

## FACT SHEET

# 2014 State Level Abortion Restrictions at Mid-Year: An Extreme Overreach into Women's Reproductive Health Care

July 2014

*State legislators in 2014 continue to enact laws that restrict access to abortion or ban it outright. So far this year, 13 states have adopted 21 new restrictions that limit access to abortion.<sup>1</sup> These state restrictions are a dangerous overreach into women's personal medical decisions.*

### States Are Banning Abortion Later in Pregnancy, Ignoring an Individual Woman's Particular Circumstance

So far in 2014, one state – Mississippi – has enacted a ban on later abortion. It bans abortion after 20 weeks of pregnancy, with only very limited exceptions in cases of medical emergencies and severe fetal anomalies, and no exception at all for when the pregnancy results from rape or incest.<sup>2</sup> The West Virginia legislature also passed a ban on abortion after 20 weeks, but it was vetoed by Governor Tomblin, who said it is unconstitutional and “unduly restricts the physician-patient relationship.”<sup>3</sup>

Mississippi's unconstitutional law<sup>4</sup> – which joins 9 other recently passed, similar state laws<sup>5</sup> – deprives a woman of her ability to make an extremely personal medical decision. Every pregnancy is different. These laws take the decision away from a woman and her doctor, and hand it over to politicians.

### States Are Requiring Women to Undergo Medically Unnecessary, Physically Invasive Ultrasounds Before Obtaining an Abortion

So far in 2014, Oklahoma has enacted a provision requiring a woman to undergo an ultrasound before she can obtain an abortion.<sup>6</sup>

Oklahoma joins 10 other states that require an abortion provider to perform an ultrasound on each woman seeking an abortion.<sup>7</sup> Requiring doctors to perform ultrasounds without regard for the circumstances or the patient's wishes impairs the doctor-patient relationship and violates principles of medical ethics. Mandatory ultrasound laws represent a profound disrespect for women's decision-making ability and the clinical judgment of doctors.

### States Are Attempting to Regulate Abortion Providers Out of Existence

In 2014 so far, 4 states – Arizona, Indiana, Louisiana, and Oklahoma – have passed targeted regulations of abortion providers.

- Louisiana and Oklahoma passed laws requiring abortion providers to obtain medically unnecessary hospital

admitting privileges.<sup>8</sup> There is no medical reason for these laws and plans are already in place in the rare case of an emergency. These laws are written with the goal of making access to safe and legal abortion hard or even impossible, and are modeled after one passed in 2012 in Mississippi, where doctors who provide abortions at the sole abortion clinic in the state were denied privileges at every hospital to which they applied.<sup>9</sup>

- Despite the fact that they already rigorously regulate abortion clinics, Arizona and Indiana passed laws to allow unannounced inspections of abortion facilities.<sup>10</sup>

This brings to 26 the number of states that regulate abortion providers beyond what is necessary to ensure patient safety.<sup>11</sup> These laws are meant to drive abortion providers out of practice, and are a back door ban on abortion.

## **States Are Banning Insurance Coverage of Abortion, Taking Away Benefits Women Currently Have and Jeopardizing Women's Health**

So far in 2014, two states – Georgia and Indiana – enacted laws that take insurance benefits away from women who need an abortion. The Georgia law bans insurance coverage of abortion in the marketplaces established in the state as part of implementing the health care law, with no exceptions for rape or incest.<sup>12</sup> Indiana, which already has a law banning coverage in plans purchased on the marketplace, passed a law banning coverage in all private insurance plans.<sup>13</sup>

Twenty-five states now prevent women from obtaining a comprehensive health plan that includes coverage of abortion services.<sup>14</sup> Bans on insurance coverage of abortion represent a radical departure from the status quo and result in a woman losing benefits she currently has. Bans on insurance coverage of abortion are also dangerous to women's health. A woman with a serious, permanent, and even life-shortening health condition may not be able to obtain insurance coverage for a medically necessary abortion. For example, a woman for whom continuing the pregnancy will result in permanent damage to her health, such as damage to her heart, lungs, or kidneys, or a pregnant woman who is diagnosed with cancer and must undergo chemotherapy may not have insurance coverage for these medically necessary abortions.

One state so far in 2014 has also targeted insurance coverage for low-income women in the Medicaid program. In Alaska, where a court has ordered the state to fund all "medically necessary" abortions in the state Medicaid program, the legislature narrowly redefined the term as only those necessary to protect a woman's life or physical health.<sup>15</sup> The law is being challenged in court.<sup>16</sup>

## **States Are Limiting Women's Access to Non-Surgical Abortion**

So far in 2014, one state – Oklahoma – passed a law that overrides clinical judgment and requires doctors to provide medication abortion according to an outdated FDA-approved protocol.<sup>17</sup>

Once Oklahoma's law goes into effect later this year, it will become the third state with a law that forces providers to provide medication abortion in accordance with the outdated FDA-approved protocol.<sup>18</sup> The newer protocol, which uses less medication, is just as effective but requires fewer provider visits and has fewer side effects. Requiring adherence to the original FDA label for medication abortion goes against years of research and doctors' practical experience. It forces doctors to either practice outdated medicine, which violates medical ethics and subjects women to unnecessary risks, or to cease providing medication abortion altogether.

