

Delaware

AN ACT TO AMEND TITLES 24, 10, 11, AND 18 RELATING TO THE WOMEN'S REPRODUCTIVE HEALTH, Vol. 83, ch. 32
(Approved June 29, 2022, formerly HB 455)

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1702. Definitions.

The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:

(14) "Registration" means the entry of a certificate to practice medicine into the records of the Board of Medical Licensure and Discipline pursuant to the regulations of the Board.

() "Reproductive health services" includes all of the following:

a. "Abortion" as defined in § 1782 of this title.

b. "Termination of pregnancy" as authorized in § 1790 of this title.

c. Emergency contraception that is approved by the Federal Drug Administration and available over-the-counter, with a prescription, or dispensed consistent with the requirements of Chapter 25 of this title.

d. Services relating to pregnancy or the termination of pregnancy including medical, surgical, counseling, or referral services.

(15) "Store and forward transfer" means the transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time.

§ 1731. Unprofessional conduct and inability to practice medicine.

(a) A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by other appropriate action, which may include a requirement that a person who is disciplined must complete specified continuing education courses. The Board shall permanently revoke the certificate to practice medicine in this State of a person who is convicted of a felony sexual offense.

(b) "Unprofessional conduct" includes any of the following acts or omissions:

(19) Suspension or revocation of a certificate to practice medicine or of the authorizing document to practice another profession or occupation regulated under this chapter, or other disciplinary action taken by the regulatory authority in another state or territory. In making its determination, the Board may rely upon decisions made by the appropriate authorities in other states and may not permit a collateral attack on those decisions;

() "Unprofessional conduct" under subsection (b) of this section does not include the performance, recommendation, or provision of any reproductive health service that is lawful in this State even if such performance, recommendation, or provision is for a person who resides in a state where such performance, recommendation, or provision is illegal or considered to be unprofessional conduct or the unauthorized practice of medicine.

§ 1773. Regulation of physician assistants.

(b) (1) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall suspend, revoke, or restrict the license of a physician assistant or take disciplinary action or other action against a physician assistant for engaging in unprofessional conduct as defined in § 1731(b) of this title; or for the inability to render medical acts with reasonable skill or safety to patients because of the physician assistant's physical, mental, or emotional illness or incompetence, including but not limited to: deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol; or for representing himself or herself as a physician, or

for knowingly allowing himself or herself to be represented as a physician; for failing to report in writing to the Board within 30 days of becoming aware of any physician, physician assistant, or healthcare provider who the licensee reasonably believes has engaged in unprofessional conduct as defined in § 1731(b) of this title or is unable to act with reasonable skill or safety to patients because of the physician's, physician assistant's, or other healthcare provider's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol for failing to report child abuse and neglect as required by § 903 of Title 16. The license of any physician assistant who is convicted of a felony sexual offense shall be revoked. Disciplinary action or other action undertaken against a physician assistant must be in accordance with the procedures, including appeal procedures, applicable to disciplinary actions against physicians pursuant to subchapter IV of this chapter, except that a hearing panel for a complaint against a physician assistant consists of 3 unbiased members of the Regulatory Council, the 3 members being 2 physician assistant members and 1 physician or pharmacist member if practicable.

(c) The Board or the Regulatory Council for Physician Assistants may not impose any sanction pursuant to subsection (b) of this section for the performance, recommendation, or provision of any reproductive health service that is lawful in this State even if such performance, recommendation, or provision is for a person who resides in a state where such performance, recommendation, or provision is illegal or considered to be unprofessional conduct or the unauthorized practice of a physician assistant.

§ 1790. Termination of pregnancy before viability not prohibited; termination of pregnancy after viability limited.

(a) Any of the following may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability:

(1) A physician.

(2) A physician assistant with a collaborative agreement with an appropriately trained physician.

(3) A certified nurse midwife or certified nurse practitioner who demonstrates knowledge and competency including successful completion of a training or certification approved by the Board of Nursing.

Section 2. Amend Chapter 19, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1902. Definitions.

() “Reproductive health services” means as defined in § 1702 of this title.

