

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 254 (Bauer-Kahan) – As Amended April 17, 2023

SUBJECT: Confidentiality of Medical Information Act: reproductive or sexual health application information

SYNOPSIS

This is one of three bills being heard in the Committee today that directly seeks to further California’s goal of protecting the intimate, reproductive privacy rights of California residents and those from other jurisdictions who may have come to California to seek abortion care.

This bill seeks to ensure that commercial websites and applications that collect consumer reproductive health data are subject to California’s medical privacy laws. According to the author, there remain serious loopholes in existing protections for digital health information—loopholes that are being increasingly exploited by a murky industry of digital care. In addition, lax data security of apps that track menstrual cycles or pregnancy means this data could be easily acquired and used as evidence to criminalize pregnancy loss, abortion, or gender-affirming care. Specifically, this bill revises the Confidentiality of Medical Information Act (CMIA) to include reproductive or sexual health application information in the definition of “medical information.” In addition it deems any business that offers a reproductive or sexual health digital service to a consumer to be a provider of health care under the CMIA.

With the fall of Roe v. Wade, a number of states moved quickly to restrict abortions and punish those who are suspected of helping people obtain them. Oklahoma, for example, passed the nation’s strictest abortion ban in order to immediately end the ability of people in the state to obtain the procedure. The state quickly followed the ban by making the providing of an abortion a felony punishable by a fine of up to \$100,000 and up to 10 years in prison.

Given the actions of so many states to not only ban abortion and gender affirming care within their borders, but to criminalize and punish people who assist someone in obtaining that care, whether within the state or in traveling to another state, taking additional steps to secure personal information related to a person’s reproductive health that could conceivably be used as evidence that someone has received that care is of the utmost importance.

As the examples above demonstrate, it is becoming increasingly dangerous for people to seek abortion services in many parts of the country. This bill is a sensible measure that closes a loophole in the CMIA and furthers California’s over-fifty-year commitment to being a reproductive freedom state. This bill is supported by the American Civil Liberties Union, the California Federation of Teachers, and Oakland Privacy, among others.

This bill passed the Assembly Health Committee on a bipartisan 13-0-2 vote.

SUMMARY: Revises the Confidentiality of Medical Information Act (CMIA) to include reproductive health application information, as defined, in the statutory definition of “medical information.” Deems a business that offers a reproductive or sexual health digital service to a consumer for the purpose of allowing the individual to manage the individual’s information, or

for the individual's diagnosis, treatment, or management of a medical condition, to be a provider of health care, as specified. Specifically, **this bill**:

- 1) Defines the following terms:
 - a) "Medical information" includes reproductive or sexual health application information.
 - b) "Reproductive or sexual health application information" means information related to a consumer's reproductive health, menstrual cycle, fertility, pregnancy, miscarriage, pregnancy termination, plans to conceive, or type of sexual activity collected by a reproductive or sexual health digital service, including, but not limited to, information from which one can infer someone's pregnancy status, menstrual cycle, fertility, hormone levels, birth control use, sexual activity or gender identity.
 - c) "Reproductive or sexual health digital service" means a mobile-based application or internet website that collects reproductive or sexual health application information from a consumer, markets itself as facilitating reproductive or sexual health services to a consumer, and uses the information to facilitate reproductive or sexual health services to a consumer.
- 2) Deems any business that offers a reproductive or sexual health digital service to a consumer for the purpose of allowing the individual to manage the individual's information, or for the individual's diagnosis, treatment, or management of a medical condition, to be a provider of health care under the CMIA. Clarifies that this bill is not to be construed as making a business specified in this bill to be a provider of health care for purposes of any law other than this bill.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 2) Provides that the state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. (Cal. Const., art. I, § 1.1.)
- 3) Establishes under federal law, the Health Information Portability and Accountability Act of 1996 (HIPAA), which sets standards for the privacy of individually identifiable health information and security standards for the protection of electronic protected health information, including, through regulations, that a HIPAA-covered entity may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except under specified circumstances. Provides that if HIPAA's provisions conflict with state law, the provision that is most protective of patient privacy prevails. (42 U.S.C. § 1320d, et seq.; 45 Code Fed. Regs. Part 164.)
- 4) Prohibits, under the state CMIA, a health care provider, a health care service plan, a contractor, a corporation and its subsidiaries and affiliates, or any business that offers software or hardware to consumers, including a mobile application or other related device, as defined, from intentionally sharing, selling, using for marketing, or otherwise using any

medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. States that a violation of these provisions that results in economic loss or personal injury to a patient is a crime. (Civ. Code § 56, et. seq.)

