CENTER *for* REPRODUCTIVE RIGHTS

2023 State Legislative Wrap-up

State Policy Report:
An overview of the state landscape

Contents

Cover photo: Jon Cherry/ Getty Images.

Introduction

The U.S. Supreme Court's 2022 ruling in *Dobbs v. Jackson Women's Health Organization ("Dobbs")* unleashed an escalating public health crisis and marked an unprecedented rollback of constitutional rights. This retrogression further exacerbates sexual and reproductive health and rights disparities and has been disastrous for pregnant people and those who care for them. *Dobbs* is a warning about the potential for retrogression in other areas of human rights such as the right to contraception, the right to marriage equality for same-sex and inter-racial couples, and the right to engage in private sexual conduct. Numerous states now force people to be pregnant and give birth in a country that normalizes preventable pregnancy-related deaths and injuries, non-consented care, and mistreatment in the healthcare system; obstructs meaningful options for where, how, and with whom individuals experience birth; and provides little or no legal recourse for these violations. The Supreme Court's decision in *Dobbs* and the resulting actions of the 14 states that have criminalized abortion further undermine people's bodily autonomy and belief in rule of law principles.

Broadly, we are seeing total polarization across the country: some states are protecting reproductive rights and expanding access to abortion care, or, conversely, criminalizing abortion care while not addressing the resulting effects on maternal health care or assisted reproduction. Twenty-one states and the District of Columbia have enacted more than 80 new laws protecting abortion rights while 14 states have made abortion illegal. Anti-abortion state legislators are continuing to introduce harmful abortion bans even after defeat at the ballot box or in litigation and, with increased polarization and gerrymandering, they can enact laws that curtail reproductive rights. In this landscape, where a person lives can determine whether they can exercise their reproductive autonomy; there are now multiple border regions throughout the U.S. where reproductive rights exist on one side and are criminalized on the other.

The Center for Reproductive Rights is working to not only build back the reproductive rights we had under *Roe*, but to also guarantee robust and equal access to abortion and reproductive autonomy under the federal Constitution. Using the law to advance reproductive rights as human rights, we are focusing on several short and long-term strategies to establish legally enforceable rights to access abortion and a future in which every person in the United States is legally guaranteed and able to realize the full

Data in this report is current as of 12/2/23

2023 State Leadership Summit, Chicago: Held in person for the first time since 2019, the Summit convened legislators and advocates to strategize on ways to advance proactive reproductive rights legislation in the states. Shown at the Summit are members of the Center for Reproductive Rights State Policy Advocacy, U.S. Human Rights, and Litigation teams. Photo: Barry Brecheisen.

right to bodily and reproductive autonomy. While we advocate for robust reproductive autonomy under the federal Constitution and in federal law, we are prioritizing state efforts to preserve or expand reproductive rights, wherever possible. State work includes enforcing and building state constitutional protections for reproductive autonomy by working with our partners to advance proactive state legislation, enhancing protections for abortion access across state lines, supporting state ballot initiatives, litigating in state courts, and mitigating harm wherever possible.

During 2023, the Center for Reproductive Rights tracked almost 2000 pieces of reproductive rights legislation in states across the country. Topics include reactions to *Dobbs,*[1] interstate shield laws, the FDA's regulation of mifepristone, statutory protections, proposed constitutional amendments, extension of postpartum Medicaid coverage, expanded access to midwives and doulas, protections for incarcerated pregnant people, fertility care

[1] *Dobbs v. Jackson Women's Health Org.*, 597 U.S (June 24, 2022), rev'd *Dobbs v. Jackson Women's Health Org.*, 945 F.3d 265, 274 (5th Cir. 2019).

coverage mandates, the regulation of surrogacy, paid family leave, and access to Temporary Assistance for Needy Families, a federally funded, state-run program that assists helps families financially.

This report highlights 2023 legislative trends impacting people's access to abortion care, maternal health care, and assisted reproduction. To begin, we examine interstate shield laws that protect abortion and transgender health care; abortion protections in state law; the allocation of state public funding for reproductive healthcare; and private insurance requirements concerning abortion and in-vitro fertilization. Next, we move to maternal health data; highlight the interplay of criminal law and reproductive health care access; policies surrounding minors; surrogacy; parental leave; and providers' scope of practice. Finally, the report details new abortion bans; cross-border restrictions; and barriers to care that hinder access to reproductive healthcare services. The report concludes with recommendations to ensure informed decision-making and a holistic picture of the current state of reproductive rights in the United States.

Interstate Shield: Abortion & Transgender Health Care

Interstate shield laws protect providers, helpers and patient records. Shown at the 2023 State Leadership Summit are Illinois Rep. Kelly Cassidy and Khadine Bennett, Director of Advocacy and Intergovernmental Affairs with the ACLU of Illinois discussing their experience advocating for Illinois's interstate shield law protecting reproductive rights and transgender care. Photo: Barry Brecheisen.

After oral arguments in the *Dobbs* case in December 2021 and in expectation of the Supreme Court overruling *Roe v. Wade*, states began introducing and enacting interstate shield legislation to protect providers, helpers, and patient medical records. This year, states built upon interstate shield laws enacted in 2022, expanding shield laws to include protections for transgender health care, data privacy, and clinic access. Notably, in 2023 four states (Colorado, New York, Vermont, and Washington) joined Massachusetts in enacting robust shield protections for providers who utilize telemedicine to provide care, regardless of the patient's location.[2] Interstate shield bills have also served as a vehicle to repeal existing restrictions, including parental consent requirements, and expand the scope of practice to permit advanced practice clinicians to provide care. As of December 1, 2023, 17 states and the District of Columbia have enacted shield laws.

[2] In 2023 California enacted a shield law aimed at protecting telemedicine providers offering care to patients outside of California. *See* S.B. 345, 2023 Leg., Reg. Sess. (Cal. 2023). However, the law does not include extradition protections, meaning California providers must rely on a 2022 Executive Order to shield them from extradition. Executive Orders are routinely repealed by new administrations with little public notice or attention, leaving telemedicine providers vulnerable to the whims of the political process and burdening them with additional legal risk and uncertainty. Absent a statutory protection for extradition, the Center does not consider California's telemedicine shield law to offer the same robust protections as those enacted in Massachusetts, Colorado, New York, Vermont, and Washington.

Common Components of Interstate Shield Laws

Extradition
Almost all interstate shield laws prohibit the governor from extraditing someone who provided or assisted in the provision of care that is legal in that state if they did not flee another jurisdiction.

Professional Penalties
Prohibits provider licensing boards from penalizing (suspending, revoking, fining, or refusing to license) a provider who provides care that is legal in that state.

Medical Malpractice Insurance
Prohibits medical malpractice insurance carriers from penalizing a provider based on the provision of care that is legal in that state.

Cooperation of state employees
Prohibits state employees from participating in or cooperating with investigations originating in other states regarding abortion or transgender health care. This prohibition typically includes sharing information, arresting people, expending any funds to cooperate with investigations or requests, or issuing summons or subpoenas.

Final judgments from other jurisdictions
Allows a person who has paid a civil penalty to recuperate those penalties ("clawback").

Privacy Protections
Prohibits covered entities or governmental agencies from releasing patient health information and medical records to further out-of-state investigations related to specific health care legal in the state (e.g., abortion care and/or transgender health care). Protections can include prohibiting the geofencing of health care facilities, including abortion clinics, and expanding address confidentiality programs to include reproductive health care workers, helpers, and patients.

Telehealth Provision of Abortion Care ("TeleMAB")
Protects providers who utilize telemedicine to provide medication abortion and other reproductive health care services across state lines to patients physically outside of the protected state.

Transgender Health Care
Most states with shield laws have protected transgender health care alongside reproductive health care, acknowledging that attacks on these two types of health care are ideologically motivated and originate in the same spaces.[3]

In 2023, 94 interstate shield bills were introduced in 21 states (California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Minnesota, Missouri, New Jersey, New Mexico, New York, Nevada, Ohio, Oregon, Pennsylvania, Vermont, Virginia, and Washington) and D.C. In the same session, 14 states (California,[4] Colorado,[5] Connecticut,[6] Hawaii,[7] Illinois,[8] Maine,[9] Maryland,[10] Minnesota,[11] New Mexico,[12] New York,[13] Nevada,[14] Oregon,[15] Vermont,[16] and Washington[17]) and D.C.,[18] enacted interstate shield bills.

3 Eleven states and D.C. have enacted shield laws protecting transgender health care. See https://www.lgbtmap.org/equality-maps/health-care/trans_shield_laws (Accessed on October 24, 2023).
4 S.B. 385, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. BUS. & PROF. Code § 3527.5) ; S.B. 487, 2023 Leg., Reg. Sess. (Cal. 2023) (*amending* CAL. HEALTH & SAFETY CODE § 123467.5, *to be codified at* § CAL. HEALTH & SAFETY CODE 1375.61, *to be codified at* CAL. INS. CODE § 10133.641, *amending* CAL. WELF. & INST. CODE §§ 14043.6, 14123); A.B. 1707, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. BUS. & PROF. CODE §§ 805.9, 850.1, CAL. HEALTH & SAFETY CODE §§ 1220.1, 1265.11); A.B. 571, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. INS. CODE §11.591); A.B. 352, 2023 Leg., Reg. Sess. (Cal. 2023) (*amending* CAL. CIV. CODE §§ 56.101, 56.108, to be codified at § Cal. Civ. Code 56.110, *amending* CAL. HEALTH & SAFETY CODE § 130290); A.B. 254, 2023 Leg., Reg. Sess. (Cal. 2023), (*amending* CAL. CIV. CODE §§ 56.05, 56.06). A.B. 1646, 2023 Leg., Reg. Sess. (Cal. 2023), (*amending* CAL. BUS. & PROF. CODE § 2065).. A.B. 1194, 2023 Leg., Reg. Sess. (Cal. 2023), (*amending* CAL. CIV. CODE §§ 178.99.31, 1798.145, 1798.185).
5 S.B. 23-188, 74th Leg., Reg. Sess. (Colo. 2023) (*amending* COLO. REV. STAT. §§ 104-4-109.6, 10-16-121, 10-16-705.7, 16-3-102, 16-3-301, 16-15-201,16-19-107, 17-1-114.5, 18-9-313, 24-30-2102, 24-30-2103, 24-30-2104, *to be codified at* COLO. REV. STAT. §§ 12-30-121, 13-1-140, 13-21-133, 13-64-402.5, 16-5-104, 18-13-133).
6 S.B. 3, 2023 Leg., Reg. Sess. (Conn. 2023) (*amending* CONN. GEN. STAT. ANN. §§ 42-515 to 42-525; H.B. 6820, 2023 Leg., Reg. Sess. (Conn. 2023).
7 S.B.1, 32nd Leg., Reg. Sess. (Haw. 2023), (*amending* HAW. REV. STAT. ANN. §§ 453-16, 457-8, 836-2, 442-9, 453-8, 455-11457-12, 461-21, Ch. 636C, 577A-1).
8 H.B. 4664 § 28-40, 102nd Gen. Assemb.., Reg. Sess. (Ill. 2022) (*codified at* 725 ILL. COMP. STAT. § 225/6, 225 ILL. COMP. STAT. 60/22(C)(3), 735 ILL. COMP. STAT. § 35/3.5, 775 ILL. COMP. STAT. § 55/1-25(d)).
9 L.D. 616, 131st Leg., Reg. Sess. (Me. 2023) (*to be codified at* ME. STAT. tit. 24-A, § 2159-F).
10 H.B. 808, 445th Leg., Reg. Sess. (Md. 2023) (*codified at* MD. CODE ANN., CTS. & JUD. PROC. §§ 9-302(b)(2), 9-402(a), 10-408(c)(5), 11-802(a), MD. CODE ANN., CRIM. PROC. § 9-106(b), MD. CODE ANN., HEALTH OCC. § 1-227, MD. CODE ANN., INS. § 19-117). H.B. 812, 455th Leg., Reg. Sess. (Md. 2023) (*codified at* MD. GEN. PROVIS. § 4-333, MD. CODE ANN., HEALTH-GEN. §§ 4-301(j)(2), 4-302.5, 4-310).
11 H.F. 366, 93rd Leg., Reg. Sess. (Minn. 2023) (*amending* MINN. STAT. ANN. §§147.091, 1.11, 147A.13, 148.261, 1.12, 151.071. 245C.15, 1.13 629.01, 629.02, 629.05, 629.06, 629.13, 629.14, *to be codified at* MINN STAT. ANN. § 1.14 Ch. 144, 548, 604).
12 S.B. 13, 56th Leg., First Sess. (N.M., 2023) (*to be codified at* N.M. STAT. ANN. § 24-35-1 through 24-35-8).
13 S.B. 1066B, 2023 Leg., Reg. Sess. (N.Y. 2023) (*amending* N.Y. CIV. PRAC. LAW §§ 3102, 3119, N.Y. CRIM. PRO. LAW §§ 140.10, 570.17, N.Y. EDUC. LAW § 6531-b, N.Y. EXEC. LAW § 837-x, N.Y. Ins. Law § 3436-a, *to be codified at* N.Y. CIV. PRAC. LAW § 4550). S 4007, 2023 Leg., Reg. Sess. (N.Y. 2023).
14 S.B. 131, 82nd Leg., Reg. Sess. (Nev., 2023) (*amending* NEV. REV. STAT. §§ 179, 232, 629).
15 H.B. 2002, 82nd Leg., Reg. Sess. (Or. 2023) (*amending* OR. REV. STAT. §§ 15.430, 109.640).
16 H 89, 2023 Leg., Reg. Sess. (Vt. 2023) (*codified at* VT. STAT. ANN. tit. 1, § 150, VT. STAT. ANN. tit. 12, ch. 221. § 7301 through 7306, VT. STAT. ANN. tit. 13 § 1033, VT. STAT. ANN. tit. 13 § 4970, VT. STAT. ANN. tit. 13 § 1033, VT. STAT. ANN. tit. 13 § 6650, amending VT. STAT. ANN. tit 15 § 1151). S 37, 2023 Leg., Reg. Sess. (Vt. 2023).
17 H.B. 1469, 68th Leg., Reg. Sess. (Wash. 2023) (*amending* WASH. REV. CODE §§ 5.51.020, 5.56.010, 9.73.040, 9.73.260, 10.55.020, 10.88.250, 10.88.320, 10.88.330, 10.96.020, 10.96.020, 10.96.040, 40.24.030). H.B. 1340, 68th Leg., Reg. Sess. (Wash. 2023) (*amending* WASH. REV. CODE §§ 18.130.180, 18.130.055, *to be codified at* WASH. REV. CODE § 18.130).
18 B 24-0830, 25th Council, Reg. Sess. (D.C. 2022) (*codified at* D.C. CODE ANN. §3-1205.01a).

Protecting Abortion in State Law

Within six months of the Supreme Court overturning *Roe v. Wade*, voters affirmed abortion rights in all six states where abortion was on the ballot, approving proactive reproductive freedom constitutional amendments in California, Michigan, and Vermont and rejecting ballot measures that would have restricted abortion rights in Kansas, Kentucky, and Montana. In 2023, Ohio became the seventh state to voter for abortion rights since *Dobbs*.

The Supreme Court's decision to overrule *Roe v. Wade*, the first time in the nation's history that the Court has revoked a fundamental right, pushed the U.S. into an expanding public health crisis. Lawmakers and advocates who support abortion rights acted swiftly to increase protections for abortion in state law. This section examines the legislation meant to protect abortion in state law, achieved through state constitutional amendments on abortion and state statutory protections for abortion.

State Constitutional Amendments on Abortion

State constitutional protections for abortion and reproductive freedom ensure that reproductive health care remains legal and accessible and prohibits anti-abortion lawmakers from enacting barriers or prohibitions on care. These protections can originate from state supreme court decisions or the approval of proposed state constitutional amendments at the ballot box. Constitutional amendments can be legislatively referred or, in states where the constitution allows, initiated by voters. While many states' constitutional amendments focus on protecting the right to abortion access, some go further and protect the right to make and carry out one's own reproductive decisions, including, for example, decisions on contraception, fertility treatment, prenatal care, and miscarriage care.

In 2023, state supreme courts in Indiana, North Dakota, and Oklahoma found that the state constitutions protect abortion rights when the pregnant person's life or health is at risk.[19] There was one voter-initiated constitutional amendment on a state ballot this year and two amendments were referred by legislators for general elections in 2024.

