

New Mexico

Shield Law Fact Sheet

AUGUST 2024

For both reproductive and gender-affirming health care, New Mexico’s shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, and civil liability. New Mexico’s shield laws also provide protections for consumer data related reproductive and gender-affirming care. New Mexico’s shield laws do not currently protect against adverse consequences for health care providers’ professional liability insurance related to either reproductive or gender-affirming health care.

PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

Protection Barring State Agency/Employee Assistance

A state agency or an individual acting on its behalf may not release information or use resources to further an out-of-state investigation or proceeding that seeks to impose civil or criminal liability or a professional disciplinary action upon a person or entity for engaging in “protected health care activity,” which includes seeking, providing, receiving, or assisting in reproductive or gender-affirming health care.¹

Protection against Extradition and Arrests

The Governor may not arrest or surrender to another state a person charged with criminal conduct relating to “protected health care activity” unless the state demanding surrender alleges in writing that the person was physically present in the demanding state when the alleged offense was committed and fled from that state.²

¹ SB 13 (N.M. 2023) (N.M. Stat. § 24-35-3).

² SB 13 (N.M. 2023) (N.M. Stat. § 31-4-6).

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

Parties may not submit an out-of-state subpoena or summons for documents, information, or witness testimony related to an investigation or proceeding seeking to impose civil or criminal liability or professional discipline related to “protected health care activity,” unless they submit a sworn statement that the request relates to an out-of-state action for which the same claim exists under New Mexico law.³ Anyone served with a subpoena that violates this law must notify the court that issued the subpoena and may not produce documents, information, or testimony in compliance with the subpoena.⁴

PROTECTION FROM PROFESSIONAL DISCIPLINE

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

A board may not discipline a license holder or applicant based on their provision, authorization, recommendation, assistance, or referral of a “protected health care activity” to a resident of New Mexico or another state, or based on the actual or alleged violation of another state’s laws, if the activity is lawful in New Mexico.⁵

PROTECTION AGAINST CIVIL LIABILITY

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

Anyone who has been subject to a legal action in another state where liability is based on engaging in “protected health care activity” in New Mexico may bring an action in New Mexico to recover the amount of the judgment entered against them in the other state’s court.⁶

³ SB 13 (N.M. 2023) (N.M. Stat. § 24-35-4). A party that intentionally fails to submit or submits a false sworn statement could receive a \$10,000 penalty. N.M. Stat. § 24-35-4.

⁴ SB 13 (N.M. 2023) (N.M. Stat. § 24-35-4).

⁵ SB 13 (N.M. 2023) (N.M. Stat. § 61-1-10.1).

⁶ SB 13 (N.M. 2023) (N.M. Stat. § 24-35-5).

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

Protection Against Disclosure of Data by Businesses Providing Electronic Communications and Reproductive Health Apps

It is unlawful to request information related to someone’s “protected health care activity” from entities⁷ that electronically transmit that information—and for the entities to release that information—with the intent to harass, humiliate, intimidate, cause fear or emotional distress, deter, prevent, sanction, or penalize someone for engaging in a “protected health care activity.”⁸

⁷ This law does not apply to the health plans, health care clearinghouses, and health care providers covered by HIPAA. N.M. Stat. Ann. § 24-35-6.

⁸ SB 13 (N.M. 2023) (N.M. Stat. § 24-35-6).

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