- 5) Defines, for purposes of the CMIA, medical information to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental health app information, mental or physical condition, or treatment. (Civ. Code § 56.05(i).)
- 6) Prohibits health care providers, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civ. Code § 56.10(a).)
- 7) Deems any business organized for the purpose of maintaining medical information in order to make the information available to an individual or to a provider of health care at the request of the individual or the provider of health care, for purposes of allowing the individual to manage their information, or for the diagnosis and treatment of the individual, to be a health care provider subject to the requirements of the CMIA. (Civ. Code § 56.06(a).)
- 8) Deems any business that offers software or hardware to consumers, including a mobile application or other related device that is designed to maintain medical information in order to make the information available to an individual or a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to manage their information, or for the diagnosis, treatment, or management of a medical condition of the individual, to be deemed to be a health care provider subject to the requirements of the CMIA. (Civ. Code § 56.06(b).)
- 9) Deems any business that offers a mental health digital service to a consumer for the purpose of allowing the individual to manage the individual's information, or for the diagnosis, treatment, or management of a medical condition of the individual, to be deemed to be a health care provider. (Civ. Code § 56.06(d).)
- 10) Establishes the California Consumer Privacy Act (CCPA). (Civ. Code §§ 1798.100-1798.199.100.)
- 11) Provides that the CCPA applies to any for-profit entity that collects consumers' personal information, does business in California, and meets one or more of the following criteria:
 - a) It had gross annual revenue of over \$25 million in the previous calendar year.
 - b) It buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually.
 - c) It derives 50% or more of its annual revenue from selling California residents' personal information. (Civ. Code § 1798.140(d).)

- 12) Defines “consumer” as a natural person who is a California resident. (Civ. Code § 1798.140(i).)
- 13) Provides a consumer, subject to exemptions and qualifications, various rights, including the following:
 - a) The right to know the business or commercial purpose for collecting, selling, or sharing personal information and the categories of persons to whom the business discloses personal information. (Civ. Code § 1798.110.)
 - b) The right to request that a business disclose the specific pieces of information the business has collected about the consumer, and the categories of third parties to whom the personal information was disclosed. (Civ. Code § 1798.110.)
 - c) The right to request deletion of personal information that a business has collected from the consumer. (Civ. Code § 1798.105.)
 - d) The right to opt-out of the sale of the consumer’s personal information if the consumer is over 16 years of age. (Sale of the personal information of a consumer below the age of 16 is barred unless the minor opts-in to its sale.) (Civ. Code § 1798.120.)
 - e) The right to equal service and price, despite the consumer’s exercise of any of these rights, unless the difference in price is reasonably related to the value of the customer’s data. (Civ. Code § 1798.125.)
- 14) Defines “personal information” as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes such information as:
 - a) Name, alias, postal address, unique personal identifier, online identifier, IP address, email address, account name, social security number, driver’s license number, passport number, or other identifier.
 - b) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
 - c) Biometric information.
 - d) Internet activity information, including browsing history and search history.
 - e) Geolocation data.
 - f) Professional or employment-related information. (Civ. Code § 1798.140(v).)
- 15) Establishes the Reproductive Privacy Act, which provides that 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 individual has the fundamental right to choose to bear a child or to choose to obtain an abortion, with specified limited exceptions; and,
- c) The state shall not deny or interfere with a person's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted. (Health & Saf. Code § 123462.)

16) Provides that the state may not deny or interfere with a 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 person. (Health. & Saf. Code § 123466 (a).)