§ 1922. Disciplinary proceedings; appeal.

(d) The Board may not impose any sanction pursuant to subsection (b) of this section for the performance, recommendation, or provision of any reproductive health service that is lawful in this State even if such performance, recommendation, or provision is for a person who resides in a state where such performance, recommendation, or provision is illegal or considered to be unprofessional conduct or the unauthorized practice of nursing.

§ 1935. Advanced Practice Registered Nurse (APRN) — Authority and duties.

(b) An APRN licensed by the Board of Nursing with full-practice authority is authorized within the APRN’s role and population foci to:

(1) Prescribe, procure, administer, store, dispense, and furnish over the counter, legend and controlled substances pursuant to applicable state and federal laws and within the APRN’s role and population foci.

(2) Plan and initiate a therapeutic regimen within the APRN’s role and population foci that includes ordering and prescribing nonpharmacological interventions, including:

a. Medical devices and durable medical equipment, nutrition, blood, and blood products.

b. Diagnostic and supportive services including home health care, hospice, and physical and occupational therapy.

(3) Diagnose, prescribe and institute therapy or referrals of patients within the APRN’s role and population foci to health-care agencies, health-care providers and community resources.

(4) Sign death certificates.

(5) Terminate a human pregnancy in accordance with § 1790 of this title.

Section 3. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3926A. Production of reproductive health services records.

(a) As used in this section, “reproductive health services” means as defined in § 1702 of Title 24.

(b) Notwithstanding any law or court rule to the contrary, in any civil action or proceeding, no health care provider may disclose any of the following unless authorized in writing by the patient, the patient’s guardian, or legal representative:

(1) Any communication made to such health care provider relating to reproductive health services from a patient or anyone acting on behalf of the patient including a legal representative or a parent of the patient.

(2) Any information obtained by personal examination of a patient relating to reproductive health services.

(c) Subsection (b) of this section does not apply under any of the following circumstances:

(1) If the records relate to a patient who is a plaintiff in a complaint pending before a court of competent jurisdiction alleging health care negligence and the request for records has been served on a named defendant(s) in that litigation.

(2) If the records are requested by a health care licensing board and such request is made in connection with an investigation of a complaint to such licensing board and such records are related to such complaint.

(3) If the records are requested by the Department of Justice, a law-enforcement agency, or an agency charged with investigating child abuse, elder abuse, or abuse of a disabled person, incompetent person, or person with an intellectual disability if such request is made in connection with an investigation of abuse and such records are related to such investigation.

(c) Nothing in this section shall be construed to impede the lawful sharing of medical records amongst health care providers as permitted by state or federal law.

§ 3928. Limitations and protections against actions relating to the termination of pregnancy.

(a) A law of another state that authorizes a person to bring a civil action against a person that does any of the following is contrary to the public policy of this State:

(1) Terminates or seeks to terminate a pregnancy.

(2) Performs or induces the termination of pregnancy.

(3) Knowingly engages in conduct that aids or abets the performance or inducement of the termination of pregnancy.

(4) Attempts or intends to engage in the conduct described in paragraphs (a)(1) through (3) of this section.

(b) The State shall not do any of the following:

(1) Apply any law described in subsection (a) of this section to any case or controversy heard in any court.

(2) Issue a summons in a case where prosecution is pending, or where a grand jury investigation has commenced, or is about to commence, for a criminal violation of a law described in subsection (a) of this section unless the acts forming the basis of the prosecution or investigation would constitute a crime in this State.

(3) Issue or enforce a subpoena for information or testimony issued by another state or government relating to a civil action described in subsection (a) of this section.

§ 3929 Recouperation of out-of-state judgments related to reproductive health services.

(a) As used in this section, “reproductive health services” means as defined in § 1702 of Title 24.

(b) When any person has had a judgment entered against such person, in any state, where liability, in whole or in part, is based on the alleged provision, receipt, assistance in receipt or provision, material support for, or any theory of vicarious, joint, several, or conspiracy liability derived therefrom, for reproductive health services that are lawful in this State, such person may recover

damages from any party that brought the action leading to that judgment or has sought to enforce that judgment.

