

## How State COVID-19 Orders Can Impact Abortion Access

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In response to the COVID-19 pandemic, state governments around the country are issuing a variety of orders that should be focused on containing the spread of the virus, protecting health care workers, and prioritizing the use of health care resources.

While some state government officials are working to ensure continued, timely access to all essential healthcare, others are instead exploiting this crisis to advance a decades-old coordinated campaign to ban abortion and to permanently shut down abortion care providers. These attacks come despite consensus among leading medical and health organizations, in the [United States](#) and globally, that abortion continues to be essential during the COVID-19 crisis and therefore must remain available. [The American College of Obstetricians and Gynecologists](#), the [Society for Maternal-Fetal Medicine](#), and [other prominent medical organizations](#) assert that “to the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure.” (Read more about abortion as an essential healthcare service [here](#)).

The law of each state determines which state officials can issue or enforce orders. Depending on the state, these orders can be issued by state governors (e.g. executive orders), attorney generals (e.g. interpretations of orders), or state departments of health (e.g. health directives, mandates, rules, regulations, and guidance). Written broadly or narrowly, some of these orders are restrictive while others ease restrictions on healthcare providers. Some restrictive orders, in particular those categorizing essential and non-essential services, have been used to single out abortion providers for differential treatment, and those orders are being litigated in several states in the Southeast and Midwest.

This resource provides an overview of the most common types of orders directed at healthcare providers and individuals with the possibility of impacting access to essential healthcare, including abortion.

### 1. RESTRICTIVE ORDERS

The following orders restrict healthcare provision or restrict individuals’ freedom of movement, although they should never be used to prohibit or restrict access to abortion care.

#### Essential/non-essential orders

Numerous state governments have issued orders directing hospitals, clinics, and providers to postpone or completely stop providing non-essential, elective, or non-emergency services (surgeries and procedures) in order to conserve personal protective equipment (PPE). In these orders, some states have said explicitly that abortion and/or reproductive healthcare are essential (e.g. Washington State) while some states have left the determination of what is “medically necessary” and what is “elective” up to the medical provider and the patient (e.g. Oregon). However, other states have said explicitly that abortion and/or reproductive healthcare are not essential (e.g. Texas) or have specified that abortion care is “elective” (e.g. Oklahoma). In response to states like Texas and Oklahoma exploiting the COVID-19 pandemic to effectively ban abortion, the [American Medical Association](#) issued a statement opposing restrictions on reproductive health care and asserted that decisions about which medical procedures are “non-urgent” should continue to be made by physicians and their patients, not by politicians.

## Mass gatherings and social distancing orders

Some orders prohibit gatherings of more than ten people and require social distancing, which entails maintaining at least six feet of distance between individuals to avoid spreading illness. The majority of these orders include exceptions that allow for providers to continue providing essential healthcare and for state residents to continue seeking essential healthcare, including abortion care.

## Out of state traveler quarantine orders

Some orders require people arriving from out of state by air or road to self-quarantine for 14 days. Most of these orders include exceptions for people, for example, seeking essential services. This type of order may impact pregnant individuals who live in highly restrictive states and who may want to travel elsewhere to get the abortion care they need.

## Travel bans (sometimes called 'Stay at Home' orders)

While these types of orders are not directed at healthcare providers, they may impact patients. Some orders direct individuals to remain in their homes unless, for example, they are essential workers or are leaving home to access essential services. These orders tend to broadly define categories of essential workers and services and most do not specifically reference abortion care.

## Staff health orders

Some orders require the monitoring of staff health and checking of their temperature at the beginning of each shift to identify anyone who may be sick with COVID-19 and thus take necessary precautions to avoid transmission. If equitably applied, this policy has no discriminatory impact on abortion providers.

## CISA Guidance

Some orders cite the US Department of Homeland Security's Cybersecurity and Infrastructure Security Agency's (CISA) [Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response](#). States like Texas are citing to revised guidance language stating that "individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion" to justify targeting abortion services as non-essential. However, this guidance explicitly includes all types of healthcare workers as essential and does not single out abortion providers. Therefore, CISA guidance should not be used to justify the exclusion of abortion providers as nonessential.

## 2. EXPANSIVE ORDERS

In contrast to the orders discussed above, the following orders ease requirements, potentially allowing abortion care providers to practice more expansively. States should consider lifting current restrictions on abortion care in the following ways in order to create greater access.

### Telemedicine Orders

States are issuing orders that relax telehealth requirements and expand access to telemedicine, or the remote diagnosis and treatment of patients by means of telecommunications technology. These orders, however, do not suspend existing telemedicine bans on the provision of medication abortion. Their specific impact depends on a number of factors including if the state has a ban on telemedicine access for abortion care, requirements for in-person biased counseling or in-person follow up, or medication abortion restrictions. Eighteen states prohibit the use of telemedicine for medication abortion, requiring patients to visit the prescribing provider in person to obtain the pills. If a state's laws treat abortion care similarly to other forms of healthcare, providers may be able to expand access to medication abortion through telemedicine.

### Temporary scope of practice expansion

In order to expand healthcare capacity, some states are issuing orders that allow healthcare providers licensed in other

states to provide care in the state issuing the order. This might mean that out-of-state healthcare providers with active unencumbered licenses or certificates of qualifications may be able to provide services across state lines. Related orders may also expand advanced practice clinicians' (e.g. physician assistants or nurse practitioners) ability to provide services beyond their general scope of practice in the state. These orders do not relax the hundreds of abortion restrictions, including Targeted Regulation of Abortion Providers (TRAP) laws, adopted across states over the past decade. However, if a state's laws treat abortion care similarly to other forms of healthcare, abortion care providers may be able to expand access with the assistance of an expanded pool of health care providers.

### Suspension of certain licensing requirements

Some orders suspend specific healthcare licensing requirements to increase the number of medical providers and healthcare workers available during this pandemic. These orders can, for example, allow retired medical professionals to return to practice or allow future providers who are still in training to provide care. Where abortion care services are treated similarly to other healthcare services, these types of orders could potentially increase abortion access with providers who are experienced or have been trained and are qualified to provide this service.