Ohio Reproductive Freedom Amendment

Voters in Ohio have gone to the polls twice in 2023 to protect reproductive rights. In August, voters overwhelmingly rejected an initiative that would have required 60% of voters rather than a simple majority to approve amendments to the state constitution. While proponents pretended that this initiative was unrelated to abortion, voters decried it as undemocratic and a targeted effort to block a constitutional right to abortion. In November 2023, 57% of voters approved a voter-initiated, proactive constitutional amendment, which adds Section 22 "The Right to Reproductive Freedom

[19] Indiana, *Members of the Med. Licensing Bd. of Ind. v. Planned Parenthood N.W. Haw.*, Alaska, Ind., Ky., No. 22S-PL-338 (Ind. Sup. Ct., Jun, 30, 2023). North Dakota, *Wrigley v. Romanick*, 2023 ND 50, ¶ 27, 988 N.W.2d 231, 242 (N.D. 2023). Oklahoma, *Okla. Call for Reproductive Justice et al. v. Drummond et al.*, Case No. 120,543 (Okla. Mar. 21, 2023). In January 2023, the South Carolina Supreme Court found that the state constitution includes protections for abortion as part of the state's right to privacy. S.C. Const. art. I, § 10; *Planned Parenthood S. Atl. v. South Carolina*, No. 28127 (S.C. Jan. 5, 2023) ("We hold that the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable, and implicates a woman's right to privacy."). In August 2023, the court allowed a six-week ban to stand, despite the acknowledgement that this ban infringes on the right to privacy and bodily autonomy, holding that a pregnant person's interest in their bodily autonomy is outweighed by the state's interest in fetal life. *Planned Parenthood S. Atl. v. South Carolina*, No. 2023-000896 (S.C. Aug. 23, 2023).

Ohio became the seventh state to vote in favor of abortion since the overturning of *Roe v. Wade* when voters approved the "Reproductive Freedom Amendment" to the state's constitution. The vote was "yet another demonstration that the majority of Americans support reproductive rights and want abortion to remain legal and accessible," said Elisabeth Smith, Director of U.S. State Policy & Advocacy at the Center for Reproductive Rights. Image: Ohioans United for Reproductive Rights.

with Protections for Health and Safety" to the state constitution. Modeled on Michigan's Proposition 3, this constitutional amendment ensures the right to reproductive decision-making.[20]

Legislatively Referred Constitutional Amendments

Efforts to enshrine abortion rights in state constitutions continued in 2023. This year, state legislatures sought to amend their state constitutions to expand or limit access to abortion by creating ballot initiatives to refer to voters according to rules in each state constitution. This section highlights protective and restrictive amendments considered this year.

In 2023, the Center monitored 22 bills in 16 states (Arkansas, Georgia, Hawaii, Illinois, Iowa, Maryland, Mississippi, Nebraska, New York, Nevada, Oklahoma, South Carolina, Texas, Virginia, Washington, and Wisconsin) seeking to amend state constitutions to protect or expand access to abortion. The Maryland[21] and New York[22] legislatures have each referred an amendment to the ballot, to appear during the 2024 elections. This year the Center monitored 14 bills in eight states (Alaska, Illinois, Kansas, Kentucky, Michigan, Missouri, Montana, and Oklahoma) seeking to amend state constitutions to limit access to abortion. However, none of these proposed amendments have yet to be referred to the ballot.

State Statutory Protections for Abortion

The *Dobbs* decision continues to embolden supportive state legislators to strengthen abortion rights in their states by making abortion a fundamental right under state law and/or creating antidiscrimination protections for pregnancy outcomes. In 2023, 20 states (Florida, Georgia, Hawaii, Maine, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South

20 Initiative Petition, *The Right to Reproductive Freedom with Protections for Health and Safety*, OHIO ATTORNEY GENERAL, The-Right-to-Reproductive-Freedom-with-Protections-for-Health-and-Safety.aspx (ohioattorneygeneral.gov).
21 H.B. 705, 445th Leg., Reg. Sess. (Md. 2023); S.B. 798, 445th Leg., Reg. Sess. (Md. 2023).
22 A. 1283, 2023 Leg., Reg. Sess. (N.Y. 2023); S 108, 2023 Leg., Reg. Sess. (N.Y. 2023).

Carolina, Tennessee, Texas, West Virginia, and Wisconsin) introduced 40 bills to codify abortion protections. Five states (Maine,[23] Michigan,[24] Minnesota,[25] New Mexico,[26] and Oregon[27]) enacted state statutory protections for abortion.

In response to federal litigation by anti-abortion advocates (see the popout on page #44) seeking to restrict or entirely invalidate the Food and Drug Administration's approval of mifepristone, the first pill in the two-pill medication abortion regimen, states supportive of abortion moved to specifically protect access to medication abortion through legislation and executive orders. In 2023, 12 states (Arizona, California, Connecticut, Illinois, Indiana, Massachusetts, Michigan, Mississippi, New York, Texas, Vermont, and Washington) and D.C. introduced 26 bills, including provisions protecting or expanding access to medication abortion. Connecticut,[28] New York,[29] and Washington[30] enacted such bills. In April, Massachusetts Governor Maura Healey signed an executive order[31] protecting access to medication abortion. As noted in the Interstate Shield section, states have enacted shield laws to include telemedicine protections for medication abortion across state lines.

23 L.D. 1343, 131st Leg. (Me. 2023) (*to be codified at* ME. STAT. tit. 22 §1598, sub-§1-A).
24 S.B. 147, 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §§ 37.2201, 37.2202), H.B. 4949, 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. §§ 750.90(h), 750.323, 333.108, 333.1091, 550.541–550.551).
25 H.F. 1, 93rd Leg., Reg. Sess. (Minn. 2023) (*to be codified at* MINN. STAT. ANN. § 145.409).
26 H.B. 7, 56th Leg., First Sess. (N.M. 2023); N.M. STAT. ANN. §§ 24-34-1 to 24-34-5.
27 H.B. 2002, 82nd Leg., Reg. Sess. (Or. 2023).
28 H.B. 6768, 2023 Leg. Reg. Sess. (Conn. 2023).
29 S 1213, 2023 Leg., Reg. Sess. (N.Y. 2023) (*codified at* N.Y. EDUC. LAW § 6438-b).
30 S.B. 5768, 68th Leg., Reg. Sess. (Wash. 2023) (*amending* WASH. REV. CODE 18.64.046, *to be codified at* WASH. REV. CODE § 72.09).
31 Mass. Exec. Order No. 2023-609 (Apr. 10, 2023), https://www.mass.gov/doc/bulletin-2023-10-executive-order-609-protecting-access-to-medication-abortion-services-in-the-commonwealth-issued-april-14-2023/download.

State Public Funding for Reproductive Health Care

Over 18 percent of adults nationwide receive Medicaid, a percentage that rises every year.[32] Despite this, states across the country limit Medicaid coverage and other public funding for abortion, allowing for coverage only in specific circumstances.[33] No states require the state Medicaid programs to cover fertility care, and there is a patchwork of coverage for vital maternal health services. There is much work to be done to ensure equitable access to reproductive health care. This year, states across the country took steps to ensure such access, enacting laws to provide for Medicaid coverage of abortion, assisted reproduction, and maternal health care. Additional states appropriated funding for abortion providers and abortion support organizations to increase access to care. This section examines funding for abortion care, fertility care, maternal health care, mental health care coverage, and Temporary Assistance for Needy Families (TANF) program amendments, highlighting the ways that states bolster or limit support for reproductive healthcare.

Abortion Funding

To increase abortion access, states can appropriate money to programs that assist in abortion care. States can also expand access to abortion through Medicaid or other medical assistance programs.

In 2023, 23 states (Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, and Washington) introduced 93 bills to expand state public funding for abortion including state Medicaid or medical assistance coverage for abortion services, state funding for abortion training and programs, and grants to abortion funds and facilities. California,[34] Delaware,[35] Oregon,[36] and Washington[37] all enacted laws that appropriated funds for abortion care, while Connecticut,[38] Maryland,[39] and New York[40] required universities to develop programs to ensure students could access reproductive health care. Finally, Minnesota,[41] Rhode Island,[42] and Vermont,[43] enacted laws that provided for, or amended, state Medicaid coverage of abortion care.

32 Katherine Keisler-Starkey & Lisa N. Bunch, *Health Insurance Coverage in the United States: 2021*, United States Census Bureau (Sep. 13, 2022) https://www.census.gov/library/publications/2022/demo/p60-278.html.
33 Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans* KAISER FAMILY FOUNDATION (Jun. 24, 2019) https://www.kff.org/womens-health-policy/issue-brief/coverage-for-abortion-services-in-medicaid-marketplace-plans-and-private-plans/.
34 A.B. 103, 2023 Leg., Reg. Sess. (Cal. 2023).A.B. 101, 2023 Leg., Reg. Sess. (Cal. 2023). S.B. 118, 2023 Leg., Reg. Sess. (Cal. 2023). S.B. 104, 2023 Leg., Reg. Sess. (Cal. 2023). S.B. 105, 2023 Leg., Reg. Sess. (Cal. 2023).
35 H.B. 197, 152nd Gen. Assemb., Reg. Sess. (Del. 2023).
36 S.B. 490 § 2, 82nd Leg., Reg. Sess. (Or. 2023).
37 S.B. 5242, 68th Leg., Reg. Sess. (Wash. 2023) (*to be codified at* WASH. REV. CODE § 41.05).
38 S.B. 1108 2023 Leg., Reg. Sess. (Conn. 2023).
39 S.B. 341, 445th Gen. Assemb., Reg. Sess. (Md. 2023).
40 A 1395, 2023 Leg., Reg. Sess. (N.Y. 2023) (*codified at* N.Y. EDUC. LAW § 6438-b).
41 S.F. 2995, 93rd Leg., Reg. Sess. (Minn. 2023) (*amending* MINN. STAT. ANN. § 256B.764).
42 H.B. 5006, 2023 Leg., Reg. Sess. (R.I. 2023) (*amending* 42 R.I. GEN. LAWS § 42-12.3-3, *repealing* 36 R.I. GEN. LAWS § 36-12-2.1.
43 S 37, 2023 Leg., Reg. Sess. (Vt. 2023).

Extending Medicaid coverage to 12 months postpartum would reduce maternal mortality and morbidity. Shown discussing Medicaid coverage at the State Leadership Summit are: top row: Bella Pori (State Legislative Counsel, Center for Reproductive Rights), W. Boyd Jackson (Committee on Health of the Council of the District of Columbia), seated: Shayla (Our Justice), Tina Sherman (MomsRising), Cat Duffy (National Health Law Program), Lee Hasselbacher (Center for Interdisciplinary Inquiry and Innovation in Sexual and Reproductive Health). Photo: Barry Brecheisen.

Fertility Care

While there are no explicit prohibitions concerning Medicaid coverage of fertility care as there are for abortion services, no state includes in vitro fertilization (IVF) in their covered services for Medicaid enrollees. Legislation introduced this year would create fertility care coverage mandates that apply to Medicaid as well as private insurance. The District of Columbia's fertility care coverage mandate, enacted this year, provides for state Medicaid coverage for the diagnosis of infertility and for medically necessary ovulation enhancing drugs. It further provides coverage for the medical services related to prescribing and monitoring the use of such drugs, including at least three cycles of ovulation-enhancing drugs.[44] New Jersey introduced, but did not pass, a similar bill.

44 B. 25-0034 § 2(c)(1), 25th Council, Reg. Sess. (D.C. 2023) (*to be codified at* D.C. CODE § 31-384.06(c)(1)).

Several fertility care coverage mandates took a more comprehensive approach, providing Medicaid coverage for all forms of fertility care. Though not enacted, bills to provide state Medicaid coverage of fertility care were introduced in three states (Connecticut, Massachusetts, and Pennsylvania). This activity suggests that states are closer to comprehensive mandates for fertility care coverage that may include Medicaid beneficiaries who are by and large shut out of access to the fertility care they need to build their families.

Additionally, Montana enacted a bill that would provide state Medicaid coverage for fertility preservation services for all people diagnosed with cancer.[45] Two states, Massachusetts and Pennsylvania introduced, but did not pass, bills that would require similar coverage of fertility preservation services for people at risk of infertility due to cancer or other medical conditions.

Finally, Maryland enacted a law that provides for state Medicaid coverage for fertility preservation services for people accessing transgender health care.[46] The law explicitly provides fertility preservation coverage for transgender people and includes state Medicaid coverage of this care, demonstrating inclusive and equitable coverage that other fertility preservation bills should emulate. While the Maryland law primarily covers transgender health care and only incidentally covers fertility preservation, the type of coverage provided to transgender people under the law marks a stride toward non-discriminatory access to fertility care. It is difficult to say if one bill signals a trend, but as transgender rights continue to be threatened, bills like this may begin appearing in states that have already taken steps to protect access to transgender health care.

Maternal Health Care

Medicaid covers four in 10 births in the United States,[47] and in some states more than half of all births are covered by Medicaid.[48] Medicaid coverage often falls short of assuring access to the health care that people need, including during the pregnancy and postpartum periods. In some states, Medicaid coverage ends 60 days after a person gives birth, a time when people are still at risk of pregnancy-related deaths and other health complications. In most states, the Medicaid program does not cover doula

45 S.B. 516 § 8, 68th Leg., Reg. Sess. (Mont. 2023).
46 H.B. 283/S.B. 460 § 1, 445th Gen. Assemb., Reg. Sess. (Md. 2023) (*to be codified at* MD. CODE. ANN. HEALTH-GEN. § 15-151(A)(2)(II)(8)).
47 Usha Ranji, Ivette Gomez, and Alina Salganicoff, *Expanding Postpartum Medicaid Coverage,* KAISER FAMILY FOUNDATION (Mar. 9, 2022), https://www.kff.org/womens-health-policy/issue-brief/expanding-postpartum-medicaid-coverage/.
48 *Births Financed by Medicaid,* KAISER FAMILY FOUNDATION https://www.kff.org/medicaid/state-indicator/births-financed-by-medicaid/ (last accessed Aug. 7, 2023).

services. Coverage of midwifery services varies widely across states. Even when midwifery services are covered, midwives are reimbursed at a lower rate than other maternity care providers. This year, states across the country took steps to address existing gaps in care.

Postpartum Medicaid Extension

Currently, Medicaid must cover pregnant people for 60 days postpartum.[49] Many of the leading causes of maternal mortality and severe maternal morbidity, however, occur later in the postpartum period.[50] For instance, cardiac conditions are a leading cause of maternal death and can appear throughout the postpartum year.[51] Access to healthcare during the postpartum period is essential for the identification and treatment of cardiac and other health conditions that can appear during and after pregnancy.

The American Rescue Plan Act of 2021 allowed states the option to extend Medicaid eligibility from 60 days to up to 12 months postpartum.[52] Extending Medicaid coverage for up to a year postpartum minimizes disruptions in care and can alleviate maternal mortality and morbidity.

This year, five states (Alaska,[53] Mississippi,[54] Missouri,[55] New Hampshire,[56] and Texas,[57]) passed 12-month postpartum Medicaid extensions (PPME) without expiration dates or other limiting conditions. Wyoming extended Medicaid coverage for 12 months postpartum, but only authorized that coverage through March 31, 2027.[58]

Finally, Utah extended Medicaid coverage for 12 months postpartum, but only for people whose pregnancies end in a live birth, a stillbirth or a miscarriage.[59] People whose pregnancies end through abortion can only access extended Medicaid coverage if the abortion was to avert their death, prevent a serious risk of substantial and irreversible impairment of a major bodily function, if the pregnancy was due to rape or incest, or if the fetus received a fatal fetal diagnosis.[60]

Four states (Arkansas, Georgia, Tennessee, and Texas), introduced, but did not pass, legislation to limit eligibility for extended postpartum coverage to people whose pregnancies end in a live birth. These four states already extended coverage to 12 months. A similar amendment was included, and then removed, in the PPME legislation that was eventually passed in Missouri.

