

Employee Benefit ■ Plan Review

District Courts Quash Justice Department Subpoenas Investigating Gender-Affirming Care

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In June 2025, the U.S. Department of Justice (DOJ) announced¹ that it had served more than 20 subpoenas to “doctors and clinics involved in performing transgender medical procedures on children.” To date, six district courts — in Boston, Philadelphia, Seattle, Pittsburgh, Denver and Maryland — have granted motions to quash filed by recipients of the subpoenas. Although the government generally has a low bar to enforce investigative subpoenas, the district courts have found that the DOJ’s subpoenas were served for an improper purpose and/or were overbroad.

BACKGROUND: EXECUTIVE ORDERS AND DOJ MEMORANDA

Almost immediately after taking office in January 2025, President Trump issued two executive orders denouncing the concept of gender identity as distinct from biological sex and opposition to gender-affirming care, particularly for children.

On his first day in office, President Trump issued an executive order entitled “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”² that declared that gender identity is a “false” concept, and declared that it is the policy of the United States to recognize two sexes that “are not changeable.”

And on January 28, 2025, the president issued an executive order entitled “Protecting Children from Chemical and Surgical Mutilation”³ announcing efforts to end gender-affirming medical and surgical treatments of children. This executive order declared that “medical professionals are maiming and sterilizing a growing number of impressionable children under the radical and false claim that adults can change a child’s sex through a series of irreversible medical interventions” and that this “dangerous trend will be a stain on our Nation’s history, and it must end.”

Thereafter, on April 22, 2025, Attorney General Pamela Bondi issued an internal DOJ memorandum⁴ that, among other things, directed the Civil Division to “act decisively to protect our children and hold accountable those who mutilate them under the guise of care” and to investigate potential violations of the Food, Drug, and Cosmetic Act (FDCA) by pharmaceutical manufacturers and distributors making false claims about puberty blockers, sex hormones, or any other drug “used to facilitate a child’s co-called ‘gender transition.’” In addition, the attorney general directed the Civil Division to investigate health care providers for submitting false claims to federal health care programs for any “non-covered services related to radical gender experimentation” by, for example, submitting false diagnosis information

to conceal the true purpose for ordering puberty blockers or sex hormones, or performing a surgery to remove or modify a child's sex organs.

Then, on June 11, 2025, the Assistant Attorney General (AAG) for the Civil Division, Brett Shumate, issued a memorandum⁵ setting forth the enforcement priorities of the Division, which included investigating pharmaceutical manufacturers and distributors for false claims and off-label marketing of puberty blockers and cross-sex hormones, as well as investigating health care providers seeking to avoid state bans for gender dysphoria treatment by submitting claims to Medicaid with false diagnosis information.

INVESTIGATIVE SUBPOENAS

On June 11, 2025, the same date as AAG Shumate's memorandum, the Civil Division served more than 20 subpoenas on hospitals, physician groups, and other providers seeking documents relating to gender-affirming care and other information. The subpoenas were issued under the Health Insurance Portability & Accountability Act of 1996 (HIPAA), which authorizes subpoenas to aid in any investigation of a federal health care offense.

Based on publicly reported information, the subpoenas sought personnel files for all the subpoena recipient's employees; documents regarding the use of billing codes in connection with gender-affirming care for minor patients; documents regarding communications with pharmaceutical manufacturers, sales representatives, marketing departments, and medical science liaisons regarding the treatment of gender dysphoria and the use of puberty blockers or hormones; prescriber information; medical records of minor patients and associated informed consent documentation and billing records, as well as information regarding patient social security numbers and home addresses.

MOTIONS TO QUASH

In recent months, district courts have granted motions to quash the DOJ subpoenas filed by five children's hospitals, Boston Children's Hospital, Children's Hospital of Philadelphia (CHOP), Children's Hospital Colorado, UPMC, and Children's National Hospital, and by a telehealth physician practice that serves patients in 10 states, QueerDoc PLLC.⁶

In general, the government faces a low burden when it seeks to enforce an administrative subpoena, such as the HIPAA subpoenas at issue here. Courts have held that to enforce a subpoena, the government must merely prove that the subpoena was issued for a congressionally authorized purpose, that the information sought is relevant to the authorized purpose and adequately described, that proper procedures were followed in issuing the subpoena, and that the requests were not unduly burdensome.

BCH AND QUEERDOC DECISIONS

Despite the low threshold for enforcement, in *BCH* and *QueerDoc*, the district courts quashed the DOJ subpoenas in their entirety on grounds that they were issued for an improper purpose. Although the DOJ asserted that it was investigating potential violations of the FDCA for improper billing, the courts noted that the DOJ introduced no evidence to support a concern that a violation had occurred. The *BCH* court specifically noted that the government had not submitted any affidavits of other evidence to show a basis for the DOJ's investigation. While the court agreed that the government was not required to provide probable cause, it also stated that the government "cannot use its subpoena power to go on a fishing expedition."

The district courts in *BCH* and *QueerDoc* contrasted the lack of evidence of improper marketing or billing with the multiple statements by the White House expressing a

desire to end gender-affirming care. The courts concluded from these circumstances that the government's purpose for serving the subpoena was to make it difficult for health care providers to offer lawful gender-affirming care rather than to investigate suspicions of violations of law. According to the *QueerDoc* court, "this is not speculation about hidden motives — it is the Administration's explicit agenda." Likewise, according to the *BCH* court:

Numerous statements by the Administration, executive orders, and memorandums, detail the Administration's goal of ending GAC [gender-affirming care]. While portions of these statements also refer to suspicions of improper billing practices and unlawful off-label promotion, the Government has not provided any support that the information sought by the subpoena is limited to these potential healthcare offenses, as opposed to the Government's stated goal of ending GAC. To be clear, the Government cannot broadly make inquiry into the provision of GAC generally — any such inquiry must be limited to the healthcare fraud that is authorized by the statute: fraudulent billing codes and unlawful off-label promotion. That is not the case here.