## **States Are Enacting Longer Mandatory Delay Requirements**

In 2014 so far, one state – Alabama – has extended its mandatory delay before a woman may obtain an abortion, from 24 hours to 48 hours.<sup>19</sup> Although Missouri also passed a bill to extend the state's 24-hour mandatory delay (to 72 hours),<sup>20</sup> it was vetoed by Governor Jay Nixon, who stated that it "serves no demonstrable purpose other

than to create emotional and financial hardships for women who have undoubtedly already spent considerable time wrestling with perhaps the most difficult decision they may ever have to make. Moreover, . . . [it] presupposes that women are unable to make up their own minds without further government intervention. This is insulting to women. . . .<sup>21</sup> An attempt to override the governor's veto is expected in September.<sup>22</sup>

Twenty-six states require a woman to wait a specific amount of time before she can obtain an abortion.<sup>23</sup> Three states now require a woman to wait more than 24 hours. Such mandatory delays are an additional burden for women, especially women who must struggle to get time off from work or to pay for child-care costs, and rural women, who often have to travel hours to reach the closest health care provider.

## States Are Enacting Harmful Sex Selective Abortion Bans

So far in 2014, one state – South Dakota – has enacted a ban on abortion if the provider knows the woman is obtaining the abortion for purposes of sex selection.<sup>24</sup>

Seven states now ban sex-selective abortions, and one state bans abortions for reasons of sex and race selection.<sup>25</sup> Although proponents of these bans try to cloak their anti-abortion agenda in social justice rhetoric, claiming that they are motivated by concerns about women's equality and racial injustice, in reality, these bans only harm women's health by further limiting their access to reproductive care and undermining the patient-provider relationship. The laws unconstitutionally ban abortion and require providers to subject women to additional scrutiny based on nothing more than stereotypes about racial and ethnic preferences for sons.<sup>26</sup>

## Conclusion

As the attacks on women's access to reproductive health care continue unabated, the ability of women to obtain the health care they need has never been at greater risk. State politicians need to stop playing politics with women's health.

