

## REPRODUCTIVE HEALTH Fact Sheet

# Key Federal Responses to Protect Abortion Access and Promote Reproductive Health Post-Dobbs

Following the U.S. Supreme Court's decision to overturn *Roe v. Wade* in [Dobbs v. Jackson Women's Health Organization](#) on June 24, 2022, the federal government has taken specific actions designed to preserve and promote access to abortions and promote reproductive health. This fact sheet examines key responses from the Biden administration that attempt to protect legal abortion access through specific actions by the (1) White House, (2) Department of Health & Human Services (HHS); (3) Department of Justice (DOJ); and (4) other federal entities.

## I. THE WHITE HOUSE

Shortly after the *Dobbs* opinion was released, [President Biden announced two primary actions](#) his administration would take to protect women's access to reproductive health care services: (1) protecting the right to seek medical care, and (2) protecting access to abortion medications. On July 8, President Biden issued an [Executive Order \[No. 14076\] on Protecting Access to Reproductive Healthcare Services](#), which addressed:

1. protecting access to reproductive healthcare services;
2. assuring patient privacy, safety, and security; and
3. coordinating federal implementation efforts.

The Executive Order specifically called for coordinated actions via HHS, DOJ (by way of the Attorney General), the U.S. Department of Homeland Security (DHS), the Federal Trade Commission (FTC), and the White House's [Gender Policy Council](#) (GPC). HHS and GPC [were asked to](#) "establish and co-chair an Interagency Task Force on Reproductive Healthcare Access (Task Force)."

On August 3, President Biden issued [Executive Order \[No. 14079\] on Securing Access to Reproductive and Other Healthcare Services](#), calling on his administration to take further action to protect the accessibility of reproductive health care services. HHS was called on again to help with (1) advancing the ability to obtain reproductive healthcare services, (2) promoting compliance with non-discrimination laws in obtaining medical care, and (3) collecting relevant data.



## II. DEPARTMENT OF HEALTH & HUMAN SERVICES

On the same day the *Dobbs* opinion was released, [HHS Secretary Xavier Becerra stated](#) that HHS “stand[s] unwavering in [its] commitment to ensure every American has access to health care and the ability to make decisions about health care – including the right to safe and legal abortion, such as medication abortion that has been approved by the FDA for over 20 years.” [HHS subsequently launched a “Know Your Rights” website, \*reproductiverights.gov\*](#), to inform Americans of their options to access reproductive health care.

On June 27, HHS and the Departments of Labor and Treasury [issued a letter to health insurers](#) reminding them of their obligations to provide coverage for birth control and contraceptive counseling under the Affordable Care Act (ACA). This letter was later supplemented by guidance issued by the Departments on July 28, [FAQs About Affordable Care Act Implementation Part 54](#).

On [June 28](#), HHS’ Secretary Becerra identified five ways in which HHS was supporting efforts to ensure access to reproductive health care:


- (1) increasing access to medication abortion;
- (2) ensuring privacy and nondiscrimination for patients seeking, and providers offering, reproductive health care services;
- (3) examining HHS’ authority under the [Emergency Medical Treatment and Active Labor Act \(EMTALA\)](#) to ensure abortions are provided in American hospitals when necessary to stabilize a patient’s emergency medical conditions, including complications related to pregnancy;
- (4) ensuring all providers have appropriate training and resources to address family planning needs; and
- (5) directing the Centers for Medicare & Medicaid Services (CMS) to protect family planning care.

**Ensuring Privacy & Nondiscrimination for Patients and Providers.** On June 29, [HHS issued two guidance documents](#) regarding health information privacy. The first guidance, [HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care](#), explains how an individual’s protected health information (PHI) related to reproductive health is protected under the [HIPAA Privacy Rule](#). The second guidance, [Protecting the Privacy and Security of Your Health Information When Using Your Personal Cell Phone or Tablet](#), offers instructions and resources on protecting one’s privacy when using personal electronics, largely regarding period tracking or other health information apps.

On July 13, HHS issued [Guidance to Nation’s Retail Pharmacies: Obligations under Federal Civil Rights Laws to Ensure Access to Comprehensive Reproductive Health Care Services](#). The guidance reiterates pharmacies’ duties of nondiscrimination under [ACA § 1557](#) and [Rehabilitation Act § 504](#) that require prescriptions for medication abortion and contraception drugs be filled without discriminating against specific patients. On July 25, [HHS announced a proposed rule](#) to strengthen nondiscrimination protections of ACA § 1557 in several ways. One such alteration [clarifies that sex-based discrimination](#) “includes sexual orientation and gender identity.”

