



NEW YORK STATE SENATOR

Shelley B. Mayer

New York Times: New York Passes Bill to Shield Abortion Providers Sending Pills Into States With Bans

PAM BELLUCK AND EMILY BAZELON June 20, 2023

| ISSUE: **ABORTION**

The measure is one of several recently enacted by states aiming to expand access to medication abortion for patients who live where it is outlawed

The New York State Legislature gave final approval on Tuesday to legislation that provides legal protection for New York doctors to prescribe and send abortion pills to patients in states that have outlawed abortion.

The measure, along with similar new laws in several other states controlled by Democrats, could significantly expand medication abortion access by allowing more patients in states that restrict abortion to end pregnancies at home, without traveling to states where abortion is legal.

The New York bill now goes to the desk of Gov. Kathy Hochul, who has indicated that she supports the idea of such a shield law. The bill stipulates that New York courts and officials will not cooperate if a state with an abortion ban tries to prosecute, sue or otherwise penalize a New York health care provider who offers abortion via telemedicine to a patient in that state, as long as the provider complies with New York law. It passed the State Assembly by a vote of 99 to 45 on Tuesday evening after clearing the Senate by a vote of 39 to 22 last month.

Since the Supreme Court ended the nationwide right to an abortion last year, legislation known as telemedicine abortion shield laws have been enacted in Massachusetts, Colorado, Vermont and Washington. But New York's legislation is expected to have a notable impact. Several providers in New York say they plan to send abortion pills to patients in all restrictive states, and a few providers are speaking publicly, which those in other states with shield laws have so far not done.

"I'm going to mail pills as soon as the governor signs the bill," said Dr. Linda Prine, a New York physician and co-founder of the Miscarriage and Abortion Hotline, which answers patients' questions about medication abortion. "This is the first time we're able to do something to fight back," she added.

Dr. Prine said she and at least three other doctors would mail pills to patients in all states with restrictions or bans. A telemedicine service in New York, Juniper Midwifery, also said it hoped to use the shield law to mail pills to patients in states with abortion bans.

"It's definitely something that we would want to explore and make it happen," Jillian Barovick, a midwife and co-founder of Juniper, said.



Assembly member Karines Reyes, a registered nurse who introduced the bill to the assembly. Credit...Cindy Schultz for The New York Times

Abortion is now mostly outlawed in **14 states**. But most bans penalize people who assist with an abortion, not those who take abortion pills.

More than half of abortions in the United States are now carried out with medication, using two drugs, mifepristone followed by misoprostol. Data indicates the process is **safe and effective**.

Abortion opponents are trying to **force mifepristone off the market** by challenging the Food and Drug Administration's approval of the drug 23 years ago in a lawsuit expected to be decided by the Supreme Court. The suit also challenges the F.D.A.'s decision in 2021 **allowing patients to receive prescribed pills by mail**.

Since the overturning of *Roe v. Wade*, tens of thousands of patients in states with bans or severe restrictions have taken abortion pills. Many have traveled to states where abortion is legal to obtain pills at clinics or at addresses in those states where pills were sent by mail. But many patients cannot afford the cost and time of traveling.

“The telemedicine option and protecting providers who are providing telemedicine abortion services is going to help tremendously the people here in Mississippi and other restricted states,” said Michelle Colón, the executive director of SHERo Mississippi, an organization focused on supporting reproductive rights for people of color. “This will expand access, which we so desperately need.”

Other patients [receive pills in the mail from overseas](#), either prescribed by doctors abroad, [through a European telemedicine service](#), or ordered directly from online pharmacies in India or other countries. By the time the pills arrive, often two to three weeks later, patients may be past the 12-week threshold of pregnancy that the [World Health Organization endorses](#) for using medication abortion. Mailing pills from within the United States, as doctors operating under shield laws are doing, cuts delivery time to a few days.

The telemedicine shield laws [are not a guarantee](#) of full legal protection for providers. Under the legislation, if a state with a ban issued an arrest warrant for a physician like Dr. Prine, New York would refuse to extradite her to that state. But if she traveled there, or to another state that agreed to extradite her, she could face criminal charges.



