

ASSEMBLY BILL NO. 383—ASSEMBLYMEN TORRES, PETERS, GORELOW, GONZÁLEZ; ANDERSON, BILBRAY-AXELROD, BROWN-MAY, CONSIDINE, D’SILVA, DURAN, JAUREGUI, C.H. MILLER, NEWBY, SUMMERS-ARMSTRONG, THOMAS AND WATTS

MARCH 22, 2023

JOINT SPONSORS: SENATOR D. HARRIS

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to health care. (BDR 40-116)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; prohibiting a governmental entity from substantially burdening certain activity relating to reproductive health services under certain circumstances; authorizing a person whose engagement in such activity has been so burdened to assert the violation as a claim or defense in a judicial proceeding; authorizing a court to award damages against a governmental entity that substantially burdens such activity in certain circumstances; expanding required coverage of contraception under the State Plan for Medicaid; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prescribes certain rights for a patient of a medical facility or a facility for the dependent. (NRS 449A.100-449A.124) **Sections 2-7** of this bill establish the Right to Reproductive Health Care Act. **Sections 4-5.5** of this bill define certain terms for purposes of the Act. **Section 6** of this bill applies the provisions of the Act to certain state laws and all local laws and ordinances and the implementation of those laws and ordinances, regardless of when those laws or ordinances were enacted. **Section 7** of this bill generally prohibits a governmental entity from enacting or implementing any limitation or requirement that singles out



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reproductive health services and substantially burdens: (1) the access of a person to reproductive health services, drugs or devices related to reproductive health services or information related to reproductive health services; or (2) the ability of a provider of health care to provide reproductive health services, drugs or devices related to reproductive health services or information related to reproductive health services within his or her scope of practice, training and experience. **Section 7** creates an exception to such prohibitions if the governmental entity demonstrates by clear and convincing evidence that the burden, as applied to the person or provider of health care who is subject to the burden: (1) furthers a compelling interest; and (2) is the least restrictive means of furthering that interest. **Section 7** authorizes a person whose ability to obtain or provide reproductive health services, drugs or devices related to reproductive health services or information related to reproductive health services is burdened to bring or defend an action in court and obtain appropriate relief. **Section 7** requires a court to award costs and attorney's fees to a person who prevails on such a claim.

Existing law requires the State Plan for Medicaid to include coverage for certain contraceptive drugs and devices, including: (1) up to a 12-month supply of contraceptive drugs; (2) certain devices for contraception; and (3) voluntary sterilization for women. (NRS 422.27172) **Section 8** of this bill additionally requires the State Plan for Medicaid to cover: (1) voluntary sterilization for men; (2) clinical services relating to covered contraceptive drugs, devices and services; and (3) a portion of the cost of language translation services provided to facilitate the provision of covered contraceptive drugs, devices and services. **Section 8** also requires the State Plan to: (1) cover certain contraceptive services when provided by any provider of health care for whom the services are within his or her scope of practice, training and experience; (2) reimburse a provider of health care, other than a physician, physician assistant or advanced practice registered nurse, for providing such services at a rate that is not less than the rate provided to a physician, physician assistant or advanced practice registered nurse; and (3) cover such services regardless of whether the services are provided in an inpatient or outpatient setting.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *Sections 2 to 7, inclusive, of this act may be cited as the Right to Reproductive Health Care Act.*

Sec. 3. *As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4, 5 and 5.5 of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Governmental entity" means the State of Nevada or any of its agencies or political subdivisions.*

Sec. 5. *"Provider of health care" has the meaning ascribed to it in NRS 629.031.*

Sec. 5.5. *"Reproductive health services" means medical, surgical, counseling or referral services relating to the human*



1 *reproductive system, including, without limitation, services*
2 *relating to pregnancy, contraception, miscarriage, in-vitro*
3 *fertilization or any procedure or care found by a competent*
4 *medical professional to be appropriate based upon the wishes of a*
5 *patient and in accordance with the laws of this State.*

6 **Sec. 6.** 1. *Except as otherwise provided in this subsection,*
7 *the provisions of sections 2 to 7, inclusive, of this act apply to all*
8 *state and local laws and ordinances and the implementation of*
9 *those laws and ordinances, whether statutory or otherwise, and*
10 *whether enacted before, on or after January 1, 2024. The*
11 *provisions of sections 2 to 7, inclusive, of this act do not apply to*
12 *NRS 442.250 or the implementation of NRS 442.250.*

13 2. *State laws that are enacted on or after January 1, 2024, are*
14 *subject to the provisions of sections 2 to 7, inclusive, of this act*
15 *unless the law explicitly excludes such application by reference to*
16 *this section.*

17 3. *The provisions of sections 2 to 7, inclusive, of this act do*
18 *not:*

19 (a) *Authorize a governmental entity to burden:*

20 (1) *The access of any person to reproductive health*
21 *services, information related to reproductive health services or any*
22 *drug or device related to reproductive health services; or*

23 (2) *The ability of a provider of health care to provide*
24 *reproductive health services or information related to reproductive*
25 *health services or to provide, administer, dispense or prescribe any*
26 *drug or device related to reproductive health services within the*
27 *scope of practice, training and experience of the provider of health*
28 *care.*

29 (b) *Authorize or sanction any sterilization procedure without*
30 *the voluntary and informed consent of the patient.*

