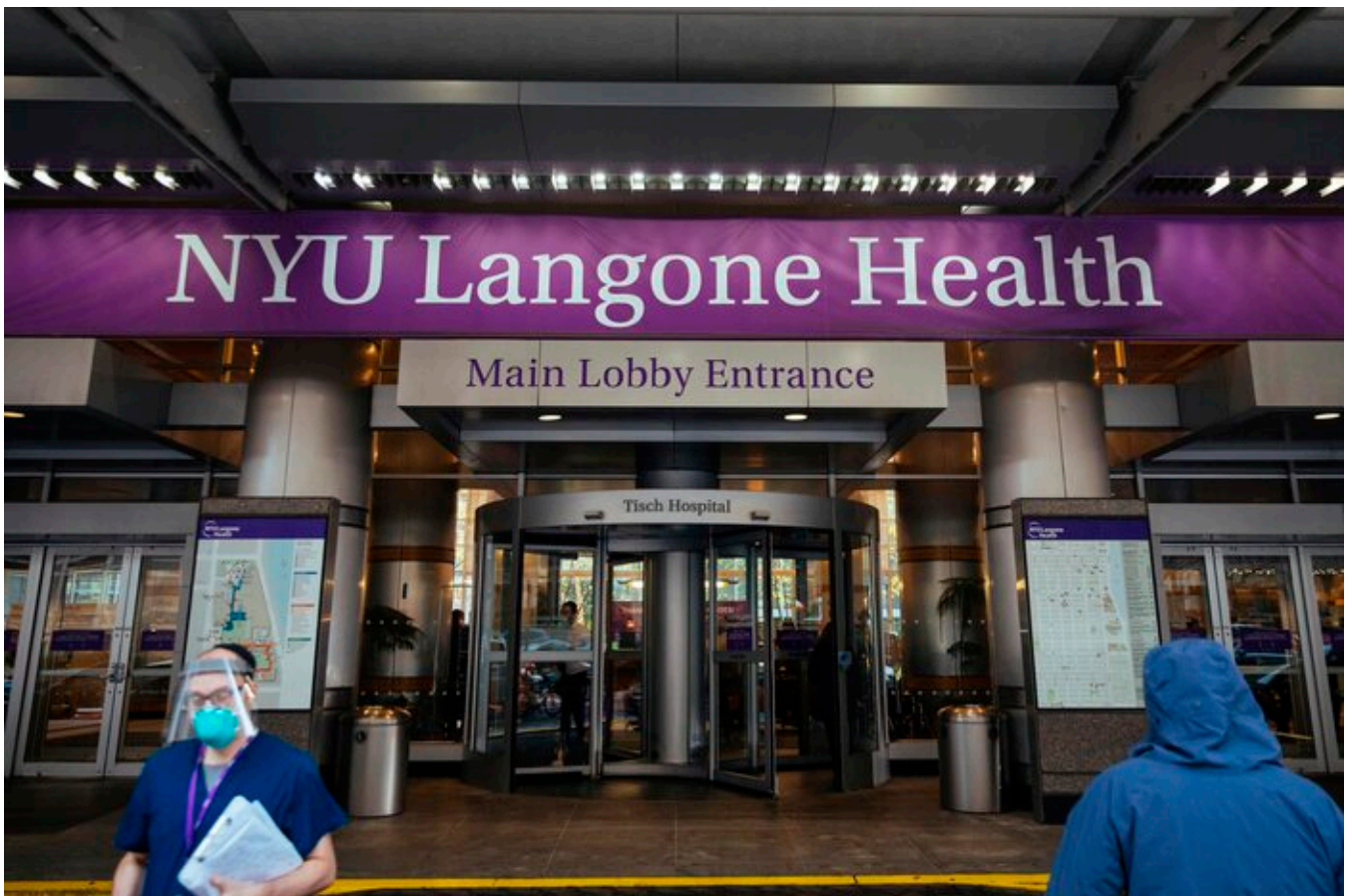


DOJ Escalates Gender Care Probes With Criminal Subpoenas

By **Mark Payne**

Law360 (May 26, 2026, 5:14 PM EDT) -- As the Justice Department faces pushback on a series of civil demands for medical records from hospitals across the country, its bid for a criminal subpoena from a grand jury in Texas represents a significant escalation of the administration's push to end gender-affirming care for minors.



Officials with New York University's Langone hospitals disclosed that the government is demanding that NYU Langone turn over a raft of information on its gender-affirming care patients under 18. (AP Photo/Kevin Hagen)

While civil subpoenas are a routine part of litigation and have limited reach, criminal subpoenas are much harder to secure, typically requiring both strict constitutional guardrails and a showing of evidence.

They're also far tougher to challenge in court, said Cynthia Cheng-Wun Weaver, the senior director of litigation at the Human Rights Campaign.

"With the criminal track in criminal prosecution investigations, prosecutors have wide latitude in the investigatory phase," she said. "It is just more challenging to quash these types of subpoenas than civil ones."

