

# LEGAL NEWS FOR YOUR BUSINESS

August 2022

## *Healthcare Provider Alert*

# HIPAA IN THE POST-DOBBS ERA: OCR GUIDANCE FOR HEALTHCARE PROVIDERS

On June 24, 2022, the United States Supreme Court issued a decision in *Dobbs v. Jackson Women's Health Organization*, overturning *Roe v. Wade*, essentially ceding to individual states wholesale authority to regulate abortion. As a response, the Department of Health and Human Services (HHS), Office of Human Rights (OCR) issued new guidance regarding the application of HIPAA's Privacy Rule to the information of patients seeking reproductive health care. In general, covered entities may not disclose private health information (PHI) without express patient authorization, unless *expressly permitted or required* by the Privacy Rule. OCR's post-*Dobbs* guidance primarily focuses on three provisions under the Rule: (1) disclosures that are required "by law"; (2) disclosures "for law enforcement purposes"; and (3) averting serious threats to health and safety.

### ***Disclosures Required by Law***

OCR emphasizes that disclosures that meet this exception are limited to federal or state legal mandates that require entities to disclose PHI. In these cases, the Privacy Rule permits, but does not require, entities to disclose PHI without patient authorization. However, when a state does not expressly require reporting, the Privacy Rule does not permit disclosure of PHI to law enforcement. For example, if a state prohibits abortions past six weeks but does not expressly require providers to report suspected incidences, disclosure of PHI would be in violation of the HIPAA Privacy Rule.

### ***Disclosures for Law Enforcement Purposes***

Further, OCR clarifies that disclosures to law enforcement are only permitted when they are pursuant to a legal process, such as a warrant, subpoena, or summons. For example, if PHI is requested by law enforcement in the absence of a court order or other enforceable mandate, disclosure would not be permissible under the Privacy Rule.

### ***Averting Serious Threats to Health and Safety***

Although disclosures may be made to law enforcement in the presence of a serious threat to health and safety of a person or the public, OCR states that it would be inconsistent with professional standards of ethical conduct to disclose PHI “regarding an individual’s interest, intent, or prior experience with reproductive health care.” Such disclosures, OCR stresses, would not constitute a “serious or imminent threat” under the Privacy Rule and could compromise the integrity of patient-physician relationships.

As each state enacts specific abortion legislation, health care providers should take care to ensure their disclosure policies, procedures, and actions are in full compliance with the HIPAA Privacy Rule.

*If you have questions or concerns about the HIPAA Privacy Rule, please do not hesitate to reach out to any member of Gardner Skelton’s healthcare team.*

### ***General Business Alert***

## **EMPLOYING THE CLASS OF 2022: TIPS FOR HIRING “ZOOMERS”**

Known as the “Zoomers,” “Gen Z,” and the “Class of COVID-19,” the members of the Class of 2022 have turned their tassels and are finally entering the workforce. According to the National Association of Colleges and Employers (NACE), employers plan to hire nearly 32% more college graduates in 2022 than in 2021. Additionally, the Bureau of Labor Statistics (BLS) expects the US’s current large number of job openings to continue through at least 2030 with the ongoing retirement of the Baby Boomer generation. With these factors coming together, the Class of 2022 has high expectations for their future employers, but matching their aspirations with the culture of the traditional workplace may be more difficult than anticipated.

According to recruiting technology provider iCIMS’ seventh annual report,[1] this year’s college graduates’ job-seeking characteristics differ greatly from previous generations, and even from older members of Generation Z. Having experienced more than half of their college education in a global pandemic, 2022 graduates have different skills, interests, and beliefs when it comes to their careers. HR and recruitment firms have identified several major categories employers should take into consideration when employing the Class of 2022:

- ***Application Requirements:*** According to surveys, only 3% of employers rank cover letters as critical to landing a job. Soft skills, hard skills, and previous work or internship experience are taking over as the most relied-upon indicators of an applicant’s fit.

- **Social Media Presence:** 70% of recent graduates reported looking at employers' websites and social media platforms to evaluate whether the company would be a good match for them.
- **Workplace Culture:** Graduates want their employers' values to match with their own. Over two-thirds of the Class of 2022 expect employers to support employees' mental health and host open, honest conversations. In addition, nearly half of graduates reported prioritizing personal passions rather than their career goals.
- **Flexibility:** While recent graduates are willing to come into the office, over 70% report wanting their jobs to accommodate some level of remote work and to have flexibility when it comes to hours, dress code, and the options of a virtual reality environment.
- **Salary:** While most employers expect to pay entry-level candidates approximately \$53,000, recent grads expect a salary of more than \$70,000 their first year out of college.
- **Stability:** After an incredibly unprecedented few years, college graduates want stability with their post-grad employers. Despite the large number of job openings and ability to move around, nearly 70% of graduates report wanting to stay with an employer long-term.

*As new generations enter the workforce, both applicants and employers will have to adapt toward new expectations, skills, and processes. If you want to update your employment practices, or have questions or concerns regarding your employment policies, please contact any member of Gardner Skelton's employment team.*



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