

# Abortions

**Policy Number:** BIP001.O  
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[➔ Instructions for Use](#)

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<b>Related Policies</b>
None

## Federal/State Mandated Regulations

### California (CA) Health and Safety Code (HSC), Division 106, Part 2, Chapter 2

#### Article 2, Abortion

#### Section 123420

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=HSC&sectionNum=123420.&article=2.&highlight=true&keyword=abortion](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=123420.&article=2.&highlight=true&keyword=abortion)

(a) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if the employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion.

No such employee or person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his or her refusal to participate in an abortion. No such employee of a hospital, facility, or clinic that does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of the person's participation in the performance of an abortion in other than the hospital, facility, or clinic.

No employer shall refuse to employ any person because of the person's refusal for moral, ethical, or religious reasons to participate in an abortion, unless the person would be assigned in the normal course of business of any hospital, facility, or clinic to work in those parts of the hospital, facility, or clinic where abortion patients are cared for. No provision of this article prohibits any hospital, facility, or clinic that permits the performance of abortions from inquiring whether an employee or prospective employee would advance a moral, ethical, or religious basis for refusal to participate in an abortion before hiring or assigning that person to that part of a hospital, facility, or clinic where abortion patients are cared for.

The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subdivision shall not form the basis of any claim for damages.

- (b) No medical school or other facility for the education or training of physicians, nurses, or other medical personnel shall refuse admission to a person or penalize the person in any way because of the person's unwillingness to participate in the performance of an abortion for moral, ethical, or religious reasons. No hospital, facility, or clinic shall refuse staff privileges to a physician because of the physician's refusal to participate in the performance of abortion for moral, ethical, or religious reasons.
- (c) Nothing in this article shall require a nonprofit hospital or other facility or clinic that is organized or operated by a religious corporation or other religious organization and licensed pursuant to Chapter 1 (commencing with Section

1200) or Chapter 2 (commencing with Section 1250) of Division 2, or any administrative officer, employee, agent, or member of the governing board thereof, to perform or to permit the performance of an abortion in the facility or clinic or to provide abortion services. No such nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act. The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic that does not permit the performance of abortions on its premises shall post notice of that proscription in an area of the facility or clinic that is open to patients and prospective admittees.

(d) This section shall not apply to medical emergency situations and spontaneous abortions.

Any violation of this section is a misdemeanor.

## **Section 123425**

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=HSC&sectionNum=123425.&article=2.&highlight=true&keyword=abortion](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=123425.&article=2.&highlight=true&keyword=abortion)

The refusal of any person to submit to an abortion or surgical sterilization or to give consent therefor shall not be grounds for loss of any privileges or immunities to which the person would otherwise be entitled, nor shall submission to an abortion or surgical sterilization or the granting of consent therefor be a condition precedent to the receipt of any public benefits. The decision of any person to submit to an abortion or surgical sterilization or to give consent therefor shall not be grounds for loss of any privileges or immunities to which the person would otherwise be entitled, nor shall the refusal to submit to an abortion or surgical sterilization or to give consent therefor be a condition precedent to the receipt of any public benefits.

## **Section 123435**

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=123435&lawCode=HSC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=123435&lawCode=HSC)

The rights to medical treatment of an infant prematurely born alive in the course of an abortion shall be the same as the rights of an infant of similar medical status prematurely born spontaneously.

## **Section 123440**

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=123440&lawCode=HSC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=123440&lawCode=HSC)

- (a) It is unlawful for any person to use any aborted product of human conception, other than fetal remains, for any type of scientific or laboratory research or for any other kind of experimentation or study, except to protect or preserve the life and health of the fetus. "Fetal remains," as used in this section, means a lifeless product of conception regardless of the duration of pregnancy. A fetus shall not be deemed to be lifeless for the purposes of this section, unless there is an absence of a discernible heartbeat.
- (b) In addition to any other criminal or civil liability that may be imposed by law, any violation of this section constitutes unprofessional conduct within the meaning of the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

## **Section 123445**

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=123445&lawCode=HSC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=123445&lawCode=HSC)

- (a) Except as provided in subdivision (b), at the conclusion of any scientific or laboratory research or any other kind of experimentation or study upon fetal remains, the fetal remains shall be promptly interred or disposed of by incineration.