A law that would shield telehealth abortions disrupts the usual model for telemedicine law and policy, which assumes a doctor is providing care in the same place where the patient is located. Credit...Johnny Milano for The New York Times

“Texas could prosecute them for murder,” said Jonathan Mitchell, a former Texas solicitor general and the architect of a 2021 Texas law that banned abortion after six weeks into pregnancy and deputized private citizens to enforce it by suing for cash judgments of \$10,000 per abortion.

“Under Texas law, killing a fetus through an illegal abortion is no different from killing a baby, except that the mother cannot be prosecuted (or sued) for death of a fetus,” Mr. Mitchell wrote in an email.

Because of the substantial risks, only about 10 health care providers in states with shield laws are known to have begun sending pills to patients in states that restrict abortion. These providers have proceeded cautiously.

“Most of the people who have been using the shield laws so far have been just dipping their toes in the water, going to states that maybe aren’t quite as litigious, but I think we just need to start doing it to all of them,” said a doctor in New York’s Hudson Valley who is planning to send pills under the new shield legislation and spoke on the condition of anonymity because of the risk involved.

Other abortion providers have indicated interest in using shield laws if they could send prescriptions to a pharmacy that would mail the pills rather than stocking and shipping the medications themselves. That option could become available in the coming months if California enacts a telehealth abortion shield bill that **passed** the state Senate last month. An online pharmacy based in California, Honeybee Health, hopes to use that law to ship to all 50 states, said Jessica Nouhavandi, co-founder and president of Honeybee.

“We are anxiously awaiting the passing of the California shield law,” she said.

As providers test their states’ telehealth shield laws, many legal questions could arise, including the possibility of civil suits and challenges to a provider’s medical license for unauthorized practice of medicine.

“It’s not a matter of if a provider will be challenged in court,” said Rachel Rebouché, the dean of Temple University Law School, who has **written** in support of shield laws. “It’s a matter of when.”



State Senator Shelley Mayer, the bill's senate sponsor, in the senate chamber on Friday. Credit...Cindy Schultz for The New York Times

Lawyers on each side of the issue say that state shield laws undermine basic premises of interstate cooperation. Rather than recognizing one state's arrest warrant or court order, another state effectively throws a wrench into the enforcement of that state's laws. And a law that shields telehealth abortions disrupts the usual model for telemedicine law and policy, which "presumes that you're providing care in the place where the patient is," Professor Rebouché said.

To treat a patient in Texas, for example, a New York physician would normally first get a Texas medical license. If the doctor practiced without one, New York would generally help Texas initiate disciplinary proceedings through its medical board. Without the shield law, an out-of-state ruling could have consequences for the doctor's license in New York.

In addition, in some cases, the U.S. Constitution requires states to enforce the civil judgments of another state. An abortion provider in New York could be sued in Texas, for example, by a family member of an abortion patient, claiming damages for wrongful death of the embryo or fetus. If the plaintiff won, the Full Faith and Credit Clause in the Constitution could obligate New York to comply in collecting damages.

“It’s very clear that in other states, citizens can still sue doctors who engage in the unlawful practice of medicine,” said Denise Harle, senior counsel for the Alliance Defending Freedom, a conservative Christian legal organization that represents the anti-abortion plaintiffs seeking to remove mifepristone from the market in their lawsuit against the F.D.A. “They can sue to protect against bad acts by people who are committing crimes.”

Malpractice insurance can also be challenging to arrange. New York’s shield bill, however, says that an insurer cannot drop or penalize a provider who complies with New York law in providing abortions.

To date, there have been no known examples of prosecutions, lawsuits or other actions against providers working under telemedicine abortion shield laws. Dr. Prine and others said that they were prepared to be the guinea pigs but that they were also taking steps to protect themselves.

Most providers using shield laws say they are avoiding travel to states with abortion bans. Dr. Prine said she would even make sure not to have a flight connection in an airport in a restrictive state.

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Sponsored by **Shelley B. Mayer**

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