

CORE BRIEF

Medication abortion access update

February 2023



This brief explains recent changes in federal policy that impact access to medication abortion. The policy change will expand access to medication abortion in states where abortion is legal. But as of this writing (February 2023), it will have no impact on access in Wisconsin, where abortion is no longer available since the US Supreme Court overturned *Roe v. Wade*. We also describe other legal and policy challenges that may affect medication abortion access in the near future.

What is medication abortion?

Medication abortion, often called the abortion pill, is a safe and effective way to end a pregnancy. Medical and public health organizations, including the [American College of Obstetricians and Gynecologists](#) and the [World Health Organization](#), recommend two medication abortion regimens: 1) mifepristone and misoprostol used together, and 2) misoprostol used alone. Misoprostol works by causing the cervix to soften and the uterus to contract, which expels the pregnancy tissue. Mifepristone blocks progesterone and prevents the pregnancy from progressing. While misoprostol alone can cause an abortion, many studies indicate that medication abortion is most effective when misoprostol and mifepristone are used in combination.



Recent FDA rule change will expand access to medication abortion in states where abortion is legal

The federal government has recently made changes that affect one of the two abortion pills: mifepristone.

The US Food and Drug Administration (FDA) approved mifepristone for abortion and miscarriage care in 2000, but, due to [political, not scientific, concerns](#), it imposed several restrictions on its use. These rules required that the pill be given in-person to the patient in a clinic, medical office, or hospital under the direct supervision of a certified clinician. Patients were unable to access mifepristone from retail or mail-order pharmacies. (Note that the FDA has approved mifepristone to treat other medical conditions, without these restrictions.)

The FDA restrictions were [opposed](#) by physicians and other healthcare professionals because they were not based on scientific evidence, did not improve care or make care safer, created barriers to needed care, and most burdened people who already face structural barriers to care, including people of color and people living in rural communities.

On January 3, 2023, the FDA [changed its policy](#) so that certified pharmacies can now dispense mifepristone to patients with a prescription from a certified prescriber for abortion and miscarriage care. A patient can now fill a mifepristone prescription at a “brick-and-mortar” pharmacy, or by mail from a mail-order pharmacy, as with most other FDA-approved medications.

Pharmacies interested in dispensing mifepristone need to complete an application process to be certified. It is not yet clear how many pharmacies will apply, and in what states, cities, and counties these pharmacies will be located. The system for certifying clinicians to dispense the drug remains the same.

In states where abortion is legal, this change will make obtaining medication abortion easier, if pharmacies apply to be certified. Patients will no longer be forced to see a clinician face-to-face to take a medication that can be safely taken at home. The rule change also enables patients to obtain medication abortion through telehealth, where state law permits.

The new rules do not change access to medication abortion in Wisconsin

Since the US Supreme Court overturned *Roe v. Wade* in June 2022, healthcare providers and pharmacies may lawfully provide medication abortion *only in those states* where abortion is legal.

In Wisconsin, an 1849 law makes providing abortion a felony except to save the life of the pregnant person. After *Roe* was overturned, the Wisconsin Attorney General filed a [lawsuit](#) challenging the enforceability of the law. In the meantime, clinicians will not provide abortion care due to concerns of criminal prosecution.



Consequently, the FDA changes to mifepristone do not change medication abortion access in Wisconsin. The only way the policy could change access is if the 1849 ban is overturned through legislation or if a court rules that the ban is not enforceable.

Notably, prior to the overturn of *Roe*, Wisconsin had some of the [most restrictive](#) medication abortion care laws in the country.

The new rules may benefit people experiencing miscarriage in Wisconsin

If Wisconsin pharmacies become certified to dispense mifepristone under the new FDA rules, certified clinicians will be able to write prescriptions for its use in early pregnancy loss and send the prescription to a certified pharmacy. The person experiencing a miscarriage would then be able to fill the prescription at a local pharmacy or by mail order.

At this point, it is unknown if and how many Wisconsin pharmacies will become certified.

Expect more legal and policy challenges related to medication abortion

The FDA rules are just one of many developments related to medication abortion access in the last few months. For example, the US Department of Justice issued an [opinion](#) that existing federal law does not prohibit sending abortion pills by the US Postal Service, a judgement that could expand access. On the other hand, some [state legislatures](#) plan to impose further medication abortion restrictions in upcoming legislative sessions.



A number of pending lawsuits could also impact medication abortion. Some of these lawsuits would *further restrict access*. A federal lawsuit filed in [Texas](#) seeks to remove mifepristone from the market nationally by arguing that the FDA was wrong to approve it over 20 years ago.

Other lawsuits *challenge state restrictions*. A federal lawsuit filed in [West Virginia](#) disputes the constitutionality of a state ban on mifepristone. In [North Carolina](#), a physician has sued state officials for regulating the use of mifepristone beyond FDA regulations.

These competing lawsuits are examples of what legal scholars have called, in an understatement, “[perplexing](#)” and “[complex](#)” [legal conflicts](#) between and across states and the federal government since the overturn of *Roe v. Wade*. The “[seismic shift in abortion law](#)” means we can expect continuing challenges to medication abortion access in coming years.

However, **these lawsuits will not change access to medication abortion in Wisconsin due to the 1849 abortion ban.**