(c) Damages include any of the following:

(1) Just damages created by the action that led to that judgment, including money damages in the amount of the judgment in that other state and costs, expenses and reasonable attorney's fees spent in defending the action that resulted in the entry of a judgment in another state.

(2) Costs, expenses, and reasonable attorney's fees incurred in bringing an action under this section as may be allowed by the court.

(d) This section shall not apply to a judgment entered in another state that is based upon any of the following:

(1) An action founded in tort, contract, or statute, and for which a similar claim would exist under the laws of this State, brought by the patient's legal representative or the patient who received the reproductive health services upon which the original lawsuit was based for any of the following:

a. Damages suffered by the patient.

b. Damages derived from an individual's loss of consortium of the patient.

(2) An action founded in contract, and for which a similar claim exists under the laws of this State, brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the judgement entered in another state.

(3) An action where no part of the acts that formed the basis for liability occurred in this state.

Section 4. Amend Chapter 25, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2506. Persons absent at time of commission of crime.

The Governor of this State may surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 2503 of this title with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise

inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, provided the acts for which extradition is sought would be punishable by the laws of this state, if the consequences claimed to have resulted from those acts in the demanding state had taken effect in this state.

Section 5. Amend Chapter 25, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2535. Adverse actions on policies relating to provision of medical care for termination of pregnancy.

No insurer may, in issuing or renewing an insurance policy to a health care professional or health care organization, increase the premium on such policy or take other adverse action against any health care professional or health care organization who performs or assists in the provision of reproductive health services, as that term is defined in § 1702 of Title 24, that is legal in this State to an individual who is from out of the state. This section applies to a policy that covers any medical professional who prescribes medication for the termination of human pregnancy to an out-of-state patient by means of telehealth.

**Delaware Code Annotated, Title 24 Professions and Occupations (Chs. 1 — 61)
Chapter 17 Medical Practice Act (Subchs. I — XIII), Subchapter VIII Parental Notice of Abortion Act (§§ 1780 — 1789B)**

§ 1780. Short title.

This subchapter shall be known and may be cited as the “Parental Notice of Abortion Act.”

[Del. Code Ann. tit. 24, § 1780 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1781. Legislative purpose and findings.

(a) The General Assembly of the State finds as fact that:

- (1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;
 - (2) The physical, emotional, and psychological consequences of teen pregnancy are serious and can be lasting, particularly when the patient is immature;
 - (3) The capacity to become pregnant and the capacity for mature judgment concerning how to choose among the alternatives for managing that pregnancy are not necessarily related;
 - (4) Parents ordinarily possess information essential to enable a physician to exercise the physician's best medical judgment concerning the child;
 - (5) Parents who are aware that their minor daughter has had an abortion can ensure that she receives adequate medical attention after the abortion;
 - (6) Parental consultation is usually desirable and in the best interest of their minor children and parents ordinarily act in the best interest of their minor children; and
 - (7) Parental involvement legislation enacted in other states has been shown to have significant impact in reducing abortion, birth and pregnancy rates among minors.
- (b) It is the intent of the General Assembly of the State in enacting this parental notice provision to further the important and compelling State interests of:
- (1) Protecting minors against their own immaturity;
 - (2) Fostering the family structure and preserving it as a viable social unit;
 - (3) Protecting the rights of parents to rear children who are members of their household; and
 - (4) Protecting the health and safety of minor children.

[Del. Code Ann. tit. 24, § 1781 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1782. Definitions.

For purposes of this subchapter, the following definitions will apply.

- (1) "Abortion" means the use of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.
- (2) "Coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter.
- (3) "Emancipated minor" means any minor female who is or has been married or has, by court order or otherwise, been freed from the care, custody and control of her parents or any other legal guardian.
- (4) "Licensed mental health professional" means a person licensed under the Division of Professional Regulation of the State as a:

- (a) Psychiatrist;
- (b) Psychologist; or
- (c) Licensed professional counselor of mental health.
- (5) “Medical emergency” means that condition which, on the basis of the physician or other medically authorized person’s good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.
- (6) “Minor” means a female person under the age of 16.

