

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 571 (Petrie-Norris) – As Amended March 9, 2023

SUBJECT: Medical malpractice insurance

SUMMARY: Prohibits insurers from refusing to provide professional liability coverage to health care providers or from imposing a surcharge on health care providers, because they offer abortion, contraception, or gender-affirming services, as specified. Specifically, **this bill:**

- 1) Prohibits an insurer from refusing to issue or renew or terminate professional liability insurance for health care providers solely based on any prohibited bases, as provided.
- 2) Prohibits an insurer from increasing premiums, imposing a surcharge or other additional compensation or cost, or increasing a deductible amount or other cost solely based on any prohibited bases, as provided.
- 3) Prohibits an insurer from denying coverage for liability for damages arising from offering, performing, or rendering abortion, contraception, gender-affirming health care, or care related to those health services if the services are within the scope of the insured's license, as provided.
- 4) Provides that prohibited bases for discrimination include all of the following:
 - a) Offering or performing abortion, contraception, gender-affirming health care, or care related to those services that are lawful in this state;
 - b) Where another state's laws create potential or actual liability for the above mentioned services in this state; or
 - c) Legal or administrative action taken in another state against a health care provider concerning abortion, contraception, gender-affirming health care, or care related to those services, results or resulted in a judgment, conviction, or disciplinary action against the provider, if such health care services would be lawful in this state.

EXISTING LAW:

- 1) Establishes the Insurance Commissioner (Commissioner) as a statewide elected official responsible for administering and overseeing the California Department of Insurance (CDI).
- 2) Regulates, generally, classes of insurance, including liability insurance.
- 3) Defines liability insurance to include, but not be limited to, insurance coverage against legal liability arising from the rendering of professional services by an insured licensed pursuant to the provisions of the Medical Practice Act or the Osteopathic Initiative Act. (Insurance (Ins.) Code Section 11580.01)

- 4) Provides that an insurer who provides professional liability insurance for physicians and surgeons shall not increase the premium for such insurance, impose a surcharge with respect to such insurance, or otherwise require additional compensation for such insurance, or institute or increase a deductible amount payable by the insured, because a notice of intention to commence an action for professional negligence has been filed, unless a complaint has been served on the physician or surgeon. (Ins. Code Section 11589)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) *Purpose.* According to the author:

In the months since the Supreme Court’s decision to overturn *Roe v. Wade*, approximately one in three women in this country has lost abortion access. Patients have been forced to travel to neighboring states to receive reproductive care. With more states attempting to ban abortion, restrictions will likely affect more than 36 million women of reproductive age – disproportionately harming youth, low-income individuals, and communities of color.

Ensuring that providers are able to obtain professional liability insurance is a critical element to securing access to services. The Future of Abortion Council and many reproductive rights champions have identified access to professional liability insurance as one of the major obstacles to increasing California’s healthcare workforce providing abortion care and gender-affirming care.

AB 571 prohibits insurers from refusing to issue professional liability insurance to licensed healthcare practitioners solely because they offer abortion, contraception, or gender-affirming services, and additionally prohibits an insurer from charging an arbitrary fee or surcharge to a healthcare provider for offering these services. AB 571 will reduce barriers otherwise capable, licensed, and willing healthcare providers face when trying to offer reproductive health services, and will increase the number of licensed healthcare providers who are able to provide abortion and gender-affirming care in California.

- 2) *Background and discussion.* Limited research suggests that the cost of liability insurance for health care providers (i.e. medical malpractice insurance) can be a barrier to the ability for family physicians to provide low-risk abortion services like first-trimester aspiration (which is provided in an out-patient setting) and medication abortion.¹ However, there is no clear data that was provided to the Committee to suggest that practitioners in California are not providing certain services because of the cost of medical malpractice insurance. Additionally, the CDI does not allow for rates that are excessive, inadequate, or unfairly discriminatory. Therefore, the need for and effect of this bill are unclear.

¹ “*Medical liability insurance as a barrier to the provision of abortion services in family medicine,*” Christine E. Dehlendorf and Kevin Grumbach, *American Journal of Public Health* (October 2008)
<https://ajph.aphapublications.org/doi/10.2105/AJPH.2008.136325>

Nevertheless, this State has made protecting access to abortion and other reproductive services a priority. Gaps in access to reproductive services disproportionately impact low-income individuals and communities of color.² Making it less cost prohibitive for practitioners to provide certain reproductive services could help to increase access.

- 3) *Concerns Related to Commissioner's Authority and Proposition (Prop.) 103.* Prop. 103, passed by the voters in November 1988, requires the "prior approval" of CDI before insurance companies can implement property and casualty insurance rates. Therefore, all insurance rates charged in this state are essentially overseen and approved by CDI and the Commissioner. The limits this bill places on how insurers can charge for medical malpractice insurance does not appear to directly violate Prop. 103, but does closely challenge it. If this bill moves forward, the author may wish to consider amendments that clarify the Commissioner's authority and role to oversee rates, specifically as it relates to the prohibition on insurers from increasing premiums, imposing a surcharge or other additional compensation or cost, or increasing a deductible amount or other cost.
- 4) *Argument in Support.* According to the American College of Obstetricians and Gynecologists District IX, the sponsor of this bill:

The current difficulty some licensed providers have in securing professional liability insurance has had an impact on the number of otherwise eligible practitioners who could offer these desperately needed services. AB 571 addresses this important issue by prohibiting insurers from refusing to issue professional liability insurance to licensed healthcare practitioners solely because they offer abortion, contraception, or gender-affirming services, and additionally prohibits an insurer from charging an arbitrary fee or surcharge solely based on the offering of these services.
- 5) *Argument in Opposition.* The Right to Life League opposes this bill, arguing that "AB 571 favors abortion services over birthing services... [and] creates unequal financial treatment of abortion and childbirth."
- 6) *Double-referral.* This bill has also been referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Reproductive Justice
 American College of Obstetricians and Gynecologists District IX
 American Nurses Association/California
 California Academy of Family Physicians
 California Medical Association
 California Nurse Midwives Association (CNMA)
 Essential Access Health
 If/when/how: Lawyering for Reproductive Justice

² "Beyond the Numbers: Access to Reproductive Healthcare for Low-Income Women in Five Communities," Kaiser Family Foundation (November 14, 2019) <https://www.kff.org/report-section/beyond-the-numbers-access-to-reproductive-health-care-for-low-income-women-in-five-communities-executive-summary/>

NARAL Pro-choice California
National Health Law Program
Nurses for Sexual & Reproductive Health
Planned Parenthood Affiliates of California
Reproductive Health Access Project (RHAP)
San Francisco Black, Jewish and Unity Group
Training in Early Abortion for Comprehensive Health Care
Women's Foundation California

Opposition

Right to Life League

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