if when how

Lawyering for Reproductive Justice

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NPWH & NSRH CE Module

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HIPAA and Clinical Documentation after Dobbs

Objectives

By the conclusion of this webinar, participants will be able to:

- Explain HIPAA's health privacy protections as they apply to women's healthcare.
- Describe how changes following the *Dobbs* decision have affected patient privacy and provider-patient trust.
- Identify opportunities to reduce patient criminalization through everyday clinical practice.
- Apply documentation best practices that support quality patient care while minimizing unnecessary privacy risks.
- Discuss appropriate responses to requests for medical records, including requests from law enforcement.

Disclosures

- The speakers have reported no relevant financial relationship.

Ending your own pregnancy is generally not a crime for the pregnant person.



0 True

0 False

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It is illegal for anyone to travel to another state in order to get an abortion.

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True	False



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Free speech laws generally protect a nurse's right to give information about abortion.



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True	False



If/When/How

We are creating a future where every one of us has the power and support to make decisions about our bodies, families, and communities, without barriers, coercion, or punishment, in safety and with dignity.

About us



Repro Legal Helpline

Legal services for your reproductive life, including abortion, pregnancy loss, and birth.



Repro Legal Defense Fund

An abortion and pregnancy defense fund.



Movement Building

Organizing lawyers, law students, and advocates and building community with partners to realize reproductive justice.



Roadmap

- Introductions
- Why this? Why now?
- What is HIPAA, legally & practically?
- How to protect patients & yourself
- Q&A

This presentation is for everyone.

It’s for you if:

- You strongly believe abortion is a human right.
- You strongly believe abortion is morally wrong.
- You believe that abortion is okay for other people, but not for you.
- You have ambivalence about abortion.

You are welcome here, as a clinician who cares for others.

This is not legal advice.

The law may have changed since the date this was recorded.



Luketic, R. (Director). (2001). *Legally Blonde* [Film]. Metro-Goldwyn-Mayer.

Terminology



Medication Abortion

An abortion with pills (mifepristone + misoprostol), early in a pregnancy.

Mife = stops supply of hormones
Miso = empties uterus



ACOG, *Medication Abortion Up to 70 Days Gestation*, Practice Bulletin No. 225 (Oct. 2020); World Health Organization, *Abortion care guideline* (March 2022).

Self-Managed Abortion (SMA)



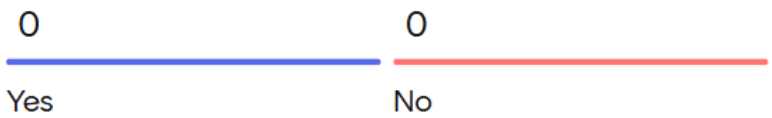
An abortion that someone does on their own, outside traditional medical systems.

- Abortion medication
- Traditional means
- Unsafe means

- Plan C
- M&A Hotline
- Repro Legal Helpline
- Reprocare

Why are we talking about HIPAA?

Have you had a patient ask whether something you've discussed would appear in their medical record, or who could see it?



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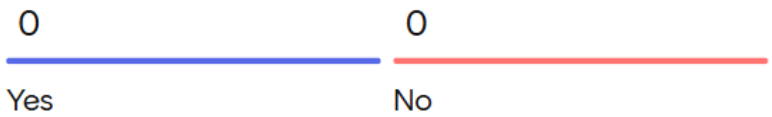
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Have you ever suspected that patient withheld information because they were concerned about confidentiality or documentation?



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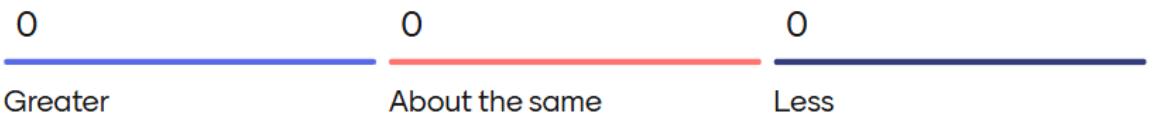
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Compared to "pre-Dobbs", do you think concerns about patient privacy are:



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It is our responsibility to create a **transparent**, **trustworthy** care environment where patients feel **safe** sharing sensitive information and **seeking care without fear**.





