

# LATEST EDITION: INDUSTRY INSIDER

June 28, 2022

## SUPREME COURT OVERTURNS ROE V. WADE

On June 24, 2022, the Supreme Court issued its ruling in *Dobbs v. Jackson Women's Health Organization*, overturning *Roe v. Wade*, which had previously held that there was a federal constitutional right to decide whether to continue a pregnancy. Furthermore, *Roe v. Wade* also prohibited states from further regulating a women's abortion decision prior to fetal viability. With this decision, individual states may now establish their own laws to regulate or prohibit abortion.

In anticipation of employers receiving inquiries from their employees in the wake of this decision, we wanted to proactively issue guidance to assist. Please know that the information addressed in this Alert neither reflects any political, philosophical, religious, or personal beliefs of our organization, nor intends to sway employer decisions regarding how to approach the ruling. Instead, employers should act based on what they believe is best for their culture and mission.

It is important to note that this situation is highly fluid, and ultimately will vary on a state-by-state basis. Today, some states require abortion coverage in private health plans (some with no patient copayments). As a result of this decision, some states may restrict coverage and services available dependent upon certain requirements, such as requiring a plan to include a medically necessary definition. Other states, however, may move toward a total ban on coverage or services. Employers' health plan coverage for abortion could include one of several levels of coverage. To help to confirm the extent of coverage included in your plan, please review your Certificates of Coverage, Plan Documents, or contact your Exude benefits team.

### Policy Coverage

Specific language for abortion coverage currently varies between health plans and states. Below are some sample guidelines of how coverage may be extended by the type of policy:

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- Fully Insured Health Plans, Level Funded, and ASO Health Plans
  - o **Medically necessary abortion coverage** – This is a broad definition, which may include, but is not limited to, one or more of the following being medically necessary:
    - Ectopic pregnancy, miscarriages/missed abortion, or a molar pregnancy;
    - Preservation of the woman’s life, or otherwise to avert substantial and irreversible impairment of a major bodily function;
    - A fetus that has a defect clearly documented by a physician, to be both uniformly undiagnosable and uniformly lethal; and/or
    - When the pregnancy is the result of rape or incest.
  - o **Elective abortion coverage** – The most liberal definition without regard to underlying medical cause.
- Self-Insured Health Plans
  - o Self-insured plans remain governed by federal law and are not impacted by state regulations or legal decisions. This means that employers who sponsor a self- insured plan may define coverage for abortion services as desired, potentially borrowing from the above definitions, and do not have to follow their state’s law. However, it is important to note that while the plan may allow for coverage, individual states may still prohibit coverage. Plans may then decide to allow for or assist with such services in other states. We await forthcoming guidance on this issue.

## Additional Information

Both in anticipation of and after the decision was announced, some companies have expanded abortion coverage while others have extended travel benefits or began offering reimbursements to assist with legal out-of-state abortions. Examples of such companies and their benefit details can be found [here](#). Experts are anticipating legal challenges to companies offering these extended benefits. Conversely, this decision may now also allow businesses to restrict coverage, depending upon state law and insurer/plan flexibility.



Given the legal ramifications surrounding this issue and the fact that this topic can be very polarizing, stressful, and emotional for many individuals, we also encourage employers to consider the following:

- Promote any existing mental health benefits, including Employee Assistance Programs, talk therapy benefits, and any additional like benefits.
- Work with your internal communications and/or legal teams to potentially provide a statement to employees on the matter. This may include reminders on professional decorum, harassment, and other items that carry the potential for workplace issues.
- Seek appropriate legal and tax consultation prior to offering or changing any benefit. This recommendation remains critically important with this issue, as some states may prohibit such benefits from being offered.
- Keep in mind other laws that may come into play when dealing with situations surrounding this issue. Such laws include, but are not limited to, the Pregnancy Discrimination Act, the Health Insurance Portability and Accountability Act, and the Employee Retirement Income Security Act. Again, please consult with counsel as to how these laws may apply.

## Conclusion

We will continue to keep employers informed of other developments related to this issue. In the meantime, we encourage clients and their leadership teams to review this information and discuss how it relates to their individual approach to the court's decision and any employee inquiries that may arise.

For additional questions regarding this or other compliance issues, please reach out to your Exude Consultant.