Storage of the fetal remains prior to the completion of the research, experimentation, or study shall be in a place not open to the public, and the method of storage shall prevent any deterioration of the fetal remains that would create a health hazard.

- (b) Subdivision (a) shall not apply to public or private educational institutions.

Any violation of this section is a misdemeanor.

## **Article 2.5, Reproductive Privacy Act**

### **Section 123462**

[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=HSC&division=106.&title=&part=2.&chapter=2.&article=2.5](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=106.&title=&part=2.&chapter=2.&article=2.5)

The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care. Accordingly, it is the public policy of the State of California that:

- (a) Every individual has the fundamental right to choose or refuse birth control.
- (b) Every pregnant individual or individual who may become pregnant has the fundamental right to choose to bear a child or to choose to have and to obtain an abortion, except as specifically limited by this article.
- (c) The state shall not deny or interfere with the fundamental right of a pregnant to choose to bear a child or to choose to have and to obtain an abortion, except as specifically permitted by this article.

### **Section 123464**

The following definitions shall apply for purposes of this chapter:

- (a) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- (b) "Pregnancy" means the human reproductive process, beginning with the implantation of an embryo.
- (c) "State" means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.
- (d) "Viability" means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

### **Section 123466**

- (a) The state shall not deny or interfere with a woman's or pregnant person's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman or pregnant person.
- (b) A person shall not be compelled in a state, county, city, or other local criminal, administrative, legislative, or other proceeding to identify or provide information that would identify or that is related to an individual who has sought or obtained an abortion if the information is being requested based on either another state's laws that interfere with a person's rights under subdivision (a) or a foreign penal civil action, as defined in Section 2029.200 of the Code of Civil Procedure.

### **Section 123467**

- (a) Notwithstanding any other law, a person shall not be subject to civil or criminal liability or penalty, or otherwise deprived of their rights under this article, based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome, including miscarriage, stillbirth, or abortion, or perinatal death due to causes that occurred in utero.
- (b) A person who aids or assists a pregnant person in exercising their rights under this article shall not be subject to civil or criminal liability or penalty, or otherwise be deprived of their rights, based solely on their actions to aid or assist a pregnant person in exercising their rights under this article with the pregnant person's voluntary consent.

### **Section 123467.5**

<https://legiscan.com/CA/text/SB487/id/2843226>

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.

- (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.

## **Section 123468**

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=123468.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=123468.&lawCode=HSC)

The performance of an abortion is unauthorized if performed by someone other than the pregnant and if either of the following is true:

- (a) The person performing the abortion is not a health care provider authorized to perform abortion pursuant to Section 2253 of the Business and Professions Code.
- (b) The abortion is performed on a viable fetus, and both of the following are established:
- (1) In the good faith medical judgment of the physician, the fetus was viable.
  - (2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant person.

## **CA HSC, Division 2, Chapter 2.2**

### ***Article 6, Operation and Renewal Requirements and Procedures***

## **Section 1375.61**

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1375.61.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1375.61.&lawCode=HSC)

- (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.

## **Senate Bill (SB) 345 Health Care Services: Legally Protected Health Care Activities**

### ***Chapter 260, Section 13***

## **Section 123468.5**

[Bill Text - SB-345 Health care services: legally protected health care activities](#)

- (a) (1) California law governs in any action in this state, whether civil, administrative, or criminal, against any person who provides, receives, aids or abets in providing or receiving, or attempts to provide or receive, by any means, including telehealth, the health care services described in paragraph (2) if the provider was located in this state or any other state where the care was legal at the time of the challenged conduct.
- (2) Reproductive health care services and gender-affirming health care services, including gender-affirming mental health care services, are subject to paragraph (1).
- (b) "Reproductive health" has the same meaning as set forth in Section 1798.300 of the Health and Safety Code.
- (c) "Gender-affirming health care services" and "gender-affirming mental health care services" have the same meaning as defined in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

