

Chapter 7.115 RCW
PROTECTED HEALTH CARE SERVICES

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RCW 7.115.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aggrieved party" means a person against whom an underlying action is commenced based on the aggrieved party's provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services.

(2) "Gender-affirming treatment" means health services or products that support and affirm an individual's gender identity, including social, psychological, behavioral, and medical or surgical interventions. Gender-affirming care services include, but are not limited to, evaluation and treatments for gender dysphoria, gender-affirming hormone therapy, and gender-affirming surgical procedures.

(3) "Protected health care services" means gender-affirming treatment and reproductive health care services that are lawful in the state of Washington.

(4) "Reproductive health care services" means all services, care, or products of a medical, surgical, psychiatric, therapeutic, mental health, behavioral health, diagnostic, preventative, rehabilitative, supportive, counseling, referral, prescribing, or dispensing nature relating to the human reproductive system including, but not limited to, all services, care, and products relating to pregnancy, assisted reproduction, contraception, miscarriage management, or the termination of a pregnancy, including self-managed terminations.

(5) "Underlying action" means a civil, criminal, or administrative proceeding, or any proceeding preliminary thereto. [2023 c 193 s 2.]

Effective date—2023 c 193: See note following RCW 7.115.020.

RCW 7.115.020 Declaration of public policy—Cooperation to enforce other state's laws—Business entities. (1) It is the public policy of Washington to protect the provision of protected health care services that are lawful in the state of Washington by a person duly licensed under the laws of the state of Washington and the provision of insurance coverage for such services regardless of the location of the person receiving the services.

(2) A law of another state that authorizes the imposition of civil or criminal penalties or liability related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington is against the public policy of this state. Accordingly:

(a) A state court, judicial officer, court employee or clerk, or public employee or official shall not issue or effectuate a warrant for the arrest of any person in connection with the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington and a state or local law enforcement agency or officer shall not effectuate such a warrant or knowingly arrest, or knowingly participate in the arrest of, any person for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of such protected health care services.

(b) A state or local agency, commission, board, or department, or any employee thereof, acting in their official capacity, shall not cooperate with or provide information to any individual, agency, commission, board, or department from another state or, to the extent permitted by federal law, to a federal law enforcement agency, for the purpose of enforcing another state's law or an investigation related to another state's law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington.

(c) A state court, judicial officer, court employee or clerk, or attorney shall not issue a subpoena, warrant, court order, or other civil or criminal legal process pursuant to any state law in connection with a proceeding in another state related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington.

(d) (i) A business entity that is incorporated, or has its principal place of business, in Washington that provides electronic communication services as defined in RCW 9.73.260 may not:

(A) Knowingly provide records, information, facilities, or assistance in response to a subpoena, warrant, court order, or other civil or criminal legal process that relates to an investigation into, or the enforcement of, another state's law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington; or

(B) Comply with a subpoena, warrant, court order, or other civil or criminal legal process for records, information, facilities, or assistance related to protected health care services that are lawful in the state of Washington unless the subpoena, warrant, court order, or other civil or criminal legal process includes, or is accompanied by, an attestation, made under penalty of perjury, stating that the subpoena, warrant, court order, or other civil or criminal legal process does not seek documents, information, or testimony relating to an investigation into, or the enforcement of, another state's law that

asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington. Any false attestation submitted under this section is subject to a statutory penalty of \$10,000 per violation. Submission of such attestation subjects the attester to the jurisdiction of the courts of Washington state for any suit, penalty, or damages arising out of a false attestation under this section.

(ii) Any business entity described in (d)(i) of this subsection that is served with a subpoena, warrant, court order, or other civil or criminal legal process described in (d)(i) of this subsection is entitled to rely on the representations made in an attestation described in (d)(i) of this subsection in determining whether the subpoena, warrant, court order, or other civil or criminal legal process relates to an investigation into, or the enforcement of, another state's law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington.

(3) Nothing in this section prohibits the investigation of any criminal activity in this state that may involve the alleged provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services occurring in the state of Washington. Any information relating to any protected health care services provided to a specific individual shall not be shared with an agency, department, or individual from another state for the purpose of investigating or enforcing another state's law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington.

(4) A state court, judicial officer, court employee or clerk, or public employee or official shall not apply to a case or controversy heard in state court any law that is contrary to this state's public policy as described in this section. [2023 c 193 s 13.]

Effective date—2023 c 193: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2023]." [2023 c 193 s 20.]