17) States that 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. (Health & Saf. Code § 123466(b).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS:

1) **The need for this bill.** This bill is modeled after the author's successful AB 2089 (Bauer-Kahan, Ch. 690, Stats. 2022), which amended the CMIA to include mental health application information. Similarly, this bill seeks to ensure that commercial websites and applications that collect consumer reproductive health data are subject to California's medical privacy laws. According to the author, there remain serious loopholes in existing protections for digital health information—loopholes that are being increasingly exploited by a murky industry of digital care. In addition, lax data security of apps that track menstrual cycles or pregnancy means this data could be easily acquired and used as evidence to criminalize pregnancy loss, abortion, or gender-affirming care.

For menstrual cycle tracking, the first question users must often answer before even entering the interface is "Are you pregnant?" Other questions include those about birth control methods, symptoms, family history, lifestyle, and other highly sensitive data. According to the author, however, these apps offer little in the way of protection for that data, with obscure privacy policies and little meaningful regulation. A *Consumer Reports* study found that none of the leading menstrual tracking apps offer transparency about who they share data with. The majority of these apps also use 3rd party trackers. The data that users provide to apps can be sold, and can be used in criminalizing these individuals for the care they receive or predatory advertising based on a diagnosis. In addition to the legal risks, being tracked across the internet with ads about this sensitive information can be incredibly stigmatizing and dissuades people from getting care. (Catherine Roberts, *These Period Tracker Apps Say They Put Privacy First. Here's What We Found*. Consumer Reports (May 25, 2022, updated Aug 30, 2022), available at <https://www.consumerreports.org/health-privacy/period-tracker-apps-privacy-a2278134145/>.)

As cybersecurity experts point out, prior to *Roe v. Wade* being overturned in 2022, having all kinds of information shared about you without your knowledge may have felt mildly creepy and annoying, but not necessarily threatening. However, in light of increased abortion restrictions in many states, the sharing of information with third parties on the internet can be dangerous. With abortion now illegal in a number of states, prosecutors may now be able to use data from period tracking apps (or other online data) to show that someone was getting a period at one point, then was not getting it, and later resumed getting a period as evidence suggesting that they may have had an abortion. (*Ibid.*)

2) **Author's statement.** According to the author:

Reproductive and sexual health information is clearly health information, and is particularly sensitive given the criminalization of almost any form of ending a pregnancy. Our current data protections do not speak to the sensitivity of this data. Apps and websites that explicitly market themselves as providing menstrual and pregnancy tracking are creating an expectation of healthcare and the associated privacy of information. Adding CMIA protections for these services is a critical and common sense step to ensure a sufficient baseline of privacy to protect consumers.

3) **Post-Dobbs access to reproductive healthcare is being restricted across the nation.** *Roe v. Wade* (1973) 410 U.S. 113 was the landmark U.S. Supreme Court decision that held the implied constitutional right to privacy extended to a person's decision whether to terminate a pregnancy, while allowing that some state regulation of abortion access could be permissible. *Roe* has been one of the most debated of all U.S. Supreme Court decisions, and its application and validity have been challenged numerous times, but its fundamental holding had continuously been upheld by the Court until June 2022. On June 24, 2022 the Court published its official opinion in *Dobbs* and voted 6-3 to overturn the holding in *Roe*. (*Dobbs v. Jackson Women's Health* (2022) 597 U.S. ___ (142 S.Ct. 2228), available at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.)

The case involved a Mississippi law enacted in 2018 that banned most abortions after the first 15 weeks of pregnancy, which is before what is generally accepted as the period of viability. (*See* Miss. Code Ann. § 41-41-191.) The majority opinion in *Dobbs* upholds the Mississippi law, finding that, contrary to almost 50 years of precedent, there is no fundamental constitutional right to have an abortion. The opinion further provides that states should be allowed to decide how to regulate abortion and that a strong presumption of validity should be afforded to those state laws.

The *Roe* decision was the foundation for allowing people the ability to control their reproductive lives because it established a federal constitutional right for anyone who could become pregnant in the United States to decide when and if to have children and prevented the criminalization of having an abortion or providing an abortion. Prior to *Roe*, legal abortion did exist in some states but the choices available to those seeking to terminate an unwanted pregnancy were limited and disproportionately affected those who were younger, lower income, and members of communities of color. In the wake of the *Dobbs* decision it is very probable that abortion will be banned or severely restricted in 24 states, with 12 states already having near total abortion bans in effect. (Elizabeth Nash and Isabel Guarnieri, *Six Months Post-Roe, 24 US States Have Banned Abortion or Are Likely to Do So: A Roundup*. Guttmacher Institute (Jan. 10, 2023), available at <https://www.guttmacher.org/2023/01/six-months-post-roe-24-us-states-have-banned-abortion-or-are-likely-to-do-so-roundup>.)

