



## **H. 121 Vermont Data Privacy Act**

### **House Commerce and Economic Development Committee**

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Planned Parenthood of Northern New England provides comprehensive reproductive and sexual health care to more than 16,000 people in Vermont at seven health centers located in Burlington, Williston, St. Johnsbury, Barre, White River Junction, Rutland, and Brattleboro and virtually through our telehealth program. People turn to us for affordable, high-quality care including wellness exams, birth control, sexually transmitted infections testing and treatment, cancer screenings, abortion care, as well as a variety of limited primary care services. We see everyone who comes to us regardless of their ability to pay, and 54% of our patients have low incomes (defined as less than twice the Federal Poverty level). Last fiscal year, we provided \$802,000 in free and discounted care to our communities in Vermont.

As a mission driven health care provider, we fundamentally believe everyone should be able to access affordable, high quality sexual and reproductive health care in their communities, no matter where they live or how much money they make, and we advocate for policies that help make this vision a reality. All people deserve to access comprehensive reproductive health care, including abortion and gender-affirming care, free from shame, stigma, and intimidation. Stigma, fear of prosecution, and harassment from anti-abortion and anti-LGBTQIA+ groups are significant barriers to accessing reproductive and gender affirming health care, and therefore, providing privacy protections is a crucial step to safeguarding health care access.

The fall of Roe has had devastating and far-reaching impacts that land disproportionately on the people who have always faced systemic barriers to care – communities of color, the LGBTQIA+ community, undocumented immigrants, young people, those living in rural communities, people with disabilities, and people with low incomes. These individuals, and all of us, need to be able to access essential health care without fearing for our safety and our privacy – and protections for all of our personal health and health-related information is an increasingly important component of that access.



States like Vermont that protect abortion and gender affirming care access will now play an even more critical role in providing care to people from states that criminalize that care and jeopardize access to health care services.

Personal health information, including consumer's sensitive data related to reproductive health, must be private. Ensuring privacy protections for and control over the collection and use of our own sensitive health data is even more important as the breadth of information collected and inferred from our personal data grows. No one should fear that their personal data will be compromised or used against them, and people seeking care in our state should not be subjected to targeted ads about their private health care decisions or have their locations tracked and shared via geotargeting when seeking health care.

#### Why these data privacy protections are needed:

Currently people have little insight into, and even less control over how their information is collected, used, shared and sold. Despite the widespread use and disclosure of personal data, [just 6% of adults](#) report that they have a strong understanding of what companies do with the data they collect, and the large [majority of consumers \(nearly 68%\)](#) are somewhat or very concerned about their online privacy.

While the federal Health Information Portability and Accountability Act (HIPAA) law provides protections for data collected by health care entities, a growing amount of personal data, including sensitive health and health-related information, is held by non-health care providers and collected through website and app data, among others, and is not protected by HIPAA. As a result, a growing amount of sensitive health data is left vulnerable to collection and disclosure without the consumer's knowledge or consent- including by anti-abortion groups, in investigations and prosecutions, or for targeting advertising.

These are not just hypothetical concerns but real tactics being used to target pregnant people in this country. Some examples include:

- In 2015, [geolocation data was used](#) to identify visitors to 140 abortion clinics in order to send those individuals ads for anti-abortion pregnancy counseling;
- In 2022, a local data broker sold [aggregated location data](#) of people who visited abortion clinics, including more than 600 Planned Parenthoods over a one-week period, for just \$160;



- [A woman was prosecuted for murder](#) after experiencing a pregnancy loss based on cell phone information that she searched online for medication abortion information. In our new reality, where abortion is criminalized, cell phone data is being used to identify, threaten, and prosecute those seeking health care;
- In 2021, Flo Health, one of the most popular period tracking apps, [settled with the FTC](#) over allegations that it shared health information on its 100 million users with third-party data analytics firms.

Planned Parenthood supports policies that protect individuals' right to privacy and control over their personal data, including their sensitive health-related information, and as such support the overall intent of H. 121.

We urge the committee to consider further strengthening this bill by ensuring that these protections reflect the unique addressing To best protect reproductive and sexual health care data in Vermont, we would recommend the committee consider the following:

#### Health Care Definitions

We recommend that, where possible and appropriate, health care-related terms included in H.121 definitions section more closely mirror pre-existing definitions in our state code, including:

- "Abortion" should cross cite to VSA title 9 § 2492, which defines abortion as: "any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth."
- "Reproductive or sexual health care" should more closely mirror the existing definition of "Reproductive health care services" in VSA 1, § 150, which is more explicitly inclusive of services "relating to pregnancy, contraception, assisted reproduction, pregnancy loss management, or the termination of a pregnancy."

#### Consumer Definition

We are concerned about the narrow scope of the definition of "consumer" in H. 121, which is currently defined as "an individual who is a resident of this State." We would ask this committee to consider expanding these protections to both residents and



individuals whose data is collected in the state -- including, for example, a person who may travel to Vermont to receive essential health care services.

In S. 173, a data privacy bill tailored to address protections for consumer's health-related data, the definition of consumer expands beyond residents to also include individuals whose health-related data is collected in Vermont. This more expansive definition of consumer was used in the enacted Washington and Nevada consumer health data-specific bills last session, and are intended to better ensure that data collected about non-residents seeking health care in Vermont are subject to the same protections.

As states across the country ban access to abortion and gender-affirming care, Vermont plays a critical role as a safe harbor for patients and their loved ones from throughout the country. Providing these same privacy protections for personal health data to non-residents is essential to safeguarding health care access in Vermont for all who need it.

#### Clarifying the exemption for Protected Health Information

It is important that bills addressing consumer data do not conflate consumer's sensitive health-related data with protected health information ("PHI") subject to HIPAA and related state laws. The most recent draft of H.121 aims to address this through a data-level carve out for PHI and intermingled information. We support this approach and want to ensure that the language in § 2417(a)(1), (7) is clear about this PHI exception.

#### Geofencing provision

Currently, digital advertising firms can set up geofencing around health care facilities that can track and send notifications or ads to any person that brings their cell phone or mobile device across the barrier. Geofences are a virtual perimeter drawn on a map around a physical location. Apps, websites, and devices can be programmed to send advertisements and/or messages to individuals when they enter a specific location. This is a tactic frequently used by digital advertisers and has been leveraged by anti-abortion groups to target and bombard people seeking reproductive health care.

The most recent draft of H. 121 (draft 6.1) would protect patients seeking reproductive health care, including abortion, from this targeted use of geo-fencing. We would ask that the committee also consider expanding the geo-fencing



prohibition to include all health care providers to allow for a more expansive protection. Last year, several states, including Washington, Nevada, New York, and Connecticut, enacted similar geofencing provisions - with the exception of Connecticut (which addressed only reproductive or sexual health care facilities or mental health care facilities), these laws take the broader approach, limiting geofencing at all health care facilities.

Thank you for your efforts to protect Vermonter's privacy and better ensure that no one fears harassment, investigation, or prosecution for seeking, providing, or assisting another in accessing essential health care.