

**How State Attorneys General Target
Transgender Youth and Adults by
Weaponizing the Medicaid Program and
their Health Oversight Authority**

**Senate Finance Committee – Majority Staff
United States Senate**



Chairman Ron Wyden

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This staff report provides an overview of efforts by state Attorneys General in Indiana, Missouri, Tennessee, and Texas to obtain private medical records from the health care providers of transgender children and adults. In order to further ideological and political goals, Attorneys General have launched investigations using their oversight authorities, including their Medicaid fraud claims oversight authority and consumer protection powers. There has been substantial variation in health care facilities' responses to the Attorneys General's legal demands. Some providers have immediately turned over near-complete, patient-identifiable medical records — a grave violation of patient privacy and trust — while other providers have limited their responses by pursuing the legal processes available to them under state law and the Health Insurance Portability and Accountability Act (HIPAA).

Note: This staff report describes the publicly reported landscape to date. There may be other jurisdictions undertaking similar activities that have not been reported and are not captured below.

Background¹

In recent years, 24 states have banned best-practice medical care for transgender youth.² These services range from mental health care to hormone therapy to surgical care. Today, an estimated 35% of transgender youth live in states that have passed laws constraining access to transgender health care.³

Attorneys General in at least four states — Indiana, Missouri, Texas, and Tennessee — have gone even further, using their oversight authorities to investigate transgender medical care across the United States. Framed as civil investigations seeking to determine if there has been misuse of Medicaid funds (Tennessee) or violations of consumer protection laws (Indiana and Missouri), these campaigns investigate medical providers on their provision of transgender medical care. In their sweeping anti-LGBTQIA+ campaigns, Attorney General offices demand a host of invasive items such as unredacted physical and mental health records, photographs of children's bodies, correspondence to hospitals' general email addresses for LGBTQIA+ patients, and lists of people referred for transgender health care. Texas, for example, has requested invasive medical information from providers, but has not yet made public what misconduct charge it is pursuing. Texas has even requested records from facilities outside the state, implicitly claiming jurisdiction beyond its state borders.⁴

There are substantial Medicaid populations in Indiana, Missouri, Tennessee, and Texas. In Missouri, for example, 33% of all children have Medicaid coverage whereas in Tennessee this

¹ Other state actors are engaging in overreaching practices, such as Florida's law banning Medicaid coverage of necessary, evidence-based, and widely-accepted gender affirming medical care, however, discussion of all such activities is beyond the scope of this staff report.

² Movement Advancement Project, Bans on Best Practice Medical Care for Transgender Youth (Jan. 31, 2024) www.mapresearch.org/equality-maps/healthcare/youth_medical_care_bans.

³ Human Rights Campaign, Map: Attacks on Gender Affirming Care by State (Nov. 13, 2023) <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>.

⁴ The Washington Post, Texas AG seeks transgender records in Georgia as part of his wider probe (Jan. 29, 2024) <https://www.washingtonpost.com/nation/2024/01/29/texas-ag-transgender-records-georgia/>.

increases to 40% of all children.⁵ Further, the hospitals targeted by these Attorneys General — major medical facilities — are some of the cornerstone providers for this population. In each state, transgender individuals rely on Medicaid for necessary health care, including transgender medical care.⁶

There is significant variation in hospitals' responses to such requests and their approaches to safeguarding the privacy of one of their most vulnerable patient populations—LGBTQIA+ people. Vanderbilt University Medical Center (VUMC) in Tennessee sits at one extreme: the hospital failed to object in any material manner to the Tennessee Attorney General's sweeping request and then caused undue terror to young patients and their families by supplying the Tennessee Attorney General with some of the records requested and then, again, by erroneously notifying some patients of medical record disclosures that had not occurred.

In contrast, Washington University School of Medicine in St. Louis (WashU) in Missouri refused to share patient records with the Missouri Attorney General, citing patient privacy and Health Insurance Portability and Accountability Act (HIPAA) concerns. It went further by filing a petition in a state court to ascertain whether the Missouri Attorney General had the authority to investigate such matters. The Seattle Children's Hospital (SCH) in Washington also took a hard stance against the Texas Attorney General. It sued to block the release of medical records to the Texas Attorney General, citing a host of jurisdictional arguments.

