Research Protocol for Restrictions on Public Funding of Abortion

Prepared by the Policy Surveillance Program Staff

August 2020
RESEARCH PROTOCOL
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Restrictions on Public Funding of Abortion
Abortion Law Database

I. Date of Protocol Creation: August 2020

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

III. Primary Data Collection

a. Project Dates: April 2018 – August 2020

b. Dates Covered in the Dataset: This dataset started out cross-sectional, analyzing laws restricting the use of public resources for abortions as they were in effect on December 1, 2018. The datasets were subsequently updated to be longitudinal, covering changes in the law from December 1, 2018 through August 31, 2020.

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 laws restricting the use of public resources for abortion. 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 restrictions on the use of public resources for abortions:

a. abortion

b. ("terminat!" /s "pregnancy")

**f. Inclusion and Exclusion Criteria:**

i. Included laws pertaining to restrictions on the use of public resources for abortions:

   - Laws broadly restricting the use of all government funds for the provision of abortion services
   - Laws broadly restricting the use of family planning funds and/or funds for women’s health services for the provision of abortion services
   - Laws restricting the use of government facilities in the provision of abortion services
   - Laws restricting government employee participation in the provision of abortion services
   - Laws restricting abortion providers from receiving government funds
   - Laws restricting government entities from contracting with abortion providers
   - Laws restricting funding of abortions in state-funded insurance plans for government employees
   - Laws restricting Medicaid funding of abortion
   - Court decisions and attorney general opinions directly affecting enforceability of state laws restricting the use of public resources for abortions. **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 that restrict the use of public funding through narrow specific programs related to abortion services. Examples of such programs include: alternatives to abortion services programs; foster care; medical assistance programs for children only; domestic violence victim programs; research; and legal services to obtain an abortion.
   - Laws that establish funding priorities based on provision of abortion services.
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.

b. Coding Methods:

i. The legal text coded was limited to requirements relating specifically to laws restricting the use of public resources for abortions. 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” or forms incorporated by reference into policies are referenced but not coded or included in the legal text. Questions in this dataset were coded based on statutes and regulations, which may differ from policies included in state Medicaid policy manuals that are outside the scope of this dataset.

ii. As stated above, 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. When enforceability of a law was limited by court and/or attorney general opinion, a general caution note was included to flag the affected question.

Below are specific coding rules used when coding the questions and responses in the Restrictions on Public Funding of Abortion 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: “Does the state restrict the use of public resources for abortion?”

- States were coded as “no” if the only law addressing the use of public resources for abortion indicates that Medicaid covers pre-viability abortions.
- States were coded as “yes” if they had a law restricting the use of all government funds for the provision of abortion services.
• States were coded as “yes” if they had a law broadly restricting the use of family planning funds and/or funds for women’s health services for the provision of abortion services.
• States were coded as “yes” if they had a law restricting the use of government facilities in the provision of abortion services.
• States were coded as “yes” if they had a law restricting government employee participation in the provision of abortion services.
• States were coded as “yes” if they had a law restricting abortion providers from receiving government funds.
• States were coded as “yes” if they had a law restricting government entities from contracting with abortion providers.
• States were coded as “yes” if they had a law restricting funding of abortions in state-funded insurance plans for government employees.
• States were coded as “yes” if they had a law restricting Medicaid funding of 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 not coded if the parent question (“Has the law been limited in whole or in part?”) was coded as “no.”
  • 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, was 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 not coded if the parent question (“Has the law been limited in whole or in part?”) was coded as “no.”
  • 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, was 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 restrict the use of government funds in the provision of abortion services?”
  • “Yes” was coded where the law broadly restricted the use of government funds for the provision of abortion services, or where the law broadly
restricted the use of family planning funds and/or funds for women’s health services for the provision of abortion services.

- “No” was coded where the only law restricting the use of government funds in the provision of abortion services was a restriction specific to Medicaid funds.
- A caution note was included when the restriction applies only to the use of a particular type of government funds, such as family planning or women’s health care services.

**Question 3.1:** “To what activities does the restriction apply?”

- This question was not coded if the parent question (“Does the state restrict the use of government funds in the provision of abortion services?”) was coded as “no.”
- Where the law restricted the use of public funds for counseling in favor of abortion, both “Encouraging abortion” and “Counseling” were coded.
- Where the law restricted the use of public funds “for abortions” or “for abortion services,” “Not specified” was coded.

**Question 3.2:** “What are the exceptions to the restriction, if any?”

- This question was not coded if the parent question (“Does the state restrict the use of government funds in the provision of abortion services?”) was coded as “no.”
- Where the law referred to using public funds for abortion in accordance with federal requirements, “Life endangerment”, “Rape”, and “Incest” were coded.
- Where the law referred to an exception for sexual assault, “Rape” was coded.

**Question 4:** “Does the state restrict the use of government facilities in the provision of abortion services?”

- “Yes” was coded where the law prohibited public funds from being used to provide facilities for abortion.
- A caution note was included where the state restricted the use of specific government facilities only (e.g., school facilities).