With the announcement of the *Dobbs* decision, a number of states moved quickly to restrict abortions and punish those who are suspected of helping people obtain them. Oklahoma, for example, passed the nation's strictest abortion ban in order to immediately end the ability of people in the state to obtain the procedure. The ban allows an abortion in the case of rape or incest, if the pregnant person reports the crime to law enforcement. In addition, the ban authorizes doctors to remove a "dead unborn child caused by spontaneous abortion," or miscarriage, or to remove an ectopic pregnancy, a potentially life-threatening emergency that occurs when a fertilized egg implants outside the uterus, often in a fallopian tube and early in pregnancy. A second Oklahoma bill went into effect in August 2022, made performing an abortion a felony, with a punishment of up to 10 years in prison and a fine of up to \$100,000. [Associated Press, *Oklahoma governor signs the nation's strictest abortion ban*, NPR, (May 26, 2022), available at <https://www.npr.org/2022/05/26/1101428347/oklahoma-governor-signs-the-nations-strictest-abortion-ban>.)

Along with an existing ban on abortions after six weeks, earlier this month, the Governor of Idaho signed a bill into law that makes it illegal for an adult to help a minor get an abortion without parental consent. This law is the first of its kind in the nation, creating the new crime of "abortion trafficking" by barring adults from obtaining abortion pills for a minor or "recruiting, harboring or transporting the pregnant minor" without parental consent. Anyone convicted faces two to five years in prison and can be sued by the minor's parent. However, parents who rape their child will not be able to sue, but the abortion trafficking criminal penalties will still apply. According to a recent Associate Press article in *The Guardian*, in order to sidestep violating a constitutional right to travel between states, the law makes illegal only the in-state portion of the trip to an out-of-state abortion provider. (Associated Press, *Idaho governor signs law banning adults from helping minors get abortions*. *The Guardian* (April 6, 2023), available at <https://www.theguardian.com/us-news/2023/apr/06/idaho-abortion-trafficking-law-governor>.)

4) **California is a reproductive freedom state.** The California Supreme Court held in 1969 that the state constitution's implied right to privacy extends to an individual's decision about whether or not to have an abortion. (*People v. Belous* (1969) 71 Cal. 2d 954.) This was the first time an individual's right to abortion was upheld in a court and came before the *Roe* decision. In 1972, the California voters passed a constitutional amendment that explicitly provided for the right to privacy in the state constitution. (Prop. 11, Nov. 7, 1972 gen. elec.) California statutory law provides, under the Reproductive Privacy Act, that the Legislature finds and declares 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; therefore, it is the public policy of the State of California that every individual has the fundamental right to choose or refuse birth control, and every individual has the fundamental right to choose to bear a child or to choose to obtain an abortion. (Health & Saf. Code § 123462.) In 2019, Governor Newsom issued a proclamation reaffirming California's commitment to making reproductive freedom a fundamental right in response to the numerous attacks on reproductive rights across the nation. (California Proclamation on Reproductive Freedom (May 31, 2019), available at <https://www.gov.ca.gov/wp-content/uploads/2019/05/Proclamation-on-Reproductive-Freedom.pdf>.)

In September 2021, over 40 organizations came together to form the California Future Abortion Council (CA FAB) to identify barriers to accessing abortion services and to recommend policy proposals to support equitable and affordable access for not only Californians, but all who seek care in this state. CA FAB issued its first report in December 2021, which included 45 policy

recommendations to protect, strengthen, and expand abortion access in California. (California Future of Abortion Council, *Recommendations to Protect, Strengthen, and Expand Abortion Care in California* (Dec. 2021), available at

https://www.cafabcouncil.org/files/ugd/ddc900_0beac0c75cb54445a230168863566b55.pdf.]

