



Protecting Access to Essential Reproductive Health Services in a Post-Dobbs World: Proactive Policy Options for States

The *Dobbs v. Jackson Women's Health Organization* Supreme Court decision drastically changed the landscape with respect to access to safe and legal abortion care in the U.S. Since the Supreme Court's decision in June 2022, almost 22 million women of reproductive age in 15 states have lost legal protections related to access to abortion. Close to one-third of women of reproductive age in the U.S. live in states where abortions are now unavailable or severely restricted. Those who have been hit hardest include millions of Black and Brown people and low-income women who are least able to afford to travel out of state for abortion care.¹

As state advocates continue to defend against further restrictions on access to reproductive health, there are important opportunities to proactively advance policies that protect women's reproductive freedoms. While these opportunities vary significantly depending on a state's political climate, state policymakers and advocates across the U.S. already are working to develop and advance a range of state-level policies to preserve and improve access to abortion and reproductive health care.

Below are some of the most promising state-level policy opportunities that might aid states in countering the impact of the Dobbs' decision and ensuring access to reproductive health care.

1. Enacting State Legal Protections for Abortion

Following the Dobbs decision, many states took immediate action to adopt statutes and constitutional provisions that codify the right to abortion in state law. Some of those laws use equal rights language to enforce protections; others use language that protects reproductive freedom more broadly; and some include specific protections for abortion within a range of protected reproductive health care options, from contraception to prenatal care and childbirth. Some governors have also issued executive orders to protect abortion as an interim step while legislative or constitutional amendment processes advance, or where legislation or constitutional changes are blocked.



STATE EXAMPLES

- » **California**,² **Michigan**,³ and **Vermont**⁴ approved ballot initiatives to establish the constitutional right to abortion.
- » **Colorado**,⁵ **Maine**,⁶ and **Oregon**⁷ codified the statutory right to abortion. The governors of **Minnesota**,⁸ **North Carolina**,⁹ and **Pennsylvania**¹⁰ signed executive orders to protect reproductive rights in their states.

2. Protecting Confidentiality and Shielding Patients and Providers from Criminal Exposure

With a growing number of states criminalizing abortion care, maintaining the privacy of protected health information is key to ensuring that people feel safe accessing care across state lines. In addition, protecting providers' ability to practice without facing criminal charges is essential to ensure reproductive health services are available to patients no matter where they live. Provisions to protect patients and providers include:

- » **Prohibiting** the sharing of protected health information in furtherance of legal proceedings that could impose civil or criminal liability on patients or providers for seeking or providing reproductive health services.
- » **Blocking** the enforcement of judgements against patients or providers for seeking or providing reproductive health services.
- » **Prohibiting** the issuance of subpoenas for out-of-state proceedings against patients or providers for seeking or providing reproductive health services.
- » **Preventing** the extradition of patients or providers to other states for proceedings that relate to seeking or providing reproductive health services.
- » **Protecting** providers from state disciplinary action for providing certain reproductive health services in other states.



STATE EXAMPLES

- » **California** enacted safeguards to protect health information by prohibiting its disclosure in legal proceedings if the disclosure would interfere with a person's access to abortion care.¹¹
- » **New York** prohibits the extradition of a clinician for providing an abortion, as well as disciplinary action for performing or recommending reproductive health services for patients where those services are illegal. Law enforcement agencies are prohibited from providing information to out-of-state agencies regarding abortions legally performed in New York.¹²

3. Improving Access to Contraception

Even before the Dobbs decision, many women lived in “contraceptive deserts” without access to their choice of provider or a full range of contraception methods. Cost is another barrier that makes it difficult to prevent unwanted pregnancies. Policies to improve access to contraception include:

- » **Eliminating** cost-sharing for contraception.
- » **Requiring** Medicaid and private insurers to cover 12-month supplies.
- » **Requiring** Medicaid and private insurers to cover over-the-counter birth control.
- » **Allowing** pharmacists to prescribe birth control.



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- » **Nevada** requires coverage of over-the-counter contraception by Medicaid and insurance plans.¹³
- » **Tennessee** allows pharmacists to prescribe birth control.¹⁴
- » **Maine** requires health insurance plans to cover 12-month supplies of contraceptives without cost-sharing.¹⁵
- » **New Jersey** requires Medicaid and private health plans to provide a 12-month supply of a patient’s contraceptive method at one time.¹⁶
- » **Louisiana** requires Medicaid plans to dispense six-month supplies of contraceptives at a time.¹⁷

4. Improving Flexibility in Telehealth Policy for Reproductive Care

One way in which states can address reproductive health access disparities is to build on the telehealth flexibilities made available during the COVID-19 public health emergency. Policy options that would allow states to improve access to abortion via telehealth include:

- » **Removing** licensing barriers by adopting the Interstate Medical Licensure Compact.
- » **Expanding** the types of providers permitted to offer telehealth care to include midwives, doulas, and advanced practice clinicians.
- » **Allowing** online prescribing without a prior provider-patient relationship,
- » **Permitting** reimbursement of audio-only telehealth services for reproductive health.
- » **Allowing** for out-of-state care without in-person requirements.



