



REPRODUCTIVE RIGHTS & HEALTH

2015 STATE LEVEL ABORTION RESTRICTIONS: AN EXTREME OVERREACH INTO WOMEN'S ABILITY TO ACCESS REPRODUCTIVE HEALTH CARE

State legislators continue to enact laws that restrict access to abortion or ban it outright. In 2015, states adopted 57 new restrictions that limit access to abortion. Some of the trends this year are described in more detail below. States also attempted to cut funding to Planned Parenthood and other family planning providers that offer abortion.¹ These state restrictions are a dangerous overreach into women's personal medical decisions.

States Are Banning Abortion, Ignoring an Individual Woman's Particular Circumstances

In 2015, two states – West Virginia and Wisconsin – enacted bans on abortions at 20 weeks of pregnancy that have only extremely narrow exceptions.² Governor Tomblin vetoed the bill, but the West Virginia Legislature overrode the veto and the ban is now in effect. Governor Tomblin vetoed the same bill last year, because it is unconstitutional and “unduly restricts the physician-patient relationship.”³

Thirteen states⁴ now have unconstitutional laws⁵ that ban abortion after 20 weeks, depriving a woman of her ability to make an extremely personal medical decision. Each pregnancy is different. These laws keep women from making the decision that is best for them.

States Are Banning a Safe and Effective Abortion Method

In 2015, two states – Kansas and Oklahoma – passed bans on a safe and effective abortion method with only limited exceptions.⁶ These laws ban the most commonly used abortion method after the first trimester, which is used in 95% of all second trimester abortions.⁷ Both laws have been challenged in court and blocked by judges, so they will not be enforced while the cases move forward.⁸

These laws are unconstitutional bans on abortion. They criminalize providers for using the safest procedure for their patients, force them to subject their patients to medical risks, and interfere with their medical judgment. The laws leave women without access to a safe and commonly used method of abortion, which could force some women to go without an abortion altogether.

States Are Attempting to Regulate Abortion Providers Out of Existence

In 2015, five states – Arizona, Arkansas, Indiana, Ohio, and Tennessee – passed targeted regulations of abortion providers.

- Arizona passed a law requiring abortion providers to obtain medically unnecessary hospital admitting privileges.⁹ Ohio amended its existing law requiring clinics to have a transfer agreement with a hospital, to specify that the hospital must be no more than thirty miles away.¹⁰ There is no medical reason to require admitting privileges or transfer agreements with a hospital. Abortion is an extremely safe procedure throughout pregnancy and providers already have plans in place in the rare case of an emergency. These types of laws are written with the goal of making access to safe and legal abortion hard or even impossible. For example, after Mississippi passed an admitting privileges law doctors who provide abortions at the sole abortion clinic in the state were denied privileges at every hospital to which they applied.¹¹



- In Arkansas, a new law requires doctors who provide medication abortions to have a signed contract with another physician who “agrees to handle complications” and has admitting privileges at a hospital.¹² This is an arbitrary requirement with no medical justification. A doctor providing medication abortion is licensed and fully qualified to handle any complications without a second physician.
- Indiana and Tennessee both passed laws that place additional unnecessary regulations on abortion facilities by requiring them to meet the licensure requirements of an ambulatory surgical center. Indiana’s law expands these requirements to include any physician’s office administering five or more medication abortions per year, even if these offices do not perform any surgical procedures.¹³ Tennessee’s law requires all surgical abortion facilities to be licensed as ambulatory surgical centers. The Tennessee law is currently being challenged in court, and a court has blocked the law while the case is pending.¹⁵

Twenty-four states now regulate abortion providers and clinics beyond what is necessary to ensure patient safety.¹⁶ These laws are meant to drive abortion providers out of practice to make it harder for women to access abortion.

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

In 2015, Arizona amended a law that takes insurance benefits away from women who need an abortion. Arizona already had a law prohibiting plans purchased on the state health insurance Marketplace from covering abortion but it allowed women to obtain supplemental insurance coverage for abortion. Arizona’s new law removes even this option.¹⁷ Despite the fact that supplemental coverage is not a genuine option for coverage,¹⁸ Arizona politicians wanted to ensure that there is no possibility that women could get insurance coverage for abortion.

