

The Reversal of Roe v. Wade: What 's Next For Your Group Health Plan?

June 28, 2022

On June 24, 2022, the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*. This decision overturned the Court's prior decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, by holding that the U.S. Constitution does not confer any right to an abortion and returning the authority to regulate abortion back to the states.

Some employer-sponsored group health plans provide coverage for abortion procedures and related expenses. The full impact of *Dobbs* on such coverage is unknown at this time, pending future legal developments in the states, guidance from the federal government, and the results of new court cases which will likely be filed in response to this decision. In the meantime, the following considerations may be relevant for employers that sponsor a group health plan:

- The application to a group health plan of any new or revised abortion-related laws that are passed in the states where (i) the employer that sponsors the group health plan operates, (ii) covered persons reside, and (iii) abortion procedures are provided to, and expenses are incurred by, covered persons;
- The provision of benefits under the group health plan for travel and lodging expenses that a covered person incurs to obtain an out-of-state abortion (or to obtain an abortion beyond a certain radius from the person's residence), and corresponding tax issues;
- ERISA preemption, if any, of state abortion laws (including criminal laws), with respect to group health plans that are subject to ERISA;
- Compliance with the mental health parity laws when adding or increasing abortion-related medical/surgical benefits (including travel) under the group health plan; and
- The provision of coverage under the group health plan for abortifacients or other abortion-related drugs.

Each of the above considerations, and others which will come to light as a result of the *Dobbs* decision, trigger legal requirements that employers should carefully consider and evaluate with their legal counsel before making changes to their group health plans.

The *Dobbs* decision is available [here](#).