Research Protocol for Medication Abortion Requirements

Prepared by the Policy Surveillance Program Staff

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I. Date of Protocol Creation: December 2019

II. Scope: Compile state laws, regulations, case law, and attorney general opinions that restrict the use of abortion-inducing drugs for medication abortions. This dataset is one of 16 datasets examining laws regulating abortion laws in the United States.

III. Primary Data Collection


   b. Dates Covered in the Dataset: This dataset started out as cross-sectional, analyzing medication abortion requirements as they were in effect at one point in time, December 1, 2018. The datasets were then updated to be longitudinal, covering changes in the law from December 1, 2018 to December 1, 2019.

   c. Data Collection Methods: The Policy Surveillance Program Staff (“Team”) building this dataset consisted of four legal researchers (“Researchers”) and one supervisor (“Supervisor”). WestlawNext was used to identify which states had medication abortion laws. Subject matter experts from Guttmacher Institute, Resources for Abortion Delivery, American Civil Liberties Union, Center for Reproductive Rights, National Abortion Federation, and Planned Parenthood Federation of America were consulted to assist with defining the scope of the laws included in the Abortion Law Project.

   d. Databases Used: Research was conducted using WestlawNext and state-specific legislature websites. The Researchers also consulted a combination of secondary sources from the Guttmacher Institute.

      i. Full text versions of the laws were collected from each respective state legislature website.

   e. Search Terms:

      i. Keyword searches and search strings were supplemented by examination of the table of contents of each relevant section of the state law identified for statues and regulations related to medication abortion restrictions:
f. Initial Returns and Additional Inclusion or Exclusion Criteria:
   i. Included laws pertaining to restrictions on medication abortion:
      • Laws that regulate medication abortions separately from other types of abortion.
      • Laws banning or restricting the use or administration of abortion-inducing medication.
      • Laws requiring physicians’ involvement in the performance of a medication abortion.
      • Laws requiring adherence to the FDA-approved labels for abortion-inducing medication.
      • Laws restricting the use of telemedicine for medication abortions.
      • Court decisions and attorney general opinions directly affecting enforceability of state medication abortion restrictions. Citations for relevant court or attorney general opinions were included in the legal text. However, the text of the opinions was not included in the dataset. Details of relevant court and/or attorney general opinions were captured in caution notes.
   ii. Excluded laws pertaining specifically to:
      • Laws generally regulating abortions, but without specific and separate regulation of medication abortions.
      • Laws regulating informed consent requirements involving the potential reversal of medication abortion.
      • Laws regulating the distribution of abortion-inducing drugs by state government.

IV. Coding

a. Development of Coding Scheme: The Team conceptualized and created the coding questions, then circulated them to the subject matter experts from Guttmacher Institute, Resources for Abortion Delivery, American Civil Liberties Union, Center for Reproductive Rights, National Abortion Federation, and Planned Parenthood Federation of America to review and finalize. When the questions were finalized, the Team entered the questions into the MonQcle, a web-based software coding platform.

b. Coding Methods:
i. The legal text coded was limited to requirements relating specifically to medication abortion laws. Statutes and regulations that are cited or cross-referenced in these policies were only coded and included in the legal text if necessary to answer a coding question. External third-party “guidelines” incorporated by reference into policies are referenced but not coded or included in the legal text.

ii. As stated above, citations for relevant court and/or attorney general opinions were included in the legal text. However, the text of the opinions was not included in the dataset. Details of relevant court and/or attorney general opinions were captured in caution notes.

Below are specific coding rules used when coding the questions and responses in the Medication Abortion Restrictions dataset. Note that this section only lists questions and responses that required further explanation of the question itself, the responses, or to understand specific coding decisions and rules.

**Question 1.1:** “What drug(s) are listed in the law?”
- “Abortion-inducing drug” was coded where the law made broad references to drugs that induce abortions.

**Question 2:** “Has the law been limited in whole or in part?”
- This question was coded “yes” where there was a relevant court opinion or attorney general opinion affecting the enforceability of one or more of the requirements coded.
- A brief summary of the opinion’s ruling, including which provisions were affected by the ruling, were captured in a caution note.
- Where related court opinions were not in scope of the dataset, this question was coded as “No.”

**Question 2.1:** “Has the law been limited by a court decision?”
- This question was coded “yes” where there was a relevant court opinion affecting the enforceability of one or more of the requirements coded.
- A brief summary of the opinion’s ruling, including which provisions were affected by the ruling, were captured in a caution note.
- Where related court opinions were not in scope of the dataset, this question was coded as “No.”

**Question 2.2:** “Has the law been limited by an attorney general opinion?”
- This question was coded “yes” where there was a relevant attorney general opinion affecting the enforceability of one or more of the requirements coded.
- A brief summary of the opinion’s ruling, including which provisions were affected by the ruling, were captured in a caution note.
- Where related attorney general opinions were not in scope of the dataset, this question was coded as “No.”

