Reproductive Health and Data Privacy After *Roe*: Threats and Opportunities for State Action

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I. Introduction and Background

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,[1] which overturned the federal constitutional right to an abortion, has had a devastating impact on reproductive and sexual health access in an already challenging environment. Prior to *Dobbs*, patients were already traveling across state lines to obtain abortion care because their home states severely limited access.[2] Post-*Dobbs*, abortion bans have made abortion care unavailable across entire regions.[3] As of this writing, abortion care is totally banned in 12 states.[4] As a result, thousands of individuals are unable to obtain abortions from state-licensed providers in their state of residency, and patients and providers across the country live in fear of criminal repercussions for obtaining or providing abortion care, even when and where it remains legal, because of a complicated legal landscape across states.[5]

Other forms of personal and sensitive health care are under increasing attack as well. Attacks on contraceptive access and in vitro fertilization ("IVF") continue to proliferate.[6] Similarly, gender-affirming health care is under attack across the country; an increasing number of states have banned such health care for minors, and the Supreme Court affirmed these bans in the case *U.S. v. Skrmetti*.[7] The federal Justice Department has also issued more than 20 subpoenas to hospitals nationwide, demanding a wide range of sensitive health information related to medical care for young transgender patients.[8] Although these attacks are targeted at young people on their face, they will hinder care for everyone. If providers face increasing threats of liability for providing care to young people, they will limit or stop providing that care, making it harder for anyone to access.[9] Furthermore, a growing number of legislative proposals seek to ban gender-affirming care for adults.[10]

Health data, including abortion care data, can be gathered from medical, billing, laboratory, imaging, medication, and wearable technology records. Beyond care providers, this information may be available to laboratories, pharmacies, payers, and patient-managed apps, because "documenting anywhere is equivalent to documenting everywhere."[11] While data sharing is a crucial tool to improve care coordination, the current legal landscape surrounding it poses a real risk to patients and providers. Providers have near-instantaneous access to their patients' full medical records, and certain providers are willing to use this access to unnecessarily report on their patients based on personal biases.[12] Combined with genuine uncertainty over the legal status of care provided elsewhere, the weaponization of the free-flowing exchange of electronic medical records by third parties such as law enforcement "risks harassment, litigation, and devastation" for patients and providers, including potentially being subject to investigation and prosecution.[13]

The criminalization of essential health care has already created a rift in the trust relationship between patients and providers, and fear of being reported for reproductive health decisions has cost people their lives.[14] These fears are understandable given that research shows unnecessary reporting by health care providers is frequently the driver for the criminalization of pregnant people.[15] In the first two years after *Dobbs*, prosecutors initiated at least 412 cases charging pregnant people with crimes related to pregnancy, pregnancy loss, or birth; in 264 of the 412 cases, information was obtained or disclosed in a medical setting.[16] Additionally, lawsuits continue against parents and providers who helped young people access abortion in restrictive states.[17] Alarmingly, but unsurprisingly, low-income individuals comprise the majority of people subjected

to criminal proceedings arising from their pregnancies.[18] If patients justifiably lack confidence that their sensitive health information will be kept private, they can be less likely to seek out care and be forthcoming about their symptoms, medical history, and other relevant information.[19] This hinders care coordination and delivery, significantly undermining both individual health outcomes and health equity.[20]

II. Legal Landscape Overview

There are existing laws, at both the state and federal level, that protect reproductive health information from disclosure, which is an important component of ensuring trust among patients and providers. The 2000 Health Information Portability and Accountability Act ("HIPAA") Privacy Rule (hereinafter "2000 Privacy Rule") set foundational national standards to protect people's medical records and gave people more control over their health information.[21] HIPAA covered entities include health care providers, health plans, and health care clearinghouses.[22] HIPAA protects individually identifiable health information received, generated, maintained, or transmitted by covered entities or their business associates, also known as "protected health information" ("PHI").[23] Importantly, the 2000 Privacy Rule permits, but does not require, uses and disclosures of PHI for a government investigation.[24]

Some, though not all, reproductive health data fall under the category of PHI. For example, data entered into a period tracking app, or information provided to an anti-abortion center, also known as a "crisis pregnancy center" ("CPC"), is not considered PHI because the entities holding that data are not subject to HIPAA requirements.[25]

States also have their own legal schema for protecting sensitive data. State shield laws, enacted in 18 states and Washington, D.C., generally protect reproductive and sexual information from disclosure in response to out-of-state legal proceedings.[26] Additionally, a group of states including Colorado, Connecticut, Nevada, Virginia, and Washington specifically provide protections against disclosure of sensitive reproductive health data by non-HIPAA covered entities (like CPCs).[27] A handful of states prohibit virtual tracking, known as geofencing, at reproductive and sexual health facilities.[28] Finally, several states have enacted or are considering enacting laws that require health information systems to develop technological capabilities to restrict the disclosure of reproductive health data.[29]