Attorneys General are weaponizing their oversight authorities for their own political gain, at the expense of LGBTQIA+ people and their families. Further, by implicating the Medicaid program, a cornerstone public insurance program for low-income Americans, these efforts undermine the integrity of public health care.

Impact on the LGBTQIA+ Community

Attorneys General are targeting an exceptionally vulnerable community: LGBTQIA+ people. LGBTQIA+ people face high rates of discrimination and acts of violence against them are increasing.⁷

The proliferation of Attorney General investigations that single-out LGBTQIA+ people, especially in states with LGBTQIA+-hostile political and social climates, further harms this marginalized population. In Tennessee there is already evidence of extreme, personal harm to patients: when news of the VUMC investigation became public, many patients suffered from suicidal ideation, severe depression, and intense anxiety.⁸ Patients continue to experience these

⁵ KFF, Medicaid in Missouri (June 2023) <https://files.kff.org/attachment/fact-sheet-medicaid-state-MO>; KFF, Medicaid in Tennessee (June 2023) <https://files.kff.org/attachment/fact-sheet-medicaid-state-TN>.

⁶ In Indiana, 6,000 transgender adults are enrolled in Medicaid. In Missouri, 1,000, Tennessee, 4,000, and in Texas, 9,000. Christy Mallory, Will Tentindo, *Medicaid Coverage for Gender-Affirming Care*, Dec. 2022. at 5-6, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Medicaid-Gender-Care-Dec-2022.pdf>.

⁷ U.S. Department of Justice Community Relations Services, 2022 FBI Hate Crimes Statistics (Oct. 30, 2023) <https://www.justice.gov/crs/highlights/2022-hate-crime-statistics>.

⁸ Los Angeles Blade, Vanderbilt turns over trans youth patient records to Tennessee AG (June 20, 2023) <https://www.losangelesblade.com/2023/06/20/vanderbilt-turns-over-trans-youth-patient-records-to-tennessee-ag/>; Patient 1, Patient 2, Patient 3 and Patient 41 v. Vanderbilt University Medical Center, Class Action Complaint No. 23-1025-I Second Amended Class Action Complaint (December 8, 2023) VUMC Exhibit 4 shared with Senate Finance Committee Majority Staff on Apr. 9, 2024.

serious, negative mental health impacts today. In the days after the investigation became public, utilization of crisis mental health services around Tennessee and Kentucky skyrocketed. Rainbow Youth Project (RYP), an organization that provides emergency behavioral health care, responded to 376 acute mental health crises from LGBTQIA+ youth in the area in a single day.⁹ In a typical month, RYP receives just over 100 calls from the same region and age range.¹⁰

Case Study One: Medicaid Fraud — Tennessee

On March 2, 2023 the Governor of Tennessee signed SB0001, a law banning youth transgender health care, effective July 1, 2023.¹¹ After learning of a YouTube video where a VUMC physician discussed diagnosis codes related to transgender medical care, the Tennessee Attorney General's office launched an investigation and requested and received the medical records of transgender VUMC patients on Medicaid.¹² In September 2022, conservative social media personalities circulated an academic medical lecture by a VUMC doctor that discussed the hospital's transgender medical care billing practices and characterized it as evidence of VUMC using transgender medical care as a money-making scheme, broadening this video's reach.¹³ Following reports on this matter, Finance Committee staff contacted VUMC, requesting information about the investigation and details about any patient record disclosures.¹⁴ VUMC provided copies of its correspondence with the Tennessee Attorney General as well as other related materials to Senator Wyden's staff.¹⁵ This communication sheds light, for the first time, on the full extent of VUMC's acute and repeated failures to protect its patients.

On November 2, 2022, the Tennessee Attorney General sent the first of three civil investigative demands (CIDs) to VUMC's Medical Clinic for Transgender Health investigating possible violations of the Tennessee Medicaid False Claims Act.¹⁶ The request demanded medical records for 72 individuals enrolled in TennCare, Tennessee's Medicaid program. It required documents ranging from intake forms to physical notes to x-rays to patient charts.¹⁷ On March 14, 2023, the Tennessee Attorney General followed up with two additional CIDs, one requesting the same range of medical and billing records for 103 new patients covered by the state-employee insurance program and one which broadened the inquiry to request confidential information

⁹ Los Angeles Blade, Vanderbilt turns over trans youth patient records to Tennessee AG (June 20, 2023) <https://www.losangelesblade.com/2023/06/20/vanderbilt-turns-over-trans-youth-patient-records-to-tennessee-ag/>.