The *BCH* court also noted that the government acknowledged that it had not made a decision as to whether the hospital was a target, or a witness to improper marketing by pharmaceutical companies, or a witness to whom other entities directed false statements, or whether hospital personnel may have committed offenses without the knowledge of hospital management. While the government certainly cannot be expected to know the results of its investigation before it investigates,

the court clearly viewed the government's inchoate investigative theory to be more evidence that it was on a fishing expedition.

Further, the *BCH* and *QueerDoc* courts stated that the sheer breadth of the subpoenas as evidence that they were issued for an improper purpose rather than in furtherance of an investigation.

The *BCH* court concluded: "It is abundantly clear that the true purpose of issuing the subpoena is to interfere with the Commonwealth of Massachusetts' right to protect GAC within its borders, to harass and intimidate [the hospital] to stop providing such care, and to dissuade patients from seeking such care." As a result, the court found that "the Government has failed to show proper purpose" and that, to the contrary, the hospital "has demonstrated that the subpoena was issued for an improper purpose, motivated only by bad faith." The *QueerDoc* court agreed: "[t]he record before the Court establishes that DOJ's subpoena to *QueerDoc* was issued for a purpose other than to investigate potential violations of [law]."

CHOP DECISION

The third case, *CHOP*, had a different procedural posture. The hospital had agreed to produce documents responsive to the subpoena with the exception of documents that contained confidential medical information or that identified patients who received gender-affirming care.

The *CHOP* court granted the hospital's motion to quash on grounds that the documents in question were not relevant to the government's investigation into a health care offense. The court reasoned that the patient-specific records were not relevant to the matter the government stated that it was investigating, which was how pharmaceutical manufacturers or others marketed puberty blockers or hormones. According to the *CHOP* court, these records "do not speak to how products were labeled, marketed, introduced into

interstate commerce, or billed to health care benefit plans. We cannot discern how such information is *relevant* to an inquiry into a 'federal health care offense' . . ."

In the alternative, the *CHOP* court held that the subpoena should be limited after balancing patient privacy concerns with government's need for the documents. In reaching this conclusion, the court was influenced by the highly sensitive nature of the records, the potential ill effects of intruding on patient-physician relationships, and the fact that the hospital had agreed to produce other records to the government so that the DOJ would have ample information for its investigation.

FURTHER DEVELOPMENTS

Since the initial three decisions discussed above, three additional courts have similarly quashed DOJ subpoenas served on health care providers seeking information about the provision of gender-affirming care to minors.⁷ These additional three courts have likewise concluded that the subpoenas were not issued for permissible law enforcement purposes, given the administration's hostile statements regarding the concept gender-affirming care and the DOJ's failure to articulate a basis to suspect that the health care providers were engaging in unlawful conduct.

IN SUMMARY

- In 2025-26, multiple federal courts quashed DOJ subpoenas issued to providers of gender-affirming care for minors, finding the subpoenas were overly broad or served for improper political purposes.
- Courts highlighted the administration's explicit agenda to end gender-affirming care, concluding the subpoenas targeted lawful medical practices rather than specific health care offenses like fraud or improper marketing.

- These rulings may provide a precedent for other providers to challenge government subpoenas that appear to be motivated by policy goals rather than genuine law enforcement needs.

CONCLUSION

Additional litigation over the government's investigation of health care providers that have provided gender-affirming care is expected. Other motions to quash are reportedly pending, and the government has appealed the decisions that have thus far quashed the DOJ's subpoenas. Parties that receive investigative subpoenas for activities disfavored by the government may find these cases helpful precedent to argue that the government is not investigating them for a proper law enforcement purpose. 🌟

NOTES

1. <https://www.justice.gov/opa/pr/departments-justice-subpoenas-doctors-and-clinics-involved-performing-transgender-medical>.
2. <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.
3. <https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation>.
4. <https://www.justice.gov/ag/media/1402396/dl>.
5. <https://www.justice.gov/civil/media/1404046/dl>.
6. See *In re Admin. Subpoena No. 25-1431-019*, 2025 WL 2607784 (D. Mass. Sept. 9, 2025) (*BCH*); *QueerDoc, PLLC v. U.S. Dep't of Just.*, 2025 WL 3013568 (W.D. Wash. Oct. 27, 2025) (*QueerDoc*); and *In re Subpoena No. 25-1431-014*, 2025 WL 3252648 (E.D. Pa. Nov. 21, 2025) (*CHOP*).
7. See *In re 2025 UPMC Subpoena, No. 2:25-MC-01069-CB*, 2025 WL 3724705 (W.D. Pa. Dec. 24, 2025); *In re Dep't of Just. Admin. Subpoena No. 25-1431-030, No. 25-MC-00063-SKC-CYC*, 2026 WL 33398 (D. Colo. Jan. 5, 2026); *In re 2025 Subpoena to Children's National Hospital, No. 1:25-CV-03780-JRR*, 2026 WL 160792 (D. Md. Jan. 21, 2026).

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