- 1 Elizabeth Nash et al., Guttmacher Institute, Laws Affecting Reproductive Health and Rights: State Trends at Midyear, 2014 <http://www.guttmacher.org/statecenter/updates/2014/statetrends2014.html> (last visited July 15, 2014).
- 2 H.B. 1400, 2014 Reg. Sess. (Miss. 2014) (to be codified at Miss. Code Ann. § 41-41-131 to -145).
- 3 Press Release, Office of the Governor Earl Ray Tomblin, Governor Tomblin Issues Statement Regarding HB 4588 (Mar. 28, 2014), <http://www.governor.wv.gov/media/pressreleases/2014/Pages/GOVERNOR-TOMBLIN-VETOES-HB-4588.aspx>.
- 4 The Supreme Court has said that states cannot ban abortion prior to viability, and cannot draw a line at a particular gestational age to establish viability because viability is a matter of judgment of the attending physician. See, e.g., Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 64-65 (1976). Although a state may ban abortion after viability, any such ban must make an exception when a woman's life or health—including mental health—is at risk. See Roe v. Wade, 410 U.S. 113, 164-65 (1973); Doe v. Bolton, 410 U.S. 179 (1973). Where these bans on later abortion have been challenged in court, they have been held unconstitutional. *Isaacson v. Horne*, 716 F.3d 1213 (9th Cir. 2013); *McCormack v. Hiedeman*, 900 F. Supp. 2d 1128 (D. Idaho 2013); *Lathrop v. Deal*, No. 2012-cv-224423 (Ga. Super. Ct. Dec. 21, 2012) (order granting interlocutory injunction). The U.S. Supreme Court refused to hear an appeal of the Arizona case, leaving in effect the ruling from the appellate court striking down the law as unconstitutional.
- 5 State Policies in Brief: State Policies on Later Abortions, GUTTMACHER INST. (July 1, 2014), [http://www.guttmacher.org/statecenter/spibs/spib\\_PLTA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf).
- 6 S.B. 1848, 54th Leg., 2d Reg. Sess. (Okla. 2014). The law requires the state Board of Health to develop the standards relating to the ultrasound requirement. Oklahoma's previous ultrasound law, which required a script be read while the ultrasound image was viewed, was struck down in 2012, and the Supreme Court refused to hear an appeal last year, leaving the injunction in place. Juliet Eilperin, Supreme Court Lets Stand Oklahoma Court Ruling Blocking Ultrasound Requirement, WASH. POST, Nov. 12, 2013, <http://www.washingtonpost.com/blogs/post-politics/wp/2013/11/12/supreme-court-lets-stand-oklahoma-court-ruling-blocking-ultrasound-requirement>.
- 7 State Policies in Brief: Requirements for Ultrasound, GUTTMACHER INST. (July 1, 2014), [https://www.guttmacher.org/statecenter/spibs/spib\\_RFU.pdf](https://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf).
- 8 H.B. 388, 2014 Reg. Sess. (La. 2014); S.B. 1848, 54th Leg., 2d Reg. Sess. (Okla. 2014).
- 9 Associated Press, Legal Woes for Mississippi's Only Abortion Clinic, USA TODAY, Jan. 11, 2013, <http://www.usatoday.com/story/news/nation/2013/01/11/abortion-mississippi-women-clinic/1828289>. A federal judge prevented the law from going into effect while the lawsuit, *Jackson Women's Health Organization v. Currier*, proceeds. See Press Release, Center for Reproductive Rights, Federal Judge Blocks All Enforcement of Mississippi Admitting Privileges Requirement (Apr. 15, 2013), <http://reproductiverights.org/en/press-room/federal-judge-blocks-all-enforcement-of-mississippi-admitting-privileges-requirement>. The state appealed the temporary injunction, and the Fifth Circuit heard arguments in the case in April 2014. Press Release, Center for Reproductive Rights, Fifth Circuit Considers Mississippi Law Designed to Shutter Last Clinic in the State (Apr. 28, 2014), <http://reproductiverights.org/en/press-room/Fifth-Circuit-Considers-Mississippi-Law-Designed-to-Shutter-Last-Clinic-in-the-State>.
- 10 H.B. 2284, 51st Leg., 2d Reg. Sess. (Ariz. 2014); S.B. 292, 118th Gen. Assemb., 2d Reg. Sess. (Ind. 2014).
- 11 State Policies in Brief: Targeted Regulation of Abortion Providers, GUTTMACHER INST. (July 1, 2014), [http://www.guttmacher.org/statecenter/spibs/spib\\_TRAP.pdf](http://www.guttmacher.org/statecenter/spibs/spib_TRAP.pdf).
- 12 S.B. 98, 2014 Reg. Sess. (Ga. 2014).
- 13 H.B. 1123, 118th Gen. Assemb., 2d Reg. Sess. (Ind. 2014).
- 14 State Bans on Insurance Coverage of Abortion Endanger Women's Health and Take Health Benefits Away from Women, NAT'L WOMEN'S LAW CENTER (May 5, 2014), <http://www.nwlc.org/resource/state-bans-insurance-coverage-abortion-endanger-women%E2%80%99s-health-and-take-health-benefits-awa>.
- 15 S.B. 49, 28th Leg., 2d Reg. Sess. (Alaska 2014). This legislation comes after the Alaska Department of Health attempted to do the same thing through the regulatory process. A court has temporarily blocked the regulations from going into effect as the case proceeds. *Planned Parenthood of the Great Nw. v. Streur*, No. 3AN-14-04711 CI (Alaska Super. Ct. 2014).
- 16 The original lawsuit against the regulations (see *supra* note 15) has been amended to include a challenge to the newly passed law.
- 17 H.B. 2684, 54th Leg., 2d Reg. Sess. (Okla. 2014). Oklahoma passed this new law after its previous law regulating medication abortion in the state was struck down last year. The Oklahoma Supreme Court found the previous restriction unconstitutional because it effectively prohibited all non-surgical abortions. The Supreme Court dismissed an appeal of the decision. *Nat'l P'ship for Women & Families, Oklahoma Enacts New Medication Abortion Restrictions After Court Rejects Similar Law*, REPRO HEALTH WATCH (Apr. 24, 2014), [http://go.nationalpartnership.org/site/News2?page=NewsArticle&id=44254&security=3161&news\\_iv\\_ctrl=3237](http://go.nationalpartnership.org/site/News2?page=NewsArticle&id=44254&security=3161&news_iv_ctrl=3237).
- 18 State Policies in Brief: Medication Abortion, GUTTMACHER INST. (July 1, 2014), [http://www.guttmacher.org/statecenter/spibs/spib\\_MA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_MA.pdf).
- 19 H.B. 489, 2014 Reg. Sess. (Ala. 2014).
- 20 H.B. 1307, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014).
- 21 Letter from Governor Jeremiah W. (Jay) Nixon, to the Secretary of State of the State of Missouri (July 2, 2014), <http://governor.mo.gov/sites/default/files/HB%201307%20veto.pdf>.
- 22 See Kyle Troutman, Sater: Legislation Will Overturn Abortion Veto, CASSVILLE DEMOCRAT, July 9, 2014, <http://www.cassville-democrat.com/story/2099234.html>.
- 23 State Policies in Brief: Counseling and Waiting Periods for Abortion, GUTTMACHER INST. (July 1, 2014), [www.guttmacher.org/statecenter/spibs/spib\\_MWPA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf).
- 24 H.B. 1162, 89th Leg. Assemb. (S.D. 2014).
- 25 In addition to South Dakota, these states are Arizona, Illinois, Kansas, North Carolina, North Dakota, Oklahoma, and Pennsylvania. In addition to Kansas, North Carolina, and North Dakota, the states are Arizona, Illinois, Oklahoma, and Pennsylvania.
- 26 See *Whren v. United States*, 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of the law based on considerations such as race."). For more information, see REPLACING MYTHS WITH FACTS: SEX-SELECTIVE ABORTION LAWS IN THE UNITED STATES (June 2014), <http://ihrcclinic.uchicago.edu/page/reports-publications-and-media>.