

Election 2024: Reproductive Rights in the US

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Sarah Raaii devotes her practice to issues impacting group health and welfare benefit plans. See her thoughts below on how the outcome of the 2024 US election could affect the way plan sponsors and employers address reproductive rights.

In Depth

In regard to reproductive rights, how would a Harris-Walz administration affect clients in your practice?

Bottom line: A Harris-Walz administration would seek to restore the protections of *Roe v. Wade*, thereby providing health plans with clarity about their obligations to cover reproductive health and reducing plan sponsors' concerns about the risks of providing reproductive health benefits in restrictive states.

Added context: Many plan sponsors/employers would breathe a sigh of relief if the administration protects access to fertility procedures, as fertility benefits have become a popular offering for employers looking to competitively recruit and retain talent. Most plan sponsors/employers would welcome a return to uniform federal requirements regarding reproductive health, as it would support the underlying principle of ERISA – a uniform scheme of benefits to be provided by a health plan to all its employees.

How would a Trump-Vance administration affect clients in your practice?

Bottom line: A Trump-Vance administration would likely further states' abilities to decide what types of reproductive health are legal in their territories, including fertility treatments like IVF. For large self-funded health plans, that will result in greater administrative difficulty and increased costs.

Added context: While smaller or religious employers may appreciate the ability to cut costs and limit the benefits they provide without running afoul of federal mandates, large employers that have

historically provided a greater breadth of benefits and touted their fertility and family-creation benefits would struggle.

After *Dobbs*, large employers have already been forced to shift strategies and implement creative solutions (such as travel benefits) to continue providing reproductive health benefits to participants in restrictive states. This need would only grow if more states are emboldened to pass restrictions on reproductive health and pursue third parties such as employers that seek to fund or assist individuals in accessing reproductive health.

With either administration, what should clients be most focused on from a regulatory and enforcement perspective?

Bottom line: Plan sponsors/employers should carefully track any federal or state efforts to either expand or restrict access to reproductive care, particularly in the arena of fertility benefits.

Added context: After *Dobbs* focused on access to abortion, many states have signaled that they may turn their attention to limiting fertility benefits, which often require the disposal of embryos. Depending on the election outcome, these states may either gain ground or need to battle it out in court with the federal government.

In the meantime, plan sponsors/employers should remain apprised of these challenges as they seek to continue to provide participants with competitive benefits, which often means supporting travel to states in which reproductive health is widely available. Travel benefits also carry with them legal and compliance risk, and the new administration may shed light on how to assess this risk.

Finally, to the extent that reproductive healthcare includes mental health treatment or implicates states or authorities seeking information about individuals' reproductive healthcare, plan sponsors should ensure that they are complying with recently issued regulations on the application of HIPAA to reproductive health and mental health parity.