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Biden Administration Signs Executive Order after Dobbs Decision

Since the *Dobbs* decision, employers and health plan sponsors have been scrambling to determine how they can assist employees and health plan participants in states that currently or will soon be restricting access to abortion. Now, employers and health plan sponsors have another factor to consider in determining their course of action – that factor is how the Biden Administration will react to the *Dobbs* decision.

On July 8, 2022, President Biden signed an Executive Order ("EO") aimed at protecting access to reproductive health care services. This EO is a direct response to the *Dobbs v. Jackson* United States Supreme Court ruling giving the power to regulate abortion back to the states.

The EO instructs the Secretary of Health and Human Services ("HHS") to take the following actions and submit a report within 30 days regarding the following –

- How HHS can take additional action to protect and expand access to FDA approved medication for abortion;

- How HHS can take additional actions to expand access to a full range of reproductive health services, including family planning and procedures, such as access to emergency contraception and other contraceptive devices; and

- How HHS can increase its outreach and public education efforts regarding access to reproductive health services.

The EO also instructs the Federal Trade Commission to consider taking steps to better protect consumer privacy for individuals who seek information about and the provision of reproductive health care services.

Last, HHS is also instructed to consider additional actions under the HIPAA privacy rules to better protect sensitive health information related to reproductive health care.

However, the EO stops short of any significant actions which are still being considered by the Administration. For example, some in the Administration have suggested that the President can declare another public health emergency relating to reproductive health care. However, that will almost certainly be challenged immediately in court, and so far, anyway, the Administration has decided not to take such a drastic step. Additional items that are still being considered include allowing abortions on federal property and/or allowing Veterans Affairs facilities to provide abortions. Both are aimed at circumventing various state laws restricting abortions.

As employers and health plan sponsors navigate this legal morass, one thing is certain, this issue is far from settled, and likely won't be for quite some time. Stay tuned for our upcoming article concerning various state "aiding and abetting" laws and how employers and plan sponsors can better protect themselves from liability.