

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1066A

SPONSOR: MAYER

TITLE OF BILL:

An act to amend the criminal procedure law, the executive law, the civil practice law and rules, the insurance law and the education law, in relation to legally protected health activity providers

PURPOSE:

To ensure telehealth services are explicitly included in existing safeguards and protections for reproductive health care services.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 amends section 570.17 of the criminal procedure law to establish definitions of "reproductive health services" and "legally protected health activity." Further, it prevents the governor from recognizing any demand, except as required by federal law, for the extradition of a person charged with any legally protected health activity, unless the executive authority of 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 crime, and thereafter they fled from that state.

Section 2 amends subdivision 3-a of section 140.10 of the criminal procedure law to prevent a police officer from arresting any person for performing any legally protected health activity in this state.

Section 3 amends section 837-w of the executive law, renumbering it as section 837-x, to prevent any government employee or entity or other person acting on behalf of state or local government from cooperating with any individual or out-of-state agency or department regarding any legally protected health activity occurring in New York, or using any time and/or resources in furtherance of any investigation or proceeding initiated in or by another state that aims to impose civil or criminal liability or professional sanctions on a person or entity for any legally protected health activity. Second, it preserves the right of authorities to investigate any alleged violations of reproductive health services in accordance with the laws of New York, so long as information relating to any medical procedure performed on a specific individual is not shared with an out-of-state agency or other individual. Lastly, it explicitly requires compliance with any court-issued subpoena or warrant in connection with any civil, criminal or professional sanctions investigation that is not related to any legally protected health activity.

Section 4 amends subdivision (g) of section 3119 of the civil practice

law and rules to prevent any New York court from issuing a subpoena in connection with an out-of-state proceeding relating to any legally protected health activity that occurred in this state. It also creates an exception to the subpoena rule for patients that receive reproductive health services and commence an out-of-state proceeding.

Section 5 amends subdivision (e) of section 3102 of the civil practice law and rules to prevent any New York court from aiding in the production of any out- of-state deposition request in relation to any legally protected health activity that occurs in this state.

Section 6 amends the civil practice law and rules by adding a new section 4550 that prevents evidence relating to a party engaged in any legally protected health activity, who provides reproductive health services to persons not physically present in this state, from being offered to support any allegations of wrongdoing, whether civil, criminal, or professional, or otherwise by virtue of recipients of such services not being physically present in this state. It also creates an exception to this rule by allowing the production of evidence in cases sounding in tort, contract, or statute, under other actionable laws of this state, or if it is brought by the patient who received reproductive health services.

Section 7 amends section 3436-a of the insurance law to prevent any medical malpractice insurer from taking adverse action against any health care provider for performing reproductive health services that are legal in New York on someone who is from out of state. It then gives the superintendent express authorization to interpret reproductive health services as if it were stated within this article.

Section 8 amends Paragraph 36 of subsection (i) of section 3216 of the insurance law to require that every policy providing hospital, surgical or medical coverage and which offers maternity coverage also provide coverage for legally protected health activity. It then gives the superintendent express authorization to interpret legally protected health activity as if it were stated within this article. Second, it prevents any legally protected health activity from being subject to any annual deductibles or coinsurance, including co-payments, unless the policy is a high deductible health plan as defined in the Internal Revenue Code.

Section 9 amends paragraph 22 of subsection (k) of section 3221 of the insurance law, to require that every policy which provides hospital, surgical, or medical coverage and which offers maternity coverage also provide coverage for legally protected health activity. It then gives the superintendent express authorization to interpret legally protected health activity as if it were stated within this article. Second, it prevents any legally protected health activity from being subject to any annual deductibles or coinsurance, including co-payments, unless the policy is a high deductible health plan as defined in the Internal Revenue Code. Third, it allows a group policy that provides hospital, surgical, or medical expense coverage delivered or issued for delivery in this state to a religious employer to exclude coverage for legally protected health activity, as is already permitted for abortion. It then sets out the procedures a religious employer must follow in order to receive this exemption.

