Ripple effects of abortion restrictions confuse care for miscarriages

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As the Supreme Court appears poised to return abortion regulation to the states, recent experience in Texas illustrates that medical care for miscarriages and dangerous ectopic pregnancies would also be

threatened if restrictions become more widespread.

One Texas law passed last year lists several medications as abortion-inducing drugs and largely bars their use for abortion after the seventh week of pregnancy. But two of those drugs, misoprostol and mifepristone, are the only drugs recommended in the American College of Obstetricians and Gynecologists guidelines for treating a patient after an early pregnancy loss. The other miscarriage treatment is a procedure described as surgical uterine evacuation to remove the pregnancy tissue—the same approach as for an abortion.

"The challenge is that the treatment for an abortion and the treatment for a miscarriage are exactly the same," said Dr. Sarah Prager, a professor of obstetrics and gynecology at the University of Washington in Seattle and an expert in early pregnancy loss.

Miscarriages occur in roughly 1 out of 10 pregnancies. Some people experience loss of pregnancy at home and don't require additional care, other than emotional support, said Dr. Tony Ogburn, who chairs the OB-GYN department at the University of Texas-Rio Grande Valley School of Medicine. But in other situations, he said, providers may need to intervene to stop bleeding and make sure no pregnancy tissue remains, as a guard against infection.

Dr. Lauren Thaxton, an OB-GYN and assistant professor at the Dell Medical School at the University of Texas-Austin, has already heard about local patients who have been miscarrying, and couldn't get a pharmacy to fill their misoprostol prescription. "The pharmacy has said, 'We don't know whether or not you might be using this medication for the purposes of abortion,'" she said.

Thaxton, who supervises the obstetrics-gynecology residents who have seen these patients, said sometimes the prescribing clinic will intervene,

but it takes the patient longer to get the medication. Other times patients don't report the problem and miscarry on their own, she said, but without medication they risk additional bleeding.

Under another new Texas abortion law, someone who "aids or abets" an abortion after cardiac activity can be detected, typically around six weeks, can be subject to at least a $10,000 fine per occurrence. Anyone can bring that civil action, posing a quandary for physicians and other providers. How do they follow the latest guidelines when other people—from medical professionals to friends and family members—can question their intent: Are they helping care for a miscarriage or facilitating an abortion?

Sometimes patients don't realize that they have lost the pregnancy until they come in for a checkup and no cardiac activity can be detected, said Dr. Emily Briggs, a family physician who delivers babies in New Braunfels, Texas. At that point, the patient can opt to wait until the bleeding starts and the pregnancy tissue is naturally released, Briggs said. For some, that's too difficult, given the emotions surrounding the pregnancy loss, she said. Instead, the patient may choose medication or a surgical evacuation procedure, which Briggs said may prove necessary anyway to avoid a patient becoming septic if some of the tissue remains in the uterus.

But now in Texas, the new laws are creating uncertainties that may deter some doctors and other providers from offering optimal miscarriage treatment.

These situations can create significant moral distress for patients and providers, said Bryn Esplin, a bioethicist and assistant professor of medical education at the University of North Texas Health Science Center in Fort Worth. "Any law that creates a hesitancy for physicians to uphold the standard of care for a patient has a cascade of harmful effects

both for the patient but also for everyone else," said Esplin.

It's an emotional and legal dilemma that potentially faces not just obstetricians and midwives, but also family physicians, emergency physicians, pharmacists, and anyone else who might become involved with pregnancy care. And Ogburn, who noted that he was speaking personally and not for the medical school, worries that fears about the Texas laws have already delayed care.

"I wouldn't say this is true for our practice," he said. "But I have certainly heard discussion among physicians that they're very hesitant to do any kind of intervention until they're absolutely certain that this is not possibly a viable pregnancy—even though the amount of bleeding would warrant intervening because it's a threat to the mother's life."

John Seago, legislative director for Texas Right to Life, described this type of hesitation as "an awful misunderstanding of the law." Even before the passage of the two bills, existing Texas law stated that the act is not an abortion if it involves the treatment of an ectopic pregnancy—which most commonly occurs when the pregnancy grows in the fallopian tube—or to "remove a dead, unborn child whose death was caused by spontaneous abortion," he said, pointing to the statute. Another area of Texas law that Seago cited provides an exception to the state's abortion restrictions if the mother's life is in danger or she's at "serious risk of substantial impairment of a major bodily function" unless an abortion is performed.

"It is a pro-life position to allow physicians to make those life-and-death decisions," Seago said. "And that may mean in certain circumstances protecting the mother in this situation and the child passing away."

But interpretation of the laws is still causing challenges to care. At least several OB-GYNs in the Austin area received a letter from a pharmacy

in late 2021 saying it would no longer fill the drug methotrexate in the case of ectopic pregnancy, citing the recent Texas laws, said Dr. Charlie Brown, an Austin-based obstetrician-gynecologist who provided a copy to KHN. Methotrexate also is listed in the Texas law passed last year.

Ectopic pregnancy develops in an estimated 2% of reported pregnancies. Methotrexate or surgery are the only two options listed in the medical guidelines to prevent the fallopian tubes from rupturing and causing dangerous bleeding.

"Ectopic pregnancies can kill people," said Brown, a district chair for the American College of Obstetricians and Gynecologists, representing Texas.

Tom Mayo, a professor of law at Southern Methodist University's Dedman School of Law in Dallas, understands why some in Texas' pharmacy community might be nervous. "The penalties are quite draconian," he said, noting that someone could be convicted of a felony.

However, Mayo said that his reading of the law allows for the use of methotrexate to treat an ectopic pregnancy. In addition, he said, other Texas laws and the Roe v. Wade decision provide an exception to permit abortion if a pregnant person's life is in danger.

Since the Texas laws include a stipulation that there must be intent to induce an abortion, Mayo said that he'd advise physicians and other clinicians to closely document the rationale for medical care, whether it's to treat a miscarriage or an ectopic pregnancy.

But Prager believes that the laws in Texas—and perhaps elsewhere soon—could boost physicians' vulnerability to medical malpractice lawsuits. Consider the patient whose miscarriage care is delayed and develops a serious infection and other complications, Prager said. "And

they decide to sue for malpractice," she said. "They can absolutely do that."

Texas providers are still adjusting to other ripple effects that affect patient care. Dr. Jennifer Liedtke, a family physician in Sweetwater, Texas, who delivers about 175 babies annually, no longer sends misoprostol prescriptions to the local Walmart. Since the new laws took effect, Liedtke said, the pharmacist a handful of times declined to provide the medication, citing the new law—despite Liedtke writing the prescription to treat a miscarriage. Walmart officials did not respond to multiple requests for comment.

Since pharmacists rotate through that Walmart, Liedtke decided to send those prescriptions to other pharmacies rather than attempt to sort out the misunderstanding anew each time.

"It's hard to form a relationship to say, 'Hey look, I'm not using this for an elective abortion,'" she said. "'I'm just using this because this is not a viable pregnancy.'"