Research Protocol for Abortion Waiting Period Requirements

Prepared by the Policy Surveillance Program Staff

December 2019
Abortion Waiting Period Requirements

Abortion Law Project

I. Date of Protocol Creation: December 2019

II. Scope: Compile state laws, regulations, case law, and attorney general opinions that regulate abortion waiting period laws. This dataset is one of 16 datasets examining laws regulations abortion laws in the United States.

III. Primary Data Collection


b. Dates Covered in the Dataset: This dataset started out as cross-sectional, analyzing waiting period and counseling requirements for 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 through 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 relevant 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 abortion waiting period and counseling requirements:

a. ("abortion" “counseling”)

b. ("abortion" “informed consent”)

c. ("abortion” “ultrasound” “heart tone”)

f. Inclusion and Exclusion Criteria:
   i. Included laws pertaining to state abortion refusal laws:
      • State laws requiring waiting periods prior to obtaining an abortion.
      • State laws imposing counseling or “informed consent” requirements.
      • State laws requiring an ultrasound to be performed prior to an abortion.
      • State laws requiring auscultation of the fetal heart tone prior to an abortion.
      • 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:
    • Customary informed consent provisions.

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.
      • “Counseling” means specific information as mandated by state law that must be communicated to a patient in connection with an abortion procedure.
• “Fetal anomaly” means fetal anomaly for which there is not a reasonable likelihood of the fetus's sustained survival outside the uterus without extraordinary medical measures.
• “Waiting period” means a requirement for a specified number of hours to elapse after a patient has received abortion counseling before the abortion procedure can be performed.

b. Coding Methods:
  i. The legal text coded was limited to requirements relating specifically to state laws that allow impose waiting period and counseling requirements for abortion. 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” and forms 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 Abortion Waiting Period Requirements 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 imposing requirements on a patient before they can obtain an abortion (e.g. counseling, waiting period, ultrasound, or fetal heart tone)?”
  • States were coded as “yes” if they had laws imposing waiting periods prior to obtaining an abortion.
  • States were coded as “yes” if they had laws imposing counseling or “informed consent” requirements.
  • States were coded as “yes” if they had laws requiring an ultrasound and/or fetal heart tone auscultation to be performed prior to an 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.
  • This question was coded “no” when a relevant court decision affected the enforceability of a legislative bill, but the correlating statute was not yet effective, and a brief summary of the opinion ruling, including which provisions were affected, were captured in a caution note.

**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 require specific information be provided to the patient before they can consent to an abortion?**
• This question was coded “yes” where states had a law requiring a medical provider or other qualified individual to provide specific information to the patient prior to performing an abortion and/or obtain voluntary informed consent of the patient.

**Question 4: Must the required information be provided verbally?**
• This question was coded “yes” where a provider or other qualified individual must communicate specific information to the patient, either in person or by phone, prior to performing an abortion.

**Question 4.1: Who must provide the information?**
• Where multiple responses were coded for this question, coding indicates that any of the selected responses may apply.
• Agent of the physician was coded as “physician performing abortion.”
• Nurses and other specified healthcare providers or members of the facility’s staff were coded as “Qualified individual other than a physician.”

**Question 4.2: Must the information be communicated to the patient in person?**
• This question was coded “no” where the law allowed the information to be communicated either in person or by telephone.
• This question was coded “no” where the law allowed the information to be communicated either in person or via real-time visual telehealth services.

**Question 4.3: What required information must be communicated to the patient?**
• “Link to breast cancer risk” was coded where required information suggested a link between abortions and the risk of breast cancer.
• “Adverse mental health effects” was coded where required information suggested a link between abortion and experiencing depression, suicidal thoughts, and/or other negative mental health effects.
• “Risk of infertility” was coded where required information suggests receiving an abortion can cause danger to subsequent pregnancies.
“Reversal of medication abortion” was coded where required information suggests the ability to reverse the effects of abortion-inducing drugs.

“Fetal pain” was coded where required information includes that a fetus may feel pain at a certain gestational age and/or that an anesthetic can alleviate pain to the fetus during an abortion.

“Fetal personhood” was coded where the patient must be informed that the abortion will terminate the life of a human being.

“Alternatives to abortion” was coded where required information includes information pertaining to medical or childcare assistance or adoption agencies.

Question 5: “Does the state require written materials be provided to the patient?”

• This question was coded “yes” where the patient must receive written materials developed by the state related to abortion.
• This question was coded “no, but materials must be offered” where a patient must be offered written materials developed by the state, but the patient may refuse them.

Question 5.1: “Who must provide the materials?”