In response to the *Dobbs* decision and CA FAB's report, California enacted a comprehensive package of legislation that protects the rights of patients seeking abortion in the state and those supporting them. Additionally, the voters overwhelmingly approved Proposition 1 (Nov. 8, 2022 gen. elec.), and enacted an express constitutional right in the state constitution that prohibits the state from interfering with an individual's reproductive freedom in their most intimate decisions.

Last year, several bills were enacted to further protect reproductive rights in California, among them:

1. AB 1242 (Bauer-Kahan, Ch. 627, Stats. 2022) protects reproductive digital information handled by companies incorporated or headquartered in California and prevents the arrest of individuals or the disclosure by law enforcement of information in an investigation related to any abortion that is legal in California.
2. AB 1666 (Bauer-Kahan, Ch. 42, Stats. 2022) declares that a law of another state that authorizes a person to bring 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, is contrary to the public policy of this state.
3. AB 2091 (Bonta, Ch. 628, Stats. 2022) prohibits a provider of health care, health care service plan, or contractor from releasing medical information related to an individual seeking or obtaining an abortion in response to a subpoena or request if that subpoena or request is based on either another state's laws that interfere with a person's rights set forth in the Reproductive Privacy Act and prohibits the issuance of a subpoena, from the Superior Court or an attorney licensed in California, based on a civil action authorized by the law of a state other than this state in which the sole purpose is to punish an offense against the public justice of that state.
4. AB 2223 (Wicks, Ch. 629, Stats. 2022) prohibits a person from being criminally or civilly liable for miscarriage, stillbirth, abortion, or perinatal death due to causes that occurred in utero.

5) **Analysis of the bill.** As discussed above, California has taken and continues to take steps to continue to be a reproductive freedom state, as it has been since 1969, and in the *post-Roe* era, to become an abortion sanctuary state. Given the actions of so many states to not only ban abortion within their borders, but to criminalize and punish people who assist someone in obtaining an abortion, whether within the state or in traveling to another state, taking additional steps to secure personal information related to a person's reproductive health that could conceivably be used as evidence that someone has obtained an abortion or gender affirming care is of the utmost importance. In keeping with the Legislature and the Governor's commitment to insuring that the intimate, reproductive privacy rights of people traveling to or temporarily living in California is protected, whether someone is receiving reproductive health services through a traditional healthcare provider or system or through an online application, any information collected should be protected under the CMIA. This is a sensible measure that closes a loophole in the law and adds critical protections for people seeking abortions, gender-affirming care, or information on

their reproductive health that may inadvertently provide evidence that they have received care that has been deemed illegal in another state.

6) **Related legislation.** In the current session, AB 352 (Bauer-Kahan) would require specified businesses that electronically store or maintain medical information on the provision of sensitive services on behalf of a provider of health care, health care service plan, pharmaceutical company, contractor, or employer to develop capabilities, policies, and procedures, on or before July 1, 2024, to enable certain security features, including limiting user access privileges and segregating medical information related to sensitive services, as specified. That bill is currently pending before this Committee.

In the current session, AB 793 (Bonta) would prohibit a government entity from seeking or obtaining information from a reverse-location demand or a reverse-keyword demand, and prohibits any person or government entity from complying with a reverse-location demand or a reverse-keyword demand. That bill is currently pending before the Assembly Appropriations Committee.

In the current session, AB 1194 (Wendy Carillo) would, if the consumer's personal information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including, but not limited to, abortion services, require a business to comply with the obligations imposed by the CPRA. It would also specify that a consumer accessing, procuring, or searching for those services does not constitute a natural person being at risk or danger of death or serious physical injury. That bill is currently pending before this Committee.

AB 2089 (Bauer-Kahan, Ch. 690, Stats. 2022) amended the CMIA to include mental health application information. The bill also defined "mental health application information" as information related to a consumer's inferred or diagnosed mental health or substance use disorder, as defined in existing law, collected by a mental health digital service; and "mental health digital service" as a mobile-based application or internet website that collects mental health application information from a consumer, markets itself as facilitating mental health services to a consumer, and uses the information to facilitate mental health services to a consumer. The bill deemed any business that offers a mental health digital service to a consumer for the purpose of allowing the individual to manage the individual's information, or for the diagnosis, treatment, or management of a medical condition of the individual, to be a health care provider, as specified. Finally, the bill required any business that offers a mental health digital service to provide to the health care provider information regarding how to find data breaches reported, as specified, on the Attorney General's website.

