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Alabama legal actions on definition of “personhood” call into question the future of US fertility services

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<https://www.chartis.com/insights/alabama-legal-actions-definition-personhood-call-question-future-us-fertility-services>

The Buzz This Week

Alabama has garnered much attention after the state's two legal actions on the definition of “personhood” related to embryos.

On February 16, the Alabama Supreme Court declared that frozen embryos can be considered children and have the same legal protections. Any person handling a frozen embryo that is damaged or destroyed would be subject to civil and/or criminal charges under Alabama's Wrongful Death of a Minor Act.

Freezing embryos has become an essential part of the in vitro fertilization (IVF) process. Many fertilized eggs do not survive. The egg extraction process itself involves strong hormone treatments and procedures, which take a toll on a woman's body and are expensive. Extracting many eggs at once and freezing some for potential future use reduces the health risks and costs. In addition, it gives women with complex health issues, such as cancer patients, the ability to preserve eggs at a young age. However, in a best-case scenario, only 55% of eggs fertilized in a lab make it to a viable “blastocyst” stage. IVF providers routinely discard unviable or leftover embryos. Under Alabama's February ruling, anyone involved in that process could face severe legal repercussions.

As a result, several Alabama health systems paused their IVF and fertility services to evaluate the new liability risks.

Dr. Paula Amato, president of the American Society for Reproductive Medicine, stated that “by insisting that these very different biological entities are legally equivalent, the best state-of-the-art fertility care will be made unavailable to the people of Alabama. No healthcare provider will be willing to provide treatments if those treatments may lead to civil or criminal charges.”

A “massive outcry” ensued against Alabama legislators from medical associations and patients. In response, the Alabama state legislature passed a second bill on March 6, granting civil and criminal immunity for IVF providers and women who receive IVF services. The new law provides protection against legal repercussions for providers and patients involved in the IVF process. Fertility clinics in Alabama have since resumed IVF services.

Why It Matters

More than one-third of US states currently recognize fetuses as people, giving them the same legal rights as a living person and making any action to terminate a fetus (such as through an abortion) subject to civic and criminal punishment. However, Alabama’s February ruling took the “personhood” definition one step further with the inclusion of embryos. This sparked concern over the future of IVF in the US, should other states enact similar legislation.

Wednesday’s action by Alabama’s state legislature provides a brief reprieve for patients there. But as articulated in a New York Times piece, “Lawmakers and legal experts acknowledged that the law did not address existential questions raised by the court about the definition of personhood, leaving open the prospect of legal challenges in the future.”

Closing fertility treatment services because of new legal risks would limit the ability for many Americans to start a family. It could also increase the cost of IVF treatments where available. In addition, it would reduce the number of medical professionals specializing in fertility service in states with stricter “personhood” definitions. And it could reduce the number of applications from medical residents seeking comprehensive training.

We anticipate continued attention and uncertainty surrounding reproductive medicine. Healthcare organizations will need to be prepared for how they articulate their position, support their providers, and care for their patients.

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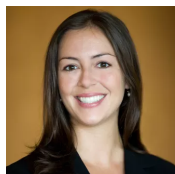
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