In recent weeks, justice officials queried a grand jury in the Northern District of Texas to issue the subpoena this month to New York University's Langone hospitals, part of a sprawling network of hospitals,

clinics and institutes that had until recently included a program for transgender youths.

In a recent disclosure, hospital officials said the government is demanding that NYU Langone turn over a raft of information on its gender-affirming care patients under 18 who were treated between 2020 and 2026. Prosecutors are also seeking the names of doctors who provided such care.

The criminal subpoena comes nearly a year after federal prosecutors issued nearly two dozen civil subpoenas seeking the same information to hospitals and healthcare providers. So far, federal courts have mostly quashed those subpoenas.

Cassandra Burke Robertson, a law professor at Case Western Reserve University, told Law360 it's too soon to know whether the government will be successful in its criminal pursuits against NYU Langone. But Robertson said it does appear the justice department is looking to bounce back after legal losses following the civil demands.

"I suspect that they won't be super successful moving on the criminal side either, but it is definitely an escalation," she said.

Civil Subpoenas

After President Donald Trump ordered federal agencies to end what he called a "stain on our Nation's history," a number of agencies have launched investigations into organizations that provide gender-affirming care to minors or even gender-related counseling to young people.

As part of that effort, the U.S. Department of Justice issued more than 20 identical subpoenas in 2025 to hospitals and healthcare providers, seeking a broad swath of information including the medical records of minors.

A July statement from the Justice Department said it was investigating that care as potential healthcare fraud or false statements, among other potential violations of the law.

"Medical professionals and organizations that mutilated children in the service of a warped ideology will be held accountable by this Department of Justice," then-Attorney General Pamela Bondi said.

Those administrative, or civil, subpoenas sought birthdates, home addresses, diagnoses, parent or guardian information, and Social Security numbers for minor patients prescribed puberty blockers or hormone therapy, according to court documents.

The DOJ isn't the only agency pursuing probes into trans care providers.

The Federal Trade Commission also issued three subpoenas in January to three organizations: the World Professional Association for Transgender Health, the American Academy of Pediatrics, and the Endocrine Society.

The commission said it is seeking to identify potential violations of fraudulent or deceptive business practices through failures to identify "material risks" in gender transition treatments or making unsupported claims about the benefits of gender care.

Kelley Robinson, president of the Human Rights Campaign, said the administration's investigations are an attempt to access long-protected private patient information.

"Doctors should be able to care for patients based on science, ethics, and medical standards, not political intimidation, and no government, no government should be able to weaponize fear against children and families simply for political gain," she said on a May 20 press call.

Gerald Stein, a partner at Davis Wright Tremaine LLP and a former attorney at the FTC's Bureau of Competition, said the agencies are simply pursuing the Trump administration's policy goals.

"Both the FTC and the DOJ are willing to advance the Trump administration's agenda," he said. "They feel that that's their role, and that's what they're doing here."

Losses Mount in Court

So far, the DOJ's civil demands have mostly been blocked in courts.

In November, a Pennsylvania federal court quashed part of the Justice Department's efforts to obtain gender-affirming care records for children at The Children's Hospital of Philadelphia. In March, another federal judge denied the DOJ's attempt to haul records from the University of Pittsburgh Medical Center Children's Hospital.

Justice officials initially appealed those decisions but later reversed course and abandoned that effort before the Third Circuit took action.

In late April, the DOJ made an unusual request to a judge in the Northern District of Texas to enforce a subpoena against Rhode Island Hospital, but failed to inform the hospital it was doing so, according to court records. U.S. District Judge Reed O'Connor of the Northern District of Texas granted the government's petition.

On May 4, the Child Advocate of Rhode Island, Katelyn Medeiros, who advocates on behalf of children in the Rhode Island Department of Children, Youth, and Families, went to a Rhode Island federal court with a request that the subpoena be quashed, arguing that the subpoena was an unconstitutional invasion of patient privacy rights. The hospital filed its own motion on May 11.

Amid a four-hour hearing, U.S. District Judge Mary S. McElroy, who Trump nominated to the bench in 2019, accused the DOJ of "**playing dirty pool**" by filing an enforcement request in a different jurisdiction without informing the hospital until after the motion had been filed.

Days later, she quashed the subpoena, saying it was a "**drastic overreach**" of those patients' informational privacy.

In Maryland, another **court is also considering** Trump administration demands for gender-care medical records. In that case, 11 families of transgender youths filed a proposed class action in mid-May, seeking to block the DOJ from accessing information about the minors.

Josh Rovenger, the legal director of GLAD Law and an attorney representing the families, said that if the class is certified, it would cover all the patients whose information is subject to investigative demands.

"The case raises similar claims that have been raised across the country, and we anticipate that the court, like other courts before it, will condemn these demands as lacking any proper investigative purpose and amounting to an unlawful overreach, intimidation, and harassment of patients," he said.

But it hasn't been all bad news for federal prosecutors. A First Circuit panel last week said that Rhode Island Hospital must follow the Texas enforcement order while the hospital appeals the decision to the Fifth Circuit.

While one D.C. federal judge found that the FTC's probes into the three trans care organizations were "**retaliatory**," another judge appeared sympathetic to the administration probes.