Given the array of diverse privacy standards, providers have experienced confusion and pressure surrounding disclosures of PHI involving reproductive health care to law enforcement in the post-*Dobbs* environment.[30] In an attempt to create a uniform standard of privacy for reproductive health data, the Department of Health and Human Services ("HHS") issued a final rule in 2024 titled HIPAA Privacy Rule To Support Reproductive Health Care Privacy (hereinafter "2024 Privacy Rule"), which has since been invalidated.[31] The 2024 Privacy Rule, among other things, disallowed the use or disclosure of PHI for actions such as criminal investigations against people seeking, obtaining, providing, or facilitating lawful reproductive health care. This lessened the risk of patients being reported to law enforcement and better protected people who are forced to travel to receive care because of state abortion bans.

Unfortunately, four lawsuits from anti-abortion extremists challenged the 2024 Privacy Rule, jeopardizing health privacy and threatening to put pregnant people at even greater risk of criminalization for their reproductive care.[32] Texas Attorney General Ken Paxton, Tennessee Attorney General Jonathan Skrmetti alongside 14 other Republican

state attorneys general, and Missouri Attorney General Andrew Bailey separately sued HHS to invalidate the 2024 Privacy Rule, claiming that it harms the states' investigative authorities.[33] Additionally, Dr. Carmen Purl, an anti-abortion physician in Texas, filed a lawsuit claiming that the 2024 Privacy Rule is unlawful and prevents her from making child abuse reports to state authorities when a parent or guardian supports reproductive health care for a child.[34]

In June 2025, Judge Matthew Kacsmaryk vacated the 2024 Privacy Rule in Dr. Purl's case, meaning that it is no longer in effect nationwide and HIPAA-covered entities are no longer required to comply with this regulation.[35] Without the 2024 Privacy Rule, HIPAA-covered entities are permitted, but not required, to disclose PHI to law enforcement, in line with the 2000 Privacy Rule.[36] This is a major blow because it emboldens reproductive health surveillance and criminalization, exacerbates fear and uncertainty among patients and providers around disclosures to law enforcement, and chills abortion access.[37] In the absence of the 2024 Privacy Rule, patients will have less assurance that the information they disclose to their provider will remain confidential and not be shared with law enforcement.[38] Eliminating protections for reproductive health care information could deepen the mistrust patients feel–especially among marginalized communities with a history of reproductive coercion, discrimination, and criminalization.[39]

III. Remaining HIPAA Protections

The 2000 Privacy Rule sets certain disclosure standards for health information that can offer a limited measure of protection against reproductive health criminalization; these standards remain despite the *Purl* decision.[40] The 2000 Privacy Rule prohibits regulated entities from using or disclosing PHI without patient authorization, except when specifically permitted or required by the rule.[41] In particular, under the law enforcement exception to the 2000 Privacy Rule, regulated entities are permitted, but not required, to disclose PHI to law enforcement. This distinction means that individual providers can decide whether or not to share patient health information with investigators.[42] While this standard provides insufficient safeguards for sensitive PHI, it is important to ensure regulated entities understand their disclosure obligations to mitigate unnecessary reporting.

Before the 2024 Privacy Rule, regulated entities experienced confusion and pressure around their disclosure obligations under this law enforcement exception, which led to unnecessary reporting.[43] As regulated entities revert to their HIPAA compliance programs prior to the 2024 Privacy Rule, it is likely that regulated entities will continue to experience difficulties navigating their disclosure obligations under HIPAA. It is crucial that regulated entities receive detailed guidance, education, and training on conditions for disclosures and risks to patients and providers associated with disclosures.

Regulated entities must also ensure that they comply with any relevant privacy laws in the states where they operate. Importantly, if a state has stronger privacy protections and prohibitions on disclosures of sensitive health information than the 2000 Privacy Rule, state law preempts the corresponding provision of HIPAA.[44] This means that, even in the absence of the 2024 Privacy Rule, states can continue to enforce their own laws prohibiting the use or disclosure of medical information to law enforcement when it is sought to investigate people seeking or providing reproductive care—a more protective standard than the 2000 Privacy Rule.