[Del. Code Ann. tit. 24, § 1782 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1783. Notice required.

No physician or other medically authorized person shall perform an abortion upon an unemancipated minor until complying with the following notification provisions:

(1) No physician or other medically authorized person shall perform an abortion upon an unemancipated minor unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has given at least 24 hours actual notice to one or both parents (either custodial or noncustodial), a grandparent, a licensed mental health professional (who shall not be an employee or under contract to an abortion provider except employees or contractors of an acute care hospital) or to the legal guardian of the pregnant minor of the intention to perform the abortion, or unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has received a written statement or oral communication from another physician or medically authorized person, hereinafter called the “referring physician or medically authorized person,” certifying that the referring physician or medically authorized person has given such notice. If the person contacted pursuant to this subsection is not the parent or guardian, the person so contacted must explain to the minor the options available to her include adoption, abortion and full-term pregnancy, and must agree that it is in the best interest of the minor that a waiver of the parental notice requirement be granted. Any licensed mental health professional so contacted shall certify that the professional has performed an assessment of the specific factors and circumstances of the minor subject to the evaluation including but not limited to the age and family circumstances of the minor and the long-term and short-term consequences to the minor of termination or continuation of the pregnancy.

- a. No physician or other abortion provider shall charge a referral fee to a person authorized under this section to receive notice; nor shall a person authorized under this section to receive notice charge a referral fee to a physician or other abortion provider.

b. Nothing in this section shall affect the obligations of a person pursuant to other provisions of this Code to report instances of child abuse to the appropriate government agencies.

(2) A minor may petition the Family Court (“Court”) of any county of this State for a waiver of the notice requirement of this section pursuant to the procedures of § 1784 of this title. A physician who has received a copy of a court order granting a waiver application under § 1784 of this title shall not, at any time, give notice of the minor’s abortion to any person without the minor’s written permission.

[Del. Code Ann. tit. 24, § 1783 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1784. Application for waiver of parental notice requirement; grounds; timeliness of decision; notice of decision; appeals; costs.

(a) The Court shall consider waiving the notice requirement of § 1783 of this title upon the proper application of a minor. The application shall be in writing, signed by the minor, and verified by her oath or affirmation before a person authorized to perform notarial acts. It shall designate:

(1) The minor’s name and residence address;

(2) A mailing address where the Court’s order may be sent and a telephone number where messages for the minor may be left;

(3) That the minor is pregnant;

(4) That the minor desires to obtain an abortion;

(5) Each person for whom the notice requirement is sought to be waived; and

(6) The particular facts and circumstances which indicate that the minor is mature and well-informed enough to make the abortion decision on her own and/or that it is in the best interest of the minor that notification pursuant to § 1783 of this title be waived.

(b) The Court, by a judge, shall grant the written application for a waiver if the facts recited in the application establish that the minor is mature and well-informed enough to make the abortion decision on her own or that it is in the best interest of the minor that notification pursuant to § 1783 of this title be waived. The Court shall presume that married parents not separated and grandparents are complete confidants, such that, on application to waive the notice requirement as to either, grounds to waive the notice requirement as to one parent or grandparent shall constitute grounds to waive the notice requirement as to the spouse thereof.

(c) If the Court fails to rule within 5 calendar days of the time of the filing of the written application, the application shall be deemed granted; in which case, on the sixth day, the Court shall issue an order stating that the application is deemed granted.

(d) The Court shall mail 3 copies of any order to the mailing address identified in the application on the day the order issues, shall attempt to notify the minor by telephone on the day the order

issues, and if so requested, shall make copies of the order available at Court chambers for the minor.

(e) An expedited appeal to the Supreme Court shall be available to any minor whose petition is denied by a judge of the Family Court. Notice of intent to appeal shall be given within 2 days of the receipt of actual notice of the denial of the petition. The Supreme Court shall advise the minor that she has a right to court-appointed counsel and shall provide her with such counsel upon request, at no cost to the minor. The Supreme Court shall expedite proceedings to the extent necessary and appropriate under the circumstances. The Supreme Court shall notify the minor of its decision consistent with subsection (d) of this section.

