

## Post-Dobbs Considerations for Health Care 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
<b>Facilitate Access to Legal Abortions for Patients in the Ban State</b>		
<b>Inform</b> a pregnant person in the Ban State about their options for accessing legal abortion	<b>Likely permissible</b> due to First Amendment protections for free speech.	
<b>Provide pre-abortion clinical services</b> to an individual in the Ban State who plans to travel out-of-state (OOS) for a legal abortion	<b>May be permissible</b> , depending on the Ban State’s laws.	<b>May be permissible</b> 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.
<b>Provide financial or logistical support</b> to an individual to travel OOS for a legal abortion	<b>May be permissible</b> , depending on the Ban State’s laws. The risk is likely lower for an out-of-state actor than for an in-state actor.	
<b>Provide Abortion Services to Patients from the Ban State</b>		
<b>Perform an emergency in-person abortion</b> to save the life of the pregnant person or prevent serious harm	<b>May be permissible.</b> CMS <a href="#">guidance</a> 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.	
<b>Perform in-person abortion services in a non-emergency scenario</b> (could be surgical or medication abortion (MAB))	<b>Higher risk</b> , 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.	<b>May be permissible</b> , 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.
<b>Prescribe MAB via telehealth</b> to a patient who is physically located in the Ban State	<b>Higher risk.</b> Telehealth encounters are generally governed by the law of the state in which the patient is physically located.	
<b>Provide Services for Miscarriage Management or Post-Abortion Complications to Patients from the Ban State</b>		
<b>Provide in-person services</b>	<b>May be permissible</b> , depending on the Ban State’s law.*	<b>Likely Permissible</b>
<b>Provide telehealth services</b> to a patient located in a Ban State	<b>May be permissible</b> , depending on the Ban State’s law.*	<b>May be permissible</b> , 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](mailto:JPolaris@manatt.com) or 212-704-1980.