

# Washington Shield Law Fact Sheet

AUGUST 2024

For both reproductive and gender-affirming health care, Washington’s shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, and civil liability. Washington also provides extensive protections for consumer data related to reproductive and gender-affirming care as a result of its shield laws and its My Health My Data Act, enacted in 2023.

Washington’s shield laws do not currently provide protections for health care providers’ professional liability insurance and participation in health plans.

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

### Protection Barring State Agency/Employee Assistance

State agencies and employees may not cooperate with or provide information to another state or federal law enforcement agency in an investigation asserting liability related to the provision, assistance, or receipt of “protected health care services”—gender-affirming treatment and reproductive health care services lawful in Washington.<sup>1</sup>

### Protection against Extradition and Arrests

The Governor may not surrender to another state a person charged with a crime involving provision, assistance, or receipt of protected health care services.<sup>2</sup> Additionally, state officials and state and local law enforcement may not issue or effectuate an arrest warrant or knowingly arrest any person in connection with the provision, assistance, or receipt of protected health care services.<sup>3</sup>

<sup>1</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.020(2)(b)).

<sup>2</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 10.88.250(2)).

<sup>3</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.020(2)(a)). Arrests without a warrant related to the provision, assistance, or receipt of protected health care services are also prohibited. Wash. Rev. Code § 10.88.330(3).

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

A state court or attorney may not issue a subpoena, warrant, court order, or other legal process in connection with a proceeding in another state related to the provision, receipt, or assistance in protected health care services.<sup>4</sup> An out-of-state request for issuance of a subpoena must include a sworn statement that the request does not seek information related to the provision, assistance, or receipt of protected health care services.<sup>5</sup> Additionally, courts may not issue a summons for witness testimony in another state's investigation or prosecution related to the provision, assistance, or receipt of protected health care services.<sup>6</sup> Courts also may not issue any *ex parte* order for the interception of a private communication related to a criminal investigation into the provision, assistance, or receipt of protected health care services.<sup>7</sup>

## PROTECTION FROM PROFESSIONAL DISCIPLINE

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

A provider may not be subject to denial of an application for licensure or licensure renewal, or any other disciplinary action based on providing or otherwise participating in reproductive health care services or gender affirming treatment lawful in Washington, or based on a conviction or disciplinary action in another state for providing or otherwise participating in reproductive health care services or gender affirming treatment lawful in Washington.<sup>8</sup>

## PROTECTION AGAINST CIVIL LIABILITY

### Protection against Application of Another State's Laws in Washington State Court

Washington courts may not apply any state's laws that authorize the imposition of liability related to the provision, receipt, or assistance in protected health care services lawful in Washington, regardless of the location of the person receiving the services.<sup>9</sup>

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<sup>4</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.020(2)(c)).

<sup>5</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 5.51.020). An exception to this prohibition applies if the subpoena relates to an out-of-state action concerning loss of consortium or a contractual relationship and a similar claim would exist under Washington law. Wash. Rev. Code § 5.51.020(4).

<sup>6</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 10.55.020(5)).

<sup>7</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 9.73.040(2)).

<sup>8</sup> HB 1340 (Wash. 2023) (Wash. Rev. Code § 18.130.450).

<sup>9</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.020). Note, however, that Washington law also provides that Washington courts must give full faith and credit as provided for in the U.S. Constitution to the public acts, records, and judicial proceedings of another state. Wash. Rev. Code § 7.115.901.

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

A person may bring a claim for interference with protected health care services when an action is filed in any court where liability is based on the provision, assistance, or receipt of protected health care services lawful in Washington, any part of the acts occurred in Washington, and the action was brought for an improper purpose and is objectively baseless, including because it impedes the right to travel.<sup>10</sup> An individual asserting a claim for interference with protected health care services may recover the amount of the judgment in the other action, and costs and attorney’s fees.<sup>11</sup>

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

### Protection Against Disclosure of Data by Businesses Providing Electronic Communications

Business entities that are incorporated or have their principal place of business in Washington that provide electronic communication services may not knowingly provide information in response to a subpoena, warrant, court order, or other legal process relating to an investigation asserting liability for protected health care services.<sup>12</sup> These businesses may not comply with a subpoena, warrant, court order, or other legal process related to protected health care services unless it is accompanied by a sworn statement that the request does not relate to another state’s law asserting liability for protected health care services.<sup>13</sup>

### Protection Against Disclosure of Consumer Health Data

In 2023, Washington also enacted My Health My Data Act, which provides protections for consumer health data, including gender-affirming care information and reproductive or sexual health information.<sup>14</sup> The law requires consumer consent regarding the collection, sharing, and use of health data, provides consumers with the right to have their health data deleted, and prohibits the selling of consumer health data without valid authorization signed by the consumer.<sup>15</sup>

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<sup>10</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.040).

<sup>11</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.040).

<sup>12</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.020(2)(d)).

<sup>13</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 7.115.020(2)(d)).

<sup>14</sup> HB 1155 (Wash. 2023) (Wash. Rev. Code § 19.373.010).

<sup>15</sup> HB 1155 (Wash. 2023) (Wash. Rev. Code §§ 19.373.030, 19.373.040, 19.373.070).

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## Protection of Location Data

Washington's My Health My Data Act also prohibits utilization of a geofence around an entity that provides health care services to identify consumers seeking health care services, collect consumer health data from consumers, or send notifications, messages, or advertisements to consumers related to their consumer health data or health care services.<sup>16</sup>

## Protection Against Disclosure of Providers' Personal Information

Any provider or employee who provides or assists in provision of protected health care services and any family members residing with them may apply to the state's address confidentiality program.<sup>17</sup>

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<sup>16</sup> HB 1155 (Wash. 2023) (Wash. Rev. Code § 19.373.080).

<sup>17</sup> HB 1469 (Wash. 2023) (Wash. Rev. Code § 40.24.030).

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## 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)