

CMS Affirms Access to Reproductive Health Care on Same Day Supreme Court Strikes Down *Roe v. Wade*

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Friday, June 24, 2022, began with the United States Supreme Court's publication of its decision to overturn *Roe v. Wade*. In *Dobbs v. Jackson Women's Health Organization (19-1392)*, the Supreme Court held: "The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives."

Nationwide, the reactions to the *Dobbs* decision was immediate and divisive. President Biden held a press conference on the same day, calling the decision "a tragic error," and urging voters to the polls in the upcoming midterm elections. On the other side of the issue, the National Right to Life Committee advocacy group (NRLC) praised the *Dobbs* decision, with NRLC President Carol Tobias stating that the "Court has correctly decided that a right to abortion is not in the constitution, thereby allowing the people, through their elected representatives, to have a voice in this very important decision."

The divisive nature of the abortion rights issue is now an issue of state law. The *Dobbs* decision returned the authority to allow or restrict abortion to the states, holding "The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. The Court overrules those decisions and returns that authority to the people and their elected representatives." Predictably, the major news outlets predict a wave of legislation and activism from advocates on both sides of the issue.

Another complicated issue that will arise from the *Dobbs* decision is whether or how access to reproductive health care and insurance coverage may change. One strong indication of the national federal position on reproductive health care came through as The Centers for Medicare & Medicaid Services (“CMS”) issued the following statement from CMS Administrator Chiquita Brooks-LaSure on the same day the *Dobbs* decision was issued:

A woman’s right to make decisions about her health is essential. As we review today’s Supreme Court decision, as the Administrator of the Centers for Medicare & Medicaid Services, I will do everything in my authority to ensure that people have the choice of when and how to start a family.

Today, more than 150 million people are served by Medicare, Medicaid and CHIP, and the Affordable Care Act, including more than 80 million women and girls. To you I say: CMS will continue working to maintain and expand access to the full range of reproductive health care services across the lifespan—that includes IUDs, emergency contraception, oral contraception, other forms of contraception, and abortion care within our legal authority. It is our fundamental value that reproductive health care is critical to ensuring that everyone can build healthy lives with economic security.

In contrast, whether commercial health insurance can cover abortion and other forms of reproductive services will now have to be assessed in light of the type of insurance at issue and the specific state laws in question.

How the complex and overlapping issues involved in the issue of insurance coverage for reproductive health care services will be resolved is unknown. However, it is clear the effect of the *Dobbs* decision on health care coverage will be wide-ranging, adding to the extraordinary impact the *Dobbs* decision is likely to have.

Nexsen Pruet will be tracking changes in state law as a result of *Dobbs* that will impact health care providers. We will publish updates as the law evolves, and please let us know if Nexsen Pruet can assist you in navigating this changing regulatory landscape.