



# Post-Roe Considerations for Health Care Provider Entities

## HEALTH CARE PROVIDER ENTITIES SHOULD CONSIDER THE IMPACT OF NEW RESTRICTIONS ON THEIR ABILITY TO:

- Provide surgical and medication abortion services, including the application of any exceptions
  - Assess the scope of the state's prohibitions/restrictions on abortion-related treatment to determine which abortion-related treatments may be provided and under what circumstances.
  - Consider how to implement any express or implied exceptions to the state's law prohibiting or restricting abortion, including documentation requirements.
  - Consider the extent to which the state's laws distinguish between treatment procedures versus abortive procedures, or treatment procedures that could be construed as abortive.
  - Evaluate your ability to treat individuals seeking abortion-related services who reside in states that restrict or prohibit abortions, in light of potential liabilities.
- Treat pregnancy complications in emergency and non-emergency situations
  - Assess the scope of the state's restrictions to determine whether they restrict procedures performed to treat pregnancy complications, including any conflicts between these restrictions and treatments required to be provided in emergency situations under federal and state law.
  - Evaluate the impact or potential impact of state law definitions of "personhood," "viability," and "emergency" treatment.
  - Consider any necessary changes in treatment protocols and documentation practices.
- Provide fertility treatments
  - Assess the scope of the state's prohibitions/restrictions on abortion-related treatment to determine the extent to which they restrict procedures performed in connection with in vitro fertilization and other fertility treatments.
  - Consider whether existing treatment protocols need to be modified in light of new restrictions imposed by state law.
- Provide reproductive health care services via telemedicine
  - Assess the scope of the state's prohibitions/restrictions on abortion-related treatment, including counseling and prescribing medication that may be deemed within the scope of prohibited abortion-related treatments under state law.
  - Evaluate your ability to treat individuals seeking abortion-related services who reside in states that restrict or prohibit abortions and who may seek to travel to states where abortion is legal to obtain prescription drugs intended to terminate a pregnancy.
  - If you are a multistate provider of telemedicine services and platforms, establish processes for implementing prohibitions and restrictions in each state in which you provide care to determine which abortion-related treatments may be provided and under what circumstances. Consider:
    - » Restrictions associated with the timing of abortion services, the application of exceptions, and how these factors will be confirmed and documented in the telemedicine context.
    - » The specific diagnostic tests, counseling, and education requirements required by each state prior to prescribing abortifacient drugs to residents of states with restrictions.
    - » Any scope of practice restrictions specific to prescribing medication abortion drugs in states with restrictions.
- Dispense and distribute drugs that may be used to terminate a pregnancy
  - Assess the state's prohibitions/restrictions on the use of medication abortion and contraceptives that may be deemed within the scope of prohibited abortion-related treatments under state laws in each state.
  - Evaluate your ability to dispense or distribute specific reproductive drugs and devices to individuals who reside in states that restrict or prohibit abortions and who travel to states where abortion is legal to obtain prescription drugs intended to terminate a pregnancy.

- Consider implications associated with off-label prescribing of drugs that are not approved or labeled for use to induce an abortion but may be used for that purpose.
- Assess the extent to which a state's restrictions on abortion extend to counseling residents of a state on medication abortion.
- Consider the need for heightened controls to address increased risks of diversion and counterfeiting of restricted medication abortion products.
- **Potential civil and criminal liabilities arising from the treatment of patients from states with abortion restrictions and bounty laws may impact:**
  - **Providers and provider entities that perform/assist in abortions in a ban state**
    - » Consider the impact on non-physician clinical staff and extenders who assist with abortions
  - **Providers and provider entities that provide post-procedure care in a ban state**
  - **Providers who practice in both ban and non-ban states**
    - » Consider potential threats to licensure in a ban state as a result of performing abortions in a non-ban state.
  - **Telemedicine and digital health platforms that facilitate the provision of abortion-related care in ban states**
  - **Pharmacies and pharmacists who dispense medication abortion products and certain contraceptive drugs and devices to residents of ban states**
  - **Manufacturers, distributors, and third-party logistics providers that distribute medication abortion products into a ban state**
  - **Manufacturers, distributors, and third-party logistics providers that distribute devices intended for use in performing abortions into a ban state**
  - **Companies that provide support services to providers of abortion-related care, such as e-prescribing software providers and drug delivery services**

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

If you are a health care provider or life sciences organization with questions about how the decision affects your business, please contact Amy Dow at [adow@ebglaw.com](mailto:adow@ebglaw.com). If you are an employer with questions about your workplace policies or benefits offerings, please contact Susan Gross Sholinsky at [sgross@ebglaw.com](mailto:sgross@ebglaw.com).