• Where multiple responses were coded for this question, coding indicates that any of the selected responses may apply.
• Agent of the physician was coded as “physician performing abortion.”
• Nurses and other specified healthcare providers or members of the facility’s staff were coded as “Qualified individual other than a physician.”

Question 5.3: “How must written materials be made available?”

• “State website” was coded where the state is required to maintain a website providing information related to abortion counseling requirements.

Question 5.4: “What specific information must be included in the written materials?”

• “Link to breast cancer risk” was coded where required information suggested a link between abortions and the risk of breast cancer.
• “Adverse mental health effects” was coded where required information suggested a link between abortion and experiencing depression, suicidal thoughts, and/or other negative mental health effects.
• “Risk of infertility” was coded where required information suggests receiving an abortion can cause danger to subsequent pregnancies.
• “Reversal of medication abortion” was coded where required information suggests the ability to reverse the effects of abortion-inducing drugs.
• “Fetal pain” was coded where required information includes that a fetus may feel pain at a certain gestational age and/or that an anesthetic can alleviate pain to the fetus during an abortion.
• “Fetal personhood” was coded where the patient must be informed that the abortion will terminate the life of a human being.
• “Alternatives to abortion” was coded where required information includes information pertaining to medical or childcare assistance or adoption agencies.
• “Fetal heartbeat” was coded where the person intending to perform or induce the abortion shall inform the pregnant person in writing that the unborn human individual the pregnant person is carrying has a fetal heartbeat.

Question 6: “Does the law require the patient to receive an ultrasound prior to obtaining an abortion?”
• This question was coded “No, but provider must offer option” where the patient is not required to receive an ultrasound prior to the abortion but the provider must give the option of receiving one.
• The question was coded “No” when receiving an ultrasound is conditional or determined under the discretion of the medical provider and captured by a caution note.

Question 6.1: “Who must provide the ultrasound?”
• “Where multiple responses were coded for this question, coding indicates that any of the selected responses may apply.
• Agent of the physician was coded as “physician performing abortion.”
• Nurses and other specified healthcare providers or members of the facility’s staff were coded as “Qualified individual other than a physician.”

Question 7: “Must the fetal heart tone be made audible?”
• This question was coded “yes” where the abortion provider must ascultate the fetal heartbeat so that it is audible to the patient.
• This question was coded “No, but must offer to make audible” where the provider must provide an auscultation of the fetal heart tone but allow the patient to choose whether they wish to hear it.

Question 8: “Does the state require a waiting period prior to obtaining an abortion?”
• This question was coded “yes” where the counseling, ultrasound, and/or fetal heart tone requirements must occur a certain number of hours prior to performing the abortion.

Question 8.1: “What is the length of the waiting period?”
• This question was coded based on the specified number of hours that a patient must wait prior to obtaining the abortion.

Question 9: “Does the law provide any exceptions?”
• “Yes, for life endangerment” was coded where the law provided an exception to requirements in situations that endanger the pregnant person’s life.
• “Yes, for serious health risk” was coded where the law provides exceptions to requirements in cases of serious risk of substantial and irreversible impairment of a major bodily function.
  ▪ Where the exception was limited to physical health risk only, this information was noted in a caution note.
• Exceptions for medical emergencies were coded as both “Yes, for life endangerment” and “yes, for serious health risk.”
• “Yes, for fetal anomaly” was coded where the law provided an exception for a lethal fetal anomaly and the lethality limitation was captured in a caution note.
• “Yes, for fetal anomaly” was coded where the law provided an exception where the fetus has a “severe brain abnormality that is uniformly diagnosable.”

V. Quality Control – 2018

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 waiting period and counseling 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 36 of 51 jurisdictions have laws imposing abortion waiting period and counseling requirements.

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 15.33% 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 12.24% 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 20.4% 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 7.22% 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 amendments to existing waiting period and counseling laws, new case law/AG opinions, and/or newly enacted waiting period and counseling laws 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 in this domain.

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.

   i. Redundant Coding: The Supervisor assigned 13 records for redundant coding and the rate of divergence was 16%. The Team discussed and resolved all divergences.

d. Post-Production Statistical Quality Control: To ensure reliability of the data, a statistical quality control procedure (SQC) was run once all of the original and redundant coding was finalized on February 3, 2020. To conduct SQC, the Supervisor took a random sample of variables from the dataset for the Researchers to independently code. At that time, the divergence rate was 4.4%. Each divergence was then reviewed and resolved.

e. Quality Control – Final Data Check: The Team checked the final coding against secondary sources from Guttmacher. 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.