

SENATE, No. 3452

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 17, 2024

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex and Hudson)

Co-Sponsored by:

Senator Zwicker

SYNOPSIS

Requires health insurance and Medicaid coverage for reproductive health care services; prohibits adverse actions by medical malpractice insurers in relation to performance of health care services.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2024)

1 AN ACT concerning insurance coverage for reproductive health care
2 and revising and supplementing various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) The Legislature finds and declares that:

8 a. Given the historic and continued attacks on abortion access
9 and reproductive health care at the federal level and in other states, it
10 is critical that New Jersey take legislative action to ensure that all
11 individuals in the State are able to exercise their fundamental rights
12 to choose to use or refuse contraception or sterilization, to carry a
13 pregnancy, to give birth, or to have an abortion, regardless of where
14 the they are domiciled.

15 b. New Jersey has historically provided stronger protections for
16 reproductive rights and autonomy than are provided by other states
17 and the federal government. The New Jersey Supreme Court has
18 made clear through several holdings, including *Right to Choose v.*
19 *Byrne*, 91 N.J. 287 (1982), and *Planned Parenthood of Cent. N.J. v.*
20 *Farmer*, 165 N.J. 609 (2000), that Article I, paragraph 1 of the New
21 Jersey Constitution protects the right to abortion and reproductive
22 autonomy to an extent that exceeds the protections established under
23 the United States Constitution. In 2022, New Jersey codified the
24 fundamental constitutional right to reproductive autonomy, including
25 the right to abortion, and has restored and allocated State funding to
26 support reproductive health care services.

27 c. The Legislature is committed to ensuring that all individuals
28 in the State can fully exercise their right to reproductive autonomy
29 and can access affordable and timely reproductive health care
30 services. It is imperative to ensure that every person present in the
31 State has the freedom to choose whether, when, and how to bear
32 children on their own terms.

33 d. Access to reproductive health care is critical for the health and
34 economic security of all people in New Jersey, providing all
35 individuals in the State with the opportunity to lead healthier and
36 more productive lives. To effectively vindicate the right to abortion
37 and reproductive autonomy enshrined in State law, New Jersey must
38 address barriers to access.

39 e. Financial barriers and costs associated with reproductive
40 health care services can prevent people from accessing appropriate
41 and necessary care. These costs can threaten individuals' financial
42 security and negatively impact their long-term economic prospects.
43 Cost barriers associated with reproductive health care often have a
44 disparate impact on people who already experience barriers to health
45 care access, including young people, people of color, people with

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 disabilities, people with a low income, people living in rural areas,
2 immigrants, and transgender or non-binary individuals.

3 f. A person's income level or their type of insurance should
4 never prevent them from having access to a full range of reproductive
5 health care. The absence of funding should never be a reason that
6 someone present in New Jersey does not exercise their fundamental
7 right to reproductive autonomy, including abortion.

8 g. Health care practitioners should not be constrained from
9 providing necessary or appropriate reproductive health care.
10 Medically unnecessary regulations discourage practitioners from
11 offering reproductive health care, including abortions, which
12 effectively reduces the number of licensed providers, diminishes the
13 availability of legal abortion providers, and creates harmful barriers
14 and delays to care without providing any benefit to patients.
15 Extensive scientific study has shown that abortion care is a safe
16 medical intervention, safer than childbirth as well as many common
17 medical procedures.

18 h. Given New Jersey's high priority to the preservation of health,
19 the State has a significant interest in ensuring that every person in
20 New Jersey can access reproductive health care, including abortion
21 services. The Legislature is committed to addressing barriers to
22 receiving and providing reproductive health care in the State. It shall
23 therefore be the policy of this State to enable all qualified health care
24 practitioners to provide abortion services in the State, and to advance
25 insurance coverage and other methods through which to ensure that
26 reproductive health care is accessible and affordable to all people
27 present in New Jersey.

28

29 2. (New section) As used in this act:

30 "Abortion" means any medical treatment intended to induce the
31 termination of a pregnancy and services rendered to facilitate the
32 termination which may include follow-up care, except for the
33 purpose of producing a live birth. "Abortion" includes, but is not
34 limited to, "aspiration abortion" and "medication abortion," as
35 defined in this section.