49 Usha Ranji, Ivette Gomez, and Alina Salganicoff, *Expanding Postpartum Medicaid Coverage,* KAISER FAMILY FOUNDATION (Mar. 9, 2022), https://www.kff.org/womens-health-policy/issue-brief/expanding-postpartum-medicaid-coverage/.
50 Ai-ris Y. Collier and Rose L. Molina, *Maternal Mortality in the United States: Updates on Trends, Causes, and Solutions,* 20 NEOREVIEWS 561 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7377107/.
51 Ai-ris Y. Collier and Rose L. Molina, *Maternal Mortality in the United States: Updates on Trends, Causes, and Solutions*, 20 NEOREVIEWS 561 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7377107/.
52 Sarah Gordon et al., *Medicaid After Pregnancy: State-Level Implications of Extending Postpartum Coverage,* U.S. DEPT. OF HEALTH AND HUM. SERV. (DEC. 7, 2021), https://aspe.hhs.gov/reports/potential-state-level-effects-extending-postpartum-coverage.
53 S.B. 58 § 2, 33rd Leg., Reg. Sess. (Alaska 2023) (*to be codified at* ALASKA STAT. § 47-07-020(o)).
54 S.B. 2212 § 1, 138th Leg., Reg. Sess. (Miss. 2023) (*to be codified at* MISS. CODE ANN. § 43-13-115(28)).
55 S.B. 45 § A, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023) (*to be codified at* MO. REV. STAT. § 208.662(6)(2)(a)).
56 H.B. 2 § 79:412, 168th Gen. Ct., Reg. Sess. (N.H. 2023) (*to be codified at* N.H. REV. STAT. ANN. § 167:68(IV)(a)).
57 H.B. 12 § 2, 88th Leg., Reg. Sess. (Tex. 2023) (*to be codified at* TEX. HUM. RES. CODE ANN. § 32.024(1-1)(2)).
58 H.B. 4 § 2, 67th Leg., Reg. Sess. (Wyo. 2023).
59 S.B. 133 § 2, 65th Leg., Reg. Sess. (Utah 2023) (*to be codified at* UTAH CODE ANN. § 26B-3-201(2)).
60 S.B. 133 § 2, 65th Leg., Reg. Sess. (Utah 2023) (*to be codified at* UTAH CODE ANN. § 26B-3-201(2)(iv)).

Four states (Idaho, Iowa, Nebraska, and Wisconsin), introduced, but did not pass, legislation to extend postpartum Medicaid coverage to twelve months. Kentucky and New York, states that already have extended coverage, introduced, but did not pass, legislation to extend Medicaid for up to two years postpartum.

States that have not yet extended Medicaid will likely introduce bills within the next few years, leading to extended postpartum coverage in all states. However, states may also pass or introduce PPME legislation that excludes people whose pregnancies end in abortion. Mixed bills, providing some support for maternal health while also stigmatizing or excluding people who have abortions, were more common this year and will likely continue. However, given that seven bills extending Medicaid coverage were enacted this year and only one contained restrictions, this trend is not inevitable.

Doula Care

As previously mentioned, the services available to Medicaid recipients vary widely by state, and often do not include doula care. Pregnant people who receive doula care are less likely to experience a cesarean delivery and are less likely to develop postpartum depression or postpartum anxiety.[61] Without Medicaid reimbursement of doula services, this support is out of reach for low-income people. Additionally, only a handful of states are currently providing Medicaid reimbursement to doulas.[62] This year, five states (including Colorado,[63] Delaware,[64] New Hampshire,[65] New York,[66] and Ohio,[67]) enacted laws to provide Medicaid coverage of doula services. Minnesota enacted a law to increase reimbursement rates for doulas.[68]

California[69] and Nevada[70] enacted laws to amend their existing Medicaid coverage programs for doulas. Sixteen other states (including Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Missouri, North Carolina, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin) introduced, but did not pass, bills to provide Medicaid coverage of doula services. Altogether, around half the states introduced or enacted a bill related to Medicaid coverage of doula services. This is a dramatic increase in bills from last year, when very few states introduced these bills and only two doula Medicaid coverage bills were enacted. Medicaid coverage of doula services is a fast-growing issue, and it is expected that many states will continue to introduce and pass these bills in the coming years.

61 April M. Falconi, Samantha G. Bromfield, Truc Tang, Demetria Malloy, Denae Blanco, Susan Disciglio, et al., *Doula care across the maternity care continuum and impact on maternal health: Evaluation of doula programs across three states using propensity score matching*, THE LANCET'S ECLINICALMEDICINE (Jul. 1, 2022) https://doi.org/10.1016/j.eclinm.2022.101531; Mariann Hutti, *Using Doula Services Can Reduce Maternal Mortality,* UK HEALTHCARE (Apr. 18, 2022), https://uknow.uky.edu/uk-healthcare/using-doula-services-can-reduce-maternal-mortality.
62 Amy Chen, *Current State of Doula Medicaid Implementation Efforts in November 2022*, NATIONAL HEALTH LAW PROGRAM (Nov. 14, 2022) https://healthlaw.org/current-state-of-doula-medicaid-implementation-efforts-in-november-2022/; Anoosha Hasan, *State Medicaid Approaches to Doula Service Benefits*, NATIONAL ACADEMY FOR STATE HEALTH POLICY (Apr. 10, 2023) https://nashp.org/state-medicaid-approaches-to-doula-service-benefits/.
63 H.B. 23-288 § 2(6), 74th Gen. Assemb., Reg. Sess. (Colo. 2023) (*to be codified at* COLO. REV. STAT. ANN. § 25.5-4-506(6)).
64 H.B. 80 § 1, 152nd Gen. Assemb., Reg. Sess. (Del. 2023) (*to be codified at* DEL. CODE ANN. tit. 31 § 530(b)).
65 H.B. 2 § 79:415, 168th Gen. Ct., Reg. Sess. (N.H. 2023) (*to be codified at* N.H. REV. STAT. ANN. § 126-A:99(I)).
66 A. 5435/S. 1867, 2023 Leg., Reg. Sess. (N.Y. 2023) (*to be codified at* N.Y. PUB. HEALTH LAW § 2594-a).
67 H.B. 33, 135th Gen. Assemb., Reg. Sess. (Ohio 2023) (*to be codified at* OHIO REV. CODE ANN. § 5164.071(B)).
68 S.F. 2995 § 33, 93rd Leg., Reg. Sess. (Minn. 2023) (*to be codified at* MINN. STAT. § 256B.758(b)).
69 A.B. 118 § 140, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. WELF. & INST. CODE § 14105.201(a)(1)(B)).
70 A.B. 283 § 1, 82nd Leg., Reg. Sess. (Nev. 2023) (*to be codified at* NEV. REV. STAT. § 422.27177(5)).

Midwifery Care

Unlike doula care, all states provide Medicaid reimbursement of midwifery care, but some states reimburse midwives at a lower rate than physicians, even if midwives provide the same care.[71] In addition, several states do not provide Medicaid coverage for home births, or restrict this coverage to certain types of licensed midwives.[72] Louisiana enacted a bill that requires its Medicaid program to reimburse midwives 95% of the amount that physicians receive from Medicaid for providing the same services.[73] Montana enacted a bill that requires its Medicaid program to cover planned home births that are attended by certified nurse midwives or direct-entry midwives.[74]

Four other states (including Alaska, Kentucky, Maine, and New York) introduced, but did not pass, bills to amend Medicaid coverage of midwifery services. As states enact bills to expand eligibility for midwifery licensure and generally increase access to midwifery care, more legislation will likely be introduced to address Medicaid reimbursement. Legislation may address reimbursement parity, reimbursement for services that midwives perform outside of a hospital, and expansion of reimbursement eligibility to all midwives, not just certified nurse midwives.

Mental Health Care Coverage

Mental healthcare is difficult to access, especially for Medicaid recipients. Arkansas enacted a law this year to require Medicaid coverage of depression screenings for pregnant people.[75] Kentucky enacted a law to provide information about perinatal mood disorders on a state website.[76] Nine other states (including Connecticut, Hawaii, Indiana, Massachusetts, Michigan, Missouri, New York, Tennessee, and Texas) introduced, but did not pass, laws that would have provided coverage for mental health screening and treatment. Addressing mental health is a complex endeavor and will require commitment and resources. Bills that cover screening but do not connect people to affordable treatment and support are not responsive to the crisis. Much like last year, states are responding to this issue with piecemeal legislation, a trend that will likely continue in subsequent legislative sessions.

Almost 23% of pregnancy-related deaths in the United States are caused by mental health conditions (including deaths from suicide and some overdoses related to substance use disorder).[77] Mental health conditions

71 *Midwife Medicaid Reimbursement Policies by State,* NATIONAL ACADEMY FOR STATE HEALTH POLICY (Apr. 23, 2023) https://nashp.org/midwife-medicaid-reimbursement-policies-by-state/.
72 Usha Ranji, Ivette Gomez, and Alina Salganicoff, *Medicaid Coverage of Pregnancy-Related Services: Findings from a 2023 State Survey,* KAISER FAMILY FOUNDATION (May 19, 2022), https://www.kff.org/report-section/medicaid-coverage-of-pregnancy-related-services-findings-from-a-2021-state-survey-report/.
73 S.B. 135 § 1, 2023 Leg., Reg. Sess. (La. 2023) (*to be codified at* LA. STAT. ANN. § 46:451(B)).
74 H.B. 655 § 3, 68th Leg., Reg. Sess. (Mont. 2023) (*to be codified at* MONT. CODE ANN. § 53-6-101(3)(p)).
75 H.B. 1011 § 1, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. § 20-77-148(a)).
76 S.B. 135 § 1, 2023 Leg., Reg. Sess. (Ky. 2023) (*to be codified at* KY. REV. STAT. ANN. § 211-122(1)(a)).
77 Susanna Trost, Jennifer Beauregard, Gyan Chandra, Fanny Nije, Jasmine Berry, Alyssa Harvey, and David A. Goodnman, *Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 36 U.S. States, 2017-2019,* CENTERS FOR DISEASE CONTROL AND PREVENTION (Sep. 19, 2022) https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/data-mmrc.html.

are the leading cause of pregnancy-related death, and the majority of these deaths are preventable.[78] Given this context, it is harmful that while many abortion bans include health exceptions for physical conditions, they exclude mental health as a qualifying condition for receiving emergency abortion care.

Temporary Assistance for Needy Families (TANF) Amendments

Medicaid is not the only program that provides support for pregnant people and their families. Temporary Assistance for Needy Families (TANF) provides financial assistance to families for a set period of time, which varies from state to state.[79] Unlike Medicaid, TANF has strict work requirements. Though the program was created as part of the 1996 Welfare Act,[80] with the claim of lifting families out of poverty through work, TANF has been remarkedly less effective at protecting children from poverty than previous cash assistance programs.[81] This is in part because TANF is informed by racist ideas that seek to control Black women and their reproductive lives.[82]

Removing Family Caps

TANF benefits are based on family size as of the date someone applies to receive benefits.[83] Family caps, however, deny families incremental increases if they have another child while receiving TANF.[84] Originally, close to half of all states had family caps; prior to this year's legislative session only 12 states still enforced this policy.[85] This year, three states, (Georgia,[86] Indiana,[87] and North Dakota,[88]) enacted legislation this year to remove the state's family cap. No other states introduced similar legislation. Three states repealing their family caps in the same year could signal a positive trend that may inspire the nine remaining states to introduce similar legislation in subsequent legislative sessions.

Expanding TANF Eligibility

Whether a person with no other children can be eligible for TANF at the start of their pregnancy varies from state to state. Some states allow people to access TANF benefits once they realize they are pregnant, while some others require the person to give birth before they can access the benefits. Still others allow pregnant people to access TANF, but only after a certain point in the pregnancy, which varies widely from state to state. This

78 Susanna Trost, Jennifer Beauregard, Gyan Chandra, Fanny Nije, Jasmine Berry, Alyssa Harvey, and David A. Goodnman, *Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 36 U.S. States, 2017-2019*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Sep. 19, 2022) https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/data-mmrc.
79 *Policy Basics: Temporary Assistance for Needy Families,* CENTER ON BUDGET AND POLICY PRIORITIES (Mar. 1, 2022) https://www.cbpp.org/research/income-security/temporary-assistance-for-needy-families.
80 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105 (1996) (*codified at* 42 U.S.C. A. § 1305).
81 Ife Floyd, Ladonna Pavetti, Laura Meyer, Ali Safawi, Liz Schott, Evelyn Bellew, and Abigail Magnus, TANF Policies Reflect Racist Legacy of Cash Assistance, Center on Budget and Policy Priorities (Aug. 4, 2021) https://www.cbpp.org/research/income-security/tanf-policies-reflect-racist-legacy-of-cash-assistance.
82 Policy Basics: Temporary Assistance for Needy Families, Center on Budget and Policy Priorities (Mar. 1, 2022) https://www.cbpp.org/research/income-security/temporary-assistance-for-needy-families.
83 Ife Floyd, Ladonna Pavetti, Laura Meyer, Ali Safawi, Liz Schott, Evelyn Bellew, and Abigail Magnus, *TANF Policies Reflect Racist Legacy of Cash Assistance,* CENTER ON BUDGET AND POLICY PRIORITIES (Aug. 4, 2021) https://www.cbpp.org/research/income-security/tanf-policies-reflect-racist-legacy-of-cash-assistance.
84 Ife Floyd, Ladonna Pavetti, Laura Meyer, Ali Safawi, Liz Schott, Evelyn Bellew, and Abigail Magnus, *TANF Policies Reflect Racist Legacy of Cash Assistance,* CENTER ON BUDGET AND POLICY PRIORITIES (Aug. 4, 2021) https://www.cbpp.org/research/income-security/tanf-policies-reflect-racist-legacy-of-cash-assistance.
85 *Policy Basics: Temporary Assistance for Needy Families,* CENTER ON BUDGET AND POLICY PRIORITIES (Mar. 1, 2022) https://www.cbpp.org/research/income-security/temporary-assistance-for-needy-families.
86 H.B. 129 § 7, 157th Gen. Assemb., Reg. Sess. (Ga. 2023).
87 S.B. 265 § 14, 123rd Gen. Assemb., Reg. Sess. (Ind. 2023) (*repealing* IND. CODE § 12-14-2-5.3).
88 S.B. 2181 § 1, 68th Leg., Reg. Sess. (N.D. 2023) (*repealing* N.D. CENT. CODE § 50-09-29(1)(w)).

year, four states (Georgia,[89] Indiana,[90] North Dakota,[91] and Oklahoma[92]) expanded eligibility for TANF to allow people with no other children to obtain these benefits at the start of their pregnancy.

Three other states, (North Carolina, Rhode Island, and Wisconsin,) introduced, but did not pass, legislation to expand eligibility for TANF.

Restrictions on State Public Funding for Abortion

Some states have continued to increase public funding for abortion care whereas other states continue to limit the accessibility of care through funding restrictions, further illustrating the polarized nature of reproductive health policies in the U.S. following the *Dobbs* decision.

In 2023, state legislators introduced 101 state public funding restrictions in 33 states (Alabama, Alaska, Arkansas, Colorado, Florida, Idaho, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming). These bills increase restrictions on Medicaid funding including provider reimbursement, prohibiting the use of government property for providing abortion care, and limit state funding for other abortion services. Arkansas,[93] Florida,[94] Iowa,[95] Kansas,[96] Montana,[97] Tennessee,[98] and Texas[99] enacted such legislation.

One alarming trend was the introduction of legislation prohibiting corporations that contract with the state from engaging in economic boycotts to oppose the state's restrictions on abortion access. Efforts to prohibit economic boycotts are likely motivated by anti-abortion politicians' recognition of the business community's power in furthering access to abortion for their employees and part of a growing effort to restrict residents of banned states from seeking out-of-state care. In 2023, 14 states introduced 23 bills prohibiting economic boycotts. Alabama,[100] Kansas,[101] and Utah[102] enacted such prohibitions. States also moved to prohibit state funding, including expenditures by municipalities, from assisting residents with obtaining out-of-state abortion care.

