

Vermont

Shield Law Fact Sheet

AUGUST 2024

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

PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

Protection Barring State Agency/Employee Assistance

A public agency or a person acting on its behalf may not knowingly provide any information or use resources in furtherance of an interstate investigation or proceeding seeking to impose liability upon a person or entity for providing, receiving, or assisting “legally protected health care activity” — obtaining, aiding, or providing reproductive or gender-affirming health care services lawful in Vermont from a provider in Vermont, regardless of patient location.¹

Protection against Extradition and Arrests

Except as required by federal law, the Governor may not surrender a person charged in another state as a result of engaging in legally protected health care activity unless the demanding state alleges in writing that the person was physically present in its state at the time of the alleged offense and then fled.²

¹ H.89 (Vt. 2023) (Vt. Stat. tit. 12, § 7306); Vt. Stat. tit. 1, § 150 (defining “legally protected health care activity”). This prohibition does not apply if the public agency or person acting on its behalf responds to a warrant or extradition demand on the good faith belief that it is valid in Vermont. Vt. Stat. tit. 12, § 7306(b).

² H.89 (Vt. 2023) (Vt. Stat. tit. 13, § 4970).

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

Except as required by federal law, Vermont courts may not order a person to give testimony or produce documents in any proceeding outside of Vermont concerning “abusive litigation”—a legal action in another state where liability is based on legally protected health care activity and any part of the activity occurred in Vermont.³ Vermont courts also may not issue a witness summons related to an investigation or prosecution of legally protected health care activity, unless required by federal law.⁴

PROTECTION FROM PROFESSIONAL DISCIPLINE

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

Professional boards may not impose disciplinary action or take adverse action on an application for certification, registration, or licensure based solely on a provider’s provision or assistance in legally protected health care activity, or based on a criminal, civil, or disciplinary action taken in another state against the provider because of their provision or assistance in legally protected health care activity.⁵

PROTECTION AGAINST CIVIL LIABILITY

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

Vermont law must govern any case heard in Vermont courts related to legally protected health care activity, except as required by federal law.⁶ Additionally, Vermont courts may not give any force or effect to any judgment resulting from abusive litigation if it was issued without jurisdiction or due process or is penal in nature.⁷

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

Any person or entity who has been subject to abusive litigation may bring a civil action to recover the amount of any judgment entered against them and other expenses, costs, or reasonable attorney’s fees incurred in connection with the abusive litigation.⁸

³ H.89 (Vt. 2023) (Vt. Stat. tit. 12, §§ 7304, 7301).

⁴ H.89 (Vt. 2023) (Vt. Stat. tit. 13, § 6650).

⁵ S. 37 (Vt. 2023) (Vt. Stat. tit. 3, § 129a(f), Vt. Stat. tit. 26, § 1354 (d)(1)).

⁶ H.89 (Vt. 2023) (Vt. Stat. tit. 12, § 7305).

⁷ H.89 (Vt. 2023) (Vt. Stat. tit. 12, § 7303).

⁸ H.89 (Vt. 2023) (Vt. Stat. tit. 12, § 7302).

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

Medical malpractice insurers may not take any adverse action against health care providers, including adjusting the provider's risk certification or premium charges, based solely on their provision of legally protected health care activity lawful in Vermont but illegal in another state, including any abusive litigation or disciplinary action against the provider in another state because of their provision of legally protected health care activity.⁹

PRIVACY OF MEDICAL INFORMATION AND OTHER DATA RELATED TO ABORTION AND GENDER-AFFIRMING CARE¹⁰

Protection Against Disclosure of Medical Information

Health plans, health care clearinghouses, and health care providers (covered entities) may not disclose personally identifiable health information related to legally protected health care activity for use in a legal action except when the disclosure is authorized by the patient, specifically required by federal or Vermont law, ordered by a court pursuant to Vermont or federal law, made to a covered entity for its defense against a claim, made to a professional board for investigation into a provider, or made to the Departments of Health or Disabilities, Aging, and Independent Living for investigation into a health care facility.¹¹

Protection Against Disclosure of Providers' Personal Information

People who provide, assist, or obtain reproductive or gender-affirming health care services in Vermont may apply to the state's address confidentiality program, which prevents state and local agencies from disclosing participants' addresses when responding to public records requests and permits participants to use a substitute mailing address.¹²

⁹ S. 37 (Vt. 2023). (Vt. Stat. tit. 8, § 4724(F)(i)).

¹⁰ Legislation introduced in 2023, H121, would have provided additional protections for consumer health data, including gender-affirming health data and reproductive or sexual health data, but the Governor vetoed the bill in May 2024.

¹¹ S.37 (Vt. 2023) (Vt. Stat. tit. 18, § 1881).

¹² HB 89 (Vt. 2023) (Vt. Stat. tit. 15, §§ 1152, 1151).

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

crhlp@law.ucla.edu

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