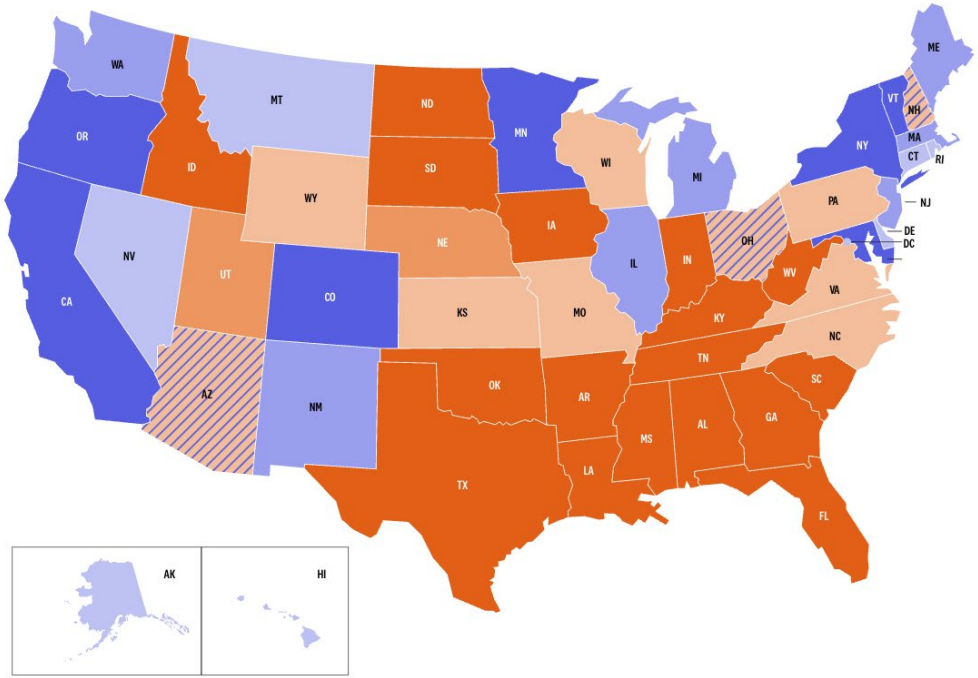
Many of us were taught: “Document everything.”

Good documentation ≠ Maximum documentation

Criminalization

Being investigated, arrested, or prosecuted for something that is *not* a crime.

Abortion Landscape in 2026



- Most restrictive
- Very restrictive
- Restrictive
- Some restrictions/protections
- Protective
- Very protective
- Most protective

Guttmacher Inst., *US Abortion Policies* (July 1, 2026), https://states.guttmacher.org/policies.

Bans don’t (typically) target people *having* abortions

“**No woman upon whom an abortion is performed or attempted to be performed** shall be criminally or civilly liable.”