36 "Aspiration abortion" means a procedure that terminates a
37 pregnancy utilizing manual or electric suction to empty the uterus.

38 "Carrier" means an insurance company, health service
39 corporation, hospital service corporation, medical service
40 corporation, or health maintenance organization authorized to issue
41 health benefits plans in this State.

42 "Covered person" means a person, or dependents of a person, on
43 whose behalf a carrier offering the plan is obligated to pay benefits
44 or provide services pursuant to the health benefits plan.

45 "Medication abortion" means the use, prescription, order,
46 dispensing, administration, or any combination thereof as applicable,
47 of a medication or a combination of medications to induce
48 termination of pregnancy.

1 “Pregnancy” means the period of the human reproductive process
2 beginning with the implantation of a fertilized egg.

3 “Religious employer” means an organization that is referred to in
4 section 6033(a)(3)(A)(i) or (iii) of the federal Internal Revenue Code
5 of 1986 (26 U.S.C. s.6033), as amended, and organized and operates
6 as a nonprofit entity.

7
8 3. (New section) a. A contract that provides hospital or medical
9 expense benefits and is delivered, issued, executed, or renewed in
10 this State by a carrier or is approved for issuance or renewal in this
11 State by the Commissioner of Banking and Insurance, on or after the
12 effective date of P.L. , c. (C.) (pending before the Legislature
13 as this bill), shall provide coverage for abortion.

14 b. (1) A contract subject to this section shall not impose a
15 deductible, coinsurance, copayment, or any other cost-sharing
16 requirement on the coverage required under this section.

17 (2) A contract that meets the requirements of a catastrophic plan,
18 as defined in 45 C.F.R. s.156.155, shall be exempt from paragraph
19 (1) of this subsection.

20 (3) For benefits offered in conjunction with a high-deductible
21 health plan, the contract shall not provide benefits until the
22 expenditures applicable to the deductible under the plan have met the
23 amount of the minimum annual deductibles in effect for self-only and
24 family coverage under section 223(c)(2)(A)(i) of the federal Internal
25 Revenue Code (26 U.S.C. s.223(c)(2)(A)(i)) for self-only and family
26 coverage, respectively. Once the foregoing expenditure amount has
27 been met under the plan, coverage for benefits shall begin and the
28 provisions in paragraph (1) of this subsection shall be in effect.

29 c. A contract shall not impose any restrictions or delays on, and
30 shall not require prior authorization for, the coverage required under
31 this section.

32 d. Notwithstanding the provisions of subsections a. through c. of
33 this section to the contrary, if the Commissioner of Banking and
34 Insurance concludes that enforcement of this section may adversely
35 affect the allocation of federal funds to this State, the commissioner
36 may grant an exemption to the requirements of this section, but only
37 to the minimum extent necessary to ensure the continued receipt of
38 federal funds.

39 e. A religious employer may request, and a carrier shall grant,
40 an exclusion under the contract for the coverage required by this
41 section if the required coverage conflicts with the religious
42 employer’s bona fide religious beliefs and practices. A religious
43 employer that obtains an exclusion shall provide written notice
44 thereof to covered persons and prospective covered persons, and a
45 carrier shall provide notice to the Commissioner of Banking and
46 Insurance, in the form and manner determined by the
47 commissioner. The provisions of this subsection shall not authorize

1 a carrier to exclude coverage for care that is necessary to preserve the
2 life or health of a covered person.

3

4 4. (New section) a. The State Health Benefits Commission shall
5 ensure that every contract providing hospital or medical expense
6 benefits, which is purchased by the commission on or after the
7 effective date of P.L. , c. (C.) (pending before the Legislature
8 as this bill), provides coverage for abortions, as defined by section 1
9 of P.L. , c. (C.) (pending before the Legislature as this bill).