U.S. District Judge Christopher R. Cooper **last week pondered** whether it would set a bad precedent for future commissions to label the FTC's investigative demand to the American Academy of Pediatrics as "retaliatory" because they align with administration policy and hostility to gender care for minors.

"Are we setting a bad precedent by saying ... if you can pick out a sharp comment ... in some informal forum ... that's the basis for a First Amendment claim?" he asked. "That's a slippery slope." Judge Cooper has not issued a decision.

In mid-May, the DOJ and the Texas attorney general reached a \$10 million settlement with Texas Children's Hospital as part of its nationwide probe into organizations that provide gender-affirming care.

As part of that deal, the hospital said it won't provide gender surgery, hormones or puberty blockers.

NYU Langone discontinued its transgender youth program earlier in 2026 after Trump officials threatened to cut off any providers offering such services from federal reimbursement money.

Stephen Calkins, a law professor at Wayne State University, said that in some instances, targets of government investigations have more leeway to say they face harm following the U.S. Supreme Court's

decision in [First Choice Women's Resource Centers v. Davenport](#) .

In that case, the **justices held** that the then-New Jersey Attorney General Matthew J. Platkin violated the associational First Amendment rights of First Choice, a network of faith-based pregnancy "crisis" centers, when he issued a subpoena seeking donor identities and staff information related to abortion.

"We just have a different world now where the argument that the target is being harmed by discovery is becoming a more persuasive argument, at least in these kinds of politically oriented cases," Calkins said.

Grand Jury Escalation

Court decisions backing civil subpoena challengers will likely not be replicated when it comes to grand jury subpoenas.

That's the move the Justice Department took when federal prosecutors in Texas convinced a grand jury to issue a subpoena to NYU's Langone on May 6.

Normally, grand jury subpoenas, which aren't indictments, are highly secretive. But New York's shield law, which protects healthcare providers from out-of-state prosecutions related to abortion and gender-affirming care, requires disclosure of inquiries into the protected health information of patients.

NYU Langone posted a notice on its website on May 7 stating that it was one of several organizations being investigated after receiving a grand jury subpoena from the U.S. Attorney's Office in the Northern District of Texas.

NYU Langone did not identify the other organizations. A hospital spokesperson did not respond to a request for comment Tuesday.

The NYU Langone subpoena, which requests nearly identical information as the civil subpoenas, didn't say what potential violations the government is investigating.

The demands cover a range of documents and information, including complete employee personnel files, contractor and company information, billing records, insurance claims, internal communications, training materials, and diagnostic codes.

"Because courts said 'No' to the Trump administration's efforts to obtain this private health information, the Trump administration has escalated both by turning to the grand jury process and also trying to enforce the administrative subpoenas in the Northern District of Texas," GLAD Law's Rovenger said.

Former FTC Chairman Bill Kovacic, now a law professor at George Washington University Law School, told Law360 that a criminal subpoena imposes greater risks on a company because there's a significantly higher level of care in responding to the government's requests.

"It's a decidedly hostile gesture to move from the civil realm to the criminal realm," he said.

The DOJ declined to comment, citing grand jury proceedings.

Still a 'Ham Sandwich'

Because the process is secretive, it's more challenging to fight typical criminal subpoenas, according to the Human Rights Campaign's Cheng-Wun Weaver, because the target of the investigation doesn't necessarily know why they're being investigated.

"The subpoenas issued in the process are difficult to limit, even more so than civil subpoenas, and it's going to be an uphill battle to protect our medical privacy under these circumstances," she said.

Mike Finio, counsel at Saul Ewing Arnstein & Lehr LLP, agreed that NYU Langone and any other criminal subpoena recipients will have a hard time opposing or narrowing a grand jury indictment.

He added that negotiations may be underway behind the scenes to narrow the subpoena request or reach a resolution. Additionally, the hospital could try to quash or modify the subpoena if there are patient or other privilege issues.

"They are presumptively legitimate, and they're much harder to oppose," he said. "The odds of having to respond in some way are very high."

But criminal subpoenas aren't indictments. Once any information is returned and prosecutors think they have a case, they can again approach the grand jury to request an indictment.

GLAD Law's Rovenger said that the grand jury subpoenas "suffer from the same legal flaws," but "they're just dressed up in different garb." The families he's representing have argued that the main shortcoming is that the probes violate patient privacy.

Whether prosecutors will be able to obtain an indictment is up in the air. Unless that happens or NYU Langone files a lawsuit to quash the subpoena, experts said, it's likely that little will be made public about the subpoena issue.

Ted Waters, a managing partner at Feldesman LLP, referred to the old adage about grand juries and the "ham sandwich." While the grand jury pool only hears from the prosecutor, indicting and convicting a healthcare provider requires a "very high standard" of evidence, he said.

"Criminal means clear and convincing evidence that you intended to break the law," he said.

--Additional reporting by Gianna Ferrarin, Jared Foretek, Hannah Albarazi and Danielle Ferguson. Editing by Amy Rowe.