Alabama Code § 26-23H-5

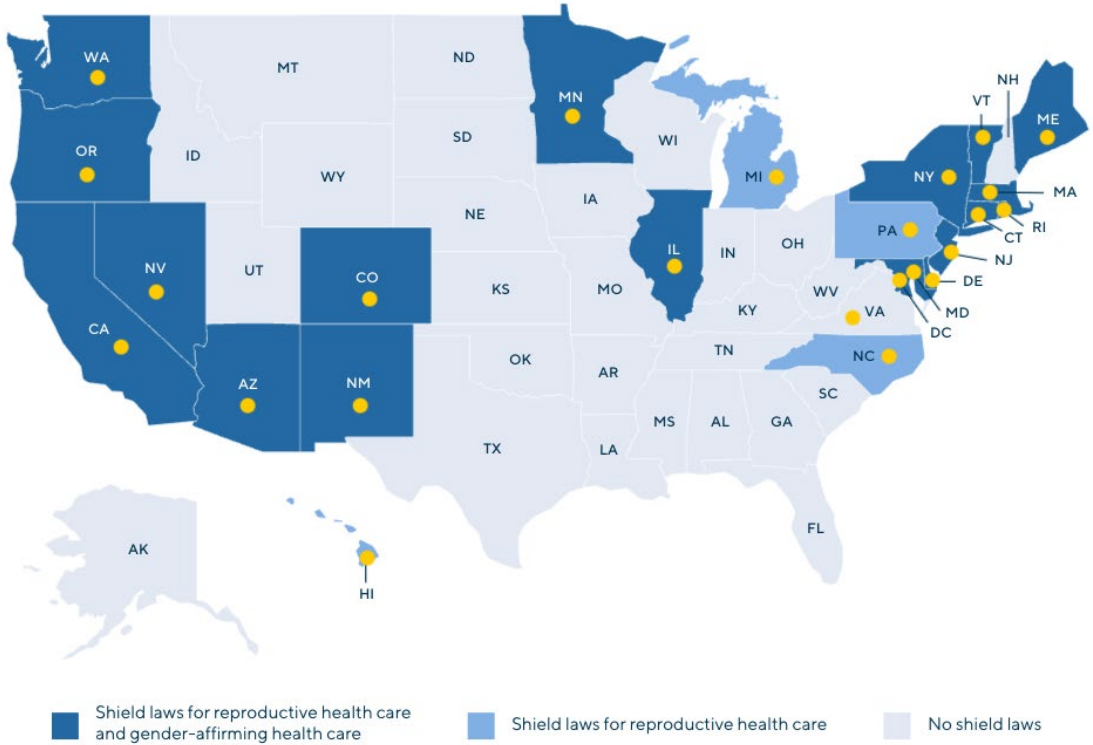
“This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a **pregnant female on whom an abortion is performed, induced, or attempted**.”

Texas Health & Safety Code § 170A.003

"Nothing in this Section may be construed to subject the **pregnant mother upon whom any abortion is performed or attempted** to any criminal conviction and penalty."

Louisiana Rev. Stat. Ann. § 40:1061

Shield Laws

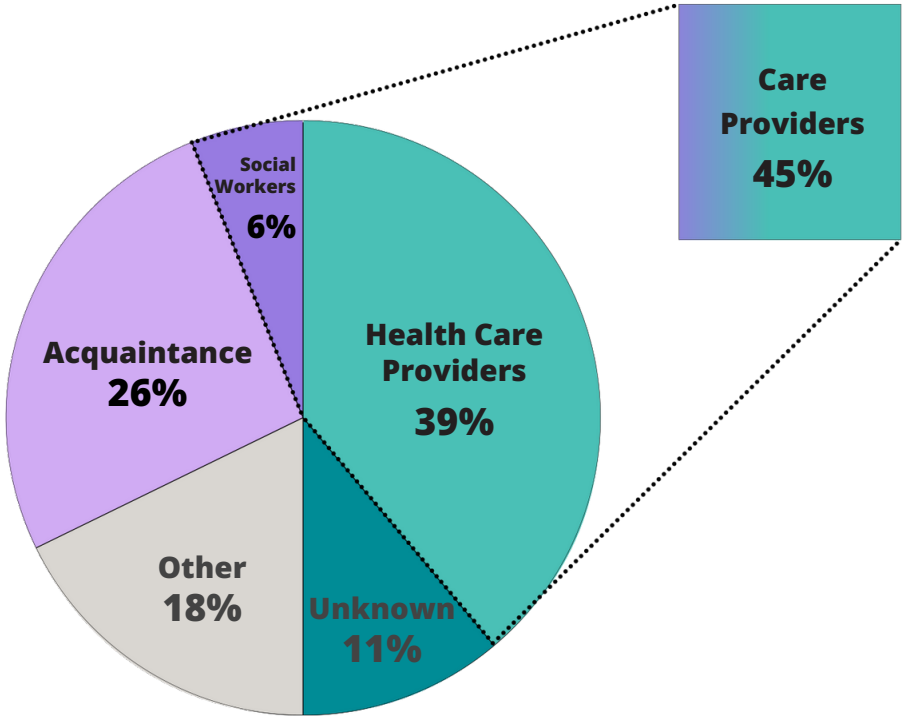

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Shield laws for reproductive health care and gender-affirming health care
Shield laws for reproductive health care
No shield laws

STATES ARE INCREASINGLY INVESTIGATING, ARRESTING, AND PROSECUTING PEOPLE FOR ENDING THEIR OWN PREGNANCIES OR FOR HELPING A LOVED ONE DO SO.