89 H.B. 129 § 3, 157th Gen. Assemb., Reg. Sess. (Ga. 2023) (*to be codified at* GA. CODE ANN. § 49-4-181(6)).
90 S.B. 265 § 1, 123rd Gen. Assemb., Reg. Sess. (Ind. 2023) (*to be codified at* IND. CODE § 12-14-1-1(f)).
91 S.B. 2181 § 1, 68th Leg., Reg. Sess. (N.D. 2023) (*to be codified at* N.D. CENT. CODE § 50-09-29(1)(a)).
92 H.B. 1932 § 1, 59th Leg., Reg. Sess. (Okla. 2023) (*to be codified at* OKLA. STAT. tit. 56 § 230.25(9)).
93 S.B. 466, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. § 6-18-2203(4). S.B. 307, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. §§ 19-5-1158(c); 22-3-223.
94 S.B. 300, 125th Leg., Reg. Sess. (Fla. 2023) (*to be codified at* FLA. STAT. § 390.0111).
95 S.F. 561, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (*to be codified at* IOWA CODE § 1131-28-8).
96 H.B. 2060, 90th Leg. Sess., Reg. Sess. (Ka. 2023) (*to be codified at* KAN. STAT. ANN. §§ 76-383(2)(g); 76-385(2), (6)(h).
97 H.B. 544, 68th Leg., Reg. Sess. (Mont. 2023) (*to be codified at* MONT. CODE ANN. § 53-4-1005. H.B. 862, 68th Leg., Reg. Sess. (Mont. 2023).
98 S.B. 600, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023) (*to be codified at* TENN. CODE ANN. §§ 5-9-1; 6-56-1; 7-3-1).
99 H.B. 12, 88th Leg. Sess., Reg. Sess. (Tex. 2023).
100 S.B. 261, 2023 Leg., Reg. Sess. (Ala. 2023).
101 H.B. 2100, 90th Leg. Sess., Reg. Sess. (Kan. 2023) (*to be codified at* KAN. STAT. ANN. § 74-4921(1)(4)(H), (1)(7)(c)(iv), (2)(a), (3)(a)).
102 S.B. 97, 65th Leg., Gen. Sess. (Utah 2023) (*to be codified at* UTAH CODE ANN. §§ 76-7-302, 304; 76-7a-201).

Private Insurance Requirements for Abortion, IVF, and Doula Services

Private insurance policies have a profound impact on individuals' ability to access and afford a range of crucial reproductive healthcare services. Reproductive health care can be difficult to access even for people with private insurance. Not all insurance plans are required to provide coverage for abortion, and indeed some states have laws that prevent even private insurance from providing coverage for abortion care.[103] Few states require private insurance plans to provide coverage of fertility care, including IVF, and certain types of maternal health care are also not covered by insurance. This year saw the expansion of private insurance coverage of reproductive health care in several states.

Private insurance coverage of reproductive healthcare services is a critical component of accessibility. This section reviews developments in private coverage requirements for individuals seeking to exercise their reproductive rights.

Abortion Coverage

Legislation that expands private insurance coverage for abortion does so in two ways: First, bills could repeal provisions prohibiting abortion from being covered by private insurance. Second, bills could create requirements for the provision of abortion care by private insurance providers. In 2023, 15 states (California, Colorado, Delaware, Georgia, Hawaii, Illinois, Kansas, Maine, North Carolina, Rhode Island, South Carolina, Texas, Vermont, and Washington) introduced 31 bills to either require private insurance providers to cover abortion care or to expand already existing coverage of abortion care by private insurance providers. Five states (Colorado,[104] Illinois,[105] Maine,[106] Vermont,[107] and Washington[108]) enacted legislation.

IVF Coverage

A single cycle of IVF can cost an average of $20,000, leaving the procedure out of reach for most people without insurance coverage.[109] Only 14 states

103 Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans* KAISER FAMILY FOUNDATION (Jun. 24, 2019) https://www.kff.org/womens-health-policy/issue-brief/coverage-for-abortion-services-in-medicaid-marketplace-plans-and-private-plans/.
104 S.B. 23-189, 74th Leg., Reg. Sess. (Co. 2023) (*amending* COLO. REV. STAT. ANN. § 10-16-104).
105 H.B. 4664 § 27-5(a), 102nd Gen. Assemb. Leg., Reg. Sess. (Ill. 2022) (codified at 215 Ill. Comp. Stat. 5/365z.4a(a), 215 Ill. Comp. Stat. 356z.4a(a). S.B. 1344, 2022 Leg., Reg. Sess. (Ill. 2023) (*amending* 215 ILL. COMP. STAT. 5/356z.60(b)).
106 L.D. 935, 131st Leg., Reg. Sess. (Me. 2023) (*amending* ME. STAT. tit. 24-A § 4320-M, sub-§2, *to be codified at* ME. STAT. tit. 24-A § 4320-M, sub-§2-A).
107 S 37, 2023 Leg., Reg. Sess. (Vt. 2023).
108 S.B. 5242, 68th Leg., Reg. Sess. (Wash. 2023) (*amending* WASH. REV. CODE §48.43.073).
109 Cost of IVF: Cost Components, FERTILITYIQ.https://www.fertilityiq.com/ivf-in-vitro-fertilization/costs-of-ivf#costcomponents (last accessed Jun. 2, 2022).

and the District of Columbia, however, have insurance mandates that require insurance plans to cover IVF[110] and some of these existing mandates are not inclusive of single individuals and LGBTQ couples, leaving them unable to access fertility care. Several mandates use the Centers for Disease Control and Prevention (CDC) definition of infertility, which it defines as the inability to become pregnant after one year of unprotected sexual intercourse for people under 35 years old, and after six months for people 35 years old or older.[111] This clinical definition of infertility, however, fails to recognize social infertility, wherein a person does not have a partner or where a couple does not have the necessary gametes to procreate. Mandates that only provide coverage for people who meet the clinical definition of infertility often leave single people and same-sex couples unable to access IVF care or require them to demonstrate clinical infertility by undergoing a pre-determined number of unsuccessful rounds of intrauterine insemination (IUI). IUI may be less expensive than IVF, but it is often not covered by insurance.

In 2023, the District of Columbia became the fifteenth jurisdiction to pass a fertility care insurance mandate that includes IVF.[112] This mandate covers both clinical and social infertility and requires insurers to cover at least three complete oocyte retrievals.[113] Twelve states, (including Minnesota, Mississippi, Missouri, North Dakota, Oregon, Pennsylvania, South Carolina, Vermont, Virginia, Washington, West Virginia, and Wisconsin) introduced, but did not pass, fertility care insurance mandates. Of those 12 states, nine would have included coverage for people experiencing social infertility. The broad trend of these mandates being inclusive of social infertility, identified last year, continues. Mandates that place restrictions on who is eligible for care, or what type of employers must provide care, continue to be less common.

This trend is further supported by states that introduced or passed amendments to their existing fertility care coverage mandates. Illinois' fertility care coverage mandate previously only applied to private insurers. An amendment enacted this year requires the State Employee Group Insurance Program to also provide coverage of fertility care.[114] People experiencing clinical and social infertility can access this coverage, which includes IVF and preimplantation genetic testing.[115]

110 *Insurance Coverage by State*, RESOLVE https://resolve.org/learn/financial-resources-for-family-building/insurance-coverage/insurance-coverage-by-state/ (last accessed on Jul. 24, 2023).
111 *What is infertility?* DIVISION OF REPRODUCTIVE HEALTH, NATIONAL CENTER FOR CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION, Mar. 1, 2022 https://www.cdc.gov/reproductivehealth/infertility/index.htm.
112 B. 25-0034, 25th Council, Reg. Sess. (D.C. 2023).
113 B. 25-0034 § 2(b), (i), 25th Council, Reg. Sess. (D.C. 2023) (*to be codified at* D.C. CODE § 31-384.06(b)(2)(A), (i)(2)).
114 H.B. 3817 § 6.11B(a), 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) (*to be codified at* 5 ILL. COMP. STAT. 375/6.11B(a)).
115 H.B. 3817 § 6.11B(b)(1), (c), (d), 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) (*to be codified at* 5 ILL. COMP. STAT. 375/6.11B(c)(1), (2)).

Seven states (California, Connecticut, Hawaii, Illinois, New Jersey, New York, and Texas) introduced, but did not pass, amendments to fertility care coverage mandates. These proposed amendments included both bills that would make it easier to access IVF and bills that would expand who could obtain fertility care. These bills, both those introduced and those enacted, continue a trend identified last year of states improving their fertility care coverage mandates to provide broader access to care, reduce waiting periods, and eliminate the requirement to first pursue less expensive alternatives. The discriminatory and restrictive provisions in many existing state mandates are out of step with the fertility care coverage mandates that have passed in recent years, so it is likely amendments that expand access to non-discriminatory fertility care will continue to be introduced.

Fertility Preservation Coverage

IVF is not the only type of fertility care that should be covered by insurance. Fertility preservation involves cryopreserving oocytes, sperm, embryos, or other reproductive tissue. Fertility preservation services are used by people undergoing medical treatments that could impact their fertility, people wishing to delay having biological children, or people needing to pursue fertility care due to genetic or other medical conditions. Fertility preservation procedures are frequently not covered by insurance and can

Insurance mandates to improve affordability and access to fertility care were discussed by Polly Crozier (GLBTQ Legal Advocates & Defenders), Agbo Ikor (SPARK Reproductive Justice Now), Katherine Kraschel (Northeastern University), Betsy Campbell (RESOLVE: The National Infertility Association), and Stephanie Jones (Michigan Fertility Alliance)at the State Leadership Summit. Panelists also discussed legalization and regulation of surrogacy. Photo: Barry Brecheisen.

be cost-prohibitive, particularly for people who are already undergoing other costly necessary medical care.

Like fertility care coverage mandates, the way "fertility patients" are defined in laws impact who can access coverage. There are many medical treatments that impact a person's fertility but bills frequently limit coverage to only people undergoing cancer treatment. Fertility preservation coverage should be inclusive and reflect the many reasons people may need or want to preserve their fertility, including people undergoing medical treatment that may pose a risk to their fertility, such as transgender health care.

This year, seven fertility preservation coverage mandates were enacted. The District of Columbia's fertility care coverage mandate included a requirement for fertility preservation coverage for all people with a medical condition that requires treatment recognized to cause a risk of impairment to fertility.[116] Kentucky,[117] Louisiana,[118] Montana,[119] and Texas[120] all enacted laws that required private insurance plans to cover fertility preservation services for people experiencing iatrogenic infertility, or an impairment of fertility caused by surgery, radiation, chemotherapy, or other medical treatments affecting reproductive organs. Texas's law was even more specific, allowing only people undergoing cancer treatment to access fertility preservation services. Utah enacted a law that requires the state's Public Employees' Benefit and Insurance Program to provide coverage for fertility preservation services for all employees and dependents who have been diagnosed with cancer.[121]

Twelve states, (including Connecticut, Hawaii, Massachusetts, Minnesota, Mississippi, North Dakota, Oregon, Pennsylvania, Virginia, Washington, West Virginia, and Wisconsin) introduced, but did not pass bills that would have required private insurance plans to provide coverage of fertility preservation services.

The vast majority of fertility preservation bills did not include specific coverage for people accessing transgender health care. Some bills, however, included a more expansive definition of fertility patient, allowing people to access this coverage if they are taking medication or undergoing surgery or other medical treatment that is recognized by medical professionals to cause a risk of impairment to fertility. Such a definition is more expansive than the definition of iatrogenic infertility, which is frequently applied only to cancer patients, though even this expansive definition does not expressly

116 B. 25-0034 § 2(i)(4), 25th Council, Reg. Sess. (D.C. 2023) (*to be codified at* D.C. CODE § 31-384.06(i(4))).
117 H.B. 170 § 1(b), 2023 Leg., Reg. Sess. (Ky. 2023) (*to be codified at* KY. REV. STAT. ANN. § 304.17A-261(1)(b)).
118 H.B. 186 § 1(A)(1), 2023 Leg., Reg. Sess. (La. 2023) (*to be codified at* LA. STAT. ANN. § 22:1036.1(A)(1)).
119 S.B. 516 § 3(1), 68th Leg., Reg. Sess. (Mont. 2023).
120 H.B. 1649 § 2, 88th Leg., Reg. Sess. (Tex. 2023) (*to be codified at* TEX. HEALTH & SAF. CODE § 1366.104(a)).
121 H.J.R. 8, 65th Leg., Reg. Sess. (Utah 2023).

ensure that transgender people can access fertility care preservation services. More work must be done to make future fertility preservation bills inclusive to all people experiencing threats to their fertility and ensure that those who are insured and receiving transgender health care, like hormone therapy and surgery, are able to preserve their fertility.

Doula Care Coverage

Most insurance plans do not provide coverage for doula care, despite its demonstrated benefits. As more states provide for Medicaid coverage of doula services, states are introducing and passing laws to require all health plans, including private insurance, to provide coverage of doula care as well. This year California,[122] Louisiana[123] and Utah[124] enacted laws related to private insurance coverage of doula care. Three states, (Missouri, New York, and Virginia,) introduced, but did not pass, bills that would provide for private insurance coverage of doula care. It is possible that once states enact Medicaid coverage requirements, there will be a similar influx of private insurance coverage bills.

[122] A.B . 904 § 2, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. HEALTH & SAFETY CODE § 1367.626).
[123] H.B. 272 § 1, 2023 Leg., Reg. Sess. (La. 2023) (*to be codified at* LA. STAT. ANN. § 22:1059.2(B)(1)).
[124] H.B. 415 § 1, 65th Leg., Reg. Sess. (Utah 2023) (*to be codified at* UTAH CODE ANN. § 49-20-422(2)).

Maternal Health Data

With the U.S. facing a maternal health crisis, several states enacted laws to improve their data collection and analysis of maternal morbidity and mortality. Photo: Royalty Free.

A significant aspect of the public health crisis exacerbated by *Dobbs* is the effect on maternal health. Maternal Morality Review Committees (MMRC) are multi-disciplinary committees that comprehensively review the deaths of people who died during, or within a year of, their pregnancy.[125] MMRCs seek to fully understand the circumstances surrounding each death, determine if the death was related to the pregnancy, and develop recommendations to prevent similar deaths in the future.[126] This year, Pennsylvania[127] and Virginia[128] enacted laws to require their state MMRCs to release reports annually, as opposed to every three years. Texas[129] enacted a law to amend the composition of the committee, and Kansas[130] and Maryland[131] enacted laws related to records accessed by their MMRCs.

Louisiana,[132] Minnesota,[133] and New Jersey[134] enacted laws to create new study committees to address maternal health and facilitate the implementation of MMRC recommendations. Nine states, (Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, New York, Oklahoma, and West Virginia) introduced, but did not pass, bills that would amend the compositions of their MMRCs, require MMRCs to put out reports more frequently, or otherwise amend how these committees function. Bills that seek to refine MMRC processes and facilitate public dissemination of their findings can improve data collection and analysis of maternal morbidity and mortality.

Idaho introduced, but did not pass, a bill that would have repealed the sunset date for the state MMRC. Because this bill did not pass, the statute that created Idaho's MMRC was repealed as of July 1, 2023. Without adequate funding and support for MMRCs, increases in maternal mortality caused by abortion bans are less likely to be documented, monitored, and publicized. It is possible that some states may neglect or politicize their MMRCs by allowing authorizing statutes to lapse, manipulating the timing of published reports, or opposing the MMRC's evidence-based policy recommendations.

125 N. Davis, A. Smoots, D. Goodman, *Pregnancy-Related Deaths: Data from 14 U.S. Maternal Mortality Review Committees, 2008-2017,* CENTER FOR DISEASE CONTROL https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/mmr-data-brief.html (last reviewed Aug. 17, 2023).
126 N. Davis, A. Smoots, D. Goodman, *Pregnancy-Related Deaths: Data from 14 U.S. Maternal Mortality Review Committees, 2008-2017,* CENTER FOR DISEASE CONTROL https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/mmr-data-brief.html (last reviewed Aug. 17, 2023).
127 S.B. 262 § 2, 207th Gen. Assemb., Reg. Sess. (Pa. 2023) (*to be codified at* 35 PA. CONS. STAT. § 10245(b)(5)).
128 S.B. 1254 § 1, 2023 Leg., Reg. Sess. (Va. 2023) (*to be codified at* VA. CODE ANN. § 32.1-283.8(G)).
129 H.B. 852 § 1, 88th Leg., Reg. Sess. (Tex. 2023) (*to be codified at* TEX. HEALTH & SAF. CODE § 34.002(b)(1)).
130 H.B. 2395 § 5, 90th Leg., Reg. Sess. (Kan. 2023) (*to be codified at* KAN. STAT. ANN. § 65-177).
131 S.B. 644 § 1, 445th Gen. Assemb., Reg. Sess. (Md. 2023) (*to be codified at* MD. CODE ANN. HEALTH—GEN. § 13-1205(a)).
132 S.R. 192, 2023 Leg., Reg. Sess. (La. 2023).
133 S.F. 2995 § 65, 93rd Leg., Reg. Sess. (Minn. 2023) (*to be codified at* MINN. STAT. § 145.9572).
134 S. 3864 § 3, 220th Leg., Reg. Sess. (N.J. 2023).