(f) No court shall assess any fee or cost upon a minor for any proceeding under this section.

(g) Each Court shall provide by rule for the confidentiality of proceedings under this subchapter, but shall continue to initiate investigations into any allegations of past abuse where otherwise appropriate, without disclosing that an application under this subchapter was the source of the information prompting the investigation.

[Del. Code Ann. tit. 24, § 1784 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1785. Short form of affidavit and application for waiver of parental notice requirement. The following shall be sufficient form of affidavit and application for waiver of parental notice requirement under this subchapter:

**IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR (NAME OF COUNTY) COUNTY**

IN THE MATTER) AFFIDAVIT AND
) APPLICATION FOR
(NAME OF MINOR APPLICANT),) WAIVER OF NOTICE
) OF
) ABORTION
STATE OF DELAWARE)
)
_____ COUNTY, SS:)

BE IT REMEMBERED that on this day of , A.D. before me, (name of person authorized to perform notarial acts), personally appeared (name of minor applicant/affiant) who, being by me duly sworn or affirmed, depose and say:

- (1) That the minor applicant resides at (minor’s address);
- (2) That the Court may send its order to (mailing address designated by applicant minor) and leave telephone messages for the applicant minor at (phone number designated by applicant minor);
- (3) That the minor applicant is pregnant;

(4) That the minor applicant desires to obtain an abortion;

(5) That the minor applicant desires that the Court waive the notice requirement of § 1783 of Title 24;

(6) That the minor applicant believes that she is mature and well-informed enough to make the abortion decision on her own and/or it would be in her best interest that a waiver of notice be granted because (state reasons why mature and well-informed enough and/or waiver of notice is in best interest based upon the applicant's age and family circumstances and the long-term and short-term consequences to the applicant of termination or continuation of the pregnancy).

WHEREFORE, this minor applicant intends to submit this affidavit and application for waiver of notice of abortion to the Family Court, and pray that an order be issued waiving the notification requirement of § 1783 of Title 24 as to the following persons: (identify each such person).

Minor applicant/affiant

SWORN TO or affirmed and subscribed before me by the minor applicant/affiant this day of , A.D. .

(Notary)

[Del. Code Ann. tit. 24, § 1785 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1786. Coercion prohibited.

No parent, guardian, or other person shall coerce a minor to undergo an abortion or to continue a pregnancy. Any minor who is threatened with such coercion may apply to a court of competent jurisdiction for relief. The court shall provide the minor with counsel, give the matter expedited consideration, and grant such relief as may be necessary to prevent such coercion. Should a minor be denied the financial support of her parents or legal guardian by reason of her refusal to undergo abortion or to continue a pregnancy, she shall be considered emancipated for purposes of eligibility for assistance benefits.

[Del. Code Ann. tit. 24, § 1786 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1787. Medical emergency exception.

The requirements of § 1783, § 1784 and § 1786 of this title shall not apply when, in the best medical judgment of the physician or other medically authorized person, based on the facts of the case, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

[Del. Code Ann. tit. 24, § 1787 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1788. Counseling to affected persons.

The Division of Prevention and Behavioral Health Services, Department of Services for Children, Youth and Their Families, shall offer counseling and support to any minor who is pregnant and is considering filing or has filed an application under this subchapter, if the minor requests such services. Notwithstanding any contrary statute, no notification of the request for or provision of such services to the minor shall be provided to any person, nor shall the consent of any person thereto be required.

[Del. Code Ann. tit. 24, § 1788 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1789. Penalty and criminal jurisdiction.

(a) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion has been performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of this subchapter, shall be guilty of a class A misdemeanor.

(b) The Superior Court shall have exclusive jurisdiction of violations of this section.

[Del. Code Ann. tit. 24, § 1789 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1789A. Notice and avoidance of liability.

In any prosecution pursuant to § 1789 of this title, the State shall prove beyond a reasonable doubt that the physician (or other medically authorized person) who performed the abortion did not have a good faith belief on that physician's part that actual notice was given by such physician (or other medically authorized person), that physician's agent, or the referring physician or another medically authorized person to a person listed in § 1783(1) of this title as qualified to receive notice. In any civil case, the plaintiff must prove the absence of such a good faith belief by clear and convincing evidence

[Del. Code Ann. tit. 24, § 1789A \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1789B. Civil damages available.

