

Delaware Shield Law Fact Sheet

AUGUST 2024

Delaware's shield laws protect against out-of-state investigations and prosecutions, professional discipline, and civil liability related to reproductive health care. Additionally, Delaware's shield laws provide protections for health care providers' professional liability insurance and protections for medical information and other data related to reproductive health care. Currently, Delaware does not provide similar shield law protections for gender-affirming care.

PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

Protection against Extradition and Arrests

The Governor may not extradite someone who was not present in the state requesting extradition when allegedly committing the criminal act and has not fled from that state if the act is legal under Delaware law.¹

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

Delaware courts may not issue a summons or enforce a subpoena for information or testimony related to an action in another state against a person for terminating a pregnancy, performing or inducing the termination of a pregnancy, or aiding or assisting the performance or inducement of the termination of a pregnancy.²

¹ HB 455 (Del. 2022) (11 Del. Code § 2506).

² HB 455 (Del. 2022) (10 Del. Code § 3928).

PROTECTION FROM PROFESSIONAL DISCIPLINE

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

Professional boards may not discipline a physician, physician assistant, or nurse—including by imposing a fine or restricting or revoking their certificate or license to practice—based on their performance, recommendation, or provision of reproductive health services lawful in Delaware, even if the services were provided to patients in states where such services are illegal or considered unprofessional conduct.³

PROTECTION AGAINST CIVIL LIABILITY

Protection against Application or Enforcement of Another State's Laws or Judgments in Delaware State Court

Delaware courts may not apply another state's law authorizing a civil action for terminating a pregnancy, performing or inducing the termination of a pregnancy, or aiding or abetting the performance of termination of a pregnancy.⁴

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

A person may bring an action in Delaware to recover damages, costs, expenses and attorneys' fees resulting from an out-of-state action against them based on the alleged provision, receipt, assistance in, or material support for reproductive health care services lawful in Delaware.⁵

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

Insurers may not increase the premium of a policy or take other adverse action against a health care provider or organization who performs or assists in the provision of reproductive health care services lawful in Delaware including by telehealth to individuals who reside in another state.⁶

³ HB 455 (Del. 2022) (24 Del. Code §§ 1731(b)(26), 1773(c), 1922(d)).

⁴ HB 455 (Del. 2022) (10 Del. Code § 3928).

⁵ HB 455 (Del. 2022) (10 Del. Code § 3929).

⁶ HB 455 (Del. 2022) (18 Del. Code § 2535).

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

Protection Against Disclosure of Medical Information

Health care providers may not disclose any patient communications relating to reproductive health services, or any information obtained by examination of a patient relating to reproductive health services in any civil action or proceeding without written authorization by the patient or their legal representative.⁷

Protection Against Disclosure of Providers' Personal Information

Providers and employees who fear for their safety because of providing reproductive health services may apply for inclusion in the state's address confidentiality program.⁸

⁷ HB 455 (Del. 2022) (10 Del. Code § 3926A).

⁸ SB 158 (Del. 2023) (11 Del. Code §§ 9612, 9613).

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