



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 220656-A
(As Amended on Floor 12/1/2022)

Introduced September 15, 2022

Councilmembers Gym, Brooks, Gauthier, Bass and Gilmore Richardson

**Referred to the
Committee on Public Health and Human Services**

AN ORDINANCE

Adding a new Chapter 6-1400 to The Philadelphia Code, entitled "Privacy of Certain Health Information," to establish privacy protections for information related to reproductive healthcare, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. City Council hereby makes the following findings:

- (1) Seeking or providing, or assisting others in the receipt or provision of, reproductive healthcare involves the exercise and enjoyment of the rights secured by the Constitution and laws of Pennsylvania.
- (2) Reproductive healthcare is essential to the health of all Philadelphians, including people who can become pregnant and birthing people, and access to such healthcare without fear of harassment or criminal prosecution enables Philadelphians to make the healthiest choices for themselves and their families.
- (3) Allowing individuals to access reproductive healthcare and make their own decisions about their bodies, becoming pregnant, and healthcare during pregnancies enables birthing people to make the healthiest choices for themselves and their families.
- (4) Birthing people have a right to privacy in making decisions about their pregnancies and bodies.
- (5) All Philadelphians have a right to privacy in making decisions about their reproductive health.

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(6) All individuals in Pennsylvania have a right to informational privacy under the Pennsylvania Constitution, namely the right to control access to, or the dissemination of, personal information about themselves.

(7) The threat of legal actions or harassment over reproductive healthcare has a detrimental effect on the health of all Philadelphians and their ability to make decisions about their bodies. Reproductive healthcare providers are less likely to render services, helpers are less likely to provide assistance to patients seeking reproductive healthcare, and patients are less likely to access care given the monetary, emotional, and physical danger posed by legal actions or harassment against them.

(8) Across the country reproductive healthcare providers, helpers, and patients have faced increasing harassment, which hinders access to reproductive healthcare and results in significant and dangerous consequences to providers, helpers, and patients.

(9) The disclosure of reproductive healthcare information facilitates the harassment of patients who are seeking or have sought reproductive healthcare, and the disclosure of the identities and contact information of reproductive healthcare providers or helpers likewise facilitates those who seek to harass them.

(10) State and local governments have passed hundreds of restrictions on abortions that can, and have, impacted other forms of reproductive healthcare, interfering with the ability of providers and helpers to render, facilitate or assist in reproductive healthcare, and harming patients' ability to obtain reproductive healthcare. These restrictions include laws criminalizing providing, receiving or assisting others in receiving an abortion and laws allowing parties in other jurisdictions to sue reproductive healthcare providers, helpers, and patients suspected of providing, facilitating, or receiving an abortion.

(11) Laws criminalizing reproductive healthcare or permitting legal action by parties outside of Philadelphia for the receipt or provision of reproductive healthcare in Philadelphia that is legal in the City of Philadelphia, including abortion, infringes upon the rights of reproductive healthcare patients, helpers, and providers in Philadelphia and is anticipated to result in worse health outcomes.

(12) Such laws are also likely to deter people who are pregnant or can become pregnant from accessing non-abortion healthcare related to their reproductive health, including gynecological and prenatal care, endangering the health of themselves and their pregnancies.

(13) The ability to sue an individual for seeking or providing reproductive healthcare and attempts to criminalize the provision or receipt of reproductive healthcare in a jurisdiction where such healthcare is legal do not confer any health benefit or make reproductive healthcare safer. These actions will harm Philadelphia patients, helpers, and providers who face threats of criminal penalties or are burdened with the costs of defending themselves against such actions and result in worse health outcomes for those who need reproductive healthcare in Philadelphia.

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(14) The disclosure of reproductive healthcare information can be used to wrongfully facilitate criminal or civil liability for providers, helpers, and patients for reproductive care that is legal in Philadelphia.

(15) The City has an interest in protecting the personal information of patients who receive reproductive healthcare in Philadelphia, as well as providers who provide reproductive healthcare in Philadelphia, and helpers who support patients receiving reproductive healthcare in Philadelphia; and in protecting all such individuals from unlawful harassment or legal action.

(16) Protecting patients who receive reproductive healthcare in Philadelphia, as well as providers who provide reproductive healthcare in Philadelphia, and helpers who support patients receiving reproductive healthcare in Philadelphia will benefit the public health of Philadelphia; particularly Philadelphia birthing persons, babies, and children.

SECTION 2. Title 6 of The Philadelphia Code shall be amended to read as follows:

TITLE 6. HEALTH CODE

* * *

CHAPTER 6-1400. PRIVACY OF CERTAIN HEALTH INFORMATION.

