

Memorandum

October 26, 2022



ROUNDUP OF RECENT REPRODUCTIVE HEALTH DEVELOPMENTS

The Biden Administration has taken several steps to expand abortion access after the U.S. Supreme Court overturned *Roe v. Wade* in June, eliminating the constitutional right to an abortion in its *Dobbs v. Jackson Women's Health Organization* decision. Following the decision, [abortion bans](#) designed to be "triggered" upon the overturning of *Roe v. Wade* went into effect in 13 states and some state legislatures are now considering passing new bans or implementing additional restrictions. In response, President Biden signed two Executive Orders (EOs). The first EO, [Protecting Access to Reproductive Health Care Services](#), outlined specific actions to improve access to reproductive health care services ([WHG Summary](#)). The second EO, [Securing Access to Reproductive and Other Health Care Services](#), expanded on the first EO and, most notably, included actions to support patients seeking abortions out of state ([WHG Summary](#)).

One of the directives to HHS in the first EO was to create a Task Force on Reproductive Healthcare Access. At the [second meeting](#) of the Task Force, the President emphasized that abortion access is dependent on Congress and called on the American people to get out and vote. With the approaching [midterm elections](#), abortion access and reproductive rights have been identified as key motivating issues for voters. This has been reflected on the campaign trail as Democratic lawmakers have made abortion rights their central message. The Administration has also embraced this messaging as President Biden recently [vowed](#) to codify abortion rights if Democrats are able to hold both the Senate and the House. With the Senate filibuster rule, Democrats would need a 60-vote threshold to pass the law with a simple majority. Currently, Democrats are [slightly favored to win the Senate](#) while [Republicans are favored to take the House](#).

This roundup provides an update on initiatives required by the two EOs, details recent agency actions, and describes relevant congressional actions.

Executive Orders

In July, the President signed the first EO, **Protecting Access to Reproductive Health Care Services (EO 14076)**, which included the following initiatives:

- Safeguard access to reproductive health care services, including abortion and contraception;
- Protect the privacy of patients and their access to accurate information;
- Promote the safety and security of patients, providers, and clinics; and
- Coordinate the implementation of Federal efforts to protect reproductive rights and access to health care.

In August, the President signed the second EO, **Securing Access to Reproductive and Other Health Care Services (EO 14079)**, which included the following initiatives:

- Support patients traveling out of state for medical care;
- Ensure health care providers comply with federal non-discrimination law; and
- Promote research and data collection on maternal health outcomes.

Memorandum

October 26, 2022



The table below lists the various agency actions that have been implemented in response to the EOs thus far.

Executive Order	Initiative	Agency Action(s)
<p>1st EO: Protecting Access to Reproductive Health Care Services (EO 14076)</p> <p><i>HHS released a report in August in response to this EO detailing actions to protect and expand access to abortion care and other reproductive health care.</i></p>	<p><i>Safeguard access to reproductive health care services, including abortion and contraception</i></p>	<p>HHS, along with the Departments of Labor (DOL) and Department of Treasury (Treasury), issued guidance to clarify protections for birth control coverage under the ACA. Under this new guidance, group plans and health insurance issuers must provide contraceptive coverage at no cost (WHG Summary).</p> <p>HHS announced more than \$6 million for Title X Family Planning Research grants, Research-to-Practice Center grants, and Teenage Pregnancy Prevention Evaluation and Research grants to protect and expand access to reproductive health care.</p> <p>The Department of Veterans Affairs (VA) implemented an interim final rule that will allow it to provide access to abortion counseling and, in certain cases, abortions. The legality of the rule has been strongly challenged by Republicans who cite the Veterans Health Care Act of 1992 which directs the VA to provide reproductive health care <i>except</i> for “infertility services, abortion, or pregnancy care (with an exception)” (WHG Summary).</p>
	<p><i>Protect the privacy of patients and their access to accurate information</i></p>	<p>The White House released a “Blueprint for an AI Bill of Rights” which states there should be extra protections around sensitive data, such as reproductive health data. Location data, for example, can be used to identify those who visit abortion clinics, and consumer data that may reveal a women’s pregnancy are entitled to these extra protections.</p> <p>Prior to the EOs, HHS launched the ReproductiveRights.gov public awareness website, which includes accurate information about reproductive health, including a Know-Your-Rights patient fact sheet to help patients and providers.</p> <p>HHS also issued guidance that clarified the extent to which federal law and regulations protect individuals’ private medical information when seeking abortion and other forms of reproductive health care, as well as when using apps on smartphones (WHG Summary).</p>
	<p><i>Promote the safety and security of patients, providers, and clinics</i></p>	<p>HHS issued guidance and a letter from Secretary Xavier Becerra to reaffirm that the Emergency Medical Treatment and Active Labor Act (EMTALA) protects providers when offering legally-mandated, life- or health-saving abortion services as stabilizing care for emergency medical conditions (WHG Summary). The Centers for Medicare and Medicaid Services (CMS) has since</p>