Interplay of Criminal Law and Reproductive Health Care Access

In the U.S there is a widespread tradition of lawmakers utilized criminal penalties to enforce abortion restrictions. In the year and a half since *Dobbs*, anti-abortion lawmakers have sought to enact more criminal penalties for providers, pregnant people and those who assist them, whereas supportive lawmakers have worked to repeal longstanding criminal penalties.

During the 2023 Legislative session, 11 states (Alabama, Arizona, Georgia, Hawaii, Louisiana, Maine, Michigan, Mississippi, New Hampshire, South Carolina, and Wisconsin) introduced 22 bills to repeal existing criminal penalties, including those related to pre-*Roe* bans. Following the 2022 approval of a ballot initiative, which secured a state constitutional right to reproductive freedom, including abortion, Michigan[135] repealed criminal penalties related to the state's pre-*Roe* ban. Hawaii,[136] Maine,[137] and South Dakota[138] also enacted legislation to repeal criminal penalties and Arizona Governor Katie Hobbs signed an executive order to do so.[139]

New Criminal Penalties Related to Abortion Care

In 2023, 21 states (Alabama, Alaska, Arkansas, Georgia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia) introduced 40 bills to create new crimes in the criminal code or add additional criminal penalties to existing restrictions. Arkansas[140] and North Dakota[141] enacted such bills.

An alarming trend is the introduction of legislation seeking specifically to criminalize pregnant people by repealing language from existing bans that prohibit the prosecution of people obtaining abortions. In 2023, seventeen (Arizona, Arkansas, Colorado, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, New York, Oklahoma, South Carolina, Texas, Vermont, Virginia, Washington, and West Virginia) introduced 22 bills targeting self-managed abortion. None of these bills were enacted.

135 H.B. 4006, 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. §§ 750.14, 750.15). S.B. 2., 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. § 750.40). H.B. 4032, 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. § 750.14). H.B. 4951,102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §§ 333.2803, 777.13k, 777.16d, 777.16p. H.B. 4953 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 600.5711). H.B. 4954 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 388.1606). H.B. 4956 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 750.90(h)).

136 S.B.1, 32nd Leg., Reg. Sess. (Haw. 2023) (*amending* HAW. REV. STAT. ANN. §577A-1).

137 L.D. 1619, 131st Leg., Reg. Sess. (Me. 2023) (*to be codified at* ME. STAT. tit. 22 § 1598, sub-§3).

138 H.B. 1220, 98th Leg., Reg. Sess. (S.D. 2023) (*to be codified at* S.D. CODIFIED LAWS § 22-17-5.2).

139 Ariz. Exec. Order No. 2023-11 (June 23, 2023), Executive Order 2023-11 | Office of the Arizona Governor (azgovernor.gov).

140 S.B. 495 § 112(8), 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. §§ 16-93-1802(lii), (liii); 16-93-1803((b)(1)).

141 H.B. 1171, 68th Leg., Reg. Sess. (N.D. 2023) (*to be codified at* N.D. CENT. CODE §§ 12.1-17).

At the State Leadership Summit, California Assemblymember Rebecca Bauer-Kahan, Vidhi Bamzai (Center for Reproductive Rights), and Washington State Senator Manka Dhingra discuss issues pertaining to criminalization, including how consumer data flows between different entities, federal and state law, and protection of reproductive health data. Photo: Barry Brecheisen.

Criminal Penalties for Substance Use During Pregnancy

Pregnancy can make people vulnerable to other criminal penalties. Pregnant people who use substances face elevated risks to both their health and their rights, as using substances often brings people into contact with the criminal justice system.[142] Unfortunately, pregnant people often lack access to basic harm reduction services, making it hard for people who want to curb their substance use to do so.[143] Addressing substance use requires states to repeal laws that criminalize substance use during pregnancy, ensure that informed consent is obtained prior to drug testing, and develop substance use disorder treatment options for all pregnant people who need this care.

Chemical Endangerment/Drug Testing

Eighteen states have laws that consider drug use during pregnancy to be a form of child abuse, meaning that parents across the country are at risk of losing their children after a positive drug screen.[144] Three states make it a crime for pregnant people to use drugs while they are pregnant,[145] and at least 45 states have at some point prosecuted people for exposing their fetuses to drugs.[146] In hospitals across the country, pregnant and postpartum people and their newborns are often tested for drugs without their informed consent. These testing practices are often motivated by race and class-based stereotypes and can lead to the separation of families by the child welfare system. They also deter pregnant and postpartum people from seeking healthcare.

142 Sarah C. Haight et al., *Opioid Use Disorder Documented at Delivery Hospitalization—United States, 1999-2014*, 67 MORBIDITY AND MORTALITY WK. REP. 845 (2018) https://www.cdc.gov/mmwr/volumes/67/wr/mm6731a1.htm.
143 Sarah C. Haight et al., *Opioid Use Disorder Documented at Delivery Hospitalization—United States, 1999-2014*, 67 MORBIDITY AND MORTALITY WK. REP. 845 (2018) https://www.cdc.gov/mmwr/volumes/67/wr/mm6731a1.htm.
144 Leticia Miranda, Vince Dixon and Cecilia Reyes, *How States Handle Drug Use During Pregnancy*, PROPUBLICA (Sept. 30, 2015) https://projects.propublica.org/graphics/maternity-drug-policies-by-state.
145 Alabama, South Carolina, and Tennessee, see Leticia Miranda, Vince Dixon and Cecilia Reyes, *How States Handle Drug Use During Pregnancy*, PROPUBLICA (Sept. 30, 2015) https://projects.propublica.org/graphics/maternity-drug-policies-by-state.
146 Leticia Miranda, Vince Dixon and Cecilia Reyes, *How States Handle Drug Use During Pregnancy*, PROPUBLICA (Sept. 30, 2015) https://projects.propublica.org/graphics/maternity-drug-policies-by-state.

Minnesota enacted a law this year to create a Task Force on Pregnancy Health and Substance Use Disorders that must recommend protocols for when providers should administer toxicology tests, and when prenatal exposure to a controlled substance should be reported.[147] North Dakota enacted a law that requires that pregnant people receive a referral for an assessment following a report of their use of controlled substances.[148]

Arizona passed a law through both chambers that would have increased involvement by the state child welfare agency following reports of substance use during pregnancy, but this law was vetoed by the Governor.[149] Montana passed a law that would have established that substance abuse alone would not constitute physical or psychological harm to the child, which was also vetoed by the Governor.[150]

Four states (Illinois, Maryland, New York, and Texas) introduced, but did not pass, laws that would require informed consent from pregnant people prior to drug testing, or otherwise modify the way that drug testing and reporting is done in hospitals. Four states (Georgia, Kentucky, Mississippi, and New Mexico) introduced, but did not pass, laws that would increase criminal and child welfare consequences for pregnant people who use substances.

While two states did pass laws aimed at protecting the rights of pregnant people and addressing punitive child welfare policies, there were also efforts to enhance consequences for substance use while pregnant or expand the role of child welfare departments (like the bill vetoed in Arizona) as well as resistance to reforming existing laws (like the Montana Governor's veto). As abortion becomes increasingly criminalized and pregnant people's rights are contested, many states may continue to choose punitive approaches to substance use during pregnancy.

Substance Use Treatment

States can improve access to substance use disorder treatment by making it more affordable, providing housing for pregnant people and new parents seeking such treatment, and increasing the availability of community clinics and healthcare workers providing it. Three states (Minnesota,[151] New Mexico,[152] and Wyoming[153]) enacted laws to fund aspects of substance use disorder treatment. Seven states (Connecticut, Hawaii, Kentucky, Maine, Massachusetts, Mississippi, and Washington) introduced, but did not pass, bills that would fund treatment for substance use disorder or create other supports for pregnant people who use substances.

147 S.F. 2995 § 110(1), 93rd Leg., Reg. Sess. (Minn. 2023).
148 S.B. 2103 § 5, 68th Leg., Reg. Sess. (N.D. 2023) (*to be codified at* N.D. CENT. CODE § 50-25.1-16)).
149 H.B. 2530, 56th Leg., Reg. Sess. (Ariz. 2023); Governor Katie Hobbs, Veto Message for H.B. 2530 Executive Office (May 19, 2023) https://s3.amazonaws.com/fn-document-service/file-by-sha384/603d652734c4fafd5747a051ec311d9f381d7c4dd231647b0be79b86edd9e50d8bb4a58b9d2a5083ea9b7b46a7f65803.
150 H.B. 37, 68th Leg., Reg. Sess. (Mont. 2023); Mara Silvers, *Gianforte vetoes bipartisan child welfare and state hospital reforms,* MONTANA FREE PRESS (May 11, 2023) https://montanafreepress.org/2023/05/11/gianforte-vetoes-bipartisan-child-welfare-and-state-hopsital-reforms/.
151 S.F. 2995 § 15, 93rd Leg., Reg. Sess. (Minn. 2023) (*to be codified at* MINN. STAT. § 144.0528).
152 H.B. 527 § 1, 56th Leg., Reg. Sess. (N.M. 2023) (*to be codified at* N.M. STAT. ANN. § 6-4-1).
153 S.F. 79 § 1, 67th Leg., Reg. Sess. (Wyo. 2023) (*to be codified at* WYO. STAT. ANN. § 35-2-1401(b)).

Pregnant People Who Are Incarcerated

Even though most women in prison are of reproductive age, federal and state authorities do not track statistics of pregnant incarcerated people.[154] One study, which surveyed incarcerated people in 22 state prisons, found that 1,396 people were pregnant.[155] And yet, there are no mandatory standards of care that prisons must provide for pregnant incarcerated people.[156] This lack of standards has led to people giving birth while being shackled or in restraints, pregnant people being placed in solitary confinement or given inadequate access to nutritious food, and many other instances of improper treatment. As awareness of the problems faced by pregnant incarcerated people increases, states have responded with legislation both to create programs that allow pregnant people to access early release or deferred sentencing programs, and to ensure that the rights of pregnant incarcerated people are respected.

Judicial Diversion Programs

Deferred sentencing bills allow pregnant and recently postpartum people to delay commencement of their prison sentence until their pregnancy and postpartum period has concluded, enabling them better access to healthcare and more dignity and autonomy during birth. Early release bills allow pregnant and postpartum people, as well as caregivers for minor children, to move to a less restrictive environment and be with their children or otherwise change the remainder of their sentence. This year, Colorado enacted a bill to establish alternatives to incarceration for pregnant and postpartum people.[157]

Four states (Florida, Maryland, New York, Pennsylvania) introduced, but did not pass, similar programs that would provide judicial diversion programs, early release, or deferred sentencing options for pregnant incarcerated people. It is likely that states will continue to introduce bills that create these programs, and some will follow Colorado's lead and enact these programs in the coming legislative sessions.

Protections for Pregnant People Who Are Incarcerated

States without early release or deferred sentencing programs can still protect the rights of pregnant incarcerated people. Examples include prohibiting the shackling of pregnant people; preventing them from being placed in solitary confinement; facilitating prenatal care; and ensuring that pregnant

154 *First of its Kind Statistics on Pregnant Women in U.S. Prisons,* JOHNS HOPKINS MEDICINE (Mar. 21, 2019) https://www.hopkinsmedicine.org/news/newsroom/news-releases/first-of-its-kind-statistics-on-pregnant-women-in-us-prisons.
155 *First of its Kind Statistics on Pregnant Women in U.S. Prisons,* JOHNS HOPKINS MEDICINE (Mar. 21, 2019) https://www.hopkinsmedicine.org/news/newsroom/news-releases/first-of-its-kind-statistics-on-pregnant-women-in-us-prisons.
156 *First of its Kind Statistics on Pregnant Women in U.S. Prisons,* JOHNS HOPKINS MEDICINE (Mar. 21, 2019) https://www.hopkinsmedicine.org/news/newsroom/news-releases/first-of-its-kind-statistics-on-pregnant-women-in-us-prisons.
157 H.B. 23-1187 § 1, 74th Gen. Assemb., Reg. Sess. (Colo. 2023) (*to be codified at* COLO. REV. STAT. § 18-1.3-103.7(2)(b)).

people have a supportive person present while they are giving birth. Arkansas,[158] Louisiana,[159] Michigan,[160] Nevada,[161] and Utah[162] enacted laws to protect the rights and health of pregnant incarcerated people.

Thirteen states (Arizona, Georgia, Hawaii, Maryland, Massachusetts, New Mexico, New York, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington) introduced, but did not pass, bills that would protect the rights of pregnant incarcerated people. Hawaii introduced, but did not pass, a bill that would have provided housing and childcare vouchers to people who completed a term of imprisonment and had primary custody of at least one child.

Oregon enacted a law that would provide pregnant incarcerated people with access to doula care.[163] Three states (Kentucky, Nebraska, and Ohio) introduced, but did not pass, bills that would provide pregnant incarcerated people with access to a doula. A similar number of bills were introduced and enacted last year as well, signaling that the rights of pregnant incarcerated people remain an important issue for states.

Fertility Fraud

Amid the evolving landscape of criminal law and reproductive health care, criminal penalties are emerging within fertility care regulations. One such area is fertility fraud, which occurs when a provider uses gametes in an assisted reproduction procedure to which the patient did not explicitly consent. These gametes can be the provider's own gametes or donated gametes different from the ones selected by the patient. Eleven states have laws against fertility fraud, either laws that criminally punish fertility fraud or create a civil cause of action.[164] This year, Illinois[165] and Nevada[166] became the twelfth and thirteenth states to pass a law related to fertility fraud. Iowa also enacted a law to amend the state's existing fertility fraud law.[167] Six states (Illinois, Michigan, New Jersey, New York, Pennsylvania, and Washington) introduced but did not pass bills to create criminal and civil penalties for fertility fraud.

158 S.B. 495 § 112(8), 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. § 12-29-804(a)).
159 H.C.R. 104 § 1, 2023 Leg., Reg. Sess. (La. 2023).
160 H.B. 4437 § 709, 102nd Leg., Reg. Sess. (Mich. 2023).
161 A.B. 292 § 2(1), 82nd Gen. Assemb., Reg. Sess. (Nev. 2023).
162 H.B. 429 § 2, 65th Leg., Reg. Sess. (Utah 2023) (*to be codified at* UTAH CODE ANN. § 26B-1-401(d)).
163 H.B. 2535 § 1(1), 82nd Leg., Reg. Sess. (Or. 2023).
164 *Federal Legislation in Assisted Reproduction, Right to Know* https://righttoknow.us/fertility-fraud-laws/ (last accessed Jul. 28, 2023).
165 S.B. 380 § 15, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
166 S.B. 309 § 5, 82nd Leg., Reg. Sess. (Nev. 2023).
167 S.F. 362 § 2, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (*amending* IOWA CODE § 802.10(3)).

Young People's Access to Abortion Care

Post-*Dobbs*, young people[168] continue to be one of the most impacted groups across the country with some states increasing barriers to care for young people and other states removing barriers.

Extreme abortion restrictions and bans can leave young people with few, if any, options to obtain abortion services. States with total bans, and narrow exceptions, make it nearly impossible for young people to receive care under medical emergencies, while states with gestational bans, such as six- and 12-week bans, leave incredibly narrow windows to seek access to care. Many states with gestational bans have overlapping parental involvement requirements, which require parents to be notified, and/or consent before unemancipated minors can have an abortion. Efforts to increase parental involvement in a young person's ability to obtain an abortion are linked to the moral panic over transgender health care for young people and the broader "parents' rights" movement. These barriers make access to care for many in this demographic incredibly difficult. In many instances, these barriers leave young people with no other option than to travel across state lines to get access to care.

Knowing that many young people might have to leave their home states to access care, anti-abortion actors have initiated a new strategy. This year, Idaho amended its criminal code and enacted H 242—a law that creates the crime of "abortion trafficking."[169] This law prohibits people from helping a young person access abortion care by "recruiting, harboring, or transporting a pregnant minor within the state" with the intent to conceal the abortion from the young person's parents. It includes criminal penalties for trafficking a young person to obtain an abortion, including imprisonment for at least two but not more than five years. Consent of a parent of the young person is an affirmative defense. The law prohibits an affirmative defense that the abortion provider or "abortion-inducing drug provider" is in another state and gives the Idaho Attorney General the sole discretion to prosecute violations. While this tactic is new, the targeting of young people by anti-abortion lawmakers is not.