RCW 7.115.030 Subpoenas—Quashing. Any person in the state of Washington that receives a subpoena from any court, state or federal, in the United States or any of its territories, may, pursuant to the Washington rules of civil procedure, move to modify or quash the subpoena on the grounds that it is inconsistent with the public policy of Washington under this chapter if:

(1) The information sought concerns the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington; and

(2) Liability in the underlying action is based in whole or in part on a cause of action or criminal liability that is not available under Washington law or the law of another state that is substantially similar to Washington law. [2023 c 193 s 15.]

Effective date—2023 c 193: See note following RCW 7.115.020.

RCW 7.115.040 Civil claim for interference with protected health care services. (1)(a) A claim for interference with protected health care services arises when:

(i) Any underlying action is commenced against an aggrieved party in any court, state or federal, in the United States or any of its territories, where liability in the underlying action is based in whole or in part on:

(A) The aggrieved party's provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington;

(B) Conduct occurring in this state; and

(C) A cause of action or criminal liability that is not available under Washington law or the law of another state that is substantially similar to Washington law; or

(ii)(A) Any person in the state of Washington receives a subpoena from any court, state or federal, in the United States or any of its territories, where the information sought concerns the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington; and

(B) Where liability in the underlying action is based in whole or in part on a cause of action or criminal liability that is not available under Washington law or the law of another state that is substantially similar to Washington law.

(b) An underlying action is based on conduct occurring in this state if any part of the acts or omissions that form the basis of liability in the underlying action occur in Washington state, whether or not such acts or omissions are alleged in the action.

(2) A person may maintain a claim for interference with protected health care services under this section if the underlying action is objectively baseless and brought for an improper purpose.

(a) An underlying action is objectively baseless under this section if:

(i) The court in the underlying action lacked jurisdiction over the aggrieved party;

(ii) The underlying action impedes the right to travel; or

(iii) Other factors exist that the court determines demonstrate the objective baselessness of the underlying action.

(b) An underlying action is brought for an improper purpose under this section if:

(i) A purpose of the underlying action is to deter acts or omissions in Washington state that are permitted under the laws of the state of Washington; or

(ii) Other factors exist that the court determines demonstrate the underlying action was brought for an improper purpose.

(3) If a court finds for the aggrieved party in an action asserting a claim for interference with protected health care services authorized by this section, the aggrieved party may recover damages from any party that brought the underlying action. Recoverable damages include:

(a) Actual damages including, but not limited to, costs and reasonable attorneys' fees spent in defending the underlying action;

(b) Costs and reasonable attorneys' fees incurred in bringing an action under this section as may be allowed by the court; and

(c) Statutory damages up to \$10,000 if the underlying action is found to be frivolous.

(4) The provisions of this section do not apply to a judgment entered in another state that is based on an action:

(a) Founded in tort, contract, or statute, and for which a similar claim would exist under the laws of this state, brought by the person who received the protected health care services upon which the original lawsuit was based or the person's authorized legal representative, for damages suffered by the person or damages derived from an individual's loss of consortium of the person;

(b) Founded in contract, and for which a similar claim would exist 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 judgment entered in another state; or

(c) Where no part of the acts that formed the basis for liability occurred in this state. [2023 c 193 s 14.]

Effective date—2023 c 193: See note following RCW 7.115.020.

RCW 7.115.050 Enforcement by attorney general. (1) The attorney general may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court may grant a permanent or temporary injunction, restraining order, writ of mandamus, or any additional orders or judgments necessary to enjoin such persons from violating this chapter. For any action in which the attorney general prevails, the attorney general may recover the costs of the action, including a reasonable attorney's fee.

(2) In furtherance of enforcing the provisions of this chapter and ensuring compliance with the public policy of Washington, the attorney general's office shall maintain a current list of any laws of another state that impose criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in Washington and make such list available to the Washington state patrol. [2023 c 193 s 16.]

Effective date—2023 c 193: See note following RCW 7.115.020.

RCW 7.115.900 Short title. This chapter may be known and cited as the shield law. [2023 c 193 s 1.]

Effective date—2023 c 193: See note following RCW 7.115.020.

RCW 7.115.901 Construction—Full faith and credit. The courts of this state shall give full faith and credit as provided for in the United States Constitution to the public acts, records, and judicial proceedings of another state and nothing in chapter 193, Laws of 2023 shall be construed to undermine the primacy of that clause. [2023 c 193 s 17.]

Effective date—2023 c 193: See note following RCW 7.115.020.