

Health Policy in Transit

Employer-sponsored Coverage Post-Roe (including travel)

*This Health Policy in Transit provides a high-level summary of what employers should consider when navigating the various laws and regulations affecting the recent change in the federal constitutional right to an abortion following the U.S. Supreme Court's decision in *Dobbs vs. Jackson Women's Health Organization*.*

There is no requirement in ERISA or any federal regulation that an employer plan covers abortion or related services, including travel. Employer-sponsored plans are allowed to cover abortion and any related services of their own choosing. In fact, these plans must cover care for essential health services, including medically necessary pregnancy care and abortion when carrying a pregnancy to term would endanger a patient's life. Under the Pregnancy Discrimination Act of 1978, pregnancy and prenatal care, including high-risk pregnancies, and obstetric care in general are required to be covered.

The question of whether an ERISA plan must cover abortion is not the same as whether abortion is allowed in a state, per state law or constitution. Also uncertain is whether state laws will take aim at employers that offer benefits, including travel or telehealth, for abortion services. Although all state laws that currently restrict abortion include an exception to save the life of the mother, what constitutes a life-threatening scenario is not always clear. Laws that restrict abortion generally apply to the medical provider and sometimes those who "aid or abet" the abortion. Some states, including Texas, allow private citizens to sue anyone who provides an illegal abortion or helps a person access an abortion. The legal question of whether an employer who covers an abortion and/or travel costs has "aided or abetted" a plan enrollee is very much unanswered.

Whether and how these state laws will be applied to employers will undoubtedly end up in the courts. There are also a host of unanswered questions about whether states that restrict abortion will have the legal authority to target abortion coverage in employer plans. The issues will likely be brought before both state and federal courts for years to come. As employers continue to navigate this uncertainty, they should continue checking in with their vendors to ensure compliance with state laws and regulations, and keep a close eye on legal and regulatory developments at the state level.

Regarding coverage for travel, if an enrollee or family member cannot access abortion in their home state, the landscape is murky and employers have many decisions to make. Several very large, national employers have already offered to cover travel for their enrollees, but providing that coverage is not as straightforward as it sounds.

Employers must determine whether enrollees will access this benefit through the health plan or some other reimbursement method and how broadly travel benefits will apply. Protecting privacy may also be an issue along with determining how these approaches may conflict with other rules.

For example:

- If an employer covers travel for an abortion but not for an eating disorder does that violate Mental Health Parity?
- If a plan has no providers willing or able to provide abortions, does it violate network adequacy rules?

As these questions remain unanswered, employers should work very closely with advisors to consider how to offer these benefits. The recent [NEBGH webcast with Epstein Becker Green](#) may also be helpful.