Research Protocol for Abortion Advertising Restrictions

Prepared by the Policy Surveillance Program Staff

December 2019
Abortion Advertising Restrictions

Abortion Law Project

I. Date of Protocol Creation: December 2019

II. Scope: Compile state laws, regulations, case law, and attorney general opinions that restrict or prohibit the advertisement of 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: Each dataset started out as cross-sectional, analyzing abortion advertising laws 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 five legal researchers (“Researchers”) and one supervisor (“Supervisor”). WestlawNext was used to identify which states had abortion advertising 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 advertising restrictions:
a. ("abortion" "advertise")
b. ("abortion" "publish")
c. ("abortion" "solicit")

f. **Inclusion and Exclusion Criteria:**
i. Included laws pertaining to restrictions on the advertisement of abortion services:
   - Laws prohibiting abortion providers from advertising abortion services.
   - Laws prohibiting the advertisement of abortion-inducing medication.
   - Laws prohibiting any individual from advertising or publicly encouraging 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:
   - Solicitation of abortion services.
   - Restrictions on publication of abortion-related materials by state agencies.
   - Laws requiring abortion providers to use an identification number when publishing advertisements.

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:**
   - “Advertising” includes the publication, printing, circulation, and/or distribution of an advertisement or notice.
   - “Abortion” is the induced termination of pregnancy by medical or procedural/surgical means.
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 Abortion Advertising Restrictions dataset. Note, that every dataset question is included in the section below; however, only responses that require an explanation of the legal text used to code are listed. An explanation of the legal text used to code each response is included, unless the response is straightforward.

Question 1: “Is there a law restricting the advertisement of abortions?”
   - States were coded as “yes” if the law prohibited individuals from advertising abortion-inducing drugs or abortion services.

Question 1.1: “To whom do the advertising restrictions apply?”
   - “Abortion provider” was coded where the law restricted individuals from advertising the provision of abortion services by a provider.
   - “Advertiser” was coded where the law restricted any individual from publishing advertisements related to abortion services and/or abortion-inducing drugs.

Question 1.2: “What types of advertising restrictions are imposed?”
   - “Advertising ban” was coded where individuals are prohibited from publishing, printing, distributing, and/or circulating advertisements related to abortion services or abortion-inducing drugs.
   - “Content restriction” was coded where individuals were prohibited from publicly encouraging or promoting 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 requirements 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 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.”

### 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 advertising 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.

- The research showed that 9 of 51 jurisdictions [AZ, FL, ID, LA, MI, MN, MS, VA, WY] have an abortion advertising 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). 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 40% on May 16, 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 dropped to 6% on August 23, 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 increased to 20% on October 18, 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 6.36% 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 amendment to existing laws relevant to abortion advertising restrictions, changes to case law/AG opinions, or newly enacted legislation relevant to abortion advertising restrictions 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, 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 two records for redundant coding and there were no divergences between the original and redundant coder.

**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.