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As Roe is in question, legal questions arise for abortion providers in Massachusetts

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FILE – Hannah Kilson of Jamaica Plain, Cathy Wilkerson of Norton, and Suzanne of Mission Hill raised women’s symbol signs as they listened to speakers at the Women’s March on the Boston Common on Jan. 19, 2019.

Meredith Nierman / GBH News



By **Sarah Betancourt**

 GBH 89.7
Morning Edition

The [leaked Supreme Court draft opinion and likely rollback of Roe v. Wade](#) raises the question of whether abortion providers in Massachusetts will face any



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Massachusetts providers have already been serving patients who live in states with restrictive abortion laws, and they expect that demand to only increase. Bay State doctors and attorneys say it is unlikely they will be subject to other states' anti-abortion laws, but experts left room open to interpret exactly how things play out for local providers interacting through telemedicine with out-of-state patients.

Twenty-six states are certain or likely to ban abortion if Roe v. Wade is overturned, according to a 2021 [analysis](#) by the reproductive rights research group Guttmacher Institute. Those include states with “trigger laws” or automatic state action when the law is overturned, and those with pre-Roe v. Wade state laws that were never removed, like in Arizona and Michigan.

There is no shield law in Massachusetts that specifically protects in-state abortion providers from legal ramifications if they provide abortions or prescribe abortion medication to patients who live in states where the procedures are illegal.

[Connecticut just passed a bill](#) that would keep authorities from cooperating with extradition requests and investigations related to this. It would also let providers sued for providing an abortion to countersue and recoup fees in state court.

In an email, the Center for Reproductive Rights impressed that abortion is still legal, and said providers licensed and practicing in Massachusetts “should not face any liability issues.” Other experts agreed.

“I think Massachusetts — along with New York, Illinois and California — is clearly going to become a safe haven state,” said Dr. Laurent Delli-Bovi. She’s been practicing reproductive medicine since the mid-1970s, right after Roe v. Wade ruling.

Delli-Bovi said she’s aware of attempts from more conservative states in criminalizing the actions of out-of-state providers for residents who can’t get access to an abortion.

frankly I have no desire to do,” she said in a phone interview.

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Delli-Bovi founded Womens' Health Services in Brookline in 1992 for women who couldn't afford safe abortions. Her clinic is already serving clients from Texas and Louisiana. Last year, Texas banned abortions after six weeks of pregnancy, and opened the door to most private citizens to sue abortion providers and others who might help women get an abortion. In Louisiana, abortion is legal for up to 20 weeks of pregnancy with a 72-hour waiting period, but there are only three clinics in the entire state. There's also [a ban on the use of telemedicine to provide medication abortion](#).

Abortion is legal in Massachusetts up to 24 weeks of pregnancy, and beyond 24 weeks in certain cases.

John Henn, who was counsel for Planned Parenthood of Massachusetts for three decades until his retirement, said abortion providers in Massachusetts won't suffer legal liability for performing abortions for out-of-state clients.

He emphasized that all rights not given to the federal government under the United States Constitution are left up to the states. Massachusetts has passed various statutes and laws, including the ROE Act, that will buffer the impact of the Roe v. Wade fallout here, and wouldn't allow for criminal conviction for providing an abortion, or civil penalties to be granted.

In most cases, one state does not have jurisdiction over another state. But there are

abortion at a Planned Parenthood in another state, and the man involved trying to sue the provider for money damages in New York in state, where Planned Parenthood is headquartered.

Henn said Massachusetts providers who offer telemedicine services to out-of-state patients might face some pushback, but those services won't have a strong enough tie to the state to support lawsuits.

"That's a little tricky," said Henn. "Let's take hypothetically the state of Texas. If provider simply have a website that anybody can access, I would say that's not sufficient context."

Even if a patient in another state can access telemedicine services with a Massachusetts provider, though, the doctor may not be allowed to prescribe abortion pills.

The Food and Drug Administration in December **permanently allowed** licensed telemedicine providers to prescribe a two-drug regimen of mifepristone and misoprostol which can be used in a patient's first 9 to 11 weeks of pregnancy. This can be done in states where it's allowed under local law. It's unclear if the pills can be mailed over state lines, legally, to states where they're not allowed to be prescribed.

Delli-Bovi said providers can't prescribe in other states unless they have a prescribing license in that state.

If someone contacted her and asked to dispense medical abortion, she doesn't think it would be possible.

"It requires having a license in that state," she said.

Dr. Marcus Gordon, who provides abortions in both Massachusetts and Charlotte, North Carolina, to provide abortions, said he anticipates Charlotte getting a lot busier as a result of this Supreme Court decision, but he does not expect the situation to change much in Massachusetts.

GBH News digital producer Meghan Smith contributed to this report.



Sarah Betancourt X

Sarah Betancourt is a bilingual reporter for GBH News, and longtime Boston muckraker. Feedback? Questions? Story ideas? Reach out to Sarah at sarah_betancourt@wgbh.org.

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