Section 10 amends subsection (ss) of section 4303 of the insurance law

to require that every policy that provides hospital, surgical, or medical coverage and which offers maternity care coverage provide coverage for legally protected health activity for an enrollee. It then gives the superintendent express authorization to interpret legally protected health activity as if it were stated within this article. Second, it prevents any legally protected health activity from being subject to any annual deductibles or coinsurance, including co-payments, unless the policy is a high deductible health plan as defined in the Internal Revenue Code. Third, it allows a group policy that provides hospital, surgical, or medical expense coverage delivered or issued for delivery in this state to a religious employer to exclude coverage for legally protected health activity, as is already permitted for abortion. It then sets out the procedures a religious employer must follow in order to receive this exemption.

Section 11 amends subdivision 2 of section 6531-b of the education law to prevent any legally protected health activity performed by a health care practitioner acting in their scope of practice from constituting professional misconduct, whether relating to any law, rule or regulation governing the licensure, certification, or authorization of any practitioner, or rules governing revocation, suspension, annulment, penalty, or disciplinary action.

Section 12 adds a severability clause, indicating that the invalidation of any one provision does not affect the validity of any other provision of the act.

Section 13 adds a choice of law clause, indicating that this Act shall be exclusively governed by and construed pursuant to the laws of the state of New York.

Section 14 adds a conflict of laws clause requiring that, in the event that any laws in the state of New York conflict with this act, this act shall govern.

Section 15 sets forth the effective date.

JUSTIFICATION:

The effects of the Supreme Court's June 2022 ruling in Dobbs v. Jackson Women's Health Organizations (1) -- where the fundamental right to an abortion enshrined in Roe v. Wade was overturned -- have been nothing short of devastating to women around the country. As the Guttmacher Institute reports, nearly 40 million U.S. women of reproductive age (58% of the total number) live in states that have demonstrated hostility to abortion rights.(2) Since the Dobbs decisions at least 66 clinics across 15 states have closed. And as of October 2022, there were no providers serving patients in at least 14 states.(3)

In the wake of Dobbs, medication abortion has become a lifeline for many individuals seeking abortions in hostile states. Medication abortion has become increasingly common over the last 20 years -- it now accounts for more than 50% of facility-based abortions, according to the Guttmacher Institute.(4) Plan C and Aid Access, organizations which help people access medication abortions, both reported significant increases in site traffic immediately following the publication of the leaked draft opin-

ion in Dobbs.(5) And according to a study released by the medical journal JAMA, there was a nearly 120 percent increase in abortion pill orders from overseas providers placed in July and August of 2022.(6)

The post-Dobbs landscape has placed strenuous burdens on patients who already have difficulty accessing an abortion, including people with limited financial resources, people of color, LGBTQ individuals and young people.(7) Moreover, as a report from JAMA found, abortion bans and restrictions have decreased access to safe abortions, particularly among those living in the South, and those who are poor, Black or Native American.(8) Even in states where abortion is available, the influx of patients from states with severe restrictions has created burdensome wait times and safety risks for those looking to obtain reproductive health services.

Following the leaked opinion in Dobbs, the New York State legislature enacted a broad, prophylactic package of laws that protected abortion and reproductive health rights in the state. This package, signed by the governor on June 13, 2022, recognized reproductive rights as human rights, and established new safeguards to protect the rights of patients and reproductive healthcare providers across New York State.(9)

This legislative package: (i) created a cause of action for unlawful interference with reproductive rights; (ii) provided legal protections for abortion service providers; (iii) prohibited professional misconduct charges against healthcare practitioners who provide reproductive health services to patients residing in states where such services are illegal; (iv) prevented medical malpractice insurance companies from taking adverse action against a reproductive healthcare provider who performs an abortion or provides reproductive healthcare that is legal in New York on someone who is from out of state; (v) included reproductive healthcare providers, employees, volunteers, and patients in the state's address confidentiality program; and (vi) authorized a study to report on unmet health and resource needs facing pregnant people in New York and the impact of limited service pregnancy centers.(10)

Despite these protections, one critical area the package did not explicitly address was reproductive health services in the context of telehealth and telehealth services. Generally, telehealth is the provision of professional health care service over geographical distances by means of modern telecommunications technology. Telehealth is a commonly used tool in the daily work of health care practitioners, providing patients with access to health care professionals in a private setting without the burdens of travel.