Also in 2023, 16 states (Arkansas, Idaho, Illinois, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New

168 "Young People" used to reference individuals under 18 years of age, contingent on state law.
169 H 242, 67th Leg., Reg. Sess. (Idaho 2023), (*to be codified at* IDAHO CODE ANN. § 18-623).

Sixteen states introduced bills to restrict young people's access to abortion—including one new "abortion trafficking" law prohibiting people from helping minors access abortion. Photo: Royalty Free.

York, North Carolina, North Dakota, Texas, and Utah) introduced 29 bills related to restricting young people's ability to access abortions, including judicial bypass restrictions, abuse reporting requirements, and requiring minors' parental involvement and notification. These efforts included a bill introduced in Texas[170] to repeal the judicial bypass mechanism, which permits unemancipated minors to obtain judicial authorization for an abortion when a young person cannot receive parental consent, which failed. Florida,[171] Idaho[172] and North Dakota[173] enacted legislation restricting young peoples' access to care.

Conversely, in states that support abortion rights, legislators enacted laws to remove barriers for young people. Sixteen bills were introduced in 10 states (Arizona, Georgia, Hawaii, Illinois, Minnesota, Missouri, North Carolina, Oklahoma, South Carolina, and Washington) to expand young people's access to abortion by repealing existing parental notification and consent requirements. Three States (Hawaii, [174]Washington,[175] and Oregon[176]) enacted legislation repealing requirements for documentation proving the relationship between the parent and young person or expanding protections for young people.

170 H.B. 2538, 88th Leg., Reg. Sess. (Tex. 2023).
171 S.B. 300, 125th Leg., Reg. Sess. (Fla. 2023) (*to be codified at* FLA. STAT. § 390.0111).
172 H 242, 67th Leg., Reg. Sess. (Idaho 2023) (*to be codified at* IDAHO CODE ANN. § 18-623).
173 S.B. 2150, 68th Leg., Re. Sess. (N.D. 2023), (*amending* N.D. CENT. CODE ANN. § 14-02.1-03.1).
174 S.B.1, 32nd Leg., Reg. Sess. (Haw. 2023) (*amending* HAW. REV. STAT. ANN. § 577A-1).
175 H.B. 1851, 68th Leg., Reg. Sess. (Wash. 2023) (*to be codified at* WASH. REV. CODE §§ 9.02.100, 9.02.110, 9.02.130).
176 H.B. 2002, 82nd Leg., Reg. Sess. (Or. 2023) (*amending* OR. REV. STAT. §109.640).

Surrogacy

While surrogacy can be a critical method of family planning, it raises complex legal issues for intended parents and surrogates. Photo: iStock FatCamera.

For individuals and families that struggle to become pregnant or to carry a pregnancy to term, surrogacy is a critical method of family building. Compensated gestational surrogacy is a practice where an intended parent or parents execute a contract with a person who agrees to become pregnant and deliver a child or children using embryos created through IVF and who receives payment beyond reimbursement for medical care. The person acting as gestational surrogate does not contribute their own gametes, nor do they intend to act as a parent to the child or children who are born. Several states expressly prohibit compensated gestational surrogacy, and in other states, the legal status of surrogacy contracts is unclear, and the legal parentage of the intended parent or parents is not secure.[177] In these states, surrogacy laws fall short of protecting the human rights of all parties involved in a surrogacy agreement, including the person acting as a surrogate, the intended parent or parents, and the children born via surrogacy.

177 *The U.S. Surrogacy Law Map*, CREATIVE FAMILY CONNECTIONS https://www.creativefamilyconnections.com/us-surrogacy-law-map/ (last accessed Jul. 31, 2023).
178 H. 264 § 1, 67th Leg., Reg. Sess. (Idaho 2023) (*to be codified at* IDAHO CODE § 7-1604(5)).

This year, Idaho enacted a law that allows for compensated gestational surrogacy.[178] This law gives the person acting as a surrogate control over all decisions related to their health, and allows for, but does not require, compensation to the surrogate. The law requires both the intended parents and the surrogate to have independent legal representation, though it does not require the intended parent to cover the expenses of the surrogate's attorney. Notably, the law does not allow the parties to petition for a pre-birth parentage order to provide legal security for the child-parent relationship once the child is born. Instead, the law requires parties to petition for a post-birth parentage order and failure to do so can lead to the intended parents being held in contempt of court and the surrogate, who did not intend to parent the child or children born, being legally, physically, and financial responsible for the child or children.

Five states (Massachusetts, Michigan, Mississippi, New Mexico, and Pennsylvania) introduced, but did not pass, bills that would have legalized and regulated compensated gestational surrogacy. Michigan and Nebraska introduced, but did not pass, bills to legalize but not regulate compensated gestational surrogacy.

States that allow surrogacy or facilitate access to other types of assisted reproduction for family formation have often failed to update their parentage laws to recognize these families. Out-of-date parentage laws can cause issues for intended parents who are not biologically related to their children, a situation frequently encountered by same-sex parents. Many states have laws that create presumptions of parentage but restrict these presumptions based on the sex of the intended parent or parents, often discriminating against LGBTQ couples.[179] Other states require intended parents to go through a lengthy adoption process to confirm the parentage of the children they have raised from birth. While no state enacted a law that would overhaul the state's parentage law, several states enacted amendments to their parentage codes that would make it easier for intended parents to be recognized as the parents to their children. These laws also make it easier for gamete donors to confirm that they are not the legal parents of children conceived with their gametes.

In 2023, several states considered or enacted new laws related to parentage. Hawaii,[180] Maryland,[181] and New Hampshire[182] amended existing parentage laws. Maine[183] and Rhode Island[184] enacted laws that would allow parents to establish parentage through streamlined confirmatory adoptions. Two states (Michigan and New York) introduced, but did not pass, bills that

179 Jamie D. Pedersen, *The New Uniform Parentage Act of 2017* AMERICAN BAR ASSOCIATION (Apr. 1, 2018) https://www.americanbar.org/groups/family_law/publications/family-advocate/2018/spring/4spring2018-pedersen/.
180 S.B. 483 § 2, 32nd Leg., Reg. Sess. (Haw. 2023) (*to be codified at* HAW. REV. STAT. § 560:2-B(b)).
181 S.B. 792, 445th Gen. Assemb., Reg. Sess. (Md. 2023) (*to be codified at* MD. CODE ANN. EST. & TRUSTS § 1-206(b)(1)).
182 S.B. 264, 168th Gen. Ct., Reg. Sess. (N.H. 2023) (*to be codified at* N.H. REV. STAT. ANN. § 168-B:2(III)).
183 L.D. 1906, 131st Leg., Reg. Sess. (Me. 2023) (*to be codified at* ME. REV. STAT. ANN. § 9-316(2)).
184 H.B. 5226/S.B. 121, 2023 Leg., Reg. Sess. (R.I. 2023) (*to be codified at* R.I. GEN. LAWS § 15-7-27(b)).

would have amended the state's parentage law. Nevada introduced a bill that would have codified aspects of the 2017 Uniform Parentage Act, model legislation that provides a uniform legal framework for establishing parent-child relationships that is of particular importance to families formed via assisted reproduction and non-traditional families, including LGBTQ families, and ensures parentage equality for same-sex couples. This bill passed the legislature but was vetoed by the Governor.[185] In his veto message, the Governor opposed the bill in part because the procedures outlined would prevent judges from making case-by-case decisions on parentage and therefore "decrease judicial discretion regarding critical issues to Nevadan families."[186] Unfortunately, case law reveals that "judicial discretion" frequently prevents parents who are not biologically related to their children, or have otherwise formed families in non-traditional ways, from securing custody of their children.[187] While it is possible that Nevada is an outlier, this veto, along with a rise of anti-LGBTQ legislation across the country, raises concerns about the passage of parentage legislation in the coming years.

185 A.B. 371, 82nd Leg., Reg. Sess. (Nev. 2023).
186 Gov. Joe Lombardo, Veto Message on Assembly Bill 371 of the 82nd Legislative Session (Jun. 16, 2023) https://gov.nv.gov/uploadedFiles/gov2022nvgov/content/Newsroom/vetos/2023-06-16_Veto_AB371.pdf.
187 *See* e.g. In re Marriage of Rebekah Wilson and Kristina Williams, FD-2021-3681 (Okla. Fam. Ct. Jan. 27, 2022) (a case where a family court judge stripped a non-biological mother of her parentage rights and gave custody to a sperm donor); Enriquez v. Velazquez, 2022 WL 16646105 (Fla. 5th Dist. Ct. App. Nov. 3, 2022) (which prevented a biological father from establishing paternity, despite the biological mother supporting his efforts to establish paternity because the couple was not married and conceived through an at-home intrauterine insemination process); State in Interest of J.E., 2023 WL 327878 (Utah Ct. App. Jan. 20, 2023) (where non-biological parent was prevented from retaining custody of his child, even though he'd signed a voluntary acknowledgment of parentage).

Parental Leave

Providing or requiring paid family leave could improve maternal health and reduce mortality. With no federal requirement for paid family leave, several states considered laws for universal paid family leave and paid family leave insurance programs. Photo: Royalty Free.

Paid leave is critical to pregnant, postpartum, and parenting individuals' ability to care for themselves and their families. Federal law allows certain employees to take up to 12 weeks of unpaid leave per year.[188] However, only companies that employ 50 or more employees must make this leave available and only to employees who have worked for them for at least 12 months.[189] Moreover, there is no federal requirement that leave be paid. It thus falls to states to fill this gap and require or provide paid parental leave. Giving birthing parents the time to recover after birth can reduce maternal mortality and result in maternal health benefits.[190]

Paid Leave

Universal paid parental leave programs allow all employees in the state to access paid parental leave. Employers and employees make mandatory payroll contributions which ensures that every employee, no matter where they work, can access paid parental leave. This year only Minnesota enacted a universal paid parental leave program.[191]

Twenty-four states (Arizona, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, and West Virginia) introduced, but did not pass, bills that would have created universal paid leave programs. Bills creating 12-week paid family leave programs for all employees are common and demonstrate high interest in this issue by

188 *Family and Medical Leave*, U.S. DEPT. OF LABOR (2022) https://www.dol.gov/general/topic/benefits-leave/fmla.
189 *Family and Medical Leave*, U.S. DEPT. OF LABOR (2022) https://www.dol.gov/general/topic/benefits-leave/fmla.
190 Zoe Aitken et al., *The maternal health outcomes of paid maternity leave: A systematic review*, 130 SOC. SCI. & MED. 32 (2015) https://www.sciencedirect.com/science/article/abs/pii/S0277953615000842?via%3Dihub.
191 H.F. 2 §§ 9, 12, 93 Leg., Reg. Sess. (Minn. 2023) (*to be codified at* MINN. STAT. §§ 268B.01(17), 268B.04(5)).

state lawmakers. However, the gulf between introduced bills and enacted bills is large, and more advocacy is needed to ensure that the paid leave bills being introduced become law.

Far more progress was made in providing paid leave to state employees, with seven states enacting such laws. Arkansas enacted a law that provides 12 weeks of paid leave for state employees. [192] Nevada enacted a law that provides eight weeks of paid leave for all employees of the state Executive Department,[193] and North Carolina enacted a law that provides eight weeks of paid leave for state employees.[194] Oklahoma,[195] South Carolina,[196] and Tennessee[197] enacted laws that provide six weeks of paid leave for school employees. Ten states (Alaska, Illinois, Indiana, Iowa, Maryland, Mississippi, Pennsylvania, South Dakota, Utah, and West Virginia) introduced, but did not pass, bills that would have provided paid family leave to state employees.

Texas enacted a law that provides 40 days of paid leave for state employees who give birth, and 20 days of paid leave for state employees who become parents through adoption, foster care, or a surrogacy agreement.[198] Four states (Kentucky, New Jersey, Texas, and Utah) introduced, but did not pass, parental leave bills that include both state employees and private employees who become parents via a surrogacy agreement.

Paid Family Leave Insurance

This year there was an increase in legislation that creates paid family leave insurance programs. Unlike other paid leave legislation, these bills allow insurance companies to offer policies that, if purchased by private companies, would provide paid family leave. These bills are similar to disability insurance programs, and are insurance policies that can, but not required to, be purchased by employers, and which can cover employees' salaries while employees are out of work due to a disability. However, this legislation does not alter the current provision of paid family leave, *i.e.*, the choice is still left to individual employers. Thus, while these bills create a new mechanism for employers to provide paid family leave, they do little to expand access to paid leave since there is no mandate for employers to utilize the paid family leave insurance system. Five states (Alabama,[199] Arkansas,[200] Florida,[201] Tennessee,[202] and Texas[203]) enacted laws that create paid family leave insurance programs. Three additional states

192 S.B. 294 § 21, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. § 6-17-122(a)); S.B. 426 § 2, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. § 21-4-214€(1)).
193 S.B. 376 § 1(1), 82nd Leg., Reg. Sess. (Nev. 2023).
194 S.B. 20 § 5.1(a), 2023 Leg., Reg. Sess. (N.C. 2023) (*to be codified at* N.C. GEN. STAT. § 126-8.6(b)(1)).
195 S.B. 1121 § 1, 59th Leg., Reg. Sess. (Okla. 2023) (*to be codified at* OKLA. STAT. tit. 70 § 6-104.8(A)).
196 H. 3908 § 1, 125th Gen. Assemb., Reg. Sess. (S.C. 2023) (*to be codified at* S.C. CODE ANN. § 8-11-151(B)).
197 H.B. 983/S.B. 1458 § 1, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023) (*to be codified at* TENN. CODE ANN. § 8-50-813(b)).
198 S.B. 222, 88th Leg., Reg. Sess. (Tex. 2023) (*to be codified at* TEX. GOV. CODE ANN. § 661.9125€).
199 H.B. 141 § 1, 2023 Leg., Reg. Sess. (Ala. 2023) (*to be codified at* ALA. CODE § 27-19-154).
200 S.B. 111 § 1, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. § 23-62-112(b)).
201 H.B. 721 § 2, 125th Leg., Reg. Sess. (Fla. 2023) (*to be codified at* FLA. STAT. § 624.6086(1)).
202 H.B. 609/ S.B. 434 § 5, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023) (*to be codified at* TENN. CODE ANN. § 56-7-5).
203 H.B. 1996 § 2, 88th Leg., Reg. Sess. (Tex. 2023) (*to be codified at* TEX. INS. CODE ANN. § 1255.102).

(Illinois, Minnesota, and North Carolina), introduced, but did not pass, bills that would have created paid family leave insurance programs. Last year only one paid family leave insurance program bill was enacted, so this could indicate a trend where states create programs for paid family leave insurance instead of paid family leave programs.

Bereavement Leave for Pregnancy Loss

Bereavement leave is a category of leave for people who have lost a family member. In many states, this leave is not explicitly available to parents who have lost a child in a miscarriage or a stillbirth. Each year, however, additional states provide for bereavement leave following pregnancy loss. Ideally, employees would be able to take the full amount of parental leave following a miscarriage, fetal loss, or stillbirth, since the physical, mental, and emotional toll of those pregnancy outcomes can be significant. This is not typically the case, however, and most bereavement leave laws provide only a few days to employees who have experienced a pregnancy loss. This year, three states, (California,[204] Delaware[205] and Tennessee[206]) enacted laws that allowed people to take bereavement leave following a pregnancy loss. California's law allows five days of leave and applies to people who have experienced unsuccessful assisted reproduction procedures, failed surrogacy agreements, or diagnoses that negatively impacted their pregnancy or fertility.[207]For those situations, Delaware's law provides five days of bereavement leave, and Tennessee's law provides six weeks of bereavement leave, but only for school employees.

Ten states (Florida, Illinois, Kentucky, Massachusetts, Montana, New Jersey, New York, Oregon, Pennsylvania, and Texas) introduced, but did not pass, bills that would have provided bereavement leave. Five of those states (Florida, Illinois, New Jersey, New York, and Oregon) introduced bills that would give people the full amount of family leave following a pregnancy loss, though none of these bills were enacted. Four states (Illinois, Massachusetts, New Jersey, and Pennsylvania) introduced, but did not pass, bereavement leave bills that would have granted employees leave following a miscarriage, stillbirth, unsuccessful assisted reproduction procedure, failed surrogacy agreement, or any other diagnosis that negatively impacted their pregnancy or fertility. States are recognizing the importance of extending bereavement leave to pregnancy loss, and these types of bills will likely become more common in subsequent years.

