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## SB-487 Abortion: provider protections. (2023-2024)

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### Senate Bill No. 487

#### CHAPTER 261

An act to amend Section 123467.5 of, and to add Section 1375.61 to, the Health and Safety Code, to add Section 10133.641 to the Insurance Code, and to amend Sections 14043.6 and 14123 of the Welfare and Institutions Code, relating to abortion.

[ Approved by Governor September 27, 2023. Filed with Secretary of State September 27, 2023. ]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 487, Atkins. Abortion: provider protections.

Existing law declares another state's law authorizing a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, to be contrary to the public policy of this state, and prohibits the application of that law to a controversy in state court and the enforcement or satisfaction of a civil judgment received under that law.

This bill would specifically include within these provisions, in addition to abortion performers, abortion providers.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

The bill would also prohibit a contract issued, amended, or renewed on or after January 1, 2024, between a health care service plan or health insurer and a health care services provider from containing any term that would result in termination or nonrenewal of the contract or otherwise penalize the provider based on a civil judgment, criminal conviction, or another professional disciplinary action in another state if the judgment, conviction, or professional disciplinary action is solely based on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in California. The bill would also prohibit a health care service plan or health insurer from discriminating against a licensed provider solely on the basis of a civil judgment, criminal conviction, or another professional disciplinary action in another state if the judgment, conviction, or professional disciplinary action is solely based on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in California. Because a willful violation of these provisions by a health care service plan would be a crime, the bill would impose a state-mandated local program.

Existing law requires that the State Department of Public Health automatically suspend as a Medi-Cal provider any individual or entity that has a license, certificate, or other approval to provide health care that is revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing was pending.

The bill would also authorize the department, subject to obtaining necessary federal approvals and the availability of federal financial participation under Medi-Cal, to elect to not suspend an individual or entity as a provider in the Medi-Cal program if the revocation, suspension, or loss of the individual or entity's license, certification, or approval authority in another state or the pending disciplinary hearing during which the individual or entity surrendered the license, certification, or approval authority in another state is based solely on conduct that is not deemed to be unprofessional conduct under California law. The bill would also require the department to seek any necessary federal approvals to implement these provisions.

Under existing law, the Director of Health Care Services is authorized, for purposes of administering the Medi-Cal program, to suspend a provider of service from further participation under the program for specified reasons, including conviction of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Existing law requires the director, upon receipt of written notification from the Secretary of the United States Department of Health and Human Services that a physician or other individual practitioner has been suspended from participation in the Medicare or Medicaid programs, to promptly suspend the practitioner from participation in the Medi-Cal program. Existing law also requires the Director of Health Care Services to notify the administrative director of a suspension of a physician from participation in the Medi-Cal program imposed pursuant to provisions authorizing the director to suspend a provider of service from participation.

This bill would authorize the director, subject to obtaining necessary federal approvals and the availability of federal financial participation under Medi-Cal, to request a waiver under federal law, as permitted, if the provider's suspension from participating in the Medicare or Medicaid program was based solely on conduct that is not deemed to be unprofessional conduct under California law. The bill would also require the department to seek any necessary federal approvals to implement these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 1375.61 is added to the Health and Safety Code, to read:

**1375.61.** (a) A contract issued, amended, or renewed on or after January 1, 2024, between a health care service plan and a provider of health care services shall not contain any term that would result in termination or nonrenewal of the contract or otherwise penalize the provider, based solely on a civil judgment issued in another state, a criminal conviction in another state, or another disciplinary action in another state, if the judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state.

(b) A health care service plan shall not discriminate, with respect to the provision of, or contracts for, professional services, against a licensed provider solely on the basis of a civil judgment issued in another state, a criminal conviction in another state, or another disciplinary action in another state if the judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state.

(c) This section does not apply to a civil judgment, a criminal conviction, or a disciplinary action imposed in another state based upon conduct that would subject a provider to claim, charge, or action under the laws of this state.

