

## Post-Dobbs Subpoenas for Protected Health Information Require Special Scrutiny under HIPAA

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The landscape of laws governing the provision of abortion-related services, and coverage of such services under employer-sponsored group health plans, is rapidly changing in the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*. Prior to *Dobbs*, numerous states had enacted "trigger laws" prohibiting or restricting abortions, that were effectuated by *Dobbs*. Other states may now pass similar anti-abortion laws. Some states, such as Texas, have laws in effect that impose potential liability on parties that "aid or abet" abortions.

As a result of the *Dobbs* decision and the fact that many state laws regulating abortions are now effective, compliance and enforcement investigations and lawsuits may arise. For example, plan sponsors of group health plans that provide coverage for abortion services, such as reimbursements for travel expenses incurred to obtain an out-of-state abortion ("**Abortion Services**"), could find themselves receiving subpoenas for information regarding Abortion Services covered by their plans.

Most plan information regarding Abortion Services that identifies (or could reasonably be used to identify) an individual will constitute PHI under HIPAA. PHI could include, for example, claim records for specific employees regarding Abortion Services received under the plan.

Before responding to a subpoena for PHI, plan sponsors should be aware that HIPAA only allows the disclosure of PHI pursuant to a subpoena that meets the specific requirements of HIPAA. HIPAA's requirements may be above and beyond what is otherwise considered acceptable for subpoenas of information that is not PHI. Plan sponsors are also required by HIPAA to maintain policies and procedures for the administration of subpoenas that comports with HIPAA's requirements.

In summary, before responding to any subpoena that covers PHI, plan sponsors must ensure that the subpoena meets HIPAA's requirements and the plan sponsor's HIPAA policies and procedures. Plan sponsors should consult with counsel if in doubt as to whether a subpoena for PHI satisfies these requirements.