POPULATION INSTITUTE

Beyond *Roe:*

More Medically Unnecessary Requirements

Medically unnecessary requirements, such as mandatory waiting periods, mandatory counseling laws, and ultrasound requirements create additional barriers to accessing abortion. These laws, passed under the false pretense of patient health and well-being, can raise the cost of abortion, cause abortions to happen later in pregnancy, and increase the risk of health complications associated with abortion.[1,2] Medically unnecessary requirements are dangerous and have no place in healthcare.

Mandatory Counseling and Waiting Periods

Mandatory counseling laws require patients receive state-mandated information from their provider on top of the normal counseling that the provider does. State-mandated counseling may include inaccurate information regarding the mental and physical health consequences of having an abortion, such as requiring providers to tell their patients that an abortion could lead to a mental health condition called "postabortion stress syndrome." This is misleading because it has been scientifically disproven: the National Academies of Sciences, Engineering and Medicine convened an expert panel in 2018 that concluded having an abortion does not increase a person's risk of depression, anxiety, or post-traumatic stress disorder.[3] Moreover, the American Psychological Association does not recognize "postabortion stress syndrome" due to there being no evidence that it exists.[4,5] Other biased and medically inaccurate information required by state-mandated counseling can include linking abortion to an increased risk of breast cancer or future infertility. However, the National Cancer Institute has published a report dismissing any causal link between abortion and breast cancer, and research shows that abortions performed in the first trimester — roughly 92 percent of all abortions performed in the U.S.– pose virtually no long-term risks for future infertility.[6,7,8]

Mandatory waiting periods are laws that require specific periods of time to pass between when a patient receives counseling and when the abortion procedure actually occurs.[9] Waiting periods could be anywhere from 18 hours to 72 hours or more between pre-abortion counseling and the abortion itself.[10] Some states even require that the counseling be conducted in-person (as opposed to over the phone or through telehealth) before the waiting period can begin, which can pose a great burden for people needing to arrange time off work, caretaking duties, travel and lodging accommodations if they live a distance from the nearest clinic for two separate trips to the clinic.

Anti-abortion advocates claim to support mandatory counseling and waiting laws because of an incorrect narrative that all people who seek abortions are not yet sure of their decision and need additional information and time before they receive medical care. However, the reality is that abortion providers already present their patients with the necessary procedure details as well as their full range of options as part of obtaining informed consent from patients.[11] What's more, many people who seek abortions are already confident in their decision.[12] Mandatory abortion counseling laws, which often require the provider to give patients medically inaccurate, biased, or misleading information, are a direct violation of informed consent and compromise trust in provider-patient relationships.

INFORMED CONSENT

Before undergoing any medical procedure or treatment, every state requires that a patient provides informed consent. While the specific definition of informed consent varies state to state, the central meaning of the informed consent process is to ensure that patients understand the nature and risks of the medical care they are considering and that their decision to undergo it is voluntary.[13] Patient education, the information a person receives regarding the available treatment options and the risks and benefits of these options, is an integral part of the informed consent process.[14] Mandatory counseling laws sometimes push irrelevant or misleading information and violate these principles of informed consent and infringe on a patient's right to receive accurate and unbiased information prior to obtaining medical care.[15]

Mandatory counseling and waiting laws have consequences when it comes to raising the cost of abortion and causing abortions to happen later in pregnancy. Laws that require the first visit for counseling to be in-person as opposed to over the phone — called two-visit requirements — have been shown to increase out-of-state travel for abortions and increase second trimester abortions.[16] For individuals living in states with gestational age bans already in effect, this can mean the difference between accessing the care they need, and not being able to have an abortion at all. In recent years, more aggressive attacks have been mounted against abortion access, including states trying to impose mandatory waiting periods of up to 72 hours.[17]

Ultrasound Requirements

Ultrasounds are not considered medically necessary for first-trimester abortions, and yet several states have enacted laws making ultrasounds a required element of routine abortion care. It adds significant additional costs to the procedure, placing further financial burdens on the person seeking care.[18] Ultrasound requirements serve as part of the greater ideological agenda of anti-choice advocates to personify the fetus and dissuade individuals from following through with their abortion.

LANDSCAPE FOR UNNECESSARY REQUIREMENTS ACROSS THE U.S.[19,20]

3 States require counseling that inaccurately portrays the risk of future fertility associated with abortion.

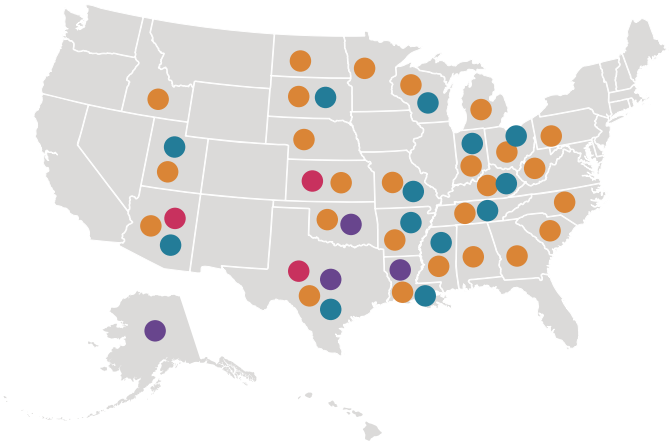
5 States require counseling that inaccurately portrays a link between breast cancer and abortion.

26 States require patients to wait a specific amount of time between counseling and the abortion procedure.

13 States require counseling be provided in person and take place before the waiting period begins.

27 States regulate ultrasound provision by abortion providers.

Map of U.S. States with Mandatory Counseling Laws, Mandatory Waiting Period Laws, and Ultrasound Requirement Laws



- States requiring counseling that inaccurately portrays the risk of future fertility associated with abortion
- States requiring counseling that inaccurately portrays a link between breast cancer and abortion
- States requiring patients to wait a specific amount of time between counseling and the abortion procedure
- States requiring counseling be provided in person and take place before the waiting period begins

No Place in Healthcare

Abortion is more regulated and legislated than any other healthcare intervention in the U.S.[21] However, complications during abortion procedures are rare, occurring in only 2.1 percent of procedures.[22] Hyper-policing a person's access to basic and necessary healthcare is wrong, and unnecessary requirements that are politically motivated should have no place in the U.S. healthcare system.

Medically unnecessary requirements alone are harmful; but when working in tandem with other restrictive policies, the barriers to accessing abortion can become insurmountable and deepen existing inequalities — even under *Roe*.

Endnotes

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