10 b. A contract subject to this section shall not impose a deductible,
11 coinsurance, copayment, or any other cost-sharing requirement on
12 the coverage required under this section. For a qualifying high-
13 deductible health plan for a health savings account, the commission
14 shall establish the plan's cost-sharing for the coverage provided
15 pursuant to this section at the minimum level necessary to preserve
16 the covered person's ability to claim tax-exempt contributions and
17 withdrawals from the covered person's health savings account under
18 26 U.S.C. s.223.

19 c. A contract shall not impose any restrictions or delays on, and
20 shall not require prior authorization for, the coverage required under
21 this section.

22

23 5. (New section) a. The School Employees' Health Benefits
24 Commission shall ensure that every contract providing hospital or
25 medical expense benefits, which is purchased by the commission on
26 or after the effective date of P.L. , c. (C.) (pending before
27 the Legislature as this bill), provides coverage for abortions, as
28 defined by section 1 of P.L. , c. (C.) (pending before the
29 Legislature as this bill).

30 b. A contract subject to this section shall not impose a
31 deductible, coinsurance, copayment, or any other cost-sharing
32 requirement on the coverage required under this section. For a
33 qualifying high-deductible health plan for a health savings account,
34 the commission shall establish the plan's cost-sharing for the
35 coverage provided pursuant to this section at the minimum level
36 necessary to preserve the covered person's ability to claim tax-
37 exempt contributions and withdrawals from the covered person's
38 health savings account under 26 U.S.C. s.223.

39 c. A contract shall not impose any restrictions or delays on, and
40 shall not require prior authorization for, the coverage required under
41 this section.

42

43 6. (New section) Notwithstanding any State law or regulation to
44 the contrary, the Department of Human Services shall ensure that
45 expenses incurred for abortion services shall be provided with no
46 cost-sharing to persons served under the Medicaid program,
47 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

1 b. Any copayment, coinsurance, or deductible that may be
2 required pursuant to the contract for services covered pursuant to
3 subsection a. of this section shall not apply.

4 c. The department may take any administrative action necessary
5 to effectuate the provisions of this section, including modifying or
6 amending any applicable contract or promulgating, amending, or
7 repealing any guidance, guidelines, or rules, which rules or
8 amendments thereto shall be effective immediately upon filing with
9 the Office of Administrative Law for a period not to exceed 12
10 months, and may, thereafter, be amended, adopted or readopted in
11 accordance with the provisions of the "Administrative Procedure
12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

13
14 7. Section 2 of P.L.2021, c.375 (C.10:7-2) is amended to read as
15 follows:

16 2. a. Every individual present in the State, including, but not
17 limited to, an individual who is under State control or supervision,
18 shall have the fundamental right to: choose or refuse contraception
19 or sterilization; and choose whether to carry a pregnancy, to give
20 birth, or to terminate a pregnancy. The New Jersey Constitution
21 recognizes the fundamental nature of the right to reproductive choice,
22 including the right to access contraception, to terminate a pregnancy,
23 and to carry a pregnancy to term, shall not be abridged by any law,
24 rule, regulation, ordinance, or order issued by any State, county, or
25 local governmental authority. Any law, rule, regulation, ordinance,
26 or order, in effect on or adopted after the effective date of this act, or
27 any part thereof, that is determined to have the effect of limiting the
28 constitutional right to freedom of reproductive choice and that does
29 not conform with the provisions and the express or implied purposes
30 of this act, shall be deemed invalid and shall have no force or effect.

31 b. If the State provides, directly or by contract, hospital or
32 medical benefits for pregnancy-related care through any program
33 administered or funded in whole or in part by the State, the State shall
34 also provide a pregnant individual otherwise eligible for the program
35 with substantially equivalent benefits to permit the individual to
36 voluntarily terminate the individual's pregnancy.

37 c. A physician or other health care professional, acting within
38 the professional's lawful scope of practice and in compliance with all
39 generally applicable regulations, shall be authorized to provide and
40 assist in the provision of reproductive health care services in this
41 State.

42 d. Nothing in P.L.2021, c.375 (C.10:7-1 et seq.) shall effect or
43 limit in anyway an advanced practice clinician who is licensed,
44 certified, or otherwise authorized by law to practice in this State from
45 performing aspiration abortion, providing medication abortion, or
46 managing the spontaneous termination of a pregnancy.