Failure to give notice pursuant to the requirements of this subchapter is prima facie evidence of interference with family relations in appropriate civil actions. The law of this State shall not be construed to preclude the award of punitive damages in any civil action relevant to violations of this subchapter. Nothing in this subchapter shall be construed to limit the common law rights of parents.

[Del. Code Ann. tit. 24, § 1789B \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

**Delaware Code Annotated, Title 24 Professions and Occupations (Chs. 1 — 61)
Chapter 17 Medical Practice Act (Subchs. I — XIII), Subchapter IX Termination of
Human Pregnancy (§§ 1790 — 1795)**

§ 1790. Termination of pregnancy before viability not prohibited; termination of pregnancy after viability limited.

(a) Any of the following may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability:

(1) A physician.

(2) A physician assistant with a collaborative agreement with an appropriately-trained physician.

(3) A certified nurse midwife or certified nurse practitioner who demonstrates knowledge and competency including successful completion of a training or certification approved by the Board of Nursing.

(b) A physician may not terminate, attempt to terminate, or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth after viability, unless, in the good faith medical judgment of the physician, the termination is necessary for the protection of the woman's life or health or in the event of a fetal anomaly for which there is not a reasonable likelihood of the fetus's sustained survival outside the uterus without extraordinary medical measures.

(c) A physician assistant or an advanced practice registered nurse may prescribe medication for the termination of pregnancy including Mifeprex, Mifepristone, and Misoprostol.

[Del. Code Ann. tit. 24, § 1790 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1791. Refusal to perform or submit to medical procedures.

(a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy; and the refusal of any person to perform or participate in these medical procedures shall not be a basis for civil liability to any person, nor a basis for any disciplinary or other recriminatory action against the person.

(b) No hospital, hospital director or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit such procedures shall not be grounds for civil liability to any person, nor a basis for any disciplinary or other recriminatory action against it by the State or any person.

(c) The refusal of any person to submit to an abortion or to give consent shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled, nor shall submission to an abortion or the granting of consent be a condition precedent to the receipt of any public benefits.

[Del. Code Ann. tit. 24, § 1791 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1792. Assistance or participation in an unlawful termination of human pregnancy. No person shall, unless the termination of a human pregnancy has been authorized pursuant to § 1790 of this title:

- (1) Sell or give, or cause to be sold or given, any drug, medicine, preparation, instrument or device for the purpose of causing, inducing or obtaining a termination of such pregnancy; or
- (2) Give advice, counsel or information for the purpose of causing, inducing or obtaining a termination of such pregnancy; or
- (3) Knowingly assist or cause by any means whatsoever the obtaining or performing of a termination of such pregnancy.

[Del. Code Ann. tit. 24, § 1792 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

§ 1795. Live birth following abortion.

- (a) In the event an abortion or an attempted abortion results in the live birth of a child, the person performing or inducing such abortion or attempted abortion and all persons rendering medical care to the child after its birth must exercise that degree of medical skill, care and diligence which would be rendered to a child who is born alive as the result of a natural birth.
- (b) Nothing found in this section shall be deemed to preclude prosecution under any other applicable section of the Delaware Code for knowing or reckless conduct which is detrimental to the life or health of an infant born as a result of a procedure designed to terminate pregnancy. Anyone who knowingly violates this section shall be guilty of a class A misdemeanor.

[Del. Code Ann. tit. 24, § 1795 \(Lexis Advance through 84 Del. Laws, c. 1\)](#)

14 § 532. Supplemental and diagnostic breast examinations.

15 (a) As used in this section:

16 (3) ~~“Carrier” means any entity that provides health insurance under §~~
~~505(3) of this title.~~

17 § 533. Services related to termination of pregnancy.

18 (a) Carriers shall cover services related to the termination of pregnancy up to a
maximum of \$750 per covered

19 individual per year in all health benefit plans delivered or issued for delivery under § 505(3) of this
title.