204 S.B. 848 § 1, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. GOV. CODE § 12945.6).
205 H.B. 65 § 1, 152nd Gen. Assemb., Reg. Sess. (Del. 2023) (*to be codified at* DEL. CODE ANN. Tit. 29 § 5125).
206 H.B. 983/S.B. 1458 § 1, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023) (*to be codified at* TENN. CODE ANN. § 8-50-813(b)).
207 S.B. 848 § 1, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. GOV. CODE § 12945.6).

Providers' Scope of Practice

Expanding the types of healthcare professionals who can provide reproductive healthcare improves access to the spectrum of abortion and maternal health care. States across the country expanded who could provide abortion care, licensed and regulated midwives from a broader range of training backgrounds, created licensing for doulas, and expanded the scope of practice for midwives to allow them to practice independently or prescribe medication.

Abortion Care

Lawmakers successfully expanded access by passing laws that allow providers beyond physicians to provide abortion care. Such expansion allows other types of clinicians to provide abortion care by repealing physician-only laws or expressly authorizing physician assistants, certified nurse midwives, nurse practitioners, and other qualified medical professionals to provide abortion care through legislation, regulations, or attorney general opinions.

In 2023, seven states (California, Georgia, Hawaii, Illinois, Montana, New York, and North Carolina) introduced 19 bills expanding the list of providers able to perform abortion care. California,[208] Hawaii,[209] and Montana enacted laws to expand the scope of practice for abortion providers to include nurse practitioners, physician assistants, or other health care providers to be able to provide procedural and medication abortion.

Expanding Access to Maternal Health Care

Many pregnant people lack meaningful options when it comes to where, how, and with whom to give birth. Limited maternity care options contribute to adverse health outcomes and deprive pregnant, birthing, and postpartum people the opportunity to make important decisions about their healthcare. Despite research demonstrating the benefits of involving doulas and midwives in maternal healthcare, many people do not have access to these services.[210] Many states have erected barriers to midwifery care by imposing unnecessarily restrictive licensure requirements. Some states have introduced or enacted bills addressing licensure, regulation, and scope of practice issues with the aim of expanding access to a more diverse range of maternal healthcare services and providers.

208 S.B. 385, 2023 Leg., Reg. Sess. (Cal. 2023) (*amending* CAL. BUS. & PROF. CODE § 3502.4, *to be codified at* CAL. BUS. & PROF. CODE § 3527.5).
209 S.B.1, 32nd Leg., Reg. Sess. (Haw. 2023) (*to be codified at* HAW. REV. STAT. § 457-8.7).
210 Andrea Nove et al., *Potential impact of midwives in preventing and reducing maternal and neonatal mortality and stillbirths: a Lives Saved Tool modelling study* 9 LANCET GLOB. HEALTH 24 (2021) https://pubmed.ncbi.nlm.nih.gov/33275948/.

States across the country licensed and regulated midwives from a broader range of training backgrounds, created licensing for doulas, and expanded the scope of practice for midwives to allow them to practice independently or prescribe medication. Photo: iStock kali9.

Midwifery Licensing

This year, two states enacted laws to expand eligibility criteria for state-licensed midwives. Colorado enacted a law allowing Certified Midwives (CMs), or midwives who have a graduate degree in midwifery, but are not licensed as nurses, to practice.[211] Iowa enacted a law that licensed and regulated Certified Professional Midwives (CPMs.)[212] This is a positive development, and an improvement from last year, during which no states enacted laws expanding licensure for midwives.

Five states (Massachusetts, Nevada, New Jersey, New York, and North Carolina) introduced, but did not pass, bills to license and regulate CPMs. Two states, Mississippi and South Carolina introduced, but failed to pass, bills to address licensure and regulation of direct-entry midwives. Minnesota introduced, but did not pass, a bill that would have licensed and regulated CMs.

Georgia introduced, but did not pass, a bill that would have regulated and licensed community midwives, or midwives practicing outside of hospitals. Hawaii introduced, but did not pass, a bill that would have expanded state licensure eligibility and provided an exemption for traditional birth attendants to practice without a license.

Doula Licensing

As more states allow for Medicaid coverage of doula care, bills licensing or otherwise regulating doulas are on the rise. The Center tracks these bills to determine whether doulas are subject to educational or other training requirements that would prevent otherwise qualified doulas from practicing. There is also concern that licensing requirements may

211 S.B. 23-167 § 2, 74th Gen. Assemb., Reg. Sess. (Colo. 2023) (*to be codified at* COLO. REV. STAT. ANN. § 12-255-104(3.2)).
212 H.F. 265 § 5, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (*to be codified at* IOWA CODE § 148I.2).

penalize unlicensed doulas and limit culturally congruent care in Black and Indigenous communities, similar to the ways in which midwifery licensure requirements have prevented skilled midwives from practicing in many states. This year, four states (Connecticut,[213] New York,[214] Ohio,[215] and Tennessee[216]) enacted laws creating licensing or certification requirements for doulas. None of these laws penalize doulas who choose not to be licensed or certified.

Six states (Illinois, Kentucky, Michigan, Missouri, Vermont, and Virginia) included doula certification requirements in bills to provide Medicaid coverage of doula care. Most legislation that allows for Medicaid or insurance coverage of doula care, however, require a newly-created committee or a state agency to create licensing or certification requirements for doulas. Doulas and their supporters should carefully monitor implementation of these laws to ensure that the committees charged with licensing and regulating doulas develop effective, inclusive requirements.

Maternal Health Scope of Practice Amendments

Many states restrict the practice of midwives, preventing them from practicing independently, prescribing medications, or attending births in non-hospital settings, even when they are trained to provide such care.

This year saw a large increase in scope of practice and practice authority amendment bills, with eight states enacting laws that expanded midwifery practice in some form. California,[217] Illinois,[218] Kansas,[219] Kentucky,[220] Maryland,[221] and North Carolina[222] enacted laws that allowed Certified Nurse Midwives (CNMs) to prescribe certain types of medication. Virginia enacted a law that allowed CPMs to obtain and administer certain medications.[223] Montana enacted a law that expanded the scope of practice for direct-entry midwives.[224] North Carolina's law also created a pathway that would allow CNMs to practice independently.[225]

Twelve states (Alabama, Florida, Georgia, Illinois, Indiana, Maine, Mississippi, Ohio, Oklahoma, South Carolina, Texas, and Wisconsin) introduced, but failed to pass, bills that would have expanded the scope of practice for midwives.

213 S.B. 986 § 14(e), 2023 Leg., Reg. Sess. (Conn. 2023).
214 A. 5435/S. 1867, 2023 Leg., Reg. Sess. (N.Y. 2023) (*to be codified at* N.Y. PUB. HEALTH LAW § 2594-a).
215 H.B. 33, 135th Gen. Assemb., Reg. Sess. (Ohio 2023) (*to be codified at* OHIO REV. CODE ANN. § 4723.89(B)).
216 H.B. 738/S.B. 394 § 1, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023) (*to be codified at* TENN. CODE ANN. § 63-15-103(a)).
217 S.B. 667 § 2, 2023 Leg., Reg. Sess. (Cal. 2023) (*to be codified at* CAL. BUS. & PROF. CODE § 2746.5).
218 S.B. 199 § 5, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) (*to be codified at* 225 ILL. COMP. STAT. 65/65-43€(4.5)).
219 S.B. 106 § 5, 90th Leg., Reg. Sess. (Kan. 2023) (*to be codified at* KAN. STAT. ANN. § 65-4101(cc)).
220 S.B. 94 § 1, 2023 Leg., Reg. Sess. (Ky. 2023) (*to be codified at* KY. REV. STAT. ANN. § 314.042(11)(l)).
221 H.B. 717/S.B. 772 § 1, 445th Gen. Assemb., Reg. Sess. (Md. 2023) (*to be codified at* MD. CODE ANN. HEALTH OCC. § 8-508(a)(2)).
222 S.B. 20 § 4.3(a), 2023 Leg., Reg. Sess. (N.C. 2023) (*to be codified at* N.C. GEN. STAT. § 90-18.8(b)).
223 H.B. 1511/S.B. 1275 § 1, 2023 Leg., Reg. Sess. (Va. 2023) (*to be codified at* VA. CODE ANN. § 54.1-2957.9).
224 H.B. 392 § 1, 68th Leg., Reg. Sess. (Mont. 2023) (*to be codified at* MONT. CODE ANN. § 37-27-302(2)).
225 S.B. 20 § 4.3(b), 2023 Leg., Reg. Sess. (N.C. 2023) (*to be codified at* N.C. GEN. STAT. § 90-178.2(1b)).

Abortion Bans

In the year and a half after the Supreme Court eliminated the federal right to abortion by overturning *Roe v. Wade*, numerous states have introduced and advanced various types of abortion bans, including gestational bans, bans on medication abortion, and telemedicine bans, and worked to severely limit exceptions to these bans.

Link Between Reproductive Rights and Voting Rights

Abortion bans are not popular, even in the states that have enacted them. Until anti-democracy state legislators gerrymander the state legislature, states cannot pass abortion bans. In 2023, polling demonstrated that "just under two-thirds of Americans (64%) say abortion should be legal in most or all cases. Majorities of residents in 43 states and the District of Columbia say that abortion should be legal in most or all cases, and in 13 of those states and in D.C., more than seven in 10 residents support legal abortion. Texas, for example, a state where violations of the state's total abortion bans can result in imprisonment for 99 years, 57% of residents believe abortion should be legal in most or all cases.[226] There are only seven states in which less than half of residents say abortion should be legal in most or all cases "and that support does not fall below 42%."[227]

In 2023, North Carolina enacted an unpopular 12-week abortion ban after one member of the General Assembly, Representative Tricia Cotham of Mecklenburg County, changed parties and voted for the ban. Representative Cotham had campaigned on her support for abortion rights, so by voting for the ban, she denied her constituents the representation for which they voted.

In Ohio, anti-abortion legislators placed a constitutional amendment on the August primary ballot, seeking to raise the threshold of support required to approve a state constitutional amendment from a simple majority of voters to 60 percent. While legislators denied it, this amendment was clearly in response to polling research demonstrating majority support for a voter-initiated reproductive freedom amendment, which was approved by voters in November 2023 and enshrined the right to reproductive decision-making in the state constitution.

How does expanding voting rights support reproductive rights? Michigan is a great example. Before Proposition 3, the reproductive freedom constitutional amendment, in 2022, Michigan voters approved Proposition 2 that enshrined a variety of voting rights in the state constitution including the right to vote by straight party ticket, automatic voter registration, same day voter registration, and no-reason absentee voting.

226 *Abortion Attitudes in a Pos-t Roe World: Findings From the 50-State 2022 American Values Atlas*, PUB. RELIGION RESEARCH INST (Feb. 23, 2023), https://www.prri.org/research/abortion-attitudes-in-a-post-roe-world-findings-from-the-50-state-2022-american-values-atlas/.
227 Id.

With abortion now illegal in more than a dozen states, panelists from states that have severely restricted or banned abortion discussed their experiences in trying to access care at the State Leadership Summit. Shown are top row: Nimra Chowdhry (Center for Reproductive Rights), Emily Martin (Avow), seated: Roula AbiSamra (Amplify Georgia Collaborative), Tamya Cox-Touré (ACLU Oklahoma), Ashley Lidow (WREN). Photo: Barry Brecheisen.

Gestational Bans

In 2023, states moved to ban abortion outright, introducing various restrictions to limit access to abortion earlier in pregnancy. Since the *Dobbs* decision in June of 2022, 14 states have successfully made abortion illegal through criminal, total bans. This year, legislators primarily focused on gestational bans, ranging from complete bans to viability bans.

State legislators introduced 65 gestational bans in 31 states (Alabama, Colorado, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming). Gestational bans that were enacted include total bans, six-week bans, and twelve-week bans.

Total Bans

In 2023, 15 states (Alabama, Colorado, Georgia, Iowa, Kansas, Kentucky, Missouri, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Virginia, West Virginia, and Wyoming) introduced 25 complete bans. Wyoming[228] and North Dakota[229] enacted such bans.

[228] H.B. 152, 67th Leg., Reg. Sess. (Wyo. 2023) (*to be codified at* WYO. STAT. ANN §35-6-120 through 35-6-128).
[229] S.B. 2150, 68th Leg. Sess., Reg. Sess. (N.D. 2023) (*to be codified at* N.D. CENT. CODE §§ 12.1-17.1, 14-02.1, 43-17-31(1)).

Fetal and Embryo Personhood

Total abortion bans regularly include language about personhood, either fetal or embryo, which is the idea that either an embryo or a fetus has similar or identical rights to people. Beyond abortion, such language can have harmful implications in many reproductive health contexts. These laws are concerning as they demonstrate a state's willingness to recognize an embryo as a person with dire consequences for pregnant people and people with the capacity to become pregnant all the while creating confusion for fertility care providers and patients.

An alarming trend this year was the introduction of fetal personhood bills that would define a "person" to include an "unborn child" at every stage of development. While states introduced fetal personhood bills during past legislative sessions, the *Dobbs* decision makes their potential enforcement possible. These bills amend the state's criminal code to punish the death of an "unborn child" as murder and, in effect, completely ban abortion. Ten states (Alabama, Alaska, Georgia, Kansas, Kentucky, Missouri, North Carolina, South Carolina, Texas, and Virginia) introduced fetal personhood bills, but none were enacted.

2023 saw an increase in bills introduced to establish embryo personhood. Wyoming enacted one such law this year, which is currently subject to an injunction.[230] Nine other states (Alaska, Georgia, Illinois, Iowa, Massachusetts, Oklahoma, South Carolina, Virginia, and West Virginia) introduced bills that contained language related to embryo personhood, but which likely would not directly impact fertility care, including IVF, because they do not create penalties for destroying or disposing of cryopreserved IVF embryos, nor do they remove IVF exceptions that already exist in many state abortion bans.

Three states (Alabama, Arkansas, and Kansas) introduced, but did not pass, embryo personhood bills that would have directly impacted IVF care. The bills' provisions would have undermined patients' ability to make decisions about their fertility care and limited their decision-making authority over frozen embryos. This legislation included criminal penalties for providers who unsuccessfully thaw cryopreserved embryos, inadvertently destroy or compromise an embryo in pursuit of preimplantation genetic testing, or unsuccessfully transfer embryos. These bills would make it impossible for patients to dispose of their embryos, since they would have required

[230] H.B. 152 § 1, 67th Leg., Reg. Sess. (Wyo. 2023) (*to be codified at* WYO. STAT. ANN. § 35-6-122(a)(iv)); Johnson v. State, No. 18853 (Wy. Dist. Ct. of Teton Cnty. Mar. 22, 2023) (order granting motion for temporary restraining order).

patients to indefinitely pay for storage and cryopreservation costs. These costs, coupled with limits on decision-making authority over frozen embryos, could lead families to forgo IVF care altogether, preventing many people from building families via assisted reproduction. Such legislation could have a chilling effect on providers who may be less willing to provide this care because of the risk of criminal penalties. In addition, many personhood bills introduced this year would have taken effect immediately upon their passage. Immediate effective dates would have particular consequences for patients and providers, including confusion and delays in care, which could lead to interruptions for people in the middle of an IVF cycle, where precise timing is crucial.

The number of personhood bills introduced this session could increase in upcoming legislative sessions, which would reflect the desire of some states to limit people's reproductive autonomy by targeting abortion and fertility care.

Six-week Bans

Following the overturning of *Roe*, eight states (Florida, Illinois, Iowa, Nebraska, New Hampshire, Pennsylvania, South Carolina, and West Virginia) introduced six-week bans, a point in pregnancy when anti-abortion advocates falsely claim a "fetal heartbeat" (a term which is misleading and medically inaccurate) can be detected, before many people know they are pregnant. Iowa,[231] South Carolina,[232] and Florida[233] enacted such bans.

Twelve-week Bans

In 2023, five states (Florida, Nebraska, New Jersey, North Carolina, and South Carolina) introduced twelve-week bans. North Carolina[234] and Nebraska[235] enacted such bans.

