Obstacles to Care Mount 1 Year After Dobbs Decision

One year ago, the US Supreme Court’s decision in Dobbs v Jackson Women’s Health Organization removed the constitutional right to abortion that had been established in 1973 with Roe v Wade. Since that time, a wave of abortion restrictions and bans has swept across the country. Currently, 14 states have total or near-total bans in effect. An additional 10 states have passed and, in many cases, enacted bans at a specific gestational duration, ranging from 6 to 18 weeks of pregnancy. In some of these states, laws restricting abortion continue to be litigated in courtrooms, creating confusion and uncertainty, whereas legislation to protect access to abortion care has passed in other states. The resulting patchwork of abortion laws across the country has shifted where, how, and if people are able to access the health care they need.

To understand the effects of the Dobbs decision, the Society of Family Planning has led a national reporting effort called #WeCount that tracks shifts in the number of abortions by state occurring within the formal health care system.1 #WeCount’s findings show that the US Supreme Court’s decision to overturn Roe v Wade caused a sudden and devastating disruption in abortion care. Notably, in the 6 months after the Dobbs decision, more than 32,000 fewer people obtained abortions within the formal US health care system.2 Since that time, a wave of abortion restrictions and bans has swept across the country. Currently, 14 states have total or near-total bans in effect. An additional 10 states have passed and, in many cases, enacted bans at a specific gestational duration, ranging from 6 to 18 weeks of pregnancy. In some of these states, laws restricting abortion continue to be litigated in courtrooms, creating confusion and uncertainty, whereas legislation to protect access to abortion care has passed in other states. The resulting patchwork of abortion laws across the country has shifted where, how, and if people are able to access the health care they need.

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The data from #WeCount suggest that, for many people living in states with restrictive abortion policies, traveling for care has not been possible. As a result, more people are likely to self-manage their abortions, including by ordering medications such as mifepristone and misoprostol online. Existing evidence indicates that self-managed abortion with these medications is safe and effective.3 An analysis of requests for medication abortion to the online telemedicine service Aid Access, which provides medication abortion care from outside the US, found large increases in medication requests after the Dobbs decision, noting the largest increases occurred from people in states with complete bans on abortion.4

Other people have been unable to travel or self-manage their abortions, and instead have been forced to remain pregnant and deliver. Extensive data demonstrate that individuals who are denied abortion care are more likely to experience a range of negative physical health outcomes, as well as a higher mortality risk, compared with those who obtain safe abortion care.5 Being denied a wanted abortion is also associated with negative socioeconomic outcomes, including a higher risk of remaining tethered to an abusive partner and living in poverty.6

In many states, abortion bans and restrictions are forcing physicians to grapple with risks such as having their licenses removed, their livelihoods threatened, and even facing criminal prosecution when caring for patients. Even when state abortion bans include exceptions, such as allowing an abortion to be performed in the case of medical emergency, physicians are unable to use decades of medical evidence to guide care. Instead of proactive, evidence-based care, physicians must determine how sick a patient has to be before they are allowed to intervene and provide needed abortion care. In some states, physicians have clearly been prevented from offering the evidence-based standard of care to patients due to legal restrictions. In Texas, an analysis of care provided at 2 hospitals after the 6-week abortion ban went into effect in 2021 found that physicians were unable to provide active management to patients experiencing preterm prelabor rupture of membranes. As a result, they documented a doubling of severe maternal morbidity in patients experiencing obstetrical complications during the perivable period compared with historical data when abortion was an option for management.6 Another report documented 50 cases of poor-quality medical care across 14 states since the Dobbs ruling, including cases of preterm prelabor rupture of membranes with sepsis and delayed management of cesarean scar ectopic pregnancy.7 Maternal outcomes will likely continue to worsen as more abortion restrictions prevent people, including those with high-risk pregnancies, from accessing the care they need.

Clinicians are expressing frustration—and moral distress—as they are prevented from providing evidence-based care to patients.7 Although representative data are lacking, reports are accumulating describing clinicians’ choice to move from states with restrictive policies to those where abortion care remains legal. It is likely that these shifts will lead to a shortage of clinicians providing obstetric and gynecologic care in some areas, exacerbating an ongoing decline in hospitals providing maternity care.8

Even though most of the efforts to restrict abortion access since the Dobbs decision have occurred at the state...
level, one ongoing case is national in scope. Over the past year, access to mifepristone, which is used in medication abortion and to treat early pregnancy loss (miscarriage), was threatened by a lawsuit that aimed to revoke the drug’s registration with the US Food and Drug Administration. Decades of evidence demonstrate that mifepristone, combined with misoprostol, is very safe and effective for medication abortion, which accounts for 53% of all abortions in the US.9 Despite this medical evidence, a federal district judge in Texas issued a preliminary ruling in Alliance for Hippocratic Medicine v US Food and Drug Administration that the approval process for mifepristone in 2000 was inappropriate and ordered the registration paused. This ruling would have removed mifepristone from the market nationwide, at least temporarily. However, the US Supreme Court issued a stay. The case is currently moving through the courts and may not be concluded before June 2024. Even though mifepristone remains available in the states where abortion is still legal (and should be available for miscarriage management nationwide), the case caused a great deal of confusion among pregnant women at 22 weeks’ gestation or less with complications in 2 Texas hospitals after legislation on abortion.6 Among pregnant women at 22 weeks’ gestation or less with complications in 2 Texas hospitals after legislation on abortion.6

In the face of growing interference in the patient-clinician relationship, several states have enacted laws aimed to protect the right to abortion. Some states, including Kansas and Michigan, have had ballot referendums that led to new protections for abortion care. In other states, including California and Massachusetts, the legislature passed so-called shield laws to protect clinicians providing abortion to patients from other states. These laws aim to safeguard clinicians against criminal prosecution or civil liability as well as threats to their medical licenses due to restrictive laws in the patient’s home state. These laws have not yet been tested in court to determine how much protection they afford.

Shortly after the US Supreme Court announced their decision in Dobbs v Jackson Women’s Health Organization, more than 75 health care organizations (including the American Medical Association and the American College of Obstetricians and Gynecologists) issued a joint statement asserting abortion care is safe and essential reproductive health care and opposing all legislative interference in the patient-clinician relationship. Now, as the US enters its second year after the overturning of Roe, it is vital that clinicians and their professional organizations continue to convey the deleterious effects of abortion restrictions on patients, communities, the medical profession, and health systems. By highlighting the impact of legislative interference, clinicians and their professional organizations play a critical role in defending evidence-based comprehensive reproductive health care.

ARTICLE INFORMATION
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REFERENCES