions including if such records are requested for the purposes of investigating a complaint against a health care provider and the records are relevant to such complaint or to if requested to investigate a claim of abuse and such records are relevant to such investigation. This section also provides protections and limitations against civil actions from another state relating to the termination of pregnancy. Such protections and limitations include the issuance of a summons for a criminal case or investigation, and the issuance of a subpoena for information or testimony relating to the termination of pregnancy. This section also creates a cause of action for persons against whom a judgment was entered in another state based upon allegedly providing, receiving, or helping another person to provide or receive reproductive health services that are legal in Delaware. This section allows the person to recover damages from any party that brought the original action that resulted in the judgment or tried to enforce it. The damages available are just damages resulting from the original action as well as costs, expenses, and reasonable attorney’s fees spent bringing the action under this section as permitted by the court. The cause of action is unavailable if no part of the acts that formed the basis for liability occurred in Delaware. It is also unavailable if the judgment entered in the other state is based on a claim

similar to one that exists under Delaware law and: (1) is a claim brought by a or the patient's legal representative for damages the patient suffered or from another individual's loss of consortium with the patient; or (2) is a contract based claim brought or enforced by a someone with a contractual relationship with the person who is subject to the judgment.

Section 4. This section limits non-fugitive extradition of someone for committing an act that results in a criminal charge for the termination of pregnancy in another state. Pursuant to this bill, a person may only be extradited if the acts for which extradition is sought are punishable under Delaware law if their consequences, as claimed by the other state, had taken effect in this state.

Section 5. This section prohibits an insurer from increasing the premium or taking any adverse action against a health care professional or health care organization for performing or providing reproductive health care services that are lawful in this State and covers any medical professional who prescribes medication for the termination of human pregnancy to an out-of-state patient by means of telehealth.