- More people choosing to self-manage means more opportunities for criminalization
- State abortion law is not always relevant
- Criminalization upends lives, even if there is no arrest or charges are dropped

HOW ADULT CASES CAME TO THE ATTENTION OF LAW ENFORCEMENT

How did **criminalization** start?



SELF-CARE, CRIMINALIZED:

THE CRIMINALIZATION of SELF-MANAGED ABORTION FROM 2000 to 2020

bit.ly/smacrimreport

if when how

Law Rep Jus

Understanding Criminalization

It's **discriminatory**

- Race
- Poverty
- Gender
- Disability
- Informal economies

It's **discretionary**

- Statutes
- Constitution
- Local police
- Prosecutorial discretion
- Social workers

It's **circumstantial**

- Fetal remains
- Medical emergencies
- Medical providers
- Other participants

Providers face new challenges

- Fear of giving appropriate, timely care
- Fear of discussing abortion and miscarriage management
- Providing care under (untested*) shield laws

True or False, Again: Criminalization

Question One:

Ending your own pregnancy is generally not a crime for the pregnant person.

Question Two:

It is illegal for anyone to travel to another state in order to get an abortion.

Question Three:

Free speech laws generally protect a nurse's right to give information about abortion.



Medical Privacy 101

Terminology

HHS: Department of Health & Human Services

PHI: Protected Health Information



HIPAA: The Health Insurance Portability & Accountability Act of 1996

2000 HIPAA Privacy Rule

Disclosures to law enforcement are permitted - not required

Disclosures must be the “minimum necessary”

Broad exception for public health reporting



Mandatory Reporting

Providers <u>can</u> share PHI when making a mandatory report.

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True	False



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Providers making a report should provide as much information as possible.



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Research shows mandatory reporting supports patient health and safety.



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Ethical issues in mandatory reporting

"The authors' research led them to reach politically unpopular and unexpected conclusions...

Thus, one of the most comprehensive reviews of data about mandated reporting was effectively discarded...

Instead, an evidence-free approach prevailed."

Mical Raz, *Why Mandatory Reporting Doesn't Keep Children Safe*, Time (Jan. 31, 2024) (discussing CAPTA).

Ethical issues in mandatory reporting

State law

(must / can report)

or

State guidance?

Institutional policy?

(not the law!)

Required

(must / can report)

or

Permissive?

(can report)

Generally, no one is required to report self -managed abortion under the law.

Doing so is likely a HIPAA violation.

Huss L, Diaz-Tello F, Samari G. (2023). *Self-Care, Criminalized*. If/When/How: Lawyering for Reproductive Justice.

HIPAA is a shield, but weaker than we'd like.



So… what now?



We can fight back.

Protecting our patients

When documenting, which concern most influences your decision-making?



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A subpoena for a patient's medical record is delivered to your clinic. What is the next best step?



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Release the requested records because a subpoena requires compliance	Review the chart and send only the records related to the case	Follow organizational procedures and refer the request for privacy/legal review	I'm not sure

Waiting for participants

Charting

- Documentation is weaponized against patients
  - Less can be more*
  - Data anywhere = data everywhere

- What does the next provider seeing this patient **need to know** in order to provide high-quality care?

Documentation should be:
Accurate + Relevant + Objective + Necessary



Ask Yourself…

Does this information affect:

- diagnosis?
- treatment?
- safety?
- follow-up care?

If not, consider whether it truly belongs in the record.

Risky vs Relevant

Patient **admits** to ordering abortion pills online because she was worried she couldn't legally get an abortion where she lives. She took one pill by mouth 1 week ago and four pills buccally the following day. She doesn't know the names of the medications she took. She did not tell her partner, because she wanted to keep it a secret. Reports continued vaginal bleeding with mild cramping and wants to know if this is normal.

Patient believes she was pregnant and reports light-moderate vaginal bleeding and mild cramping x 6 days.