**SEC. 2.** Section 123467.5 of the Health and Safety Code is amended to read:

**123467.5.** (a) A law of another state that authorizes a person to bring a civil action against a person or entity that does any of the following is contrary to the public policy of this state:

- (1) Receives or seeks an abortion.
- (2) Performs, provides, or induces an abortion.
- (3) Knowingly engages in conduct that aids or abets the performance, provision, or inducement of an abortion.
- (4) Attempts or intends to engage in the conduct described in paragraphs (1) to (3), inclusive.

(b) The state shall not do either of the following:

- (1) Apply a law described in subdivision (a) to a case or controversy heard in state court.

(2) Enforce or satisfy a civil judgment received through an adjudication under a law described in subdivision (a).

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 3.** Section 10133.641 is added to the Insurance Code, to read:

**10133.641.** (a) A contract issued, amended, or renewed on or after January 1, 2024, between a health insurer and a provider of health care services shall not contain any term that would result in termination or nonrenewal of the contract or otherwise penalize the provider, based solely on a civil judgment issued in another state, a criminal conviction in another state, or another professional disciplinary action in another state, if the judgment, conviction, or professional disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state.

(b) A health insurer shall not discriminate, with respect to the provision of, or contracts for, professional services, against a licensed provider solely on the basis of a civil judgment issued in another state, a criminal conviction in another state, or another professional disciplinary action in another state if the judgment, conviction, or professional disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state.

(c) This section does not apply to a civil judgment, a criminal conviction, or a disciplinary action imposed in another state based upon conduct that would subject a provider to claim, charge, or action under the laws of this state.

(d) The commissioner may enforce this section pursuant to Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision does not impair or restrict the commissioner's enforcement authority pursuant to another provision of this code or the Administrative Procedure Act.

**SEC. 4.** Section 14043.6 of the Welfare and Institutions Code is amended to read:

**14043.6.** (a) Except as provided in subdivision (b), the department shall automatically suspend, as a provider in the Medi-Cal program, any individual who, or any entity that, has a license, certificate, or other approval to provide health care, which is revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on that license, certificate, or approval was pending. The automatic suspension shall be effective on the date that the license, certificate, or approval was revoked, lost, or surrendered.

(b) The department may elect to not suspend an individual or entity as a provider in the Medi-Cal program pursuant to subdivision (a) if the revocation, suspension, or loss of the individual or entity's license, certification, or approval authority in another state or the pending disciplinary hearing during which the individual or entity surrendered the license, certification, or approval authority in another state is based solely on conduct that is not deemed to be unprofessional conduct under California law. The department shall seek any federal approvals it deems necessary to implement this subdivision. This subdivision shall be implemented only to the extent that the department obtains any necessary federal approvals and federal financial participation under the Medi-Cal program is available and not otherwise jeopardized.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific subdivision (b), in whole or in part, by means of plan or county letters, information notices, plan or provider bulletins, or similar written instructions.

**SEC. 5.** Section 14123 of the Welfare and Institutions Code is amended to read:

**14123.** Participation in the Medi-Cal program by a provider of service is subject to suspension in order to protect the health of the recipients and the funds appropriated to carry out this chapter.

(a) (1) The director may suspend a provider of service from further participation under the Medi-Cal program for violation of any provision of this chapter or Chapter 8 (commencing with Section 14200) or any rule or regulation promulgated by the director pursuant to those chapters. The suspension may be for an indefinite or specified period of time and with or without conditions, or may be imposed with the operation of the suspension stayed or probation granted. The director shall suspend a provider of service for conviction of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service.

(2) If the provider of service is a clinic, group, corporation, or other association, conviction of any officer, director, or shareholder with a 10 percent or greater interest in that organization, of a crime described in paragraph (1) shall result in the suspension of that organization and the individual convicted if the director believes that suspension would be in the best interest of the Medi-

Cal program. If the provider of service is a political subdivision of the state or other government agency, the conviction of the person in charge of the facility of a crime described in paragraph (1) may result in the suspension of that facility. The record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of the fact that the conviction occurred. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(3) After conviction, but before the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, the director, if they believe that suspension would be in the best interests of the Medi-Cal program, may order the suspension of a provider of service. When the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence irrespective of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw their plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment, the director shall order the suspension of a provider of service. The suspension shall not take effect earlier than the date of the director's order. Suspension following a conviction is not subject to the proceedings required in subdivision (c). However, the director may grant an informal hearing at the request of the provider of service to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension provided for in this subdivision.

