

Minnesota Court Declares Restrictions on Abortion Unconstitutional — State Level-Decisions Become Increasingly Important for Health Care Providers

July 15, 2022

A Ramsey County District Court Judge has ruled that several provisions in state law related to abortion violate the state constitution, including mandatory physician informed consent disclosures followed by a 24-hour waiting period. Judge Thomas Gilligan's opinion held that the statutes restricting provision of and access to abortion did not withstand strict scrutiny in light of a nearly thirty-year-old case that held the Minnesota constitution provided greater protection to choose abortion as a fundamental right.

The case challenging the laws, *Doe v. Minnesota*, was filed prior to the Supreme Court deciding to take up the *Dobbs* case. It targeted several provisions in state law that selectively impacted abortion care over other types of healthcare and imposed restrictions on patients and providers. Restrictions deemed unconstitutional in the state include:

- Mandatory informed consent disclosures by abortion providers that contained factually inaccurate information;
- A 24-hour waiting period after receiving the mandatory disclosures;
- Two parent notification laws for minors seeking the procedure;
- Prohibition on provision of abortion procedures by advanced practice providers;
- Requirement that second trimester abortions be performed in a hospital setting;
- Felony penalties for violations of abortion statutes.

The only challenged state law that was upheld was the requirement that practitioners who perform an abortion submit a report to the state that documents certain information regarding the procedure. All of the other challenged laws were declared unconstitutional and permanently enjoined.

In addition, the Governor of Minnesota recently issued an Executive Order stating that reproductive freedom is a right under Minnesota law. He further stated that while the Supreme Court's decision in *Dobbs* affected the federal right to reproductive health services including abortion, state law may afford additional protections to its citizens and Minnesota remained committed to protecting access. Walz committed that the state would prohibit legal liability or professional sanctions for those lawfully providing reproductive health



care services in the state. He also stated his intent to exercise his discretion to decline requests for the extradition of any person who is alleged to have committed crimes in other states related to abortion care, except to the extent those actions would also be a crime under Minnesota law.

The court decision in *Doe* and Executive Order are based on Minnesota law and applicable only within the state. Like Minnesota, state laws and regulations are a rapidly changing landscape since the *Dobbs v. Jackson Women's Health Organization* decision held that the Constitution does not grant a right to abortion and therefore regulation of abortion is entirely within the purview of the states and their elected representatives. [1] While the full impact of the decision in *Dobbs* may not be understood for some time, health care providers across the country are grappling with questions on how that opinion will impact their practice, regardless of their personal beliefs and whether they have been providing abortions or intend to in the future.

In reaction, some states are revisiting old laws to determine their applicability while legislators propose new statutes and state agencies review existing regulations. Many providers of abortion have long been accustomed to operating under state level restrictions and have developed systems to comply with the measures, including waiting periods, mandatory ultrasound and informed consent requirements, restrictions on access for minors, and gestational age limits. In the wake of *Dobbs*, uncertainty has left many healthcare providers unsure what the law is and where they stand in relation to local laws and how that impacts the provision of care within the state and for those who may travel to seek reproductive healthcare. This is proving to be particularly difficult as the legality of certain types of care changes rapidly in reaction to new legislation and rulings on existing legislation that had been barred by *Roe*.

Providers in other states may wonder how to counsel patients, whether to refer them out of state if they are unable to obtain care near home, and in what cases and situations they are able to provide care. Practitioners who do not provide abortion services as part of their practice may be unclear how this decision impacts their practice and the care they can provide to pregnant patients. Facilities may similarly wonder whether they can accept patients from other states and what the impact on operations may be.

As some states move to restrict abortion care or ban it entirely, others like Minnesota may now see an influx of patients traveling for care, as it is centrally located within the mid-west and adjacent to many more restrictive jurisdictions. For example, Missouri has proposed amendments to several recent bills that would extend the application of their abortion laws beyond their borders and criminalize performing an abortion on a resident or citizen of the state, regardless of where that care was provided. Other states have discussed similar measures and have proposed to extend enforcement of these laws beyond the state regulatory agencies and county prosecutors to ordinary citizens who may bring civil suits for violations.



As the laws, regulations, and enforcement rapidly shifts we will keep our clients and contacts up to date on the changing regulatory landscape so that they can remain compliant and address facility policies to ensure they are up to date.

[1] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___ (2022), p. 69, available at: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.