

Three Considerations for Health Care Providers After the Dobbs Decision

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Last week, the Supreme Court issued a decision in [*Dobbs v. Jackson Women's Health*](#), holding that the Constitution does not confer a right to abortion, and overruling precedent established by *Roe v. Wade*, 410 U.S. 113, and *Planned Parenthood of Southern Pa. v. Casey*, 505 U.S. 833. Health care providers that provide a full spectrum of women's health care services, including abortion, will need to understand how the *Dobbs* decision impacts the care they can provide to patients. Absent a federal protection of a patient's ability to obtain an abortion, providers operating in this space will need to understand the scope of State laws that apply to abortion services. Below are three key considerations that health care providers will need to consider.

1) Know the permissible scope of abortion services in the State.

Prior to the *Dobbs* decision, Supreme Court precedent protected the ability of a patient to receive an abortion in the first trimester of pregnancy, and allowed States to regulate abortions as long as the law did not place an "undue burden" on the right to an abortion. In light of the *Dobbs* decision which removes federal protection to the right to abortion services, State law will dictate whether a patient can obtain an abortion. Health care providers will now need to be particularly aware of the laws governing abortion services in their state. Many States, including [Kentucky](#) and [Louisiana](#), have "trigger" laws that will go into effect immediately or shortly after the *Dobbs* decision, which will prohibit abortions in those states altogether. Other states, such as [Wisconsin](#) and [Michigan](#), have "zombie" laws that were passed prior to *Roe v. Wade*, that could now become enforceable.

Many states have laws which restrict the way an abortion can be provided, including the type of provider who can provide the service, the location where the service may be provided, and the scope of informed consent required for the procedure. While many of these laws have been in place for several years, it is critical for providers in this space to understand what is permitted under the state law where they are practicing, and track legislative developments in the state which may impose further restrictions on the way to provide abortions in the state.

2) Understand permissible ways to prescribe

medication abortion via telemedicine.

The federal Food and Drug Administration (FDA) has approved medication that will end an early stage pregnancy, and recently [removed](#) in-person dispensing requirements for this medication. In addition to understanding the way that medication can be prescribed under federal law, providers will need to know whether there are state laws that limit the way that medication abortion can be prescribed in the state, particularly if the provider is prescribing the medication via a telemedicine encounter.

Over the past several years, there has been an explosion of telehealth providers, many of whom do not have physical clinics in a state where services are provided to patients. When services are provided via telemedicine, the state law of the patient's location governs. There are several states, such as [Arizona](#) and South Carolina, which prohibit medication abortion from being prescribed via telemedicine. Other states impose conditions on the informed consent process for an abortion, which effectively prohibit the service from being provided via telemedicine. Furthermore, in some states such as [North Carolina](#), only physicians may prescribe medication abortion, which may present a challenge to telemedicine companies that utilize nurse practitioners or physician assistants for patient encounters. Accordingly, telehealth providers will need to know whether the laws in the state where their patient is located prohibit or limit the way these drugs may be prescribed.

3) Beware of potential interstate challenges.

There are several state laws that may impact providers who are licensed in multiple states. Multi-state licensure is increasingly common for physicians and other providers, particularly in the digital health space. States, such as Texas, allow a state licensing agency to [revoke](#) the license of a physician who performs an abortion, and has articulated broad [jurisdiction](#) over conduct that may be criminally prosecuted in the state. These types of state laws could criminalize licensees or others individuals who assist a patient in obtaining an abortion in a state where abortion is legal. It is possible that state licensing agencies where abortion is illegal could pursue disciplinary action against a provider who is licensed in multiple states, if that provider performs a legal abortion in another state. Providers should also be mindful of collateral state licensing laws that allow a state licensing agency to initiate disciplinary procedures against a provider on the basis of the disciplinary action taken against that provider by another state licensing agency.

Health care providers will need to evaluate the laws that apply to the current scope of services they are providing, the modalities utilized to provide those services, and implement necessary modifications to comply with changes as a result of the *Dobbs* decision. We will continue to closely monitor the impacts of this decision and provide updates.

Foley is here to help you address the short- and long-term impacts in the wake of regulatory changes. We have the resources to help you navigate these and other important legal considerations related to business operations and industry-specific issues. Please reach out to the authors, your Foley relationship partner, or to our Health Care Practice Group with any questions.