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California’s Shield Law May Impact Providers and Abortion-Seekers’ Access to Medication Abortion Nationwide

LOS ANGELES, Calif., September 29, 2023 – On Wednesday, September 27th, Governor Newsom signed numerous abortion and gender-affirming care-protection-related bills, including “shield law” Senate Bill (SB) 345 which provides legal protections for health care practitioners licensed in California who provide or dispense medication or other services for abortion, contraception or gender-affirming care to out-of-state patients. SB 345 also extends protections beyond licensed providers to any individual supporting with the provision of related care.

Natalie Birnbaum, Nelson Hardiman Of Counsel, worked with stakeholders and abortion providers in order to help inform the bill’s language and particularly advocate for the protection of independent California-licensed providers traveling out of state to provide reproductive health and gender-affirming care services. California’s shield law uniquely protects this class of provider, making it one of the most extensive in the country. SB 345 is supported by a large coalition of health care rights organizations and licensing boards in California and is sponsored by Black Women for Wellness Action Project, Reproductive Freedom for All California, ACCESS Reproductive Justice, California Nurse-Midwives Association, Equality California, TEACH (Training in Early Abortion for Comprehensive Health Care), and VALOR US/VALOR CA.

SB 345 bars California law enforcement, government officials, and government contractors from cooperating with out-of-state prosecutions of those providing abortion or gender-affirming care. It blocks California-based social media and tech companies from sharing private communications with law enforcement regarding legally protected health care. Additionally, the bill prohibits a “California Healing Arts Board,” including the Medical Board of California and California Board of Registered Nursing, from taking disciplinary action or denying an application based on the provision of the protected care under SB 345.

Other critical bills signed Wednesday include SB 487, which adds safeguards for abortion providers who participate in the Medi-Cal program; AB 1707, which shields healthcare providers from licensing actions initiated by states hostile to abortion or gender-affirming care; AB 254 and AB 352, which further strengthen medical records privacy for abortion and gender-affirming care; AB 1720, which requires ultrasounds be conducted in licensed facilities; AB 1646 and SB 385, which are aimed at increasing the reproductive health care workforce; and AB 571 which ensures California providers have access to professional liability insurance without facing discrimination based on being a provider of abortion or gender-affirming care service.

“We are hopeful that SB 345 will open the gates for California licensed healthcare providers to serve out-of-state patients via telehealth and partner with participating California-based pharmacies to ship medications,” said Birnbaum. “Still, providers and healthcare professional must review their individual risks with an attorney before acting, as these laws remain untested.”

In light of recent legal action in Texas demanding that abortion providers, funds, and donors, reveal patient records, Governor Newsom must update Executive Order N-12-22 to extend extradition protections to all reproductive healthcare and gender-affirming related care and law enforcement must issue clear enforcement guidelines.”

For more information, please contact Natalie Birnbaum at nbirnbaum@nelsonhardiman.com.

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