

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2633

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2022

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2633.

This bill concerns protections with respect to the nondisclosure of patient information relating to reproductive health care services, as well as protecting access to health care, medical services, and procedures related to an abortion for persons who come to this State from jurisdictions in which such actions are illegal. The bill defines “reproductive health care services” as “all medical, surgical, counseling, or referral services relating to the human reproductive system including, but not limited to, services relating to pregnancy, contraception, or termination of a pregnancy.”

The bill generally provides that in any civil action or other proceeding preliminary thereto, a medical provider or other covered entity, as described under federal law concerning medical privacy and security, would be barred from disclosing the following communications or information, unless the patient or patient’s conservator, guardian, or other authorized legal representative explicitly consented in writing to the disclosure:

- any communication made to the covered entity, or any information obtained by the covered entity from, a patient or the conservator, guardian, or other authorized legal representative of a patient relating to reproductive health care services that are permitted under the laws of this State; or
- any information obtained by personal examination of a patient relating to reproductive health care services that are permitted under the laws of this State.

A covered entity would be required to inform the patient or the patient’s conservator, guardian, or other authorized legal representative of the patient’s right to withhold written consent at or before the time reproductive health care services are rendered, or at such time as the patient discloses any information relating to reproductive health care services that have been previously rendered.

Written consent would not be required for the disclosure if it is: pursuant to State law or the Rules of Court; by a covered entity, against which a claim has been made, to the entity’s attorney or

liability insurer for use in defense of such action or proceeding; made to the Commissioner of Health, Human Services, or Banking and Insurance, or any professional licensing board operating under the authority of the Division of Consumer Affairs in the Department of Law and Public Safety, when seeking patient records in connection with an investigation; or done in connection with a known or suspected instance of child abuse, or abuse of a person who is elderly, incapacitated, or has a physical or mental disability.

The bill also specifies that its provisions are not to be construed to conflict with or displace any requirements or conditions for disclosure under federal law, or otherwise impede the lawful sharing of medical records as permitted by State or federal law or the Rules of Court.

Additionally, a public entity of this State or employee, appointee, officer, or official or any other person acting on behalf of a public entity would be prohibited from providing any information, or expending or using time, money, facilities, property, equipment, personnel or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil or criminal liability upon a person or entity for:

- the provision, receipt, or seeking of, or inquiring or responding to an inquiry, about reproductive health care services that are legal in this State; or
- assisting, advising, aiding, abetting, facilitating, soliciting, or conspiring with any person or entity providing, receiving, seeking, or inquiring or responding to an inquiry about, reproductive health care services that are legal in this State.

These provision would not apply to any investigation or proceeding when the conduct being examined would be subject to liability under the laws of this State if committed in this State. The provisions would also not apply if it is necessary for the public entity or person to engage in conduct otherwise prohibited by the bill in order to comply with a valid order issued by a court with jurisdiction over the public entity or person, or to comply with applicable provisions of State or federal law.

Lastly, the bill provides that various professional licensing boards operating under the authority of the Division of Consumer Affairs in the Department of Law and Public Safety could not refuse to admit a person to an examination and could not suspend, revoke, or refuse to renew any certificate, registration, or license based solely on grounds that the applicant's or the certificate, registration, or license holder's provision of, authorization of, participation in, referral for, or assistance with any health care, medical service, or procedure related to an abortion was done for a person who resides in a jurisdiction where the provision, authorization, participation, referral, or assistance is illegal, if the provision, authorization, participation, referral, or assistance would not be a basis for

refusing to admit a person to an examination or for suspending, revoking, or refusing to renew a certificate, registration, or license in this State.

The committee amendments to the bill:

- eliminate section 1 of the bill as introduced, which provided for persons to pursue countersuits against parties who receive judgments in other jurisdictions for reproductive health care services lawfully available or obtained by persons in this State, but are not permitted in the other jurisdiction;
- eliminate section 3 of the bill as introduced, which barred the issuance of certain court subpoenas for out-of-State actions relating to various claims concerning reproductive health care services;
- modify the categories of communications and information that a medical provider or other covered entity would be barred from disclosing in any civil action or other proceeding preliminary thereto without written consent, as described in the statement above;
- provide that notification about whether or not written consent to disclose communications or information in any civil action or other proceeding preliminary thereto should be done at or before the time reproductive health care services are rendered, or at such time the patient discloses any information relating to previously rendered services;
- update the categories of communications or information that may be disclosed without the need for written consent by a patient or the patient's legal representative, as described in the statement above;
- clarify that the bill's provisions should not be construed to conflict with or displace any requirements or conditions for disclosure under federal law;
- expand the categories of activities associated with seeking or obtaining reproductive health care services for which a public entity or person acting on behalf of that public entity would not provide any information or expend any resources in furtherance of any interstate investigation or proceeding, as explained in the statement above;
- prohibit various professional licensing boards operating under the authority of the Division of Consumer Affairs in the Department of Law and Public Safety to refuse to admit a person to an examination, or to take any adverse action concerning a board-issued license, certificate, or registration for assisting a person, when that person resides in a jurisdiction where assistance with any health care, medical service, or procedure related to an abortion is illegal, but not illegal in this State, as described in the statement above; and
- amend the bill's title and synopsis to more accurately reflect changes made by the amendments.