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Federal and state rulings cause uncertainty over future access to maternal healthcare

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The Buzz This Week

Competing rulings by 2 federal judges last week created uncertainty and confusion over future access to the most commonly used drug for medical abortions in the United States, mifepristone. The drug has been approved by the U.S. Food and Drug Administration (FDA) since 2000. Texas-based U.S. District Judge Matthew Kacsmaryk ruled that the FDA failed to consider side effects of the drug in its original approval and put a hold on federal approval. On the same day, Washington state-based U.S. District Judge Thomas O. Rice ruled in favor of guaranteeing access in at least 17 states where availability was being challenged.

The Biden Administration appealed the Texas decision, noting “We stand by FDA’s approval of mifepristone, and we are prepared to continue defending that approval through the legal process.” On Wednesday, a federal appeals court ruled the drug could stay on the market but suspended FDA changes since 2016—including shortening the approval window from 10 weeks to 7 weeks and requiring the drug to be dispensed only in clinics. Those restrictions could go into place as early as Friday. Attorney General Merrick Garland has already stated he will ask the Supreme Court of the United States to review.

In the 8 months since *Dobbs v. Jackson Women’s Health Organization*, numerous changes have also been made to abortion laws at the state level. 13 states have banned abortion without gestational limits, while 20 states have added laws protecting abortion. Idaho is one of the states with a near total abortion ban, and last week the governor [signed a new law](#) prohibiting the transport of any pregnant Idaho minor to the border in order to receive abortion care without parental consent. Due to federal protections in interstate travel, the law focuses on transportation within Idaho. Many legal experts expect other states that have banned abortion to pass similar legislation.

Concurrent to Idaho's new laws, at least 2 hospitals have stated they will cease all deliveries by June of this year. In March, Valor Health and Bonner General Health both announced that due to physician shortages from providers leaving the market, changing demographics, and Idaho's legal and political climate around healthcare, they had to make the hard decision to shutter services.

Why It Matters

Mifepristone has been used in the United States for more than 20 years with very low complication rates. The American Medical Association notes "Mifepristone has been studied extensively for over 2 decades and has been proven to be safe time and time again." The American College of Obstetricians and Gynecologists submitted an amicus brief outlining the overwhelming evidence of safety, sharing "there is a greater risk of complications from wisdom tooth removal, colonoscopy, and Viagra use."

Historically, courts have left matters of drug safety and efficacy to the FDA. This is the first time a judge has overruled medical conclusions made by the FDA. And it could have implications well beyond abortion. Some legal experts are concerned this case gives precedent for future judges and political groups to overturn other FDA drugs and vaccines. Regulatory uncertainty could also hamper innovation and approval of new therapeutics and technologies.

Maternity care deserts (counties with no obstetric providers or hospital services) are home to more than 2.2 million people of childbearing age—and that number is growing. The Chartis Center for Rural Health notes that more than 200 hospitals in the U.S. have closed labor and delivery units since 2011, with 13 closing in the past year alone. Changing demographics and declining numbers of delivery are part of the decision to close services, but hospitals in states where providers face criminal consequences for providing abortion care have noted the ability to retain talented physicians in that legislative environment is extraordinarily difficult.

As Dr. John Werdel, an Idaho OB-GYN notes, "Obstetrical care is complex, and a nuanced approach is required. Physicians do not want to practice in a state that criminalizes care that is both medically appropriate and necessary." A survey by the Idaho Coalition for Safe Reproductive Care found that more than 60% of physicians working in obstetric services in Idaho said "yes" or "maybe" when asked if they were considering moving out of state. Of those considering a move, 97% noted Idaho's abortion laws were a contributing factor to the decision. Lack of access to obstetrical care and prenatal services leads to increased risk of pregnancy complications and adverse events.

As ongoing changes to state and federal laws and regulations shift, ripple effects on OB-GYN care broadly will continue to cause instability for patients, providers, payers, and pharmacists grappling with legal concerns over care and the accessibility of needed services.

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