47 e. A public entity shall not, in regulating or providing benefits,
48 facilities, services, or information, deny or interfere with an

1 individual's fundamental reproductive rights pursuant to subsection
2 a. of this section or discriminate against an individual on the basis of
3 the individual's exercise of fundamental reproductive rights pursuant
4 to subsection a. of this section.

5 f. (1) All rules and regulations promulgated by the
6 Department of Human Services as of the effective date of
7 P.L. , c. (C.) (pending before the Legislature as this bill),
8 or parts thereof, which limit coverage for abortion services based on
9 the type of facility or health care professional that provides the
10 services, or which are otherwise inconsistent or in conflict with the
11 provisions or express or implied purposes of P.L.2021, c.375
12 (C.10:7-1 et seq.) including, but not limited to, relevant parts or
13 subparts of N.J.A.C.10:54-5.43 and N.J.A.C.10:66-2.16 shall be void
14 and have no force or effect following the effective date of
15 P.L. , c. (C.) (pending before the Legislature as this bill),
16 provided that nothing in this subsection shall be construed to limit a
17 professional licensing board or regulatory agency from establishing
18 through regulation the qualifications or standards of care for its
19 licensees with respect to the performance of reproductive health care
20 services.

21 (2) The rules and regulations adopted by the Commissioner of
22 Human Services, pursuant to this section, shall include, but need not
23 be limited to, rules and regulations permitting electronic billing for
24 abortion services, which rules and regulations shall be promulgated
25 by January 1, 2025.

26 g. The provisions of this section shall be enforceable under the
27 "New Jersey Civil Rights Act," P.L.2004, c.143 (C.10:6-1 et seq.) or
28 in any other manner provided by law.

29 h. As used in this section:

30 "Abortion" means any medical treatment intended to induce the
31 termination of a pregnancy and services rendered to facilitate the
32 termination which may include follow-up care, except for the
33 purpose of producing a live birth. "Abortion" includes, but is not
34 limited to, "aspiration abortion" and "medication abortion," as
35 defined in this section.

36 "Advanced practice clinician" means an advanced practice nurse
37 licensed pursuant to P.L.1991, c.377 (C.45:11-45 et seq.); a physician
38 assistant licensed pursuant to P.L.1991, c.378 (C.45:9-27.10 et seq.);
39 a certified nurse midwife; and a certified midwife licensed pursuant
40 to R.S.45:10-1 et seq.

41 "Aspiration abortion" means a procedure that terminates a
42 pregnancy utilizing manual or electric suction to empty the uterus.

43 "Health care professional" means a physician and other health care
44 professionals licensed pursuant to Title 45 of the Revised Statutes,
45 and a hospital and other health care facilities licensed pursuant to
46 Title 26 of the Revised Statutes.

47 "Medication abortion" means the use, prescription, order,
48 dispensing, administration, or any combination thereof as applicable,

1 of a medication or a combination of medications to induce
2 termination of pregnancy.

3 “Pregnancy” means the period of the human reproductive process
4 beginning with the implantation of a fertilized egg.

5 “Public entity” means the State and any county, municipality,
6 district, public authority, public agency, or other political subdivision
7 or public body in the State.

8 “Reproductive health care services” includes all medical,
9 pharmaceutical, surgical, counseling or referral services performed
10 by a licensed health care professional relating to the human
11 reproductive system, including, but not limited to, services relating
12 to pregnancy, contraception, managing infertility, or the termination
13 of a pregnancy.

14 (cf: P.L.2021, c.375, s.2)

15

16 8. Section 17 of P.L.2004, c.17 (C.17:30D-22) is amended to
17 read as follows:

18 17. a. Notwithstanding any other law or regulation to the
19 contrary, an insurer authorized to transact medical malpractice
20 liability insurance in this State shall not increase the premium of any
21 medical malpractice liability insurance policy based on a claim of
22 medical negligence or malpractice against the insured if the insured
23 is dismissed from an action alleging medical malpractice within 180
24 days of the filing of the last responsive pleading.