STATE EXAMPLES¹⁸

- » **Alaska** allows advanced practice nurses to prescribe drugs via telehealth without conducting an in-person physical examination.
- » **Connecticut** temporarily extended flexibilities that allow midwives and advanced practice nurses to provide telehealth services.
- » **Pennsylvania** adopted the Interstate Medical Licensure Compact, streamlining the licensing process and making it easier for physicians to obtain licenses to practice in multiple states.
- » **Delaware** allows individuals to establish patient-provider relationships using both synchronous and asynchronous technology.
- » **Florida** updated its definition of telehealth to include audio-only communications.
- » **Virginia** allows patient relationships to be established remotely, without in-person visits.

5. Funding Out-of-State Access to Abortion Care

In July 2022, President Biden signed Executive Order 14076, Protecting Access to Reproductive Healthcare Services.¹⁹ The order directed the Department of Health and Human Services to support patients who travel across state lines for abortions, including through Medicaid Section 1115 waivers. An 1115 waiver would allow states to use federal Medicaid funds to pay travel costs for Medicaid recipients seeking abortions across state lines. To date, no state has applied for a waiver. As potential federal support is evolving, funding for interstate travel for abortion is critical to ensure that pregnant people can access abortion even when it is not available in their state.

California set up a fund to support women accessing abortion care from out-of-state. The funds provide grants to organizations that arrange for travel, lodging, and child care.

What Can State Advocates Do Now?

With states solidly in control of abortion and policymaking related to reproductive health, this is a crucial time to build awareness about state policy options that are available to preserve and improve access to abortion and reproductive health care services. **State-level advocates have powerful roles to play in developing, building support for, and advancing policies that ensure all women in the U.S. can access these essential health care services.**

As the 2023 state legislative sessions advance, Families USA will closely monitor state reproductive health policy developments. Families USA welcomes the opportunity to work with and learn from advocacy partners who engage in this work to advance policies that protect access to contraception and abortion.



CONNECT WITH US

To connect on reproductive health advocacy in your state or to join Families USA's Maternal Health State Innovation Learning Collaborative, please contact:

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For more information about state-level reproductive health policies, go to the Guttmacher Institute State Legislation Tracker at <https://www.guttmacher.org/state-policy>.

Endnotes

- ¹ *100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care*. Guttmacher Institute. (October 6, 2022). Retrieved January 5, 2023, from <https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care>.
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- ³ *Ballot Proposal 3 of 2022*. Michigan House Fiscal Agency. Retrieved January 5, 2023, from https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_3_of_2022.pdf.
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- ⁵ Colo. Rev. Stat. § 25-6-403.
- ⁶ Me. Rev. Stat. Ann. tit. 22 § 1598.
- ⁷ Or. Rev. Stat. § 659.880.
- ⁸ Minn. Exec. Order, No. 22-16, “Protecting Access to Reproductive Health Care Services in Minnesota” (June 25, 2022). Retrieved January 5, 2022, from https://mn.gov/governor/assets/EO%2022-16_tcm1055-532111.pdf.
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- ¹¹ Ca. Ass. Bill, No. 2091 (2021-2022). Retrieved January 5, 2023, from https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2091.
- ¹² *Governor Hochul Signs Nation-Leading Legislative Package to Protect Abortion and Reproductive Rights for All* [press release]. Governor Kathy Hochul. (June 13, 2022). Retrieved January 5, 2023, from <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive>.
- ¹³ *State requirements for insurance coverage of contraceptives*. KFF. (May 2022). Retrieved January 5, 2023, from <https://www.kff.org/other/state-indicator/state-requirements-for-insurance-coverage-of-contraceptives/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.
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- ¹⁵ *Insurance Coverage of Contraceptives*. Guttmacher Institute.
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- ¹⁷ *Insurance Coverage of Contraceptives*. Guttmacher Institute.
- ¹⁸ *Professional Requirements: Online Prescribing*. Center for Connected Health Policy. Retrieved January 5, 2023 from <https://www.cchpca.org/topic/online-prescribing/>.
- ¹⁹ <https://www.federalregister.gov/documents/2022/07/13/2022-15138/protecting-access-to-reproductive-healthcare-services>.

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