



## REPRODUCTIVE HEALTH/DATA PRIVACY Fact Sheet

# Common Themes and Creative Solutions to Protect Privacy of Reproductive Health Data

## Risks to Privacy of Reproductive Health Information in the Wake of *Dobbs v. Jackson Women's Health*

It has now been twenty months since a majority of the United States Supreme Court, in [Dobbs v. Jackson Women's Health](#), found there is, in fact, no right to an abortion under the U.S. Constitution. Since the *Dobbs* decision was first leaked, considerable concerns have arisen in many parts of the country, at [every level of government](#), about the potential risks to the privacy of reproductive health information. A primary concern: could prosecutors and investigators in states with abortion bans reach into states in which abortion is legal to gain access to patient health records to prosecute, intimidate, discipline, or otherwise take adverse actions against health care providers and patients?


The Network has identified at least eleven states and the District of Columbia (D.C.) that have now passed laws that seek to keep health data relating to abortion out of the hands of those that would seek to use them against patients and their providers merely for seeking, receiving or providing reproductive health care. In a follow-up to the Network's April 21, 2023 factsheet, [Federal, State and Local Efforts to Protect the Privacy of Abortion Health Records](#), this new factsheet explores common themes and creative solutions in state and District of Columbia laws aimed at protecting the privacy of reproductive health records.

## State Laws Protecting Reproductive Health Data: Common Themes and Creative Solutions

### I. Limitations on Disclosure of Reproductive Health Data

A key feature of a number of legislative solutions has been the express limitation on disclosure of reproductive health data. These laws limit disclosures by health care providers, [business associates](#), information exchanges, and others. For example, California passed [AB 1242](#), signed September 27, 2022, prohibiting communication services from producing customer records in response to an out-of-state warrant relating to providing or obtaining an abortion that does not violate California law.

Connecticut's [Public Act 22-19](#), effective July 1, 2022, prohibits Health Insurance Portability and Accountability Act (HIPAA) covered entities from disclosing information received from a patient, or gathered during a patient's physical examination, relating to reproductive health services that are legal in Connecticut, unless the patient or their personal representative consents to such disclosure, with limited exceptions. And, [Connecticut's Public Act 23-56](#), passed June 26, 2023, prohibits any person from providing access to consumer health data, including reproductive and sexual health data, to an employee or contractor unless the employee or contractor has a duty to keep the information confidential.



Following passage of [Maryland's HB 812](#), as of June 1, 2023, health information exchanges (HIEs) in that state may not disclose mifepristone data or information relating to diagnosis and procedure codes for abortion care to a provider treating the patient, a business entity or another HIE. Two exceptions to this rule are carved out in the law; namely, if the disclosure is for claims adjudication or if the individual consents to the disclosure. Violation of the act is a misdemeanor and carries a fine of up to \$10,000 per day.

And, Vermont passed [S37](#) on May 10, 2023, prohibiting disclosure of protected health information (PHI) relating to reproductive health care by a HIPAA covered entity or business associate if the disclosed information is to be used in a criminal or civil action or certain other proceedings. The law includes several exceptions to this prohibition, permitting disclosure, if, for example, the individual consents, the disclosure is specifically required by law or Vermont Supreme Court rules, or the disclosure is ordered by a court upon a determination that good cause exists for the disclosure.

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## **II. Limitations on Mobile Apps and Websites Collecting Consumer Reproductive Health Information**


At least three states have taken actions that limit use of reproductive health data collected from consumers through apps and websites, which are in many instances [not subject to the privacy requirements of HIPAA](#). For example, on September 27, 2023, California passed [AB 254](#), requiring mobile apps and websites that collect reproductive or sexual health information from consumers to comply with the privacy requirements of the [California Medical Information Act \(CMIA\)](#).

What's more, Nevada passed [SB 370](#), known as the Consumer Health Privacy Law, on June 16, 2023 (effective March 31, 2024), and Washington passed [HB 1155](#), known as the My Health My Data Act, on April 27, 2023. Both laws regulate the collection and sharing of consumer health data, which in both statutes expressly include reproductive health data. The two laws generally prohibit collection and use of consumer health data without the consent of the consumer, except where necessary to provide the services requested by the consumer. The laws further require privacy policies that disclose the categories of data collected from consumers, among other information, and afford certain rights, such as the right to have one's data deleted.

Legislators in Vermont have introduced that state's own My Health My Data bill, [S173](#). As in the case of Washington and Nevada before it, the Vermont bill specifically calls out reproductive or sexual health information as types of data protected by the bill.

## **III. Prohibitions on Cooperating with Out-of-State Investigators, Prosecutors and Agencies Adverse to Abortion**

A common feature of several state efforts to protect the privacy of individuals seeking reproductive health care and their health data is to prohibit cooperation with out-of-state investigations, prosecutions, and proceedings relating to seeking, receiving, facilitating or providing an abortion. In many cases, this prohibition applies to state agencies, including law enforcement agencies, although in at least one case, the bar applies to health care providers and health plans. The District of Columbia, for example, passed the [Human Rights Sanctuary Amendment Act of 2022](#), barring public employees from expending any resources to support interstate civil or criminal proceedings targeting any person for receiving, seeking, or performing reproductive health care. In California, Governor Gavin Newsom signed [AB2091](#) on September 27, 2022, prohibiting providers and health care services plans from releasing reproductive health information to law enforcement, and [AB 352](#) on September 27, 2023, similarly barring providers and health plans from cooperating with out-of-state agencies and federal authorities.