**Question 4.1:** “What are the exceptions to the restriction, if any?”

- This question was not coded if the parent question (“Does the state restrict the use of government facilities in the provision of abortion services?”) was coded as “no.”
- Where the law referred to using public funds for abortion in accordance with federal requirements, “Life endangerment”, “Rape”, and “Incest” were coded.
- Where the law referred to an exception for sexual assault, “Rape” was coded.

**Question 5:** “Does the state restrict government employee participation in the provision of abortion services?”
• A caution note was included where the state restricted specific government employees only (e.g., school personnel).

**Question 5.1: “What are the exceptions to the restriction, if any?”**

• This question was not coded if the parent question (“Does the state restrict government employee participation in the provision of abortion services?”) was coded as “no.”

• Where the law referred to using public funds for abortion in accordance with federal requirements, “Life endangerment”, “Rape”, and “Incest” were coded.

• Where the law referred to an exception for sexual assault, “Rape” was coded.

**Question 6: “Does the state restrict abortion providers from receiving certain government funds?”**

• “Yes” was coded where the law restricted any of the following organizations from receiving government funds: organizations that perform abortions; organizations that encourage abortion; organizations that provide abortion counseling; organizations that provide abortion referral; and affiliated organizations.

**Question 6.1: “Who does the restriction apply to?”**

• This question was not coded if the parent question (“Does the state restrict abortion providers from receiving certain government funds?”) was coded as “no.”

• “Affiliated organizations” was coded where the law imposed restrictions on an entity that “maintains or operates a facility,” or on an entity that “contracts with an entity or organization that performs abortions.”

**Question 7: “Does the state restrict government entities from contracting with abortion providers?”**

• “Yes” was coded where the law restricted government entities from contracting with any of the following: organizations that perform abortions; organizations that provide abortion counseling; organizations that provide abortion referral; and affiliated organizations.

**Question 7.1: “Who is prohibited from contracting with government entities?”**

• This question was not coded if the parent question (“Does the state restrict government entities from contracting with abortion providers?”) was coded as “no.”

• “Affiliated organizations” was coded where the law prohibited an entity that “maintains or operates a facility,” or an entity that “contracts with an entity or organization that performs abortions” from contracting with government entities.

**Question 7.2: “What government entities does the restriction apply to?”**
This question was not coded if the parent question (“Does the state restrict government entities from contracting with abortion providers?”) was coded as “no.”
“Education Department” was coded where the law imposed restrictions on public school districts.

Question 8: “Does the state restrict funding of abortions in state-funded insurance plans for government employees?”
“Yes” was coded where the law explicitly restricts the coverage of abortion in state-funded insurance plans for government employees.

Question 8.1: “What are the exceptions to the restriction, if any?”
This question was not coded if the parent question (“Does the state restrict funding of abortions in state-funded insurance plans for government employees?”) was coded as “no.”
Where the law referred to using public funds for abortion in accordance with federal requirements, “Life endangerment”, “Rape”, and “Incest” were coded.
Where the law referred to an exception for sexual assault, “Rape” was coded.

Question 9: “Does the state explicitly restrict Medicaid funding of abortion?”
“Yes” was coded where the law included an explicit restriction of Medicaid or medical assistance funds.
“No” was coded where the law broadly restricts the use of government funds, but does not specifically refer to Medicaid or medical assistance.
“No” was coded, and a caution note included, where there is no state law restricting Medicaid funding of abortion, but the state Medicaid manual restricts Medicaid coverage of abortion.
A caution note was included when the state restricted the use of Medicaid funds in a particular program only, such as family planning or women’s health care services.

Question 9.1: “What are the exceptions to the restriction, if any?”
This question was not coded if the parent question (“Does the state restrict Medicaid funding of abortion?”) was coded as “no.”
Where the law referred to the use of public funds for abortion in accordance with federal requirements, “Life endangerment”, “Rape”, and “Incest” were coded.

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 laws restricting the use of public
resources for abortions. 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 39 of 51 jurisdictions [AL, AK, AZ, AR, CA, CO, FL, GA, ID, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NJ, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WV, WI, WY] have a law restricting the use of public resources for abortions.

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 22.8% 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 dropped to 9.36% on August 29, 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 12.6% 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 5.28% on December 7, 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 laws restricting the use of public funds for abortions, new case law and/or Attorney General opinions, or new laws restricting the use of public funds for abortion that have been 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 once 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 the divergence rates. 100% of the records with substantive updates were redundantly coded. The initial assignment of redundant coding, for two jurisdictions (AR, OK), produced no divergences. The additional assignment of redundant coding, for nine jurisdictions (KY, MD, MN, OH, OR, RI, UT, VA, WY), which included updates to the new iterations of the law, produced a divergence rate of 2%. 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.

VII. Quality Control – 2020 Update

a. **Quality Control – Background Research:** All 51 jurisdictions were researched to collect amendments to existing abortion bans, new case law/AG opinions, or new abortion bans 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 – Redundant Coding:** Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document once the Researchers completed redundant coding to calculate the divergence rates. 100% of the records with substantive updates were redundantly coded. The divergence rate was 0%.

c. **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