

117TH CONGRESS
2D SESSION

S. 4723

To ensure the right to provide reproductive health care services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2022

Mrs. MURRAY (for herself, Mr. LUJÁN, Mr. PADILLA, Ms. ROSEN, Mr. BENNET, Mr. MARKEY, Ms. STABENOW, Mr. HEINRICH, Mr. BLUMENTHAL, Mr. WYDEN, Ms. WARREN, Mr. MERKLEY, Ms. SMITH, Mr. VAN HOLLEN, Mr. CARDIN, Mr. MENENDEZ, Ms. KLOBUCHAR, Mr. MURPHY, Mr. REED, Ms. CORTEZ MASTO, Mr. WHITEHOUSE, Mr. SANDERS, Ms. HIRONO, Mr. SCHUMER, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure the right to provide reproductive health care services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Let Doctors Provide
5 Reproductive Health Care Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) HEALTH CARE PROVIDER.—The term
2 “health care provider” means any entity, employee
3 of such entity, or individual (including any physi-
4 cian, certified nurse-midwife, nurse practitioner, and
5 physician assistant) that—

6 (A) is engaged or seeks to engage in the
7 delivery of reproductive health care services;
8 and

9 (B) if required by State law to be licensed,
10 certified, or otherwise authorized to engage in
11 the delivery of such services—

12 (i) is so licensed, certified, or other-
13 wise authorized; or

14 (ii) would be so licensed, certified, or
15 otherwise authorized, but for their past,
16 present, or potential provision of abortion
17 services.

18 (2) REPRODUCTIVE HEALTH CARE SERVICES.—
19 The term “reproductive health care services” means
20 abortion services, contraception services, in vitro fer-
21 tilization, or other reproductive care, education, and
22 counseling that—

23 (A) is provided in a hospital, clinic, physi-
24 cian’s office, or other service site, or provided

1 via telehealth, intended to provide medical, pro-
2 cedural, counseling, or referral services;

3 (B) is provided in a medically accurate
4 manner; and

5 (C) in any way affects commerce over
6 which the United States has jurisdiction.

7 (3) STATE.—The term “State” means each of
8 the 50 States, the District of Columbia, Puerto Rico,
9 each territory and possession of the United States,
10 and any subdivision of a State, including any unit
11 of local government, such as a county, city, town,
12 village, or other general purpose political subdivision
13 of a State.

14 **SEC. 3. RIGHT TO PROVIDE REPRODUCTIVE HEALTH CARE**
15 **SERVICES.**

16 (a) PROHIBITION.—No individual, entity, or State
17 may prevent, restrict, impede, or disadvantage—

18 (1) a health care provider from providing or as-
19 sisting with reproductive health care services lawful
20 in the State in which the services are to be provided;

21 (2) any individual or entity from assisting a
22 health care provider in providing or assisting with
23 reproductive health care services lawful in the State
24 in which services are to be provided; or

1 (3) a health care provider or any individual or
2 entity from providing or assisting a health care pro-
3 vider with reproductive health care services for an
4 individual who does not reside in the State in which
5 the services are to be provided.

6 (b) ENFORCEMENT.—

7 (1) ATTORNEY GENERAL.—The Attorney Gen-
8 eral may commence a civil action on behalf of the
9 United States against any State, or against any gov-
10 ernment official, individual, or entity that enacts,
11 implements, or enforces a limitation or requirement
12 that violates subsection (a). The court shall hold un-
13 lawful and set aside the limitation or requirement if
14 it is in violation of subsection (a).

15 (2) PRIVATE RIGHT OF ACTION.—Any indi-
16 vidual or entity adversely affected by an alleged vio-
17 lation of subsection (a) may commence a civil action
18 against any State that violates this section or
19 against any government official that enacts, imple-
20 ments, or enforces a limitation or requirement that
21 violates subsection (a). The court shall hold unlawful
22 and enjoin the limitation or requirement if it is in
23 violation of subsection (a).

24 (3) HEALTH CARE PROVIDER.—A health care
25 provider may commence an action for relief on its

1 own behalf, on behalf of the provider's staff, and on
2 behalf of the provider's patients who are or may be
3 adversely affected by an alleged violation of sub-
4 section (a).

5 (4) **EQUITABLE RELIEF.**—In any action under
6 this section, the court may award appropriate equi-
7 table relief, including temporary, preliminary, or per-
8 manent injunctive relief.

9 (5) **COSTS.**—In any action under this section,
10 the court shall award costs of litigation, as well as
11 reasonable attorney's fees, to any prevailing plain-
12 tiff. A plaintiff shall not be liable to a defendant for
13 costs or attorney's fees in any nonfrivolous action
14 under this section.

15 (6) **JURISDICTION.**—The district courts of the
16 United States shall have jurisdiction over pro-
17 ceedings under this section and shall exercise the
18 same without regard to whether the party aggrieved
19 shall have exhausted any administrative or other
20 remedies that may be provided for by law.

21 (7) **ABROGATION OF STATE IMMUNITY.**—Nei-
22 ther a State that enforces or maintains, nor a gov-
23 ernment official who is permitted to implement or
24 enforce, any limitation or requirement that violates
25 subsection (a) shall be immune under the Tenth

1 Amendment to the Constitution of the United
2 States, the Eleventh Amendment to the Constitution
3 of the United States, or any other source of law,
4 from an action in a Federal or State court of com-
5 petent jurisdiction challenging that limitation or re-
6 quirement.

