

Post-Dobbs Considerations for Healthcare Providers: Navigating State Restrictions on Abortion, Within and Across State Lines

Note: This is a new and evolving area of law. Considerations may vary depending on the patient’s home state and the state in which the provider is located. Providers should seek legal counsel for timely, state-specific analyses.

Is it Likely Permissible for a Provider to ...	Provider in the “Ban State,” which bans all/most abortions	Provider in an “Access State,” which permits pre- viability abortions
Facilitate Access to Legal Abortions for Patients in the Ban State		
Inform a pregnant person in the Ban State about their options for accessing legal abortion	Likely permissible due to First Amendment protections for free speech.	
Provide pre-abortion clinical services to an individual in the Ban State who plans to travel out-of-state (OOS) for a legal abortion	May be permissible , depending on the Ban State’s laws.	May be permissible to provide such services via telehealth, subject to compliance with Ban State licensure requirements. Establishing a provider-patient relationship in the Ban State could increase risk in certain scenarios described below.
Provide financial or logistical support to an individual to travel OOS for a legal abortion	May be permissible , depending on the Ban State’s laws. The risk is likely lower for an out-of-state actor than for an in-state actor.	
Provide Abortion Services to Patients from the Ban State		
Perform an emergency in-person abortion to save the life of the pregnant person or prevent serious harm	May be permissible. CMS guidance directs providers to perform abortions as needed to stabilize emergency medical conditions under the Emergency Medical Treatment and Labor Act (EMTALA) (see <i>Manatt’s analysis</i>). This guidance is the subject of ongoing litigation; if struck down, permissibility will depend on the Ban State’s laws. The risk may be lower for a provider in an Access State.	
Perform in-person abortion services in a non-emergency scenario (could be surgical or medication abortion (MAB))	Higher risk , unless an exception applies. For example, some Ban States permit abortions prior to a detectable fetal heartbeat and/or for pregnancies resulting from rape or incest.	May be permissible , depending on the laws of the patient’s home state. The risk may be lower if all services begin and end in the Access State (e.g., surgical abortion). The risk may be higher if (1) the provider-patient relationship was established via telehealth before the pregnant individual left the Ban State; and/or (2) the provider prescribes MAB and the patient self-administers the second pill (misoprostol) in the Ban State after traveling home.
Prescribe MAB via telehealth to a patient who is physically located in the Ban State	Higher risk. Telehealth encounters are generally governed by the law of the state in which the patient is physically located.	
Provide Services for Miscarriage Management or Post-Abortion Complications to Patients from the Ban State		
Provide in-person services	May be permissible , depending on the Ban State’s law.*	Likely Permissible
Provide telehealth services to a patient located in a Ban State	May be permissible , depending on the Ban State’s law.*	May be permissible , depending on the Ban State’s laws.*

*Permissibility may depend on whether fetal demise has already occurred and (for post-abortion care) whether the abortion was legally performed.

This chart and an accompanying issue brief are available on Manatt Health’s [website](#). For additional information, please contact [Julian Polaris](#) at JPolaris@manatt.com or 212-704-1980.