Twenty-five states prevent women from obtaining a comprehensive health plan through the insurance Marketplace that includes coverage of abortion services.¹⁹ Bans on insurance coverage of abortion are a radical departure from the status quo and result in a woman losing benefits she previously had. 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.

States Are Limiting Women’s Access to Medication Abortion

In 2015, four states – Arizona, Arkansas, Idaho, and Kansas – passed restrictions that make it more difficult for women and providers to use medication abortion.

States are Forcing Providers to Practice Outdated Medicine

In 2015, Arkansas passed a law that forces providers to administer medication abortion in accordance with an outdated protocol rather than using the best evidence-based method.²⁰ The evidence-based method uses less medication, is safer, more effective, requires fewer provider visits, and has fewer side effects. Instead, Arkansas is forcing providers to use a protocol that goes against years of research and providers’ practical experience. Four states now require providers to either practice outdated medicine or to cease providing medication abortion altogether.²¹

States are Forcing Providers to Give Women Misleading Information

In 2015, two states – Arizona and Arkansas – passed laws requiring abortion providers to give women misleading and medically questionable information stating that it “may be possible to reverse” a medication abortion.²² The intent of the law is to confuse, shame, and stigmatize women who have already made the decision to have an abortion. Arizona and Arkansas are the first two states to impose this type of requirement. The Arizona law is being challenged in court and the court has blocked the law while the case is pending.²³

States are Preventing the Use of a Safe and Effective Method of Providing Medication Abortion

In 2015, three states – Arkansas, Idaho, and Kansas – passed laws that ban the provision of medication abortion through telemedicine.²⁴ A similar bill in Montana was vetoed by Governor Bullock who stated, “As a safe, effective and efficient method of delivering health care to underserved regions of Montana, we should be embracing the use of telemedicine, not criminalizing it.”²⁵

There are now 18 states that prohibit the use of telemedicine for medication abortion.²⁶ Telemedicine is a safe and effective method of increasing access to medication abortions.²⁷ It allows providers to provide medication abortions at remote locations, and is particularly important in rural areas where women would otherwise be forced to travel long distances to see a provider.²⁸



States Are Enacting Longer Mandatory Delay Requirements

In 2015, five states – Arkansas, Florida, North Carolina, Oklahoma, and Tennessee – either extended or added mandatory delays before a woman may obtain an abortion. Arkansas and Tennessee extended the time a woman is forced to wait from 24 hours to 48 hours.²⁹ Tennessee’s law is being challenged in court.³⁰ North Carolina and Oklahoma extended their mandatory delays from 24 to 72 hours.³¹ Florida enacted a 24 hour mandatory delay, but a judge has blocked it from taking effect while it is challenged in court. While the state asserts the law does not impose an undue burden on women seeking an abortion, the court found that there is “no evidence” supporting that claim.³²

Twenty-seven states require a woman to wait a specified amount of time before she can obtain an abortion.³³ Eight states now require a woman to wait more than 24 hours.³⁴ Such mandatory delays are particularly burdensome for women forced to travel long distances to reach the closest health care provider or for those who struggle to get time off from work or to arrange and pay for child-care for the children they already have.

States are Making it More Difficult for Teens to Access Abortion

In 2015, three states – Arkansas, Oklahoma, and Texas – passed laws imposing additional restrictions on teens seeking abortions. In each of these states, laws were already in place requiring teens to get approval from a judge to obtain an abortion if they were unable to get their parents’ permission. Arkansas law now says a judge can give approval only in certain situations.³⁵ The law also requires that a teen

seek permission from a judge in the county where she lives. This threatens confidentiality, particularly in small, rural communities. Oklahoma’s law makes it a crime to assist a young person with getting an abortion without parental consent.³⁶ The law in Texas imposes several additional hurdles for teens seeking judicial approval, including making it more difficult to demonstrate that parental involvement is not in the teen’s best interests, permitting judges to require the teen to undergo a mental health evaluation, and requiring the teen to seek permission from a judge in the county where she lives.³⁷