25 b. An insurer authorized to transact medical malpractice liability
26 insurance in this State shall not take any adverse action, including
27 but not limited to, loss or denial of coverage, or imposition of
28 sanctions, fines, penalties, or rate increases, against an insured
29 licensed, certified, or registered in this State for providing or
30 facilitating a legally protected health care activity based on the fact
31 that the patient receiving the service is a resident of a state where
32 those services are illegal, or based on a revocation of an insured’s
33 license from another state or other disciplinary action by another state
34 that resulted from an insured’s providing, authorizing, participating
35 in, referring, or assisting in a legally protected health care activity, if
36 the revocation or disciplinary action was based on a violation of the
37 other state’s law prohibiting the legally protected health care activity.

38 c. As used in this section:

39 “Gender-affirming health care services” means all supplies, care,
40 and services of a medical, behavioral health, mental health, surgical,
41 psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or
42 supportive nature, including medication, relating to the treatment of
43 gender dysphoria and gender incongruence. “Gender-affirming
44 health care services” does not include sexual orientation change
45 efforts as defined by section 2 of P.L.2013, c.150 (C.45:1-55).

46 “Legally protected health care activity” means providing, seeking,
47 receiving, assisting with, or inquiring about reproductive health care

1 services or gender-affirming health care services that are lawful in
2 this State, regardless of the patient’s location.

3 “Reproductive health care services” includes all medical,
4 pharmaceutical, surgical, counseling or referral services provided by
5 a licensed health care professional relating to the human reproductive
6 system, including, but not limited to, services relating to pregnancy,
7 contraception, or the termination of a pregnancy.

8 (cf: P.L.2004, c.17, s.17)

9

10 9. The following sections are repealed:

11 Section 3 of P.L.2021, c.375 (C.26:2S-39);

12 Section 4 of P.L.2021, c.375 (C.52:14-17.29hh); and

13 Section 5 of P.L.2021, c.375 (C.52:14-17.46.6q).

14

15 10. a. Sections 1 through 3 shall take effect on the first day of the
16 third month next following the date of enactment and shall apply to
17 all policies, plans, and contracts delivered, issued, executed, or
18 renewed on or after the effective date, except the Department of
19 Banking and Insurance may take anticipatory administrative action
20 as may be necessary to implement the provisions.

21 b. Sections 4 through 9 shall take effect immediately, except that
22 the amendment made in section 7 to subsection b. of section 2 of
23 P.L.2021, c.375 (C.10:7-2) shall take effect on the sixth month next
24 following the date of enactment.

25

26

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STATEMENT

28

29 This bill requires health insurance carriers (including health
30 service corporations, hospital service corporations, medical service
31 corporations, commercial individual and group health insurers, and
32 health maintenance organizations), entities contracted to administer
33 health benefits in connection with the State Health Benefits Program
34 and School Employees’ Health Benefits Program, and the NJ
35 FamilyCares/Medicaid program to provide coverage for the
36 termination of pregnancies.

37 Under the bill, “pregnancy” is defined as the period of the human
38 reproductive process beginning with the implantation of a fertilized
39 egg. The bill provides that, upon request of a religious employer,
40 health insurers are required to grant an exclusion if the coverage
41 conflicts with the religious employer’s bona fide religious beliefs and
42 practices. “Religious employer” is defined in the bill to mean an
43 organization that is referred to in section 6033(a)(3)(A)(i) or (iii) of
44 the federal Internal Revenue Code of 1986 (26 U.S.C. s.6033), and
45 that is organized and operates as a nonprofit entity.

46 Additionally, the bill provides that any State program that
47 provides benefits for pregnancy-related care will also provide
48 benefits for the termination of a pregnancy. Lastly, under the bill,

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1 medical malpractice insurers are barred from taking any adverse
2 action, including loss of coverage, sanctions, fines, penalties, or rate
3 increases, against an insured for providing or facilitating
4 reproductive health care services or gender-affirming health care
5 services based solely on the fact that the patient receiving the service
6 is a resident of a state where providing or facilitating the activity is
7 illegal.