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In *State of Texas v. Department of Health and Human Services*, the Texas Attorney General not only challenged the 2024 rule but also asked the court to invalidate the 2000 HIPAA Privacy Rule.[45] While this case has been dismissed and the protections of the 2000 rule remain in effect, the threat to these longstanding federal safeguards alone underscores the importance of states taking action to protect health and data privacy.[46]

IV. In the States: Health Data Environment and Proactive Solutions

Post-*Dobbs*, there has been an uptick in reproductive health data sought for state investigations.[47] In April, Missouri's Attorney General subpoenaed the Missouri Abortion Fund in an attempt to obtain patients' private records.[48] Earlier this year, Missouri legislators introduced a bill to establish a state-run registry that would identify, monitor, and harass pregnant people "at risk for seeking an abortion."[49] The Indiana Attorney General subpoenaed an abortion provider for medical records of people who lived out of state.[50] In Tennessee, the Attorney General asked Vanderbilt University for medical records on transgender patients.[51] Texas' Attorney General has demanded medical records from out-of-state providers, seeking data on gender-affirming care from providers in Washington and Georgia.[52] At the same time, other states have stepped up to protect out-of-state patients in accessing abortion care.

a. Shield Laws and Mandated Noncooperation

Interstate shield laws provide a range of protections for abortion providers, helpers, and patient medical records to mitigate civil and criminal consequences stemming from abortion and reproductive health care provided to out-of-state residents. Currently, shield laws are codified through statute in 18 states and the District of Columbia.[53] The most comprehensive shield laws include explicit protections for telehealth and for patient and provider confidentiality. Notably, the states home to the nation's biggest technology companies that hold troves of electronic records, California and Washington, have strong shield laws that generally prohibit data holders based in-state from complying with warrants, subpoenas, and other demands for data stemming from investigations into reproductive health activities.[54] Nonetheless, even states with existing shield laws can consider ways to strengthen their protections. For example, Washington's shield law does not explicitly prohibit health care providers and other individual holders of health care data from disclosing reproductive or sexual health information in response to out-of-state subpoenas.[55] Oregon's shield law likewise does not prevent information disclosure in response to out-of-state subpoenas,[56] and New Jersey's does not specifically prevent disclosure by business associates.[57]

Some governors have issued executive orders ("EOs") that prohibit state agencies from cooperating with out-of-state abortion actions, such as preventing medical records, patient data, and other information from being shared by state agencies in response to inquiries or investigations brought by other states or individuals within those states looking to restrict abortion care access.[58] Some governors have also adopted policies of declining out-of-state extradition requests related to legal abortions in their state and have signed orders prohibiting professional sanctions for providing legal abortions, such as the suspension or revocation of a medical license.[59]

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b. Limitations on Data Collection and Disclosure

Multiple states have health privacy laws that prohibit providers and other entities that collect reproductive health data from sharing that information, for example, with law enforcement or data brokers. At least three states, California, Nevada, and Washington, limit the *collection* of reproductive health data through apps and websites, which are in most instances not subject to the privacy requirements of HIPAA.[60] A much larger group of states limits the *disclosure* of reproductive health data to protect patients seeking reproductive care from out-of-state litigation, though states do so using different tactics and extend protections to different types of entities, such as private businesses or state agencies; disclosure limitations have significant overlap with shield laws and often resemble the 2024 Privacy Rule.[61]

A number of shield laws, including those in California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, New Jersey, New York, Vermont, and Washington, generally prohibit disclosing medical information to out-of-state actors or law enforcement if the purpose is for investigating or imposing liability for reproductive health care under another state's law, very similar to the 2024 Privacy Rule.[62] These laws are consistent with federal law because HIPAA is the floor, not the ceiling; HIPAA explicitly allows for state laws that are more protective of PHI.

Colorado, Connecticut, Nevada, Virginia, and Washington protect against disclosure through broad consumer privacy laws that prohibit sharing non-HIPAA-covered health data without consent.[63] These comprehensive state privacy laws have exemptions for PHI collected by covered entities or business associates, leaving it to be regulated by HIPAA.[64] These laws still regulate disclosures of reproductive health information outside of HIPAA's scope, including information collected or held by CPCs, apps, and cash-only health care providers.

c. Prohibitions on Geofencing

A geofence is technology that uses spatial or location detection, such as cell phone or Wi-Fi data, to create a virtual boundary around a location or to locate a person within a virtual area.[65] At least eight states have taken steps to prohibit the use of geofences that infringe on the privacy of individuals seeking health services.[66] Connecticut and Maryland, for example, bar geofencing within 1,750 feet of a reproductive, sexual, or mental health facility.[67] Washington, Nevada, and New York have similar protections for all health care facilities,[68] and California protects location data from family planning centers.[69]

d. Technical Requirements for Data Storage Vendors

Health information systems, such as electronic health records ("EHRs"), health information exchanges, and health information networks, store an enormous amount of data with implications for reproductive health.[70] In addition to including these systems in laws restricting data disclosure by state-regulated entities, states can require health information systems to develop technological capabilities to restrict the unnecessary transfer of reproductive health data, as California, Maryland, and Massachusetts have.[71] These laws incentivize technology developers and vendors to immediately modify their interfaces to allow for tagging and segmenting both structured and unstructured reproductive health data, and to create EHR pop-ups prompting providers to restrict certain records.

