

Illinois To Become Abortion 'Oasis' In Wake Of Dobbs Ruling

By **Celeste Bott**

Law360 (June 27, 2022, 10:17 PM EDT) -- Abortion providers and officials in Illinois are preparing for potential interstate conflict and litigation as they expect a flood of patients to cross the state's borders following Friday's U.S. Supreme Court decision overturning *Roe v. Wade* that could clear the way for every surrounding state to outlaw the procedure.

Each state that directly borders Illinois — Missouri, Indiana, Wisconsin, Iowa and Kentucky — has either already banned abortion or could restrict the procedure soon. Other nearby states, like Michigan, Arkansas and Tennessee, have abortion bans already on the books that could take effect now that the nation's high court has **overturned *Roe*** 🇺🇸, which established abortion as a constitutional right.



Supporters gather for an abortion-rights rally at Federal Plaza on Friday in Chicago, after the Supreme Court overturned *Roe vs. Wade*. (AP Photo/Paul Beaty)

That leaves Illinois, a state where Democrats have long maintained supermajorities in the legislature, to serve as a "reproductive health care oasis" in a red desert, according to Attorney General Kwame Raoul.

But bordering states that banned the procedure are likely to try to make any efforts to cross state lines to get an abortion illegal, either for patients or for those who help them travel to Illinois, according to Carolyn Shapiro, a Chicago-Kent College of Law professor and the founder and co-director of the school's Institute on the Supreme Court of the United States. She said that could subject providers even in

permissive states to "a significant amount of interstate tension and litigation."

It's a moment abortion providers and advocates in the Prairie State have been preparing for long before a draft opinion of the high court's ruling in **Dobbs v. Jackson Women's Health Organization** was leaked in May, indicating that the court would overturn Roe and make the procedure illegal in **dozens of states**.

In 2017, state lawmakers repealed a "trigger" provision that would have outlawed abortion if Roe were to be overturned. In 2019, they passed the Reproductive Health Act, codifying reproductive health care as a fundamental right in Illinois and requiring private insurers in the state to provide coverage for abortions. And effective June 1, Illinois put an end to the **requirement** that doctors notify the parents of a minor seeking an abortion in the state, according to Ameri Klafeta, director of the Women's and Reproductive Rights Project for the ACLU of Illinois.

"There's been a lot of work done in Illinois in the last few years to prepare us for this," she told Law360.

On Friday, Gov. J.B. Pritzker announced that he would call state legislators back to the capital for a special session to debate additional protections. He has also said that Illinois is preparing to handle as many as 30,000 people a year from neighboring states seeking abortion care in the wake of the Dobbs ruling.

But that overwhelming influx of new patients may make it difficult for both Illinois residents and those crossing the border to obtain an abortion or other reproductive care.

Shapiro said there will be longer wait times for appointments and difficulty getting appointments not just for abortion care but for other women's health services such as mammograms and Pap tests.

That could leave residents of blue states like Illinois struggling to get an abortion, not because it is banned but because of high demand, said Robin Fretwell Wilson, a professor at the University of Illinois College of Law.

"They're not going to be able to move you to the top of the list because you live in the state," she said.

A Steady Increase in Out-of-State Patients

Providers have already seen a significant uptick in out-of-state residents receiving abortion care in Illinois, according to data from the state's health department.

In 2011, roughly 3,000 out-of-state patients terminated their pregnancies in Illinois, less than 10% of all abortions in the state. By 2020, the most recent year for which data is available, the number skyrocketed to 9,686 of about 46,243 procedures, or about 20% of abortions performed, according to the Illinois Department of Public Health.

The U.S. Food & Drug Administration's removal of the in-person dispensing requirement for the abortion pill in December may help expand capacity. Beginning in April, Planned Parenthood of Illinois began to offer abortion medication through the mail for qualifying patients with an Illinois address who first met with a doctor via a telehealth visit. And out-of-state patients can get access to the same pills without needing a formal in-person appointment, as long as they travel to Illinois for their video visit and pick up the medicine from a health center there.