¹⁰ *Id.*

¹¹ Tennessee's 113th General Assembly, SB0001: AN ACT to amend Tennessee Code Annotated, Title 28; Title 29; Title 33; Title 34; Title 36; Title 37; Title 39; Title 40; Title 49; Title 56; Title 63; Title 68 and Title 71, relative to medical care of the young (Mar. 22, 2023) <https://www.capitol.tn.gov/Bills/113/Bill/SB0001.pdf>; ACLU, Tennessee Bans Gender-Affirming Care for Transgender Youth (Mar. 2, 2023), <https://www.aclu.org/press-releases/tennessee-bans-gender-affirming-care-for-transgender-youth>.

¹² Deposition of Brian D. Roark, Patient 1, et al v. Vanderbilt University Medical Center (Feb. 19, 2024) shared with the Senate Committee on Finance Majority Staff.

¹³ The Daily Wire, 'Huge Money Maker': Video Reveals Vanderbilt's Shocking Gender 'Care,' Threats Against Dissenting Doctors (Sept. 20, 2022) <https://www.dailywire.com/news/huge-money-maker-video-reveals-vanderbilts-shocking-gender-care-threats-against-dissenting-doctors>.

¹⁴ Email chain between Kathleen Hanbury, Alex R. Currie and Senate Committee on Finance Majority Staff (Oct. 24 - Nov. 3).

¹⁵ *Id.*

¹⁶ All three CIDs impose an obligation on VUMC to supplement productions, should additional documents be identified and/or created.

¹⁷ State of Tennessee Office of Attorney General and Reporter, Civil Investigative Demand (Nov 2, 2022) VUMC Exhibit A shared with Senate Finance Committee Majority Staff on Nov 2, 2023.

across 18 categories, without any bounds on the number of patients or people implicated.¹⁸ The first two CIDs include “prior and current name,”¹⁹ suggesting that the Tennessee Attorney General deadnamed transgender individuals. The categories of information captured by this third demand ranged from employment contracts for physicians to volunteer agreements for the VUMC Trans Buddy Program to communications to and from a general email address.²⁰ Over the course of seven months, in response to the first and second demands, VUMC produced over 65,000 pages of documents, including the medical records of 82 transgender patients, 72 of whom are Medicaid beneficiaries. It is unknown what documents VUMC supplied to the Tennessee Attorney General pursuant to the third CID.

On June 1, 2023 the American Civil Liberties Union (ACLU) cited the existence of the three demands, which it had received in discovery, in a footnote of a document it filed on the public docket in a separate suit it is leading against Tennessee’s ban on transgender health care for minors.²¹ On June 19, 2023, VUMC notified patients by its patient messaging platform and/or by mailed hard copy that their medical records had been disclosed to the Tennessee Attorney General’s office.²² After receiving this information, many patient experienced suicidal ideation and suffered significant emotional distress, including depression and anxiety.²³

Health Insurance Portability and Accountability Act (HIPAA) Concerns

Section 164.512(f)(1) of the HIPAA privacy rule allows health care providers to share identifiable patient information, without their consent, with law enforcement personnel. But the HIPAA privacy rule also requires that, pursuant to an administrative request, like the one the Tennessee Attorney General used, a three-part test be satisfied prior to the disclosure of such information. The information must be (i) relevant and material to the investigation and (ii) specific and limited in scope, and it must be assured that (iii) de-identified information could not reasonably be used. The only written documentation that the Tennessee Attorney General provided to VUMC to justify the need for such sensitive private medical records was a cursory statement that “the information sought therein is relevant, material, specific, and limited in scope,”²⁴ and that, “[d]e-identified data cannot be used for this inquiry, as [the office] need[s] to request certain patient treatment records to reconcile such records against the billing data.”²⁵ VUMC accepted these three sentences — which merely restate HIPAA’s three-pronged test in the affirmative, failing to provide any substantive rationale — as evidence that the Tennessee Attorney General needed full, identifiable medical records. At the outset, VUMC withheld

¹⁸ State of Tennessee Office of Attorney General and Reporter, Civil Investigative Demand (Mar 14, 2023) VUMC Exhibit A shared with Senate Finance Committee Majority Staff on Nov 2, 2023.