**EMTALA.** On July 11, CMS issued clarifying guidance, [Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss](#). Per the guidance, if a provider determines that an abortion is necessary to stabilize a pregnant person’s emergency medical condition, it may be performed irrespective of contrary state laws. HHS’ [Secretary Becerra issued a letter to health care providers](#) on the same day, emphasizing that EMTALA requirements preempt state law regarding abortion (subject to further litigation as discussed in other Network guidance (see below)).

**Provider Training & Resources.** On June 30, [HHS announced that it is awarding nearly \\$3 million in funding](#) to support training and technical assistance for Title X family planning providers through grants to the [Reproductive Health National Training Center \(RHNTC\)](#), which is managed by [JSI Research & Training Institute](#),



[Inc.](#), headquartered in Boston, MA, and the [National Clinical Training Center for Family Planning \(NCTCFP\)](#), located at the University of Missouri – Kansas City. The organizations collaborate closely with one another and are supported by HHS’ [Office of Population Affairs \(OPA\)](#).

**CMS’ Protections for Family Planning Care.** On August 26, HHS Secretary Becerra and CMS Administrator Chiquita Brooks-LaSure [encouraged state governors](#) to apply for [Medicaid § 1115 waivers](#) as a means of using federal funding to expand access to reproductive health care.

**HHS’ Report.** In response to E.O.’s 14076 and 14079 (see Part I above), HHS issued its report, [Health Care Under Attack: An Action Plan to Protect and Strengthen Reproductive Care](#), on August 26, 2022. The Report catalogues the steps HHS has already taken to protect access to abortion care and lists additional recommendations to ensure access to reproductive health care services. The recommendations largely align with the five priorities identified by Secretary Becerra in June, broadly focused on (1) access to medication abortion and contraception; (2) access to care under the law; (3) protecting patient privacy; (4) improving awareness, education, and access to accurate information; and (5) improving data and research.

### III. DEPARTMENT OF JUSTICE

On June 24, [Attorney General Merrick B. Garland issued a statement](#) emphasizing DOJ’s commitment to “protect[ing] and advanc[ing] reproductive freedom.” The Attorney General specifically indicated that DOJ would uphold women’s rights to travel to seek reproductive care; the [Freedom of Access to Clinic Entrances Act](#), which prohibits intentional interference with or obstruction to a person’s right to obtain or provide reproductive health care services; and accessibility of mifepristone—an abortion medication—approved by the Food and Drug Administration (FDA).

On July 12, [DOJ established a Reproductive Rights Task Force](#), which is [responsible for monitoring and evaluating state and local legislation](#) that (1) interferes with federal legal protections for reproductive care; (2) impairs women’s ability to travel for reproductive care; (3) impairs individual’s abilities to discuss reproductive care available in other states; (4) bans mifepristone contrary to FDA approval; or (5) imposes criminal or civil liability on federal employees who provide reproductive care pursuant to federal law.

Additional actions filed by DOJ to enforce HHS’ EMTALA guidance are addressed in additional Network guidance documents (see below).

### IV. OTHER FEDERAL ENTITIES

On June 27, the Office of Personnel Management (OPM) issued guidance for federal employees on the [Availability of Sick Leave for Travel to Access Medical Care](#), reiterating its leave policies for travel to obtain medical care. Although the guidance does not specifically reference abortion, [the timing of its release](#) indicates that sick leave benefits for medical travel will also cover travel for reproductive health care.

On June 28, the Department of Defense (DoD) issued a memo to Pentagon leadership on [Ensuring Access to Essential Women’s Health Care Services for Service Members, Dependents, Beneficiaries, and Department of Defense Civilian Employees](#). The memo emphasized that the *Dobbs* decision would not impact DoD’s provision of covered abortions or leave policies, such as those regarding travel to receive abortion care. On August 12, [DoD also published a Q&A on reproductive health care access](#) for uniformed service members, retirees, and their families.



## Additional Resources

The Network for Public Health Law has developed (and is regularly updating) [a series of reproductive health resources](#) in the aftermath of the *Dobbs* decision, including: (1) [Abortion Access: Post-Dobbs Litigation Themes](#); (2) [Ballot Measures on Abortion Access](#); (3) [State-Based Abortion Protections](#); (4) [Abortion Access: A Post-Roe Public Health Emergency](#).

---

This document was developed and updated by **Jennifer L. Piatt, J.D.**, Deputy Director, **Madisyn Puchebner**, Senior Legal Researcher, and **C. McKenna Sauer**, Legal Researcher, and reviewed by **James G. Hodge, Jr., J.D., LL.M.**, Director, Network for Public Health Law – Western Region Office, Sandra Day O'Connor College of Law, Arizona State University. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document do not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

### SUPPORTERS



Robert Wood Johnson Foundation

Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.