Planned Parenthood of Illinois has also expanded its locations near the borders of neighboring states, including a large clinic that opened in 2019 in Fairview Heights, Illinois, less than 20 miles from the Missouri border. Most of the out-of-state residents receiving abortion care in Illinois overwhelmingly traveled from Missouri — more than 6,500 in 2020, according to the public health department data.

Missouri, with a Republican-led legislature, governor and attorney general, had strict abortion restrictions before the Dobbs decision, including a 72-hour waiting period and a parental consent requirement for minors. Past attempts to deny abortion facilities licenses there have meant most Missouri patients have been directed to the Fairview Heights location across the border for several years now, according to Richard Muniz, general counsel for the Reproductive Health Services of Planned Parenthood of the St. Louis Region.

"Illinois remains a critical access point," he said.

The Fairview Heights clinic performs 6,000 to 7,000 abortions a year, and that demand could triple post-

Dobbs, Muniz said.

Among the top priorities for Planned Parenthood right now is to expand the pool of providers and help patients traveling long distances from other states to navigate care, he said. They're also watching for attempts by legislators to impose penalties or liability on providers helping patients receive that care across the border, he said.

Illinois legislators will soon debate additional protections for those travelers in addition to the "firewall" it's already established, according to state Rep. Kelly Cassidy, a Chicago Democrat who sponsored the state's Reproductive Health Act in 2019.

"We want to do everything we possibly can to ensure the safety of inbound patients, as long as they're here," she said.

The Illinois Senate had considered a bill last session that would prevent Illinois from using any disciplinary action over abortion care in a more restrictive state as grounds to discipline doctors and nurses who are also licensed in Illinois. That bill didn't pass, but it is likely to be considered again, Cassidy said. Lawmakers could also soon explore ways to make it easier for health care providers coming from other states to provide abortion care, either temporarily or permanently, she said.

"We already know how to do it, because we did it with COVID," Cassidy told Law360 on Monday. "We made it really easy for doctors and nurses to come here."

Preparation for Legal Battles

Wilson says red states are likely to follow Texas' lead and attempt to pass abortion laws with an enforcement scheme that bypasses state agencies and instead allows private individuals to sue providers and people who help women obtain abortions. An injunction granted in the federal government's challenge to the Texas law is currently being **challenged at the Fifth Circuit**.

"We have already seen that being copied all over the country," Wilson said. "In these neighboring states, I think we have to pay attention to the arguments people are going to be making in statehouses."

A counteraction from a state like Illinois could be refusing to allow sheriffs to do service of process in those kinds of suits, Wilson said. But depending on what laws its neighbors pass, there could be extended liability, she said.

"If I'm sitting in Missouri making an appointment with an Illinois abortion provider, the fact that I made the call in Missouri could be enough to extend the long-arm statute," she said.

And even if a blue state can establish protections for abortion providers performing the procedure on out-of-state residents, it could still affect Illinois providers' ability to travel freely to neighboring states, where they could find themselves subject to subpoena or service, Chicago-Kent's Shapiro pointed out.

Ultimately, there's still a bit of a waiting game as states reckon with the aftermath of the Dobbs decision, she said.

"What states can do is evolving, just as the questions of what the Constitution allows are evolving on this point," Shapiro said. "It's hard to know at this point exactly what that might look like, because we don't know what the laws that might impose these penalties might look like."

In some red states, Democratic prosecutors have already vowed not to enforce the restrictions. In Wisconsin, Gov. Tony Evers, a Democrat, has pledged to grant clemency to anyone who is charged under the state's trigger law banning most abortions.

Klafeta of the ACLU says that overturning Roe "is not the end" for anti-abortion politicians and advocates but only one step in the process. But there are numerous constitutional doctrines that come into play when one state tries to regulate what happens in another state, she said. She noted that even Justice Brett Kavanaugh, who voted to overturn Roe, indicated in his concurrence that people have a constitutional right to interstate travel and states shouldn't bar them from traveling elsewhere for the procedure.

"You can go to Nevada and gamble," Klafeta said, "even if you can't in your own state."

--Additional reporting by Jimmy Hoover and Nate Beck. Editing by Andrew Cohen.

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