¹⁹ Letter from Michael J. Regier to Chairman Wyden (Apr. 9, 2024) on file with Committee.

²⁰ State of Tennessee Office of Attorney General and Reporter, Civil Investigative Demand (Mar 14, 2023) VUMC Exhibit A shared with Senate Finance Committee Majority Staff on Nov 2, 2023.

²¹ L.W. v. Skrmetti, Civil No. 3:23-cv-00376 (June 1, 2023) <https://www.aclu.org/cases/l-w-v-skrmetti?document=Plaintiffs-Reply-in-Support-of-Motion-for-Preliminary-Injunction>.

²² Patient 1, Patient 2, Patient 3 and Patient 41 v. Vanderbilt University Medical Center, Class Action Complaint No. 23-1025-I Second Amended Class Action Complaint (December 8, 2023) VUMC Exhibit 4 shared with Senate Finance Committee Majority Staff on Apr. 9, 2024.

²³ *Id.*

²⁴ Email from Kevin M. Kreutz to Brian Roark, Robert E. Cooper, Tony Hullender, and Emily Fountain (Nov. 17, 2022) VUMC OCR Response Exhibit C 07312023.

²⁵ *Id.*

mental health records for “additional review due to heightened patient confidentiality concerns under Tennessee Code Title 33.”²⁶ But, just a few months later, VUMC sent the Tennessee Attorney General 7,934 pages of mental health records.²⁷ VUMC treated HIPAA’s three-pronged test as a box-checking exercise, rather than a federal requirement to protect patient privacy.

HIPAA sets out the minimum standards that must be met for disclosures. Under HIPAA, health care providers can take the demanding agency’s word. Or, they may go further, exercising their professional and moral duty to protect patient privacy by challenging whether legal demands truly meet HIPAA’s three-part test when they do not appear to. When requests are found to go beyond the parameters set out in the three-part test, courts may decline to enforce the demands or order their modification. HIPAA flexibilities, as a floor, allow facilities to insist on a warrant or a court order, a higher standard for legal process than an administrative demand, prior to releasing identifiable medical information. Facilities that are committed to protecting patient privacy will go the extra mile to exercise all options under HIPAA and do just that.

There are numerous precedents where a court ordered an agency to limit its request due to noncompliance with HIPAA’s three-part test. In one case, the Internal Revenue Service (IRS) issued summonses to medical providers seeking “any of” the decedent’s medical records in their possession from 2010-2013.²⁸ The decedent’s estate moved to quash these summonses, contending that they failed to meet both the “relevant and material” and the “limited and specific in scope” requirements of HIPAA’s three-pronged test. The court agreed and limited the demands’ timeframe to two years. In a separate case, a Drug Enforcement Administration (DEA) administrative demand seeking broad, identified patient information was likewise found to violate HIPAA’s three-pronged test.²⁹ There, the DEA sought “a list of all patients in the last five years and all controlled substance prescriptions written for each patient...patient files, billing statements, controlled substance prescriptions, communications, and any other documents which refer to or relate to the listed patients...”³⁰ The provider asserted the request was not limited in scope and that de-identified information could reasonably satisfy law enforcement’s purpose. The court suggested the DEA limit its inquiry to documents relating to treatment for a diagnosis for which controlled substances were prescribed, records pertaining to their diagnosis, and documents related to their prescription.³¹

There were multiple, obvious avenues VUMC could have pursued to limit the sensitive patient data it disclosed to the Tennessee AG, including pushing more aggressively to limit the information to de-identified information. First and foremost, VUMC accepted a three-sentence, boilerplate response from the Tennessee AG’s office as justification for needing full, patient-

²⁶ Letter from Robert E. Cooper to Tony Hullender and Kevin Kreutz (Mar. 27, 2023) VUMC OCR Response Exhibit A Redacted 07312023.

²⁷ Letter from Robert E. Cooper to Tony Hullender and Kevin Kreutz (Apr. 21, 2023) VUMC OCR Response Exhibit A Redacted and shared with the Senate Committee on Finance Majority Staff (Nov. 13, 2023) on file with Committee., Letter from Robert E. Cooper to Tony Hullender and Kevin Kreutz (Apr. 25, 2023) VUMC OCR Response Exhibit A Redacted and shared with the Senate Committee on Finance Majority Staff (Nov. 13, 2023) on file with Committee.