## **AB 1954 Health Care Coverage: Reproductive Health Care Services**

### ***Chapter 495, Section 3***

## **Section 1367.31**

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB1954](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1954)

- (a) Every health care service plan contract issued, amended, renewed, or delivered on or after January 1, 2017, shall be prohibited from requiring an enrollee to receive a referral prior to receiving coverage or services for reproductive and sexual health care.
- (b) (1) For the purposes of this section, “reproductive and sexual health care services” are all reproductive and sexual health services described in Sections 6925, 6926, 6927, and 6928 of the Family Code, or Section 121020 of the Health and Safety Code, obtained by a patient.  
 (2) For the purposes of this section, “reproductive and sexual health care services” do not include the services subject to a health care service plan’s referral procedures as required by subdivisions (a) and (b) of Section 1374.16.  
 (3) This section applies whether or not the patient is a minor.
- (c) In implementing this section, a health care service plan may establish reasonable provisions governing utilization protocols for obtaining reproductive and sexual health care services, as provided for in subdivision (a), from health care providers participating in, or contracting with, the plan network, medical group, or independent practice association, provided that these provisions shall be consistent with the intent of this section and shall be those customarily applied to other health care providers, such as primary care physicians and surgeons, to whom the enrollee has direct access, and shall not be more restrictive for the provision of reproductive and sexual health care services. An enrollee shall not be required to obtain prior approval from another physician, another provider, or the health care service plan prior to obtaining direct access to reproductive and sexual health care services. A health care service plan may establish reasonable provisions governing communication with the enrollee’s primary care physician and surgeon regarding the enrollee’s condition, treatment, and any need for followup care.
- (d) This section shall not apply to a health care service plan contract that does not require enrollees to obtain a referral from their primary care physician prior to seeking covered health care services from a specialist.
- (e) A health care service plan shall not impose utilization protocols related to contraceptive drugs, supplies, and devices beyond the provisions outlined in Section 1367.25 of this code or Section 14132 of the Welfare and Institutions Code.
- (f) This section shall not apply to specialized health care service plan contracts or any health care service plan that is governed by Section 14131 of the Welfare and Institutions Code.

## State Market Plan Enhancements

None

## Covered Benefits

**Important Note:** Covered benefits are listed in *Federal/State Mandated Regulations*, *State Market Plan Enhancements*, and *Covered Benefits* sections. Always refer to the *Federal/State Mandated Regulations* and *State Market Plan Enhancements* sections for additional covered services/benefits not listed in this section.

Refer to the member’s Evidence of Coverage (EOC) and Schedule of Benefits (SOB) to determine coverage eligibility.

- Termination of pregnancy; surgically or non-surgically or drug induced.
- Services for the care and treatment of spontaneous abortions (miscarriage)

## Not Covered

Non-medically necessary fetal reduction surgery

## Policy History/Revision Information

Date	Summary of Changes
09/01/2024	<p><b>Federal/State Mandated Regulations</b></p> <ul style="list-style-type: none"> <li>• Removed language pertaining to <i>California Health and Safety Code Section 123450</i></li> <li>• Revised language pertaining to <i>California Health and Safety Code Section 123467.5</i></li> <li>• Added reference link to the <i>California Health and Safety Code Section 123468</i></li> <li>• Added language pertaining to <i>California Health and Safety Code Section 123468.5</i></li> </ul> <p><b>Not Covered</b></p> <ul style="list-style-type: none"> <li>• Updated list of non-covered services; replaced “fetal reduction surgery, except if medically necessary” with “non-medically necessary fetal reduction surgery”</li> </ul>

Date	Summary of Changes
	<b>Supporting Information</b> <ul style="list-style-type: none"> <li>Archived previous policy version BIP001.N</li> </ul>

## Instructions for Use

Covered benefits are listed in three (3) sections: *Federal/State Mandated Regulations*, *State Market Plan Enhancements*, and *Covered Benefits*. All services must be medically necessary. Each benefit plan contains its own specific provisions for coverage, limitations, and exclusions as stated in the member's Evidence of Coverage (EOC)/Schedule of Benefits (SOB). If there is a discrepancy between this policy and the member's EOC/SOB, the member's EOC/SOB provision will govern.