She is seeking reassurance that she is OK.

Screening for intimate partner violence and reproductive coercion today: negative

Speculative vs Objective

Patient presents for follow-up from ER visit yesterday. Reports diagnosis of early pregnancy loss at approximately 7 weeks by LMP. Patient **claims** she didn't take any medication to end the pregnancy, but she was seen last week requesting information about an abortion.

Patient presents for follow-up from ER visit yesterday. Reviewed discharge paperwork showing diagnosis of early pregnancy loss at approximately 7 weeks by LMP.

Judgmental vs Necessary

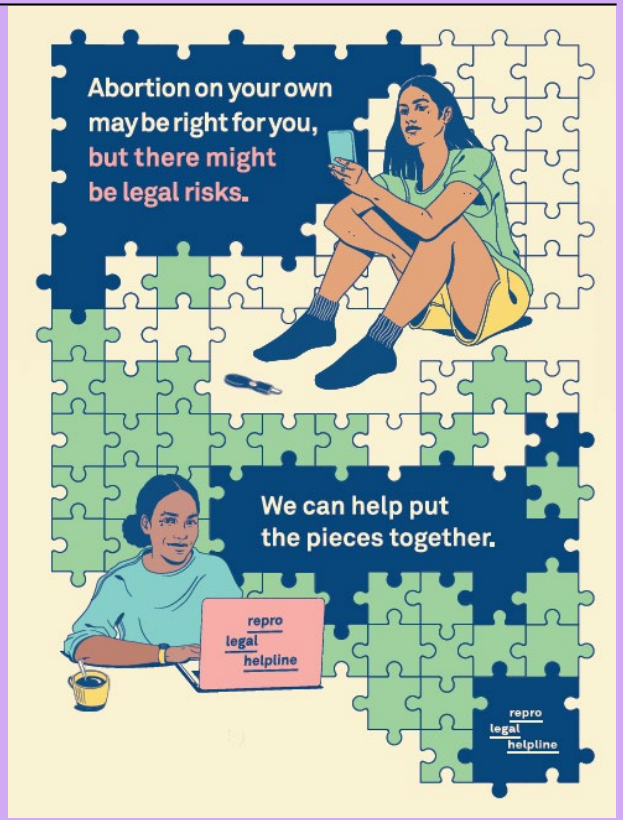
Patient here for birth control with positive UPT. Pt states, “There’s no way I’m pregnant. I just had an abortion 5 days ago.” She **refuses** to provide information on where the abortion was performed. She wants birth control pills again, but she was **non-compliant** with them previously, leading to an unwanted pregnancy.

Patient presents requesting birth control following an abortion 5 days ago. UPT positive. Patient is aware of all her options and chooses birth control pills. Reviewed instructions on use, risks, benefits, and common side effects.

Responding to Requests for Medical Records

- Do not feel pressured to immediately release information.
- Follow organizational policy and escalate as appropriate, but also…
  - Serve as a resource on what is medically relevant
  - Advocate for organizational policies that minimize harm

Resources


Abortion on your own may be right for you, but there might be legal risks.
We can help put the pieces together.
repro legal helpline
repro legal helpline



Technical Assistance

Legal Information & Public Education

Our Technical Assistance team addresses questions about state abortion regulations, including self-managed abortion; child welfare and abortion reporting requirements; and medical privacy protections.

ifwhenhow.org/learn/technical-assistance



Repro Legal Helpline

Legal services for your reproductive life.

If/When/How's Repro Legal Helpline provides free, confidential legal services for your reproductive life, including abortion, pregnancy loss, and birth.

ReproLegalHelpline.org or **844-868-2812**



Repro Legal Defense Fund

An Abortion and Pregnancy Defense Fund

The Repro Legal Defense Fund funds bail and strong defenses for people facing legal trouble for abortion, miscarriage, stillbirth, and other pregnancy outcomes.

ReproLegalDefenseFund.org or 866-463-7533(RLDF)



More burning questions?

Reach out!

Providers can *still* defend repro health records, and should fight to do so.

We can help keep abortion-seekers safe by sharing information and supporting providers.

States can protect medical privacy more strongly—and some already do!

Questions?

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