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V. Policy Recommendations

We all have fewer medical privacy protections than we did at the beginning of 2025; this merits policy action. Given the Trump Administration's hostility to reproductive health and rights, Congress has a responsibility to pass clear, uniform, modern standards for health data privacy that consider current technological realities and the criminalization of reproductive care post-*Dobbs*. However, because of ongoing political realities, namely that the majority of the U.S. Congress supports anti-abortion policies and is unlikely to take action intended to protect patients and providers, states present the clearest path forward for enacting data privacy protections.[72]

In addition to **repealing any current abortion restrictions still on the books**, states can promulgate and implement:

- **Strong shield laws**, including the expansion of existing shield law statutes and regulations.
- **Shield executive orders** issued by governors to prohibit state agencies from using state resources to further anti-abortion investigations or proceedings.[73]
- **Broad health privacy laws** that limit both the collection and disclosure of reproductive health information and are applicable to PHI, similar to the 2024 Privacy Rule, as well as data that would not be covered under HIPAA.
- **Laws that prohibit the use of geofences** around health facilities.
- **Laws governing health information systems** that incentivize technology developers to enable data segmentation and restriction of the unnecessary transfer of reproductive health data.

Any efforts to address data privacy and the complex dynamics inherent in the exchange and use of sensitive information related to sexual and reproductive health care demand a careful, person-centered approach. Abortion care is increasingly criminalized across the country, and now more than ever patients must be able to trust that their providers will keep their medical information private.

VI. Conclusion

Active attacks on health privacy mean politicians, governments, and police may use threats and intimidation to gain access to medical records and criminalize individuals, providers, and helpers including parents. Fear of being reported for reproductive health decisions has already cost people their lives.[74] It is important that people know where to seek help. Individuals in every state and territory who have questions about the potential legal risk of seeking or helping someone else seek medical care related to pregnancy, birth, or abortion can contact If/When/How's Repro Legal Helpline for free, confidential legal services at www.reprolegalhelpline.org. Questions about the legal right to provide or support abortion care can be directed to the Abortion Defense Network at https://abortiondefensenetwork.org/get-in-touch/. For other technical assistance, including legislative drafting, contact statepolicy@reprorights.org or info@nationalpartnership.org.

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61 *See id.*

62 *See id.*; *see also* Colo. Rev. Stat. § 6-1-1301 et seq.; 10 Del. Code Ann. tit. 10, §§ 3926A, 3928; Haw. Rev. Stat. § 323J; 735 Ill. Comp. Stat. 35/3.5; 735 Ill. Comp. Stat. 40/28-11; 22 Me. Rev. Stat. tit. 22, § 1711-C; Minn. Exec. Order No. 22-16 (June 25, 2022); Minn. Exec. Order No. 23-03 (Mar. 8, 2023); N.J. Stat. Ann. § 2A:84A-22.18(a).

63 *See* Colo. Rev. Stat. §§ 6-1-1301 to -1313; Conn. Gen. Stat. §§ 42-515 to -525; Nev. Rev. Stat. §§ 603D.010 to .900; Nev. Rev. Stat. §§ 603A.300 to .360 ; Va. Code Ann. §§ 59.1-575 to -586; Wash. Rev. Code §§ 19.373.010 to .900.

64 *See id.*

65 *Common Themes and Creative Solutions*, *supra* note 60, at 4.

66 *Shield Laws*, *supra* note 26 (see map titled "States with Shield Law Protections of Medical Information and Other Data Related to Reproductive or Gender-Affirming Care").

67 *Common Themes and Creative Solutions*, *supra* note 60, at 4; *see also* Conn. Pub. Act No. 23-56 (2023).

68 *See id.*; see also Wash. Rev. Code §§ 19.373.010 to .900; Nev. Rev. Stat. §§ 603D.010 to .900; N.Y. S.4007, 2023–2024 Leg., Reg. Sess. (2023).

69 SB 345 (Cal. 2023) (Cal. Civ. Code § 1798.99.90).

70 *See Common Themes and Creative Solutions*, *supra* note 60, at 3.

CENTER *for*
REPRODUCTIVE
RIGHTS

if
when
how

Lawyering for
Reproductive
Justice

71 *See id.; see also* H.B. 812, 2023 Gen. Assemb., Reg. Sess. (Md. 2023); S.B. 2543, 149th Gen. Ct., Reg. Sess. (Mass. 2025).

72 *See, e.g.,* One Big Beautiful Bill Act, H.R. 1, 119th Cong. § 71113 (2025). In addition, it would require a two-thirds majority of Congress to override an executive veto by an anti-abortion president.

73 Due to the legislative makeup in certain states, action from the governor's office may be more politically viable.

74 *Supra* note 14.