²⁸ *Est. of Chaiken v. United States*, No. 16-MC-80155-DMR (Dec. 27, 2016) 2016 WL 8255575 at *2.

²⁹ *United States v. Wilson*, No. 1:22-MC-20 JCH (Nov. 21, 2022) 2022 WL 17093457.

³⁰ *Id.*

³¹ *United States v. Wilson*, No. 1:22-MC-20 JCH (Apr. 19, 2023) 2023 WL 3006888.

identifiable medical and billing records and never required the Tennessee AG’s office to document any substantiating information. VUMC should have rejected this meaningless, boilerplate attestation as insufficient justification for such sensitive information and, instead, insisted on a more explicit rationale for needing patient-identifying information. Further, VUMC should have sought to limit the number of years for which it produced information, including medical records, as the Tennessee AG demanded records going back five to eight years.

VUMC did limit the patient records it turned over in one notable way. In response to the Tennessee AG’s second demand for records, which requested information on 103 patients, VUMC provided the Tennessee Attorney General with a responsive ten-person sample. As of November 3, 2023, the Tennessee Attorney General had not requested additional information in connection with that demand.³² Of course, this improvement is still not a success — the release of this sample still violates patient privacy and trust and places the implicated ten individuals in harm’s way. VUMC disputed this characterization, but also confirmed it did not view continuing to share identifiable patient information with the AG’s office to violate patient privacy, even in the wake of the AG’s office making some of that information public after it committed to VUMC that it would not do so.³³

VUMC failed to pursue all options available to notify affected patients, as afforded by HIPAA and the First Amendment to the United States Constitution.³⁴ Through early June 2023, over seven months into the Tennessee AG’s investigation and after VUMC had already made substantial and invasive patient record disclosures, patients were still unaware that this investigation was underway and that their complete medical records were now held by the Tennessee AG. But HIPAA permits providers to give notice to patients of health record disclosures, independent of a non-disclosure or “gag” order issued by a judge. There is no evidence such a prohibition was in effect here, meaning that VUMC made an active decision to keep patients in the dark and only notify them about the investigation after the ACLU had exposed its existence. Further, once VUMC was publicly shamed into notifying patients, it failed to inform the correct patients.

Case Study Two: Consumer Protection — Missouri and Indiana

On February 17, 2023, the Missouri Attorney General announced that “[n]o stone will go unturned”³⁵ in his investigation into alleged misconduct at the WashU Transgender Center. On February 23, 2023, the Missouri Attorney General sent the clinic, which serves Medicaid

³² Letter from Michael J. Regier to Senate Committee on Finance Majority Staff (Nov. 13, 2023) on file with Committee.

³³ Letter from Michael J. Regier to Chairman Wyden (Apr. 9, 2024) on file with Committee.

³⁴ Microsoft Corp. v. US Dept. of Justice, 233 F. Supp. 3d 887 - Dist. Court, WD Washington 2017.

³⁵ Missouri Attorney General, Attorney General Bailey’s Statement on Transgender Clinic’s Refusal to Implement Moratorium on Puberty Blockers for Children (Feb. 17, 2023). <https://ago.mo.gov/attorney-general-bailey-s-statement-on-transgender-clinic-s-refusal-to-implement-moratorium-on-puberty-blockers-for-children/>.

patients,³⁶ a CID for patient records.³⁷ The Missouri Attorney General cited the Missouri Merchandising Practices Act (MMPA), a consumer protection law, to justify his investigation. MMPA prohibits false advertising “in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose.”³⁸ Since the Missouri Attorney General opened his investigation under MMPA, the Missouri Department of Social Services has joined to investigate possible Medicaid fraud.³⁹ WashU has refused to share patient records with the Missouri AG, citing patient privacy and HIPAA concerns.

On December 4, 2023 WashU filed a petition in a state court to ascertain whether the Missouri Attorney General even has the legal authority to demand patient records.⁴⁰ In its legal filing, WashU notes that, traditionally, in Missouri the Board of Healing Arts, rather than the Missouri AG, conducts health oversight. Essentially, if the Missouri Attorney General is *not* a health oversight agency, then HIPAA would *not* permit disclosure to this office. WashU also asked the Department of Health and Human Services Office of Civil Rights (HHS OCR), which oversees HIPAA, whether the Missouri Attorney General would be considered a health oversight agency. Neither the state court nor HHS OCR have decided yet. But, WashU’s pro-patient ethical and legal posture demonstrates to other hospitals that pushing back against sweeping, invasive LGBTQIA+ investigations by Attorneys General is possible.