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On April 5, 2023, New Mexico passed [SB13](#), known as the Reproductive and Gender-Affirming Health Care Protection Act. The law prohibits public entities from releasing information to assist an out-of-state investigation seeking to impose civil or criminal liability or professional discipline for engaging in reproductive health care. [New York's Executive Law § 837-w](#), signed June 13, 2022, similarly bars cooperation by in-state law enforcement with an out-of-state agency regarding an abortion legally performed in New York.

On July 1, 2022, New Jersey passed [AB 3975/SB 2633](#) barring cooperation by public entities with interstate investigations imposing civil or criminal liability for receiving or providing reproductive health care services.

And, on July 26, 2022, Massachusetts passed [H5090](#), similarly prohibiting release of information by law enforcement to federal or out-of-state law enforcement or any individual in relation to reproductive health care provided legally in Massachusetts.

#### **IV. Prohibition on Use of State Courts to Assist Out-of-State Investigations and Prosecutions Relating to Reproductive Health Care**

Several states have passed laws aimed at preventing use of state court or judicial resources to further out-of-state investigations or prosecutions targeting patients in relation to reproductive health care. California's [AB 1242](#), signed September 27, 2022, prohibits California state courts from issuing *ex parte* orders authorizing the interception of electronic communication to investigate an abortion that would be legal in California.

Connecticut's [Public Act 22-19](#), effective July 1, 2022, bars state judges from issuing a summons in a criminal case involving abortion. Illinois [HB 4664](#), signed January 13, 2023, New York [Civil Practice Law and Rules \(CPLR\) 3119](#), amended June 13, 2022, Delaware [HB455](#), signed June 29, 2022, and New Mexico [SB 13](#), signed April 5, 2023, all generally limit their state courts from issuing subpoenas on submission of an out-of-state subpoena relating to an investigation of an abortion. Finally, New York also amended [CPLR 3102](#) on June 13, 2022, prohibiting its supreme courts from issuing orders in aid of a deposition in support of an out-of-state proceeding relating to an abortion legally performed in New York.

#### **V. Mandated Technical Requirements for Electronic Health Information Systems Storing Reproductive Health Data**

Electronic health records (EHRs) offer convenient access to health information for authorized purposes. However, reproductive health records are not typically segregated from other types of health information within electronic health records, leading to concerns that reproductive health data may be inadvertently accessed, or disclosed in response to subpoenas or records requests, even where the disclosure is prohibited by law. On September 27, 2023, California passed [AB 352](#) requiring businesses that maintain EHR systems that store information relating to the provision of reproductive health care and other sensitive services, on behalf of a health care provider, to enable certain privacy-enhancing features. These features include the ability to limit access to information relating to sensitive services to authorized persons, preventing disclosure of such information outside of California, segregating such information from other types of information in the system and providing automatic access controls over such segregated information.



## VI. Prohibition on Geofences Around Health Care Facilities

A geofence is technology that uses spatial or location detection, such as global positioning coordinates, cell phone towers, cell phone data, or Wi-Fi data, to create a virtual boundary around a location or to locate a consumer within a virtual area. At least four states have taken steps to prohibit use of geofences around health care facilities that infringe on the privacy of individuals seeking services. Washington’s [My Health My Data Act](#), for example, prohibits use of a geofence within 2,000 feet of a health care facility to (1) track individuals seeking care, (2) gather health information from consumers, or (3) send messages and advertisements to consumers related to their health data or health care services.

**At least four states have taken steps to prohibit use of a geofence around health care facilities that infringes on the privacy of individuals seeking services.**

Connecticut’s [Public Act 23-56](#), passed June 26, 2023, similarly bars geofencing within 1,750 feet of a reproductive, sexual or mental health facility. Nevada’s [Consumer Health Privacy Law](#) provides almost identical protections but applies its prohibition on geofencing to within 1,750 feet of any health care facility. Finally, New York’s [S4007C](#), passed May 3, 2023, similarly prohibits geofences within 1,850 feet of a health care facility for the purposes of delivering advertisements, creating consumer profiles, or to “infer health status, medical condition, or medical treatment of any person.”

## Conclusion

Since the U.S. Supreme Court’s decision in *Dobbs*, several states have taken steps to directly or indirectly bolster privacy of reproductive health data, passing laws (i) limiting or prohibiting disclosure of reproductive health data by communications companies, health care providers, health information exchanges, and others, (ii) applying new privacy restrictions to collection and use of consumer health data, (iii) prohibiting cooperation with out-of-state investigations by state agencies, in-state law enforcement, and even health care providers and health plans, (iv) limiting the use of state courts to assist out-of-state investigations involving reproductive health care, (v) requiring technical capabilities within electronic health record systems to segregate reproductive data from other types of health data and limit access to authorized persons and (vi) barring utilization of geofences around health care facilities to interfere with access to health care services.

**This document was developed by Stephen Murphy, Acting Director, Mid States. 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 does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

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