20 (b) Coverage provided under this section may not be subject to any deductible,
coinsurance, copayment, or any

21 other cost-sharing requirement up to the \$750 maximum.

22 (c) A carrier must provide coverage for the full scope of services permissible
under the law.

23 (d) Coverage provided under this section may not require a referral or prior
authorization as a condition of

24 coverage.

25 (e) If a policy or contract limits an insured’s access to a network of participating
providers for other health-care

26 services, then it may limit access for services related to termination of pregnancy, but the policy or
contract must include in

27 all its provider networks a sufficient number of providers of termination of pregnancy services to
accommodate the direct

28 access needs of their enrollees.

29 (f) Coverage provided under this section must be funded by State resources if
services are not eligible for federal

30 funds. If federal funds are permitted to be used for services under this section, then federal funds
must be used.

31 Section 2. Amend Chapter 1, Title 18 of the Delaware Code by making deletions
as shown by strike through and

32 insertions as shown by underline as follows and redesignating accordingly:

33 § 102. Definitions.

34 As used in this part:

35 (12) “Religious employer” means an employer that is both of the following:

36 a. A church, convention, association of churches, or elementary or secondary school that is controlled,

37 operated, or principally supported by a church or convention or association of churches.

38 b. Qualified as a tax-exempt organization under 26 U.S.C. § 501(c) (3).

39 Section 3. Amend Chapter 33, Title 18 of the Delaware Code by making deletions as shown by strike through and

40 insertions as shown by underline as follows:

41 § 3370G. Services related to termination of pregnancy.

42 (a) As used in this section:

43 (1) “Carrier” means any entity that provides health insurance in this State that is subject to the provisions of

44 this chapter. “Carrier” includes an insurance company, health service corporation, managed care organization, health

45 maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state

46 insurance regulation. “Carrier” also includes any third-party administrator or other entity that adjusts, administers, or

47 settles claims in connection with health benefit plans.

48 (2) “Health benefit plan” means as defined in § 3342A of this title.

49 (b) A carrier shall cover services related to the termination of pregnancy for enrollees.

50 (1) a. Except as provided in paragraphs (b)(1)b. and (b)(1)c. of this section, coverage provided under this

51 section may not be subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement.

52 b. The limitations on cost-sharing in paragraph (b)(1)a. of this section do not apply to a high deductible

53 health plan or a catastrophic health plan if the limitations would cause such plan to lose its status as a high

54 deductible health plan under § 223(c)(2) of the Internal Revenue Code or a catastrophic health plan under §

55 1302(e) of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18022(e).

56 c. Coverage under this section may be limited to \$750 per covered individual per year.

57 (2) A carrier must provide coverage for the full scope of services permissible under the law.

58 (3) Coverage provided under this section may not require a referral or prior authorization as a condition of

59 coverage.

60 (4) If a policy or contract limits an insured's access to a network of participating providers for other health-

61 care services, then it may limit access for services related to termination of pregnancy, but the policy or contract must

62 include in all its provider networks sufficient numbers of providers of termination of pregnancy services to

63 accommodate the direct access needs of their enrollees.

64 (c) This section applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or

65 reissued after December 31, 2025.

66 Section 4. Amend Chapter 35, Title 18 of the Delaware Code by making deletions as shown by strike through and

67 insertions as shown by underline as follows:

68 § 3571AA. Services related to termination of pregnancy.

69 (a) As used in this section:

70 (1) "Carrier" means any entity that provides health insurance in this State that is subject to the provisions of

71 this chapter. “Carrier” includes an insurance company, health service corporation,
managed care organization, health

72 maintenance organization, and any other entity providing a plan of health insurance or
health benefits subject to state

73 insurance regulation. “Carrier” also includes any third-party administrator or other entity
that adjusts, administers, or

74 settles claims in connection with health benefit plans.

75 (2) “Health benefit plan” means as defined in § 3342A of this title.

76 (b) A carrier subject to this section shall cover services related to the termination
of pregnancy for enrollees.

