Research Protocol for Refusal to Perform Abortions

Prepared by the Policy Surveillance Program Staff

December 2019
Refusal to Perform Abortions

Abortion Law Project

I. Date of Protocol Creation: December 2019

II. Scope: Compile state laws, regulations, case law, and attorney general opinions that allow providers to refuse to participate in abortion services. 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: December 1, 2018 – December 1, 2019. This dataset started out as cross-sectional, analyzing laws governing refusal to perform abortions 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 abortion refusal 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 refusal to provide abortions:
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f. Inclusion and Exclusion Criteria:

i. Included laws pertaining to state abortion refusal laws:
   - State laws protecting the right of an individual to refuse to participate, directly or indirectly, in the provision of abortion services.
   - State laws prohibiting individuals from being forced to participate, directly or indirectly, in the provision of abortion services.
   - State laws exempting individuals from civil liability or damages based on their refusal to participate, directly or indirectly, in the provision of abortion services.
   - Court decisions and attorney general opinions directly affecting enforceability of state abortion advertising 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 prohibiting adverse employment actions based on an employee’s refusal to participate in abortion.
   - Refusal laws related to pharmacists and/or providing emergency contraception.
   - Exceptions related to facilities that primarily provide abortions.
   - Laws that generally allowed individuals or facilities to refuse to provide any medical services, not specific to abortion, that violate their conscience.

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 MonQcle, a web-based software coding platform. As the Team developed the coding scheme they recorded the dataset terminology below:
i. Dataset terminology:
- “Abortion” is the induced termination of pregnancy by medical or procedural/surgical means.
- “Medical institution” includes hospitals and other medical facilities that do not primarily provide abortions.
- “Medical provider” includes physicians, physician assistants, nurses, midwives, and other healthcare providers.
- “Non-medical provider” includes social workers, genetic counselors, and other medical facility staff not directly providing healthcare services.
- “Participate” includes performing or assisting in the performance of abortion procedures.

b. Coding Methods:
   i. The legal text coded was limited to requirements relating specifically to abortion advertising 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 Refusal to Perform Abortions 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:** “Is there a law allowing for the refusal to provide abortion services?”
- States were coded as “yes” if they had laws protecting the right of an individual to refuse to participate, directly or indirectly, in the provision of abortion services.
- States were coded as “yes” if they had laws prohibiting individuals from being forced to participate, directly or indirectly, in the provision of abortion services.
- States were coded as “yes” if they had laws exempting individuals from civil liability or damages based on their refusal to participate, directly or indirectly, in the provision of abortion services.
- “States were coded as “no” if they had laws prohibiting adverse employment actions based on an employee’s refusal to participate in abortion.

**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 provisions coded.

**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 provisions 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 provisions 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 have a law that allows an individual medical provider to refuse to participate in an abortion?”
This question was coded “yes” where states had a law protecting the right of an individual medical provider to refuse to participate, directly or indirectly, in the provision of abortion services.
This question was coded “yes” where states had a law prohibiting individual medical providers from being forced to participate, directly or indirectly, in the provision of abortion services.

Question 3.1: “What actions are explicitly protected under the law?”
Both “Refusal to perform an abortion” and “Refusal to assist in the performance of an abortion” were coded where states did not define participation in an abortion.
Both “Refusal to perform an abortion” and “Refusal to assist in the performance of an abortion” were coded where states included direct or indirect participation in an abortion.
“Refusal to provide a referral” was coded only when explicitly protected in the law.
“Refusal to provide counseling” was coded when explicitly protected in the law, or when encouraging or promoting abortion was included.

Question 3.2: “What exceptions apply, if any?”
“Life endangerment” was coded where the law provided an exception to refusal protections in situations that endanger the pregnant individual’s life.
Medical emergencies were coded as both “life endangerment” and “serious health risk.”
“Health” was coded where the law provided an exception for situations that endanger the health or safety of any patient.
“No exceptions specified” was coded for states that did not include an explicit exception to refusal protections.
Question 3.3: “Does the state provide protections for a patient whose individual medical provider refuses to perform an abortion?”

- This question was coded “yes” where the patient must explicitly be informed of the refusal to provide abortion services.
- This question was coded “yes” where the provider must refer the patient to alternative care upon refusal to provide an abortion.
- This question was coded “no” where the individual refusing to perform abortion is required to inform their employer of their objection but not to directly inform the patient seeking services.
- This question was coded “no” where the individual refusing to perform abortion is required to provide a written statement of objection but not to directly inform the patient seeking services.

Question 3.3.1: “What protections are required?”

- This question was coded “notification” where the patient must explicitly be informed of the refusal to provide abortion services.
- This question was coded “referral” where the patient must be connected with a provider or facility that will provide the services requested by the patient.

Question 4: “Does the state have a law that allows a person who is not a medical provider to refuse to participate in an abortion?”