(4) If the provider of service appeals the conviction and the conviction is reversed, the provider may apply for reinstatement to the Medi-Cal program after the conviction is reversed. Notwithstanding Section 14124.6, the application for reinstatement shall not be subject to the one-year waiting period for the filing of a reinstatement petition pursuant to Section 11522 of the Government Code.

(b) (1) Whenever the director receives written notification from the Secretary of the United States Department of Health and Human Services that a physician or other individual practitioner has been suspended from participation in the Medicare or Medicaid programs, the director shall promptly suspend the practitioner from participation in the Medi-Cal program and notify the Administrative Director of the Division of Workers' Compensation of the suspension, in accordance with paragraph (2) of subdivision (e). This automatic suspension is not subject to the proceedings required in subdivision (c). No payment from state or federal funds may be made for any item or service rendered by the practitioner during the period of suspension.

(2) If the practitioner suspended from participation in the Medicare Program or Medicaid program is a participant in the Medi-Cal program, the director may request a waiver as permitted by federal law, including, but not limited to, Section 1320a-7(d)(3)(B)(i) of Title 42 of the United States Code if the suspension was based solely on conduct that is not deemed to be unprofessional conduct under California law. The department shall seek any federal approvals it deems necessary to implement this paragraph. This paragraph shall be implemented only to the extent that the department obtains any necessary federal approvals and federal financial participation under the Medi-Cal program is available and not otherwise jeopardized.

(3) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific paragraph (2), in whole or in part, by means of plan or county letters, information notices, plan or provider bulletins, or similar written instructions.

(c) The proceedings for suspension shall be conducted pursuant to Section 100171 of the Health and Safety Code. The director may temporarily suspend any provider of service prior to any hearing when in their opinion that action is necessary to protect the public welfare or the interests of the Medi-Cal program. The director shall notify the provider of service of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The accusation and all proceedings thereafter shall be in accordance with Section 100171 of the Health and Safety Code. Upon receipt of a notice of defense by the provider, the director shall set the matter for hearing within 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the director has made a final determination on the merits. The temporary suspension shall, however, be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed. This subdivision does not apply where the suspension of a provider is based upon the conviction of any crime involving fraud, abuse of the Medi-Cal program, or suspension from the federal Medicare Program. In those instances, suspension shall be automatic.

(d) (1) The suspension by the director of any provider of service shall preclude the provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation, or other association to the Medi-Cal program for any services or supplies the provider has provided under the program, except for services or supplies provided prior to the suspension. No clinic, group, corporation, or other association which is a provider of service shall submit claims for payment to the Medi-Cal program for any services or supplies provided by a person within the organization who has been suspended or revoked by the director, except for services or supplies provided prior to the suspension.

(2) If the provisions of this chapter, Chapter 8 (commencing with Section 14200), or the regulations promulgated by the director are violated by a provider of service that is a clinic, group, corporation, or other association, the director may suspend the organization and any individual person within the organization who is responsible for the violation.

(e) (1) Notice of the suspension shall be sent by the director to the provider's state licensing, certifying, or registering authority, along with the evidence upon which the suspension was based.

(2) At the same time notice is provided pursuant to paragraph (1), the director shall provide written notification of the suspension to the Administrative Director of the Division of Workers' Compensation, for purposes of Section 139.21 of the Labor Code.

(f) In addition to the bases for suspension contained in subdivisions (a) and (b), the director may suspend a provider of service from further participation under the Medi-Cal dental program for the provision of services that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. The suspension shall be subject to the requirements contained in subdivisions (a) to (e), inclusive.

**SEC. 6.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.