

Maryland Shield Law Fact Sheet

AUGUST 2024

For both reproductive and gender-affirming care, Maryland’s shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, and civil liability, and provide protections for health care providers’ professional liability insurance.¹ Maryland’s shield laws also provide protections for the privacy of medical information related to abortion care, including specific protections against the sharing of electronic health record information related to abortion through health information exchanges.

PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

Protection Barring State Agency/Employee Assistance

State agencies or individuals acting on their behalf may not provide information or expend resources in furtherance of an interstate investigation or proceeding seeking to impose liability or sanction related to “legally protected health care”—defined to include reproductive and gender-affirming health care services lawful in Maryland—if the activity would not be subject to liability or sanction in Maryland.²

Protection against Extradition and Arrests

The Governor may not surrender a person to another state if the alleged act involves providing, procuring, or aiding in “legally protected health care” and the act would not be a crime in Maryland.³

¹ Legislation providing these protections for gender-affirming health care takes effect October 1, 2024. An Executive Order issued in June 2023 provides similar protections. Exec. Order 01.01.2023.08, Protecting the Right to Seek Gender-Affirming Treatment in Maryland (Md. June 5, 2023), available at: https://governor.maryland.gov/Lists/ExecutiveOrders/Attachments/11/EO_01.01.2023.08_accessible.pdf. This Fact Sheet describes the protections effective October 1, 2024.

² SB 859 (Md. 2023) (Md. Code State Pers. & Pens. § 2-312); SB 119 (Md. 2024) (adding gender affirming health care to the definition of “legally protected health care services”).

³ SB 859 (Md. 2023) (Md. Code Crim. Proc. § 9-106) (provides protection for “legally protected health care services”); SB 119 (Md.

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

A judge may not order a person in Maryland to give testimony or produce documents in a case in another state relating to a criminal violation involving the provision of, receipt of, or assistance with “legally protected health care” lawful in Maryland.⁴ A judge also may not issue an *ex parte* order authorizing the interception of communications for investigating or recovering evidence related to “legally protected health care” lawful in Maryland.⁵ Additionally, anyone requesting issuance of an out-of-state subpoena must include a sworn statement that the subpoena does not relate to an investigation or proceeding involving “legally protected health care” unless based on conduct that would be prohibited under Maryland law.⁶

PROTECTION FROM PROFESSIONAL DISCIPLINE

Protection against Adverse Actions related to Providers’ Licenses and Other Board Discipline

A Maryland health occupations board may not revoke, suspend, discipline, take adverse action against, or refuse to issue or renew a license, certification, or authorization to practice for any health care practitioner for providing “legally protected health care” lawful in Maryland, or for being disciplined in another state for providing “legally protected health care” lawful in Maryland.⁷

PROTECTION AGAINST CIVIL LIABILITY

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

Any out-of-state judgment issued in connection with litigation concerning “legally protected health care” may not be filed and enforced in Maryland courts unless based on conduct that would be prohibited under Maryland law.⁸

2024) (Md. Code State Pers. & Pens. § 2-312).

⁴ SB 859 (Md. 2023) (Md. Code Cts. & Jud. Proc. § 9-302); SB 119 (Md. 2024).

⁵ SB 859 (Md. 2023) (Md. Code Cts. & Jud. Proc. § 10-408); SB 119 (Md. 2024).

⁶ SB 859 (Md. 2023) (Md. Code Cts. & Jud. Proc. § 9-402); SB 119 (Md. 2024).

⁷ SB 859 (Md. 2023) (Md. Code Health Occ. § 1-227); SB 119 (Md. 2024).

⁸ SB 859 (Md. 2023) (Md. Code Cts. & Jud. Proc. § 11-802); SB 119 (Md. 2024).

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

A professional liability insurer may not refuse to renew or execute a contract, increase the premium, or otherwise unfavorably change terms of coverage because a health care practitioner provides or refers “legally protected health care.”⁹

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

Protection Against Disclosure of Medical Information

A Health Information Exchange (HIE) or electronic health network (EHN) may not disclose mifepristone data or the diagnosis, procedure, medication, or related codes for abortion care and other sensitive health services, to a treating provider, business entity, another HIE, or another EHN unless the disclosure is for the adjudication of claims or to a specific provider at the patient’s written request and with the patient’s consent.¹⁰ A person who knowingly violates this provision is guilty of a misdemeanor and may be subject to up to \$10,000 fines per day.¹¹

⁹ SB 859 (Md. 2023) (Md. Code Ins. § 19-117).

¹⁰ SB 786 (Md. 2023) (Md. Code Health-Gen. § 4-302.5).

¹¹ SB 786 (Md. 2023) (Md. Code Health-Gen. § 4-302.5).

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

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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