- This question was coded “yes” where states had a law protecting the right of any individual who is not a medical provider to refuse to participate, directly or indirectly, in the provision of abortion services.
- This question was coded “yes” where states had a law prohibiting individuals who are not medical providers from being forced to participate, directly or indirectly, in the provision of abortion services.

Question 4.1: “What actions are explicitly protected under the law?”

- “Refusal to assist in the performance of an abortion” was coded where states did not define participation in an abortion.
- “Refusal to assist in the performance of an abortion” was coded where states included direct or indirect participation in an abortion.
- “Refusal to provide a referral” was coded only when explicitly protected in the law.
- “Refusal to provide counseling” was coded when explicitly protected in the law, or when encouraging or promoting abortion was included.

Question 4.2: “What exceptions apply, if any?”

- “Life endangerment” was coded where the law provided an exception to refusal protections in situations that endanger the pregnant individual’s life.
- Medical emergencies were coded as both “life endangerment” and “serious health risk.”
- “No exceptions specified” was coded for states that did not include an explicit exception to refusal protections.
Question 4.3: “Does the state provide protections for a patient whose non-medical provider refuses to perform an abortion?”

- This question was coded “yes” where the patient must explicitly be informed of the refusal to participate in the provision of abortion services.
- This question was coded “yes” where the provider must directly refer the patient to alternative care upon refusal to participate in the provision of abortion services.
- This question was coded “yes” where the law requires that the patient be provided with information about alternative resources or services.
- This question was coded “no” where the individual refusing to participate in the provision of abortion is required to inform their employer of their objection but not to directly inform the patient seeking services.
- This question was coded “no” where the individual refusing to participate in the provision of abortion is required to provide a written statement of objection but not to directly inform the patient seeking services.

Question 4.3.1: “What protections are required?”

- This question was coded “notification” where the patient must explicitly be informed of the refusal to provide abortion services.
- This question was coded “referral” where the patient must be connected with a provider or facility that will provide the services requested by the patient.
- This question was coded “provide alternate resources” where the law requires that the patient be provided with information about alternative resources or services, but does not require that the patient be directly connected with those services.

Question 5: “Does the state have a law that allows a medical institution to refuse to participate in an abortion?”

- This question was coded “yes” where states had a law protecting the right of a medical institution to refuse to participate, directly or indirectly, in the provision of abortion services.

Question 5.1: “What actions are explicitly protected under the law?”

- “Refusal to admit a patient” was coded only when explicitly protected in the law.
- “Refusal to perform an abortion” was coded where explicit, or where states did not define participation in an abortion.
- “Refusal to provide a referral” was coded only when explicitly protected in the law.

Question 5.2: “What exceptions apply, if any?”

- “Life endangerment” was coded where the law provided an exception to refusal protections in situations that endanger the pregnant individual’s life.
- Medical emergencies were coded as both “life endangerment” and “serious health risk.”
- “No exceptions specified” was coded for states that did not include an explicit exception to refusal protections.
Question 5.3: “Does the state provide protections for a patient medical institution refuses to perform an abortion?”

- This question was coded “yes” where the patient must explicitly be informed of the refusal to provide abortion services.
- This question was coded “yes” where the facility must refer the patient to alternative care upon refusal to provide an abortion.
- This question was coded “yes” where the facility must have a refusal policy in place and the policy must be publicized or the patient must be directly informed of the policy.
- This question was coded “no” where the individual refusing to perform abortion is required to inform the facility of their objection but not to directly inform the patient seeking services.

Question 5.3.1: “What protections are required?”

- This question was coded “notification” where the patient must explicitly be informed of the refusal to provide abortion services.
- This question was coded “notification” where the facility has a refusal policy in place and must either publicize the policy or directly inform the patient of their policy.
- This question was coded “referral” where the patient must be connected with a provider or facility that will provide the services requested by the patient.
- This question was coded “provide alternate resources” where the law requires that the patient be provided with information about alternative resources or services, but does not require that the patient be directly connected with those services.

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 abortion refusal laws. 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 46 of 51 jurisdictions have laws protecting the refusal to provide abortion services.

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). The Team discussed and resolved all divergences for each Batch of states detailed below.

- **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% on May 21, 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 4.3% 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 9.3% on October 22, 2018.

- **Redundant Coding for Batch Four**
  The Supervisor assigned Batch Four [HI, ID, IL, IA, LA, ME, MD, MA, MI, MN, MS] for redundant coding and the rate of divergence was 7.24% on December 6, 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 changes to existing laws governing refusal to perform abortions, changes to case law/AG opinions, or new laws governing refusal to perform abortion enacted 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 as the Researchers completed coding to examine the data for any missing responses, citation, 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 redundant coding of one initial record (MA) produced a divergence of 3%. The redundant coding of two updated records (IN, NY) was 4% on August 22, 2019. 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.