This legislation builds upon the abortion and reproductive health services laws signed in June 2022 by explicitly adding protections for telehealth and telehealth services. As many states across the country have enacted abortion bans and draconian reproductive rights restrictions following the Dobbs decision, this bill fills an important gap by safeguarding health care practitioners in New York from out-of-state activities that impede upon their ability to provide necessary reproductive health services to patients.

Notably, this bill adds a new definition of "legally protected health activity" to encompass "reproductive health services," which explicitly includes telehealth and telehealth services. Second, it amends the appropriate civil and criminal procedure laws-concerning extradition,

arrests, and coordination with any out-of-state investigations or evidentiary requests-to operate as a shield to New York health care practitioners who perform any legally protected health activity against states who try to impose disciplinary actions upon them. Third, it amends the education law to prevent New York health care practitioners from professional disciplinary action for legally protected health activity. Lastly, it amends the insurance law to prevent medical malpractice insurers from taking adverse action against health care practitioners for legally protected health activity, and prevents insurance companies from imposing any annual deductibles or coinsurance for legally protected health activity.

This bill will strengthen New York's role as a nation-wide leader in reproductive rights, creating new avenues for those who live in states with severe abortion restrictions.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately, provided, however, the amendments to subparagraph (B) of paragraph 36 of subsection (i) of section 3216 of the insurance law made by section eight of this act shall take effect on the same date and in the same manner as section 1 of part R of chapter 57 of the laws of 2022, takes effect.

1 Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022) (hereinafter Dobbs).

2 Guttmacher Institute (Elizabeth Nash), State Abortion Policy Landscape: From Hostile to Supportive, <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive> (last checked, Jan. 3, 2023).

(3) Guttmacher Institute (Marielle Kirstein, Joerg Breweke, Rachel Jones, & Jess Philbin), 100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care, <https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care> (last checked, Jan 3, 2023).

(4) Guttmacher Institute (Rachel Jones, Elizabeth Nash, Lauren Cross, Jess Philbin & Marielle Kirstein), Medication Abortion Now Accounts for More Than Half of All US Abortions, <https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions> (last checked Jan 6, 2023).

(5) Politico (Ben Leonard), Telemedicine Abortion Providers See a Surge in Interest, <https://www.politico.com/news/2022/05/08/telemedicine-abortion-providers-interest-surge-roe-00030800> (May 8, 2022).

(6) JAMA Network (Abigail Aiken, Jennifer Starling, James Scott), Request for Self-Managed Medication Abortion Provided Using Online Telemedicine, <https://jamanetwork.com/journal/ama/article-abstract/2797883> (Nov 1, 2022).

(7) Guttmacher Institute (Elizabeth Nash, Peter Ephross), State Policy

trends 2022: In a Devastating Year, US Supreme Court's Decision to Overturn Roe Leads to Bans, Confusion, and Chaos, <https://www.auctmasher.org/2022/12/state-policy-trends-2022-devastating-year-us-supreme-courts-decision-overturn-roe-leads> (last checked, Jan. 3, 2023).

(8) JAMA Network, Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v. Jackson Women's Health Decision, <https://jamanetwork.com/journals/jama/article-abstract/2798215>, (Nov. 1, 2022)

(9) Governor Hochul Signs Nation-Leading Legislative Package to Protect Abortion and Reproductive Rights for All, <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive> (June 13, 2022).

(10) Id.