§ 6-1401. Definitions.

The following definitions, and the definitions set forth in Sections 1-103, 6-102, and 6-1501 of the Code shall apply to this Chapter:

(1) Excluded Covered Entity. A covered entity, as defined in 45 Code of Federal Regulations Section 160.103, that has adopted and enforces a process to avoid disclosure of protected reproductive healthcare information in connection with wrongful actions; and in circumstances when the person receiving the protected reproductive healthcare information intends to use it to harass a Philadelphia protected party; in either case unless such disclosure is required by law or court order.

(2) Harass. To engage in activity that would constitute a violation of 18 Pa.C.S. § 2709.

(3) Protected Reproductive Healthcare Information. Any personally identifiable information related to a Philadelphia protected party that a reasonable person knows, or should know, would identify or could be combined with other information to identify a Philadelphia protected party as receiving, seeking, providing or supporting in the receipt, seeking or provision of reproductive healthcare in Philadelphia, including the personal contact information of a Philadelphia protected party or pseudonymized data; unless such information was disseminated

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or obtained under circumstances where no reasonable person would question that the Philadelphia protected party to whom it pertains intended to widely disseminate the information.

(4) Pseudonymized data. Data that has had personal identifiers removed, or replaced with an alias or a pseudonym, but that can be used to identify a Philadelphia protected party in conjunction with other reasonably obtainable information.

§ 6-1402. Protection of Reproductive Healthcare Information.

(1) Confidentiality.

(a) Philadelphia protected parties have a privacy interest in their protected reproductive healthcare information remaining confidential, and in not being harassed or subject to abusive litigation as a result of their involvement with reproductive healthcare.

(2) Prohibition on Disclosure of Protected Reproductive Health Care for Certain Purposes. Except as required by Pennsylvania law, an order from a Pennsylvania court, a federal law, or an order from a federal court, no person shall disclose protected reproductive healthcare information to another person when the disclosing person knows or should know that the person receiving the information intends to use the information to harass a Philadelphia protected party or bring a wrongful action against a Philadelphia protected party.

(3) Limitations.

(a) Subsection (2) of this Section 6-1402 shall not apply to any investigation or proceeding in which the conduct that is subject to potential liability would be subject to civil or criminal liability or a professional sanction under Pennsylvania law if committed in Pennsylvania.

(b) Nothing in this Chapter shall regulate any person in a manner that would conflict with the provisions of the Federal Employee Retirement Income Security Act of 1974 or the Fair Credit Reporting Act.

(c) Nothing in this Chapter is intended to prevent the sharing of protected reproductive health care information for health insurance coverage, payment processing-related purposes, or in circumstances that a healthcare provider or healthcare plan has determined in reasonable good faith is necessary and appropriate for the coordination of care of the individual whose protected reproductive healthcare information is at issue.

(d) Nothing in this Chapter should be construed to in any way limit any other prohibition on the release of protected reproductive healthcare information provided for in any other federal, state, or City law or regulation.

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(e) The provisions of this Chapter shall be interpreted consistently with the United States Constitution and other applicable law and shall not unlawfully prohibit constitutionally protected activity.

(f) This Chapter is intended to protect access to lawful reproductive healthcare in Philadelphia and the privacy of individuals in connection with such reproductive healthcare. This Chapter shall not apply in any circumstance where such application would result in the extraterritorial application of the Chapter in a manner that is not incidental. Nor does this Chapter limit the rights of an aggrieved person to recover damages or seek legal protection under any other applicable law or legal theory.

§ 6-1403. Enforcement and Penalties.

(1) Private Right of Action. Any person aggrieved by a violation of this Chapter may bring a civil action in a court of competent jurisdiction against any person, other than an excluded covered entity, for a violation of this Chapter within two (2) years of learning of such violation and may recover for each such violation:

(a) Actual damages incurred by such person as the result of the violation or \$100, whichever is greater;

(b) reasonable attorney's fees and litigation costs; and

(c) any other legal or equitable relief as the court may determine appropriate to remedy the violation.

(2) City Action. In addition to the imposition of fines and penalties as provided under Section 1-109 of the Code, the Department, or such other office or department as may be designated by the Mayor, may seek injunctive or other equitable relief to prevent continued violations of this Chapter.

(3) Nothing in this Chapter limits the rights of an aggrieved person to recover damages or seek legal protection under any other applicable law or legal theory.

§ 6-1404. Severability.

If any paragraph, subsection, clause, provision, or exception of this Chapter shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Chapter as a whole or any part thereof. It is the intention of City Council that the remainder of this Chapter would have been adopted as if such invalid paragraph, subsection, clause, provision, or exception had not been enacted.

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