On March 6, 2023 the Indiana Attorney General sent letters to at least 17 different medical facilities, including hospitals and Planned Parenthood clinics, seeking information about their treatment of gender dysphoria as well as their advertising practices related to transgender health care.^{41, 42} The Indiana Attorney General demanded copies of policies related to the provision of specific transgender medical care, the information that is shared with patients and families prior to treatment, and revenue numbers for transgender health care.

While the Indiana healthcare providers have pursued disparate courses of action, there is a clear trend of these healthcare facilities seeking to use the various legal avenues available to them.

³⁶ Washington University School of Medicine John T. Milliken Department of Medicine, *Resources for Gender Diverse Adult Patients on MO Medicaid*, <https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/d/1520/files/2023/11/Resources-for-Adults-on-MO-Medicaid-1.pdf> (last visited Feb. 7, 2024).

³⁷ Missouri Independent, Wash U alleges Missouri AG illegally sought patient records from transgender center (Dec. 6, 2023). <https://missouriindependent.com/briefs/wash-u-alleges-missouri-ag-illegally-sought-patient-records-from-transgender-center/>.

³⁸ Missouri Revisor of Statutes, § 407.020 (Aug. 28, 2020)

<https://revisor.mo.gov/main/OneSection.aspx?section=407.020>.

³⁹ Annelise Hanshaw, *Missouri Agencies Launch Investigation into Health Center for Transgender Youth*, Missouri Independent (Feb. 9, 2023) <https://missouriindependent.com/2023/02/09/missouri-agencies-launch-investigation-into-health-center-for-transgender-youth/>.

⁴⁰ *The Washington University v. Andrew Bailey*, No. 2322-CC09640 (Dec. 4, 2023) Cr. Ct. St. Louis.

⁴¹ Letter from the Office of the Attorney General of the State of Indiana to “youth gender clinics” (Mar. 6, 2023) https://content.govdelivery.com/attachments/INAG/2023/03/07/file_attachments/2429809/Letter%20to%20Gender%20Clinics%203.7.23.pdf.

⁴² Indiana Capital Chronicle, Just three health providers respond to Rokita letter on transgender minor care (June 29, 2023) <https://indianacapitalchronicle.com/2023/06/29/just-three-health-providers-respond-to-rokita-letter-on-transgender-minor-care/>.

Some entities chose not to respond or only responded in part.⁴³ Planned Parenthood, for example, explained in a one-line letter that it simply does not provide transgender medical care in any of its 11 facilities in Indiana. Three of the facilities under investigation — IU Health, Eskenazi Health, and Mosaic Health and Healing Arts — asked a judge in Indiana to quash the Indiana AG’s demands, arguing that the office already had access to most of the requested information in connection with a separate, ongoing lawsuit related to the state’s transgender health care ban.⁴⁴ On November 1, 2023 the judge ruled that the three facilities must comply with the Indiana AG’s demands.⁴⁵ The Indiana Attorney General then sought to dismiss the case after it “resolved a dispute on the requested information,”⁴⁶ according to local reporting. The full contours of this investigation, as well as the specific actions facilities did or did not take to protect patients, are not fully known.

Case Study Three: Sweeping Investigations — Texas

The Texas Attorney General has initiated investigations against at least two hospitals located in Texas as well as at least two medical providers in other states (Washington and Georgia) related to their provision of transgender health care. The inquiries included “requests to examine” letters and query information on the use of hormone blockers and counseling services for transgender use.⁴⁷ The Texas Attorney General told The Washington Post that the investigations span “a Medicaid fraud probe...[as well as] deceptive trade, antitrust and human trafficking laws.”⁴⁸

In May 2023, Dell Children’s Medical Center (Dell Children’s) in Austin and Texas Children’s Hospital (TCH) in Houston received letters from the Texas Attorney General alleging “potentially illegal” activity related to the provision of transgender medical care in their facilities.⁴⁹ The Dell Children’s investigation was likely catalyzed by a Project Veritas video that included a clip of a social worker discussing the hospital’s policies on youth transgender medical care.⁵⁰