7 (8) RIGHT TO REMOVE.—Any party shall have
8 a right to remove an action brought under this sub-
9 section to the district court of the United States for
10 the district and division embracing the place where
11 such action is pending. An order remanding the case
12 to the State court from which it was removed under
13 this paragraph may be immediately reviewable by
14 appeal or otherwise.

15 (c) RULES OF CONSTRUCTION.—

16 (1) IN GENERAL.—Nothing in this section shall
17 be construed to modify, supersede, or otherwise af-
18 fect the authority of any executive branch agency to
19 promulgate regulations or otherwise implement laws.

20 (2) OTHER INDIVIDUALS CONSIDERED AS GOV-
21 ERNMENT OFFICIALS.—Any person who, by oper-
22 ation of a provision of Federal or State law, is per-
23 mitted to implement or enforce a limitation or re-
24 quirement that violates this section shall be consid-
25 ered a government official for purposes of this Act.

1 **SEC. 4. PROHIBITION ON THE USE OF FEDERAL FUNDS.**

2 Notwithstanding any other provision of law, no Fed-
 3 eral funds may be used by a State, including through a
 4 grant, contract, or cooperative agreement, to pursue legal
 5 cases against residents or other individuals or entities, or
 6 to take any other enforcement, disciplinary, or adverse li-
 7 censing proceeding on the basis of such residents or other
 8 individuals or entities providing or assisting with repro-
 9 ductive health care services that are lawful in the State
 10 in which the services are provided.

11 **SEC. 5. REPRODUCTIVE HEALTH CARE LEGAL SERVICES**
 12 **DEFENSE FUND GRANTS.**

13 (a) DEFINITIONS.—In this section:

14 (1) ELIGIBLE ENTITY.—The term “eligible enti-
 15 ty” means an individual, partnership, firm, corpora-
 16 tion, or nonprofit organization that has a specific ex-
 17 pertise in providing legal assistance and is licensed
 18 to practice law.

19 (2) ELIGIBLE PROVIDER.—The term “eligible
 20 provider” means a health care provider that—

21 (A) provides or refers for abortion care
 22 services; and

23 (B) faces legal issues relating to providing
 24 or assisting with reproductive health care serv-
 25 ices.

1 (b) FUNDING.—There is appropriated to the Attor-
2 ney General, out of amounts in the Treasury not otherwise
3 appropriated, \$40,000,000, to remain available until ex-
4 pended, for purposes of awarding grants to eligible entities
5 or consortia of eligible entities to provide legal assistance
6 to eligible providers.

7 (c) APPLICATION.—

8 (1) IN GENERAL.—An eligible entity desiring a
9 grant under this section shall submit an application
10 to the Attorney General at such time, in such man-
11 ner, and containing such information as the Attor-
12 ney General may require.

13 (2) JOINT APPLICATIONS.—Multiple eligible en-
14 tities may submit a joint application that designates
15 a single eligible entity as the lead entity for the pur-
16 poses of receiving and disbursing funds received
17 through a grant under this section.

18 (d) USE OF FUNDS.—An eligible entity may use
19 amounts received under a grant under this section—

20 (1) to provide advice, legal services, or rep-
21 resentation to eligible providers, related to providing
22 or assisting with reproductive health care services
23 under Federal, State, and local law;

24 (2) to educate eligible providers about the
25 rights and obligations of the eligible provider related

1 to providing or assisting with reproductive health
2 care services under Federal, State, and local law;

3 (3) to monitor compliance by a State with Fed-
4 eral, State, and local laws related to providing or as-
5 sisting with reproductive health care services; and

6 (4) for any other activity the Attorney General
7 may reasonably prescribe that is related to providing
8 or assisting with reproductive health care services
9 under Federal, State, and local law.

10 **SEC. 6. REPRODUCTIVE HEALTH CARE SERVICES SECUR-**
11 **RITY GRANTS.**

12 (a) IN GENERAL.—There is appropriated to the Sec-
13 retary of Health and Human Services (referred to in this
14 section as the “Secretary”), out of amounts in the Treas-
15 ury not otherwise appropriated, \$40,000,000, for purposes
16 of awarding grants to eligible providers (as defined in sec-
17 tion 5(a)(2)(A)) for enhanced security for staff and pa-
18 tients of such providers.

19 (b) APPLICATION.—An eligible provider (as defined
20 in section 5(a)) desiring a grant under this section shall
21 submit an application to the Secretary at such time, in
22 such manner, and containing such information as the Sec-
23 retary may require.

1 (c) USE OF FUNDS.—A recipient of a grant under
2 this section may use such grant funds for any of the fol-
3 lowing purposes:

4 (1) Providing physical upgrades to health care
5 facilities to improve security.

6 (2) Providing training in security to health care
7 staff.

8 (3) Improving capabilities to defend against
9 cyberattacks.

10 (4) Ensuring patient and provider data secu-
11 rity.

12 (5) Providing protective services to staff and
13 patients.

14 (6) Any other activity, as the Secretary deter-
15 mines appropriate.

16 **SEC. 7. FAIR LIABILITY INSURANCE.**

17 An issuer of professional liability coverage for health
18 care providers shall not—

19 (1) deny a health care provider professional li-
20 ability coverage because that provider offers, sup-
21 ports, provides, or prescribes lawful reproductive
22 health care services; or

23 (2) sue a health care provider because that pro-
24 vider provides lawful reproductive health care serv-
25 ices.

1 **SEC. 8. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any person, entity, government, or cir-
4 cumstance, is held to be unconstitutional, the remainder
5 of this Act, or the application of such provision to all other
6 persons, entities, governments, or circumstances, shall not
7 be affected thereby.

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