Thirty-eight states require judicial approval for a young person to get an abortion if she is unable to get her parent’s permission.³⁸ It is already a burden on young people to require them to either involve a parent or to seek judicial approval before obtaining an abortion. Many young people do not have support at home and many face abuse from family members. For these teens, telling a parent about their decision to have an abortion and getting their involvement may be impossible and even dangerous. These young people should not be forced to go to court, let alone deal with additional hurdles these states are adding to the judicial approval requirement, in order to get an abortion. These new requirements impose barriers to the judicial process that will be insurmountable for many teens and prevent them from getting the care they need.

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 is at great risk. States need to protect women’s access to abortion, and state legislators need to stop playing politics with women’s health.

- 1 *Laws Affecting Reproductive Health and Rights: 2015 State Policy Review*, GUTTMACHER INST. (last visited January 7, 2016), <https://www.guttmacher.org/statecenter/updates/2015/statetrends42015.html>.
- 2 H.B. 2568, 2015 Reg. Sess. (W.V. 2015) (to be codified at W. VA Code § 16-2M-4 (2015)) (banning abortion at 20 weeks except where the woman’s life is at risk, where necessary to prevent “substantial and irreversible physical impairment of a major bodily function,” or to terminate a pregnancy deemed “medically futile.”); S.B. 179, 2015 Leg., Reg. Sess. (Wis 2015) (banning abortion at 20 weeks unless the woman’s life is endangered or to prevent “substantial and irreversible physical impairment of a major bodily function”).
- 3 Press Release, Office of the Governor Earl Ray Tomblin, Governor Tomblin Issues Statement Regarding HB 2568 (Mar. 3, 2015), <http://www.governor.wv.gov/media/pressreleases/2015/Pages/Governor-Tomblin-Vetoes-HB2568,-Citing-Constitutional-Concerns.aspx>; 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 *State Policies in Brief: State Policies on Later Abortions*, GUTTMACHER INST. (July 1, 2015), http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf.
- 5 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). Each time a ban on abortion at 20 weeks has been challenged in court, it has been held unconstitutional. *McCormack v. Hiedeman*, No. 13-35401, 2015 U.S. App. LEXIS 8936 (9th Cir. May 29, 2015); *Isaacson v. Horne*, 716 F.3d 1213 (9th Cir. 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.