77 (1) a. Except as provided in paragraphs (b)(1)b. and (b)(1)c. of this
section, coverage provided under this

78 section may not be subject to any deductible, coinsurance, copayment, or any other cost-
sharing requirement.

79 b. The limitations on cost-sharing in paragraph (b)(1)a. of this
section do not apply to a high deductible

80 health plan if the limitations would cause the plan to lose its status as a high
deductible health plan. under §

81 223(c)(2) of the Internal Revenue Code.

82 c. Coverage under this section may be limited to \$750 per
covered individual per year.

83 (2) A carrier must provide coverage for the full scope of services
permissible under the law.

84 (3) Coverage provided under this section may not require a referral or
prior authorization as a condition of

85 coverage.

86 (4) If a policy or contract limits an insured’s access to a network of
participating providers for other health-

87 care services, then it may limit access for services related to termination of pregnancy, but
the policy or contract must

88 include in all its provider networks a sufficient number of providers of termination of
pregnancy services to

89 accommodate the direct access needs of their enrollees.

90 (c) (1) A religious employer may request, and the plan must grant, an exclusion
 from the coverage requirement if

91 the coverage requirement conflicts with the religious organization’s bona fide religious beliefs and
 practices. If such

92 employer obtains an exclusion, it must provide its employees reasonable and timely notice of the
 exclusion.

93 (2) An exclusion under this subsection does not authorize the exclusion
 of coverage for services related to the

94 termination of pregnancy that are necessary to preserve the life or health of a covered
 individual.

95 (d) This section applies to all policies, contracts, or certificates issued, renewed,
 modified, altered, amended, or

96 reissued after December 31, 2025.

97 Section 5. Amend Chapter 52, Title 29 of the Delaware Code by making deletions
 as shown by strike through and

98 insertions as shown by underline as follows:

99 § 5217. Services related to the termination of pregnancy.

100 The plan shall provide coverage for services related to the termination of
 pregnancy. Such coverage may not be

101 subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement and must
 cover the full scope of

102 services permissible under the law.

103 Section 6. Sections 1 and 5 of this Act take effect January 1 of the year
 following enactment. Sections 2, 3, and 4

104 of this Act are effective upon enactment

SYNOPSIS

Section 1 amends Title 31 to require all health benefit plans delivered or issued for Medicaid to cover services related to the termination of pregnancy. Coverage provided under this section is not subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement and must cover the full scope of services permissible under the law. It also moves the definition of “carrier” out of individual provisions and into the general definition section for the chapter.

Section 2 adds a definition of “religious employer” to Title 18. Sections 3 and 4 amend Title 18 to require both individual and group health carriers to cover services related to the termination of pregnancy with identical cost-

sharing prohibitions. Certain types of limited coverage plans are exempt from the requirement, and HDHP and catastrophic plans are exempt from the cost-sharing prohibitions if such requirements would cause them to lose their status and treatment under federal law. A religious employer may obtain an exclusion from the carrier if the requirements conflict with the organization's bona fide religious beliefs and practices.

Section 5 amends Title 29 to require coverage for services related to the termination of pregnancy under the state employee health plan. Coverage shall not be subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement and shall apply to the full scope of services permissible under the law.

The changes to Medicaid and the state employee health plan are effective January 1 of the year following enactment. The changes to insurance requirements for private group, blanket, and individual coverage are effective for policies issued, renewed, or altered after December 31, 2025.

This substitute differs from the original bill as follows: (1) It makes several technical corrections; (2) It limits the permissible applications of referral, prior authorization, and in-network requirements to ensure full and timely access to covered services; (3) It requires federal funds to be used for Medicaid services wherever the use of federal funds is allowed and specifies State funds will otherwise be used for covered services; (4) It adds a definition of religious employer and requires a religious employer to cover services when the life or health of the covered individual is at risk; (5) It changes the effective and application dates of the coverage requirements; (6) It caps the benefit at \$750 per year per covered individual for Medicaid; and for private insurance it allows the benefit to be limited to \$750 per covered individual per year.

The bill also makes a technical change by moving the definition of "carrier" out of individual sections of Chapter 5 of Title 29 and into the general definitions section for that chapter.