Memorandum

October 26, 2022



Executive Order	Initiative	Agency Action(s)
	<p><i>Coordinate the implementation of Federal efforts to protect reproductive rights and access to health care</i></p>	<p>issued new guidance to reflect a preliminary injunction set forth in <i>Texas v. Becerra</i>.</p> <p>The EO established the interagency Task Force on Reproductive Healthcare Access. The Task Force coordinates and drives efforts across the Federal government to protect access to reproductive healthcare services and defend reproductive rights.</p> <p>The Department of Justice announced the establishment of the Reproductive Rights Task Force that formalized an existing working group chaired by Associate Attorney General Vanita Gupta. The Task Force will monitor and evaluate all state and local legislation, regulation, and enforcement actions that threaten certain reproductive health rights.</p>
<p>2nd EO: Securing Access to Reproductive and Other Health Care Services (EO 14079)</p>	<p><i>Support patients traveling out of state for medical care</i></p>	<p>HHS and CMS sent a letter to U.S. governors encouraging them to apply for Section 1115 waivers to increase access to reproductive health care for women, especially in states that are limiting reproductive rights (WHG Summary).</p>
	<p><i>Ensure health care providers comply with federal non-discrimination law</i></p>	<p>HHS issued a proposed rule that would strengthen the regulations interpreting Section 1557, the nondiscrimination provision of the Affordable Care Act (ACA), and would reinforce that discrimination on the basis of sex includes discrimination on the basis of pregnancy or related conditions (WHG Summary).</p> <p>HHS issued guidance to roughly 60,000 U.S. retail pharmacies, clarifying their obligations under federal civil rights laws to ensure access to comprehensive reproductive health care services (WHG Summary).</p>
	<p><i>Promote research and data collection on maternal health outcomes</i></p>	<p>In the same EO-responsive report referenced above, HHS noted it is actively exploring approaches to improve its ability to track and understand the implications of lack of access to abortion through improved comprehensive and timely data. It also committed to continuing reporting systems established by the CDC and the Agency for Healthcare Research and Quality (AHRQ) to better understand the impact of abortion bans on maternal mortality and morbidity.</p>

Memorandum

October 26, 2022



Congressional Action

Legislative Updates

- On July 15, two bills intended to improve access to abortion were passed in the House but are unlikely to pass in the Senate due to the 60-vote filibuster threshold:
 - The **Women's Health Protection Act of 2022** ([H.R. 8296](#)) introduced by Reps. Judy Chu (D-CA), Ayanna Pressley (D-MA), Lois Frankel (D-FL), and Veronica Escobar (D-TX) was passed as anticipated with a 219-210 vote. This bill sets to establish a statutory right for health care providers to provide, and their patients to receive, abortion care; and
 - The **Ensuring Access to Abortion Act of 2022** ([H.R. 8297](#)) introduced by Reps. Lizzie Fletcher (D-TX), Marilyn Strickland (D-WA), and Jamie Raskin (D-MD) also passed with a 223-205 vote. It would prohibit states from punishing individuals for traveling to a different state to obtain abortion services.
- Senator Lindsey Graham (R-SC) recently [introduced](#) the **Protecting Pain-Capable Unborn Children from Late-Term Abortions Act** ([S.4840](#);[H.R.8814](#)) which aims to ban abortions at or after 15 weeks gestation. It has no chance of passing in the Democratic controlled Senate and has not been endorsed by Senate Minority Leader Mitch McConnell (R-KY) or House Minority Leader Kevin McCarthy (R-CA).

Hearings

- On July 19, the **House Energy & Commerce Committee Oversight and Investigation Subcommittee** held a hearing on the consequences of the Supreme Court's decision *in Dobbs v. Jackson Women's Health Organization* that overturned *Roe v. Wade*. Members disagreed on medication abortion, when a physician should be able to provide an abortion in the event the woman's life is at risk, and issues observed in pharmacies where pharmacists are unable to fill prescriptions for drugs that could terminate a pregnancy but are also used to treat various other conditions ([WHG Summary](#)).
- On September 29, the **House Committee on Oversight and Reform** held a hearing on the impact of Republican led abortion bans and heard witness testimony from witnesses who discussed the effects of abortion restrictions on the health and wellbeing of those seeking reproductive health care services in hostile states and the disproportionate harm these restrictions will have on low-income communities ([WHG Summary](#)).

Committee Activity

- Earlier this month, Democratic committee leaders with jurisdiction in the [Senate](#) and [House](#), sent separate letters to Secretary Becerra supporting the Biden Administration's proposed health care nondiscrimination rule. In the letters, the lawmakers expressed strong support for many provisions in the

Memorandum

October 26, 2022



proposed rule. They also emphasized that the final rule should *explicitly* prohibit discrimination on the basis of pregnancy or related conditions-including termination of pregnancy-as a form of sex-based discrimination.

- Chairwoman Maloney of the **House Committee on Oversight and Reform** recently released a [report](#) following the Committee's review of insurers' and pharmacy benefit managers' (PBMs) compliance with the ACA's birth control coverage requirement. This provision in the ACA requires insurers and health plans to cover FDA approved birth control without cost-sharing. Key findings from the report are:
 - Insurers and PBMs imposed cost-sharing or coverage exclusions on at least 34 different contraceptive products, including a disproportionate number of newer contraceptive products as well as those used by patients with distinct health care needs or those used by people with lower incomes; and
 - Health insurers and PBMs denied an average of at least 40% of exception requests. The report also characterized exceptions processes as not sufficiently accessible, expedient, or transparent.