- 6 H.B. 1721, 55th Leg., 1st Reg. Sess. (Okla. 2015) (to be codified at OKLA. STAT. tit. 63, § 1-737.7 (2015)); S.B. 95, 2015 Reg. Sess. (Kan. 2015).
- 7 Karen Pazol et al., *Abortion Surveillance—United States*, 2009, CENTER FOR DISEASE CONTROL AND PREVENTION MMWR SURVEILLANCE SUMMARY, 61:1-44 (2012).
- 8 Nova Health Systems v. Cline, No. CV-2015-1838, (D. Okla. Oct. 28, 2015), <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/2015-10-28%20OK%20Ban%20and%20Delay%20Order%20Granting%20in%20Part%20and%20Denying%20in%20Part%20Mtn%20for%20TI.pdf>; Associated Press, Judge Blocks Kansas' Ban on 2nd-Trimester Abortion Procedure, N.Y. TIMES, June 25, 2015, <http://www.nytimes.com/aponline/2015/06/25/us/ap-us-kansas-abortion-lawsuit.html>.
- 9 S.B. 1318, 52nd Leg, 1st Reg. Sess. (Ariz. 2015) (to be codified at ARIZ. REV. STAT. ANN. § 36-449.02 (2015)). Arizona already had a law requiring abortion providers either have admitting privileges at a hospital or an agreement with a physician who has such privileges. The new law does not permit such agreements.
- 10 H.B. 64, 131st Gen. Assemb., Reg. Sess. (Ohio 2015).
- 11 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 which the Fifth Circuit upheld in July 2014. In November 2014, the Fifth Circuit rejected a motion for reconsideration. Jessica Mason Pieklo, *Mississippi's Anti-Choice Admitting Privileges Law Deals Another Blow*, RH REALITY CHECK, Nov. 20, 2014, <http://rhrealitycheck.org/article/2014/11/20/mississippi-anti-choice-admitting-privileges-law-dealt-another-blow/>. The state filed a petition for certiorari asking the Supreme Court to review the Fifth Circuit's decision in February 2015. The Court has not yet responded to the petition. *Currier v. Jackson Women's Health Organization*: pending, SCOTUSBLOG, June 25, 2015, <http://www.scotusblog.com/case-files/cases/currier-v-jackson-womens-health-organization/>.
- 12 H.B. 1394, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).
- 13 S.B. 546, 119th Gen. Assemb., 1st Reg. Sess. (Ind. 2015) (to be codified at IND. CODE 16-34-2-1.5 (2015)). A similar Indiana law was struck down by a federal court in 2014.
- 14 S.B. 1280, 109th Gen. Assemb., 2015 Reg. Sess. (Tenn. 2015) (to be codified at TENN CODE ANN. § 68-11-201 (2015)).
- 15 Michael Sheffield, *Tennessee Abortion Law Averted By Federal Judge For Now*, MEMPHIS BUSINESS JOURNAL (June 29, 2015), <http://www.bizjournals.com/memphis/news/2015/06/29/tennessee-abortion-law-averted-by-federal-judge.html>.
- 16 *State Policies in Brief: Targeted Regulation of Abortion Providers*, GUTTMACHER INST. (July 1, 2015), http://www.guttmacher.org/statecenter/spibs/spib_TRAP.pdf.
- 17 S.B. 1318, 52nd Leg, 1st Reg. Sess. (Ariz. 2015) (to be codified at ARIZ. REV. STAT. ANN. § 20-121 (2015)).
- 18 *Texas Bill Attempts to Ban Insurance Coverage of Abortion, and Supplemental Coverage is a False Promise*, NAT'L WOMEN'S LAW CTR. (May 2015), <http://nwlc.org/resources/texas-bill-attempts-ban-insurance-coverage-abortion-and-supplemental-coverage-false-promise/>.
- 19 *State Bans on Insurance Coverage of Abortion Endanger Women's Health and Take Health Benefits Away from Women*, NAT'L WOMEN'S LAW CTR. (January 22, 2015), <http://www.nwlc.org/resource/state-bans-insurance-coverage-abortion-endanger-women%E2%80%99s-health-and-take-health-benefits-awa>.
- 20 H.B. 1394, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).
- 21 *State Policies in Brief: Medication Abortion*, GUTTMACHER INST. (July 1, 2015), http://www.guttmacher.org/statecenter/spibs/spib_MA.pdf.
- 22 S.B. 1318, 52nd Leg, 1st Reg. Sess. (Ariz. 2015) (to be codified at ARIZ. REV. STAT. ANN. § 36-2153 (2015)); H.B. 1578, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).