**Question 3:** “Does the state require medication abortion to be provided in accordance with the FDA approved regimen?”
- “Yes, requires compliance with the current FDA approved regimen” was coded where the law made reference to a general FDA regimen.
Question 4: **“What type of health care provider must provide medication abortions?”**

- “Physician” was coded where the law required a physician, or the physician’s agent, to be physically present for the initial administration of abortion-inducing drugs.

Question 5: **“What requirements must be met in order to administer a medication abortion?”**

- When the law required compliance with federal law, the current FDA approved regimen was used to code.
- “Provider must administer medication abortion in-person” was coded where the law explicitly included an in-person requirement for the administration of an abortion-inducing drug, and was not coded based on a prohibition against telemedicine.
- “Complication plan” was coded where there was explicit language referencing a plan for complications following a medication abortion.
- “Complication plan” was coded where the law required that the provider have a contract with an OB-GYN for emergencies.

Question 6: **“Does the state explicitly prohibit the use of telemedicine for medication abortions?”**

- If a state bans the use of telemedicine to provide abortion generally, the question was coded “yes” with a caution note stating the general telemedicine ban.

V. Quality Control

a. **Quality Control – Background Research:** All 51 jurisdictions were 100% redundantly researched to confirm that all relevant laws were being collected by the Researchers. The Researchers independently recorded the relevant citations on a Master Sheet for each jurisdiction that had a medication abortion restriction. The Master Sheet includes the most recent legislative history for the statute, regulation, case and/or attorney general opinion as well as its effective date. The Supervisor reviewed the original Master Sheet against the redundant Master Sheet, and the Team resolved all divergences (differences between research findings) prior to collecting the legal text.

i. The research showed that 26 of 51 jurisdictions [AK, AL, AR, AZ, IA, ID, IN, KS, LA, ME, MI, MO, MS, NC, ND, NE, OH, OK, SC, SD, TN, TX, VA, WA, WU, WV] have a medication abortion restriction.

b. **Quality Control – Original Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document as the Researchers completed coding to examine the data for any missing responses, citations, and caution notes.

c. **Quality Control – Redundant Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document after the Researchers coded and redundantly coded to examine the data for divergences (differences between the coded responses).
• **Redundant Coding for Batch One**
  The Supervisor assigned Batch One [AL, AZ, FL, KS, MO, OK, SD, TX, WV, WI] for redundant coding and the rate of divergence was 10.56% on May 22, 2018.

• **Redundant Coding for Batch Two**
  The Supervisor assigned Batch Two [AK, AR, CA, CO, CT, DE, DC, GA, MT, TN, UT, VA, VT, WA, WY] for redundant coding and the rate of divergence was 9% on August 28, 2018.

• **Redundant Coding for Batch Three**
  The Supervisor assigned Batch Three [NE, NV, NH, NJ, NM, NY, NC, ND, PA, RI, SC, OR, OH, KY, IN] for redundant coding and the rate of divergence was 11.5% on October 19, 2018.

• **Redundant Coding for Batch Four**
  The Supervisor assigned Batch Three [HI, ID, IL, IA, LA, ME, MD, MA, MI, MN, MS] for redundant coding and the rate of divergence was 4.18% on December 10, 2018.

d. **Quality Control – Post-Production Statistical Quality Control (SQC):** The Supervisor typically runs a statistical quality control procedure after each dataset is completed. However, since this dataset was redundantly coded at 100% and the Team had a subject matter expert repeatedly checking the validity of the coding, there was no post-production statistical quality control check.

e. **Quality Control – Final Data Check:** The Team checked the final coding against secondary sources from Guttmacher. Each divergence was discussed as a group and resolved. Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.

VI. **Quality Control – 2019 Update**

a. **Quality Control – Background Research:** All 51 jurisdictions were researched to collect amendments to existing laws relevant to medication abortion requirements, changes to case law/AG opinions, and/or newly enacted laws relevant to medication abortion requirements effective since December 1, 2018. The Researchers consulted a combination of secondary sources (Guttmacher.org, Center for Reproductive Rights, ANSIRH) to verify changes to the law.

b. **Quality Control – Original Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document once the Researcher completed coding to examine the data for any missing responses, citations, and caution notes.

c. **Quality Control – Redundant Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document once the Researchers completed redundant coding to calculate divergence rates. 100% of the records with substantive updates to the law were redundantly coded. The Supervisor assigned four jurisdictions’ records (KY, NV, OK, SD) for redundant coding, and on August 22, 2019, the rate of divergence was 10% for redundant coding of the first assignment.
(KY, NV, OK) and 23% for redundant coding of the second assignment (SD). The Team discussed and resolved all divergences.

d. **Quality Control – Final Data Check:** Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.