31 **Sec. 7.** 1. *Except as otherwise provided in this section, a*
32 *governmental entity shall not enact or implement any limitation or*
33 *requirement that:*

34 (a) *Expressly, effectively, implicitly or, as implemented, singles*
35 *out reproductive health services, drugs or devices related to*
36 *reproductive health services or information related to reproductive*
37 *health services or any providers of health care or facilities that*
38 *provide reproductive health services, drugs or devices related to*
39 *reproductive health services or information related to reproductive*
40 *health services; and*

41 (b) *Substantially burdens:*

42 (1) *The access of a person to reproductive health services,*
43 *drugs or devices related to reproductive health services or*
44 *information related to reproductive health services; or*



(2) *The ability of a provider of health care to provide reproductive health services, drugs or devices related to reproductive health services or information related to reproductive health services within the scope of practice, training and experience of the provider of health care.*

2. *A governmental entity may enact a requirement or limitation described in subsection 1 if the governmental entity demonstrates by clear and convincing evidence that the burden imposed by the requirement or limitation on the activity described in paragraph (b) of subsection 1, as applied to the person or provider of health care who is subject to the burden:*

(a) *Furtheres a compelling interest; and*

(b) *Is the least restrictive means of furthering that interest.*

3. *Notwithstanding any provision of NRS 41.0305 to 41.039, inclusive, but subject to the limitation on damages set forth in NRS 41.035 when applicable, a person or provider of health care who has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief. A court shall award costs and attorney's fees to a person who prevails on such a claim or defense pursuant to this section.*

4. *A court may find that a person is a vexatious litigant if the person makes a claim within the scope of sections 2 to 7, inclusive, of this act which is without merit, fraudulent or otherwise intended to harass or annoy a person. If a court finds that a person is a vexatious litigant pursuant to this subsection, the court may deny standing to that person to bring further claims which allege a violation of this section.*

Sec. 8. NRS 422.27172 is hereby amended to read as follows:

422.27172 1. The Director shall include in the State Plan for Medicaid a requirement that the State pay the nonfederal share of expenditures incurred for:

(a) Up to a 12-month supply, per prescription, of any type of drug for contraception or its therapeutic equivalent which is:

(1) Lawfully prescribed or ordered;

(2) Approved by the Food and Drug Administration; and

(3) Dispensed in accordance with NRS 639.28075;

(b) Any type of device for contraception which is lawfully prescribed or ordered and which has been approved by the Food and Drug Administration;

(c) Self-administered hormonal contraceptives dispensed by a pharmacist pursuant to NRS 639.28078;

(d) Insertion or removal of a device for contraception;



(e) Education and counseling relating to the initiation of the use of contraceptives and any necessary follow-up after initiating such use;

(f) Management of side effects relating to contraception; ~~and~~

(g) Voluntary sterilization ~~for women~~; and

(h) Any clinical services relating to the drugs, devices and services described in paragraphs (a) to (g), inclusive. Such clinical services, include, without limitation, services to monitor the use and effectiveness of contraception.

2. Except as otherwise provided in subsections 4 and 5, to obtain any benefit provided in the Plan pursuant to subsection 1, a person enrolled in Medicaid must not be required to:

(a) Pay a higher deductible, any copayment or coinsurance; or

(b) Be subject to a longer waiting period or any other condition.

3. The Director shall ensure that the provisions of this section are carried out in a manner which complies with the requirements established by the Drug Use Review Board and set forth in the list of preferred prescription drugs established by the Department pursuant to NRS 422.4025.

4. The Plan may require a person enrolled in Medicaid to pay a higher deductible, copayment or coinsurance for a drug for contraception if the person refuses to accept a therapeutic equivalent of the contraceptive drug.

5. For each method of contraception which is approved by the Food and Drug Administration, the Plan must include at least one contraceptive drug or device for which no deductible, copayment or coinsurance may be charged to the person enrolled in Medicaid, but the Plan may charge a deductible, copayment or coinsurance for any other contraceptive drug or device that provides the same method of contraception.

6. *The Plan must:*

(a) Provide for the reimbursement of a provider of health care for providing services described in subsection 1 if the services are within the scope of practice, training and experience of the provider of health care.

(b) Provide coverage for the services described in subsection 1 regardless of whether those services are provided in an inpatient or outpatient setting.

7. *The Director shall include in the State Plan for Medicaid a requirement that the State pay the nonfederal share of expenditures incurred for:*

(a) One-quarter of the costs of any language translation services provided to facilitate the provision of any drug, device or service described in subsection 1 to a recipient of Medicaid who is eligible for the Children's Health Insurance Program; and



(b) One-half of the costs of any language translation services provided to facilitate the provision of any drug, device or service described in subsection 1 to a recipient of Medicaid who is not eligible for the Children's Health Insurance Program.

8. As used in this section:

(a) "Drug Use Review Board" has the meaning ascribed to it in NRS 422.402.

(b) "Therapeutic equivalent" means a drug which:

(1) Contains an identical amount of the same active ingredients in the same dosage and method of administration as another drug;

(2) Is expected to have the same clinical effect when administered to a patient pursuant to a prescription or order as another drug; and

(3) Meets any other criteria required by the Food and Drug Administration for classification as a therapeutic equivalent.

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 20, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.