- 23 Alia Beard Rau, *Second Ruling in 2 Days Against Arizona's Abortion Laws*, THE ARIZONA REPUBLIC (Oct. 16, 2015), <http://www.azcentral.com/story/news/arizona/politics/2015/10/16/judge-freezes-arizona-abortion-reversal-law/74079464/>.
- 24 S.B. 53, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); H.B. 154, 63d Leg., 1st Reg. Sess. (Idaho 2015) (to be codified at IDAHO CODE ANN. § 6-18-617 (2015)); S. Sub for H.B. 2228, 2015 Reg. Sess. (Kan. 2015).
- 25 Associated Press, *Montana Governor Vetoes 34 Bills*, BILLINGS GAZETTE (April 30, 2015), http://billingsgazette.com/news/government-and-politics/montana-governor-vetoes-bills-all-but-from-republicans/article_d981be9e-8a62-5034-80b0-c04df02ee29d.html.
- 26 *State Policies in Brief: Medication Abortion*, GUTTMACHER INST. (July 1, 2015), http://www.guttmacher.org/statecenter/spibs/spib_MA.pdf. The Iowa State Supreme Court recently struck down a 2013 regulation banning the use of telemedicine for medication abortion. The court found that there was no evidence to support imposing such an undue burden on women. Brendan Pierson, *Iowa Supreme Court Allows Telemedicine Abortion Program to Go On*, Reuters (June 19, 2015) <http://www.reuters.com/article/2015/06/19/iowa-telemedicine-abortion-idUSL1N0Z50YC20150619>.
- 27 See, e.g., Daniel Grossman et al., *Effectiveness and Acceptability of Medical Abortion Provided Through Telemedicine*, 118 *Obstetrics & Gynecology* 296 (2011).
- 28 *NWLC Files Amicus Brief in Iowa State Supreme Court Against Medically Unnecessary Regulation That Restricts Access to Abortion*, NATIONAL WOMEN'S LAW CENTER (Nov. 11, 2014), <http://www.nwlc.org/press-release/nwlc-files-amicus-brief-iowa-state-supreme-court-against-medically-unnecessary-regulat>.
- 29 H.B. 1578, 90th Gen. Assemb., Reg. Sess. (Ark. 2015); S.B. 1222, 109th Gen. Assemb., 2015 Reg. Sess. (Tenn. 2015) (to be codified at TENN. CODE ANN. 39-15-202 (2015)).
- 30 Anita Wadhvani, *Judge's Order Allows 2 Tennessee Abortion Clinics to Stay Open*, USA TODAY (June 26, 2015), <http://www.usatoday.com/story/news/nation/2015/06/26/judges-order-allows-tenn-abortion-clinics-stay-open/29358223/>.
- 31 H.B. 465, Gen. Assemb. Session 2015 (N.C. 2015) (to be codified at N.C. GEN. STAT. § 90-21.82 (2015)); H.B. 1409, 55th Leg., 1st Reg. Sess. (Okla. 2015) (to be codified at OKLA. STAT. tit. § 63, 1-738.2 (2015)).
- 32 H.B. 633, 2015 Leg., Reg. Sess. (Fla. 2015) (to be codified at FLA. STAT. § 390.011 (2015)); Samantha Lachman, *Judge Blocks Florida Law Requiring 24-Hour Waiting Period for Abortions*, THE HUFFINGTON POST (June 30, 2015) http://www.huffingtonpost.com/2015/06/30/florida-abortion-waiting-period_n_7699372.html. The state immediately appealed the decision allowing the law to go into effect for one day. Two days later, another judge blocked the law on appeal, so it currently is not in effect. *Florida Judge Blocks 24-Hour Abortion Waiting Period For 2nd Time*, ORLANDO SENTINEL (July 2, 2015) <http://www.orlandosentinel.com/news/politics/os-abortion-ruling-judge-20150702-story.html>.



- 33 *State Policies in Brief: Counseling and Waiting Periods for Abortion*, GUTTMACHER INST. (July 1, 2015), www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf.
- 34 *Id.*; *Laws Affecting Reproductive Health and Rights: State Trends at Midyear, 2015*, GUTTMACHER INST. (July 1, 2015), <http://www.guttmacher.org/media/inthenews/2015/07/01/index.html>.
- 35 H.B. 1424, 90th Gen. Assemb., Reg. Sess. (Ark. 2015) (to be codified at ARK. CODE ANN. § 20-16-801).
- 36 S.B. 642, 55th Leg., 1st Reg. Sess. (Okla. 2015) (to be codified at OKLA. STAT. tit. § 63, 1-740.4b (2015)).
- 37 H.B. 3994, 84th Leg., Reg. Sess. (Tex. 2015).
- 38 *State Policies in Brief: Parental Involvement in Minors' Abortions*, GUTTMACHER INST. (July 1, 2015), http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf.