The Texas Attorney General is also seeking medical records from outside the state of Texas, drawing these inquiries into uncharted territory. The Texas Attorney General sent demands to at least two non-Texas entities: the Seattle Children’s Hospital (SCH) in Washington and QueerMed, a telemedicine clinic, based in Georgia. Both non-Texas entities received these

⁴³ *Id.*

⁴⁴ Indiana Capital Chronicle, Health entities providing gender-affirming care turn to court to quash Attorney General’s request (Nov. 1, 2023) <https://indianacapitalchronicle.com/2023/11/01/health-entities-providing-gender-affirming-care-turn-to-court-to-quash-attorney-generals-request/>.

⁴⁵ Indiana Capital Chronicle, Judge denies request to quash attorney general’s civil demands (Nov. 6, 2023) <https://indianacapitalchronicle.com/2023/11/06/judge-denies-request-to-quash-attorney-generals-civil-demands/>.

⁴⁶ IndyStar, Rokita’s office enlists DC firm to investigate if doctors misrepresent trans care risks (Feb. 1, 2024) <https://www.indystar.com/story/news/politics/2024/02/01/indiana-ag-enlists-dc-firm-to-investigate-transgender-care-providers/71770234007/>.

⁴⁷ The Texas Tribune, Texas AG Ken Paxton probing Austin children’s hospital following video of social worker discussing transition-related care (May 5, 2023) <https://www.texastribune.org/2023/05/05/ken-paxton-trans-care-investigation-dell-childrens/>.

⁴⁸ The Washington Post, Texas AG’s pursuit of transgender medical records stirs privacy concerns (Feb. 2, 2024) <https://www.washingtonpost.com/nation/2024/02/02/paxton-texas-attorney-general-transgender/>.

⁴⁹ The Texas Tribune, Texas Attorney General investigating second children’s hospital for transition-related care (May 19, 2023) <https://www.texastribune.org/2023/05/19/ken-paxton-texas-childrens-hospital/>.

⁵⁰ Project Veritas, Too Young (Apr. 19, 2023), <https://vimeo.com/817481724/a0e01b7274>.

requests at the end of 2023 and both have forcefully rejected the Texas AG’s demands.⁵¹ Izzy Lowell, the founder of QueerMed, told The Washington Post that the Texas Attorney General has sent similar letters to medical providers in other states, suggesting that Texas’ out-of-state record demands might extend further than is publicly known.⁵² These efforts to seize medical records from extraterritorial jurisdictions, where the Texas Attorney General has few levers at his disposal to even make change, suggest that the Texas Attorney General is more interested in engaging in a culture war than investigating real harms and protecting those in his jurisdiction.

SCH has resisted the Texas AG’s demands, asserting that SCH does not have “substantial contacts” to Texas and the Texas Attorney General does not have a “specific jurisdiction” claim in Washington.⁵³ SCH also points to Washington’s Shield Law, which prohibits law enforcement actions related to the provision, receipt, or facilitation of access to legal and protected health care services in Washington, like transgender health care, as barring SCH from disclosing such information to the Texas AG. Finally, since the SCH perceives the Texas Attorney General as acting beyond its appropriate health oversight authority, such disclosure would not be lawful under HIPAA. QueerMed has similarly resisted the Texas AG’s demands. According to a statement on QueerMed’s website, the clinic’s “unwavering stance [is that] under no circumstances shall we [sic] disclose any HIPAA-protected patient information.”⁵⁴

⁵¹ The Washington Post, Texas AG seeks transgender records in Georgia as part of his wider probe (Jan. 29, 2024) <https://www.washingtonpost.com/nation/2024/01/29/texas-ag-transgender-records-georgia/>.

⁵² *Id.*

⁵³ Seattle Children’s Hospital v. Office of the Attorney General of the State of Texas, D-1-GN-23-008855 (Dec. 17, 2023) <https://static.texastribune.org/media/files/f13db3ea7aee00300304ed66cf7c3552/Seattle%20Childrens%20TXAG%20petition.pdf>.

⁵⁴ QueerMed, QueerMed resolutely opposes the Texas Attorney General’s request for patient data (Jan. 29, 2024) <https://queermed.com/2024/01/queermed-resolutely-opposes-the-texas-attorney-generals-request-for-patient-data/>.