AB 1184 (Chiu, Ch. 190, Stats. 2021) revised and recasted provisions to require a health care service plan (health plan) or health insurer, effective July 1, 2022, to accommodate requests for confidential communication of medical information regardless of whether there is a situation involving sensitive services or a situation in which disclosure would endanger the individual. The bill also prohibited a health plan or health insurer from requiring a "protected individual," as defined, to obtain the policyholder's, primary subscriber's, or other enrollee or insured's authorization to receive health care services or to submit a claim, if the protected individual has the right to consent to care. The bill required the health plan or health insurer to direct all communications regarding a protected individual's receipt of sensitive health care services directly to the protected individual, and prohibited the disclosure of that information to the

policyholder, primary subscriber, or any plan enrollees or insureds without the authorization of the protected individual. Finally, the bill expanded the definition of “sensitive services” to identify all health care services related to mental health, reproductive health, sexually transmitted infections, substance use disorder, transgender health, including gender affirming care, and intimate partner violence, and includes services, as specified.

AB 2167 (Chau, 2018) would have amended CMIA to include within the definition of medical information, any information in possession of, or derived from, a digital health feedback system. AB 2167 would have required manufacturers or operators that sell devices or applications that may be used as part of these digital health feedback systems to equip them with reasonable security features, as specified. AB 2167 died on the Senate Floor.

SB 1121 (Dodd, Ch. 735, Stats. 2018) modified the CCPA, by requiring a business that collects personal information about a consumer to disclose the consumer’s right to delete personal information in a form that is reasonably accessible to consumers.

AB 375 (Chau, Ch. 55, Stats. 2018) enacted the CCPA, which grants a consumer a right to request a business to disclose the categories and specific pieces of personal information that it collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling the information, and the categories of third parties with which the information is shared.

ARGUMENTS IN SUPPORT:

The ACLU writes in support of the bill:

Current privacy laws do not adequately protect the sensitive information collected by reproductive or sexual health apps. In California, patient privacy is protected by the Confidentiality of Medical Information Act (CMIA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), neither of which contemplate personal health information generated by technology outside the traditional care setting. Combined, these two laws only protect health information that is generated by healthcare providers, insurers and health plans, pharmaceutical companies, healthcare clearinghouses and businesses organized for the purpose of maintaining medical information. The information created by new health technologies, such as reproductive or sexual health apps, do not fall cleanly into this rubric. While the California Consumer Privacy Act (CCPA) applies to information collected by reproductive or sexual health apps, the law does not protect consumer data to the same extent as the medical privacy laws, creating uneven privacy protections for health information collected by new health technology versus data created by providers. For example, whereas CCPA permits data sharing but requires access, deletion, and limits on the sale of data to third parties upon request, CMIA and HIPAA prohibit most cases of sharing at all.

The California Federation of Teachers (CFT) writes in support of the bill:

While it is empowering to have modern tools to get a better understanding of reproductive and sexual health, using these tools should not come at the expense of giving up privacy rights and being required to surrender sensitive health information. Furthermore, reproductive and sexual health digital products and service providers collect and share a lot

of sensitive information and consumers don't know and often can't control who is accessing this data.

This bill creates continuous data protection across health platforms for abortion and gender affirming care. With AB 254, users can be assured that sensitive digital information about their reproductive and sexual health will have the same protections and privacy as their medical information.

ARGUMENTS IN OPPOSITION:

REGISTERED SUPPORT / OPPOSITION:

Support

AccessNow
Accountable Tech
ACLU California Action
ADL
American College of Obstetricians and Gynecologists District IX
CA Legislative Women's Caucus
California Federation of Teachers
California Pan - Ethnic Health Network
Center For Digital Democracy
CFA
Consumer Reports
Demand Progress
Doctors In Politics
EKO
Electronic Frontier Foundation
epic.org
Fairplay
Fight For The Future
Free Press
Friends of the Earth
glaad
Health Care Voices
KAIROS
Mozilla
Oakland Privacy
She Persisted
Sister Song
Super-majority
ultraviolet Action
Vote Pro Choice

Opposition

1 individual

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