

# Colorado

## Shield Law Fact Sheet

AUGUST 2024

For both reproductive and gender-affirming care, Colorado’s shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, and civil liability. Additionally, Colorado’s shield laws provide protections for health care providers’ professional liability insurance and participation in health plans. Colorado’s shield laws also include limited protections for medical information and other data related to reproductive and gender-affirming care.

### **PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS**

#### **Protection Barring against State Agency/Employee Assistance**

A state agency or executive department may not provide information or data, including patient medical records, patient-level data, or related billing information, or expend resources related to another state’s investigation or proceeding seeking to impose criminal or civil liability or professional sanction upon a person or entity for engaging in “legally protected health-care activity,” defined to include seeking, providing, receiving, assisting, or providing material support for reproductive and gender-affirming health care lawful in Colorado regardless of the patient’s location.<sup>1</sup>

#### **Protection against Extradition and Arrests**

The Governor may not surrender a person charged in another state for engaging in “legally protected health-care activity,” unless required by federal law or the demanding state alleges in writing that the accused was physically present in the demanding state at the time of the commission of the alleged offense and then fled to Colorado.<sup>2</sup> Additionally, a peace officer may not knowingly arrest any person for engaging in a “legally protected health-care activity.”<sup>3</sup>

<sup>1</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 24-116-102(1), 12-30-121(1)(d)).

<sup>2</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 16-19-107(2), 12-30-121(1)(d)).

<sup>3</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 16-3-102(2), 12-30-121(1)(d)).

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

Courts may not issue a search warrant or an *ex parte* order for wiretapping relating to an investigation into “legally protected health-care activity.”<sup>4</sup> Additionally, judges may not issue a summons in a case or investigation involving “legally protected health-care activity” lawful in Colorado.<sup>5</sup> Further, subpoenas may not be issued in connection with a proceeding in another state concerning “legally protected health-care activity.”<sup>6</sup>

## Express Protection for Telehealth Provision into States with Restrictions or Bans

A health-care provider may not be prosecuted, investigated, or subjected to any penalty if the provider prescribes an abortifacient to a patient who ingests it in another state if the abortifacient was prescribed or administered consistent with Colorado law.<sup>7</sup>

## PROTECTION FROM PROFESSIONAL DISCIPLINE

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

Regulators may not deny a license or impose a disciplinary action against an individual based solely on an individual’s provision or assistance in “legally protected health-care activity” in Colorado or any other state, or based on a civil or criminal judgment or disciplinary action against the individual for engaging in legally protected health-care activity.<sup>8</sup>

## PROTECTION AGAINST CIVIL LIABILITY

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

Colorado courts may not apply another state’s law to a case or controversy related to “legally protected health-care activity,” and may not give any force or effect to another state’s judgment concerning “legally protected health-care activity” if it was issued without personal jurisdiction or due process or is penal in nature.<sup>9</sup>

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<sup>4</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 16-3-301(4), 16-15-102(1)(d), 12-30-121(1)(d)).

<sup>5</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 16-5-104, 12-30-121(1)(d)).

<sup>6</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 16-3-301(4), 12-30-121(1)(d)).

<sup>7</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. § 18-13-133).

<sup>8</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. § 12-30-121). Colorado’s shield laws do not appear to include specific protections against loss of facility privileges.

<sup>9</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 13-21-133, 12-30-121(1)(d)). Colorado’s shield laws do not appear to provide for a “clawback lawsuit” to recover damages from litigation in another state related to protected care.

## 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 medical malpractice insurer may not refuse to issue, cancel or terminate, refuse to renew, or impose any sanctions, fines, penalties, or rate increases for a medical malpractice policy solely based on an individual’s engagement in “legally protected health-care activity” in Colorado.<sup>10</sup> Contracts between insurance carriers and providers must include provisions prohibiting the carrier from refusing to pay for an otherwise covered health care service based solely on the health-care provider’s provision or assistance in “legally protected health care activity.”<sup>11</sup>

### Protection of Contracts with Health Plans and Insurers

A person or entity may not terminate a health care contract with a health care provider solely based on their provision or assistance in “legally protected health-care activity,” except if it conflicts with bona fide religious beliefs and practices.<sup>12</sup> Additionally, a carrier may not refuse to credential a physician as a network provider or terminate a physician’s status as a network provider based solely on the health care provider’s provision or assistance in “legally protected health-care activity” lawful in Colorado.<sup>13</sup>

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

### Protection Against Disclosure of Medical Information

As noted above, state agencies and the executive department may not provide information or data, including patient medical records and patient-level data, to another state’s investigation or proceeding seeking to impose liability or sanction for “legally protected health-care activity.”<sup>14</sup>

### Protection of Providers’ Personal Information

Providers or employees of an organization providing or assisting individuals in accessing “legally protected health-care activity” may apply for the state’s address confidentiality program, which prohibits the state from knowingly making their personal information available on the internet.<sup>15</sup>

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<sup>10</sup> SB 23-188 (2023) (Colo. Rev. Stat. § 10-4-109.6).

<sup>11</sup> SB 23-188 (2023) (Colo. Rev. Stat. §§ 10-16-121(1)(f), 12-30-121(1)(d)).

<sup>12</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 25-37-103(1)(3), 12-30-121(1)(d)).

<sup>13</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. § 10-16-705.7(9.5)).

<sup>14</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §§ 24-116-102(1), 12-30-121(1)(d)). Colorado’s shield laws do not appear to include specific protections against providers’ disclosure of medical information related to protected care, protections against disclosure of data by businesses providing electronic communications and reproductive health apps, or protections for location data.

<sup>15</sup> SB 23-188 (Colo. 2023) (Colo. Rev. Stat. §18–9–313).

## 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

[law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy](http://law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy)

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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](mailto:larj@law.ucla.edu)