Gestational Ban Exceptions

A trend novel to 2023 is the narrowing of exceptions within gestational bans, including rape and incest exceptions that require reporting to law enforcement and collection of DNA evidence; gestational limits within exceptions; and limiting care provided by hospitals under an exception. While some have framed this legislation as a harm reduction effort, few patients qualify under the narrow limits of exceptions, and exceptions have grown more burdensome with the addition of new requirements and

231 H.F. 732, 90th Leg., Reg. Sess. (Iowa 2023) (*to be codified at* IOWA CODE ANN. § 146E.1, 146E.2).
232 S 474, 125th Leg., Reg. Sess. (S.C. 2023) (*amending* S.C. CODE ANN. §§ 44-41-610 through 44-41-690).
233 S.B. 300, 125th Leg., Reg. Sess. (Fla. 2023) (*amending* FLA. STAT. ANN. § 390.0111).
234 S.B. 20, 2023 Leg., Reg. Sess. (N.C. 2023) (*to be codified at* N.C. GEN. STAT. § 90-21.81B (2)).
235 L.B. 574, 108th Leg., 1st Reg. Sess. (Neb. 2023) (*to be codified at* NEB. REV. STAT. § 38-178, 179, 192, 193, 196, 2021, 2894).

limitations. The language used for exceptions is often vague and confusing, making it unclear what care a provider can legally perform or offer when a pregnancy threatens the life or health of a pregnant person. Exceptions place health care providers in a position where they are forced to balance their obligation to provide ethical, high-quality medical care against the threat of legal and professional sanctions.

This year legislation creating bans or amending existing exceptions to bans included worrisome language in health or life that explicitly exclude mental health conditions. Another alarming trend is the introduction of legislation redefining abortion to exclude care provided to remove an ectopic pregnancy or when care is provided during a medical emergency or because of a fetal abnormality. Such bills attempt to redefine abortion in a manner inconsistent with the reality of medical practice. This year 10 states (Alabama, Arkansas, Idaho, Louisiana, Missouri, Oklahoma, Tennessee, Texas, Wisconsin, and Utah) introduced 18 bills to create exceptions within existing gestational bans. Idaho,[236] Montana,[237] Tennessee,[238] Texas,[239] and Utah[240] enacted such bills.

Medication Abortion

Medication abortion is the most common method of abortion in the United States, currently accounting for more than half (53%) of all abortions. In 2020, 98% of medication abortions included the use of mifepristone as part of a two-pill regime. Since its approval, mifepristone has established a well-documented safety record, as demonstrated by its real-world use by more than five million people as well as hundreds of additional high-quality studies.

States hostile to abortion have moved to outright ban or limit abortion earlier in pregnancy and worked to eliminate access to medication abortion. Medication abortion is safe and effective regardless of where people take it and regardless of who is involved in the process.[241] In 2021 and 2022, there was a rise in legislation restricting medication abortion in response to the FDA's decision to remove the in-person dispensing requirement. These restrictions work in tandem with other abortion restrictions to eliminate access to abortion in states. Efforts to restrict medication abortion continued in 2023; SCOTUS's decision to overturn *Roe* and the *Alliance for Hippocratic Medicine v. FDA* case emboldened state legislators to prohibit medication abortion from entering banned states.

236 H.B. 374, 67th Leg., Reg. Sess. (Idaho 2023) (*to be codified at* IDAHO CODE §§ 18-604, 18-622).
237 H.B. 721, 68th Leg., Reg. Sess. (Mont. 2023).
238 H.B. 883, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023) (*to be codified at* TENN. CODE ANN. § 39-15-213).
239 H.B. 3058, 88th Leg. Sess., Reg. Sess. (Tex. 2023) (*to be codified at* TEX. CODE ANN. §§ 164.055; 74.551, 552).
240 H.B. 467, 65th Leg., Gen. Sess. (Utah 2023) (*to be codified at* UTAH CODE ANN. §§ 76-7-302, 304; 76-7a-201).
241 Center for Drug Evaluation and Research, *Review of proposed Major REMS Modification Summary Review for Mifepristone,* (Dec. 2022). Available at: https://www.accessdata.fda.gov/drugsatfda_docs/summary_review/2023/020687Orig1s025SumR.pdf.

Alliance for Hippocratic Medicine v. FDA

In the most recent ruling in a case filed in November 2022, the Fifth Circuit Court of Appeals ruled on August 16 to reinstate burdensome pre-2016 restrictions on the abortion medication mifepristone but not to revoke the U.S. Food and Drug Administration's (FDA's) initial approval of the drug. The ruling upheld part of a decision by a federal court in Texas. Because of an order issued by the U.S. Supreme Court in April, the Fifth Circuit's ruling did not take effect, and mifepristone remains available under current regulations while litigation continues. The Department of Justice has announced that it will seek Supreme Court review of the Fifth Circuit's decision. Mifepristone is part of a two-drug regimen for medication abortion and was first approved by the FDA in 2000.

The lawsuit against the FDA was filed by anti-abortion advocates to challenge the FDA's initial approval of mifepristone as well as the agency's more recent actions to increase access to the drug.

The Fifth Circuit's ruling left in place the FDA's approval of the drug in 2000 and its approval of a generic version in 2019. But it ruled to roll back FDA actions to expand access to mifepristone and return to pre-2016 regulations that included a requirement for people to access the drug in person. Such restrictions, if allowed to take effect, would prohibit the drug from being sent through the mail or prescribed through telemedicine, making it much more difficult for patients to obtain abortion care in most states. Both the FDA and Danco Laboratories have asked the US Supreme Court to grant certiorari and review the Fifth Circuit's most recent ruling.

Prior to the Fifth Circuit's August 16 ruling, court decisions in Alliance for Hippocratic Medicine v. FDA related to a preliminary injunction have included:

- A sweeping decision by a federal district court in Texas attempting to revoke the long-standing FDA approval of mifepristone.
- A Fifth Circuit ruling refusing to block the district court's order.
- A stay issued by the U.S. Supreme Court preventing the district court's order from taking effect.

During the 2023 legislative sessions, six states introduced total medication abortion bans (Arkansas, Hawaii, Iowa, Missouri, Texas, and Wyoming). Wyoming[242] was the only state to enact a total medication abortion ban.

Telemedicine Bans

In addition to attempts to outright ban medication abortion, states proposed telemedicine bans, which prohibit the use of telemedicine for abortion care, primarily to prohibit the remote provision of medication abortion. In 2023 state legislatures continued to limit access to medication abortion. Seven states (Florida, Kansas, Maine, Missouri, North Carolina, South Carolina, and West Virginia) introduced telemedicine bans, which were enacted in Florida[243] and North Carolina.[244]

242 S.F. 109, 67th Leg., Reg. Sess. (Wyo. 2023) (*to be codified at* WYO. STAT. ANN. §§ 35-6-120, 35-6-101).
243 S.B. 300, 125th Leg., Reg. Sess. (Fla. 2023) (*to be codified at* FLA. STAT. § 390.0111).
244 S.B. 20, 2023 Leg., Reg. Sess. (N.C. 2023) (*to be codified at* N.C. GEN. STAT. §§ 14-44.1(a)(1), (a)(3), (b); 90-21.81(a), B(2); 90-21.82(b)(1a)(g); 90-21.93(e)(3)).

Cross-Border Restrictions

While Congress has exclusive jurisdiction to regulate interstate commerce,[245] states hostile to abortion are targeting clinics and individuals in their state who help people gain abortion access outside of the state. Prior to *Dobbs*, the main group targeted by bills prohibiting travel to seek abortion care were young people.[246] Post-*Dobbs*, states are considering restrictions on everyone's movement—though young people continue to be the target of this type of legislation.[247]

Five states (Idaho, Iowa, Missouri, Texas, and West Virginia) introduced 12 bills to restrict cross-border abortion care by seeking to prohibit contracts with companies that assist employees with out-of-state care, banning the distribution of medication abortion, or criminalizing "abortion trafficking," a term created to perpetuate abortion stigma and harm people who assist young people with access to care. Texas and Iowa introduced identical legislation enforced exclusively through a private right of action to prohibit mailing or transporting medication abortion "in any manner to or from any person or location in the state" and require internet service providers to block internet access to information or materials that assist with obtaining an abortion, including medication abortion. Both bills failed. Idaho [248] was the only state to enact such legislation.

245 U.S. Const. art. I § 8, cl. 3.
246 See e.g, Mo. Rev. Stat. § 188.250.
247 See supra Section VIII on young people.
248 See supra note 164, H 242, 67th Leg., Reg. Sess. (Idaho 2023) (*to be codified at* IDAHO CODE ANN. § 18-623).

With millions of people in the U.S. now left without access to abortion care, traveling to other states to obtain care is often the only option. Some states that have banned abortion are also attempting to prohibit cross-border abortion care.
Photo: ©Ralph Paprzycki/Fotolia/Adobe Stock.

Barriers to Care

Well-known and existing barriers to reproductive health care were a focus of state legislation this year. Legislators who support reproductive rights introduced and enacted legislation to protect people from anti-abortion centers and misinformation or repeal long-standing restrictions, whereas anti-abortion lawmakers supported numerous barriers to care by funding anti-abortion centers and requiring the dissemination of misinformation, allowing broad religious refusals, and expanding ultrasound requirements before the provision of abortion care.

Anti-Abortion Centers

Anti-abortion centers, also known as crisis pregnancy centers, are organizations that advertise themselves as being able to assist with pregnancy. In truth, these centers use deceptive practices to divert people away from receiving abortions. Most of these centers do not have medically trained or licensed staff.[249]

Protecting Pregnant People from Anti-Abortion Centers

In 2023, state legislators continued a longstanding effort to regulate anti-abortion centers as 17 states (Arizona, California, Colorado, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Jersey, New York, Nevada, North Carolina, Pennsylvania, Texas, Vermont, and Wisconsin) introduced 28 bills to regulate anti-abortion centers through consumer protection measures such as banning deceptive advertising practices or requiring anti-abortion centers to disclose services they provide. California,[250] Colorado,[251] Illinois,[252] Vermont,[253] and Washington[254] enacted such legislation. The Colorado law is preliminarily enjoined.[255]

Funding for Anti-Abortion Centers

In addition to severely limiting access to abortion and failing to fund much-needed safety nets and family resources, more states funded anti-abortion centers this year. This effort is expected to increase in upcoming years, with the goal to fund and thereby embed anti-abortion biased counseling within hospitals, doctors' offices, and other places where pregnant patients receive with pregnancy related care. The anti-abortion agenda is to further limit the types of care patients might seek when dealing with emergency care and fetal diagnoses.[256]

249 Amy G. Bryant& Jonas J. Swartz, *Why Crisis Pregnancy Centers Are Legal but Unethical* 20 AMA J ETHICS. 269 (2018) https://journalofethics.ama-assn.org/article/why-crisis-pregnancy-centers-are-legal-unethical/2018-03
250 A.B. 1720, 2023 Leg., Reg. Sess. (Cal. 2023), (*to be codified at* CAL. HEALTH & SAFETY CODE §§123621, 123622.)
251 S.B. 23-190, 74th Leg., Reg. Sess. (Colo. 2023), (*to be codified at* COLO. REV. STAT. §§ 6-1-734, 12-30-120).
252 S.B. 1909, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
253 S 37, 2023 Leg., Reg. Sess. (Vt. 2023), (*to be codified at* V.S.A. § 150, *amending* 129 V.S.A. §§4722, 4724, *to be codified at* V.S.A. § § 4088m, 4099(e), *amending* V.S.A. §§ 129(a), 1354, *to be codified at* 63 V.S.A. §§ 2491, 2492, 2493, *amending* 18 V.S.A. § 9405, *amending* 56 V.S.A. § 3071, *to be codified at* 78 V.S.A. §§ 2501, 2502, *amending* 18 V.S.A. § 1881).
254 H.B. 1155, 68th Leg., Reg. Sess. (Wash. 2023), (*amending* WASH. REV. CODE §44.28).
255 *Bella Health and Wellness v. Weiser,* No. 23-939 (D. Colo. 2023) (order granting preliminary injunction).
256 See Jessica Valenti, *Calculated Cruelty, Abortion Every Day* (Oct. 19, 2023) https://jessica.substack.com/p/calculated-cruelty.

Twenty-two states (Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and West Virginia) introduced 60 bills to fund these anti-abortion centers. Thirteen funding bills were enacted in Arkansas,[257] Florida,[258] Kansas,[259] Louisiana,[260] Mississippi,[261] North Carolina,[262] North Dakota,[263] Pennsylvania,[264] Texas,[265] and West Virginia.[266]

Prohibiting or Requiring Misinformation

Limiting information about reproductive health care and actively perpetuating misinformation is an established tactic of anti-abortion lawmakers and activists. They utilize these tactics to create and further stigma about abortion and the people who provide care, assist with care, or seek care. In 2023, lawmakers in several states enacted protections from misinformation and unknown denials of care whereas anti-abortion lawmakers continued to mandate misinformation.

Protecting Pregnant People

Advocates and legislators in Colorado passed the "Safe Access to Protected Health Care" Package this year, which addressed issues of access, misinformation, and inequity for people accessing care in the state. Colorado HB 23-1218[267] requires the state Department of Public Health and Environment to develop a form by August 1, 2024, listing healthcare services, including abortion, reproductive healthcare, and transgender healthcare, that are frequently subject to denial at certain hospitals. Private hospitals in the state will be required to fill out the form indicating which services they do and do not offer. The completed form will then be publicly accessible on the department's website and hospitals will be required to provide a printed copy to patients seeking relevant care.

Colorado SB 23-188[268] includes interstate shield protections and requires correctional facilities to provide information about abortion providers, referrals to abortion funds, and transportation to access abortion and miscarriage management for incarcerated people capable of pregnancy.

257 S.B. 495, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (*to be codified at* ARK. CODE ANN. §§ 20-1-1001(a); 20-8-1001(d)(2); 20-8-1002; 20-16-2401(3)). S.B. 286, 94th Gen. Assemb., Reg. Sess. (Ark. 2023). S.B. 578, 94th Gen. Assemb., Reg. Sess. (Ark. 2023).
258 S.B. 300, 125th Leg., Reg. Sess. (Fla. 2023).
259 H.B. 2184, 90th Leg. Sess., Reg. Sess. (Kan. 2023).
260 S.B. 41, 2023 Leg. Sess., Reg. Sess. (La. 2023).
261 H.B. 1671, 138th Leg., Reg. Sess. (Miss. 2023), (*amending* MISS. CODE. ANN. § 27-7-22.43).
262 H.B. 259 § 4.3(a), 2023 Leg., Reg. Sess. (N.C. 2023), (*to be codified at* N.C. GEN. STAT. § 130A-9H.11(a)).
263 S.B. 2150, 68th Leg. Sess., Reg. Sess. (N.D. 2023), (*to be codified at* N.D. CENT. CODE §§ 12.1-17.1, 14-02.1, 43-17-31(1)).
264 H.B. 611, 207th Gen. Assemb., Reg. Sess. (Pa. 2023).
265 S.B 24, 88th Leg., Reg. Sess. (Tex. 2023), (*to be codified at* TEX. HEALTH & SAFETY CODE ANN. § 54).
266 H.B. 2002, 86th Leg., Reg. Sess. (W.Va. 2023), (*amending* W. VA. CODE ANN. § 11-21-10a, *to be codified at* W.VA. CODE ANN. §§ 16-5K-7, 16-66-1, 16-66-2, 16-66-3).
267 H.B. 23-1218, 74th Leg., Reg. Sess. (Colo. 2023), (*to be codified at* COLO. REV. STAT. § 25-58-104).
268 S.B. 23-188, 74th Leg., Reg. Sess. (Colo. 2023), (*amending* COLO. REV. STAT. § 17-1-114.5).

Alerting Consumers to Assisted Reproduction Care Denials

In 2023, several states enacted laws that would either require the state to alert people to denial of care practices or proactively protect the right to access fertility care. No states enacted bills that would have allowed providers to refuse to provide assisted reproduction services based on their religious objections to that care. Colorado enacted a law that would alert people to hospitals and clinics that denied people fertility care.[269] Connecticut,[270] Minnesota,[271] and New Mexico[272] enacted laws that protected people's ability to access fertility care. These laws, like many interstate shield protections, include fertility care as reproductive health care for the purposes of statutory protections, a trend that will likely continue in states that pass other proactive abortion policies.

Misinformation through Biased Counseling

Anti-abortion laws frequently require health care providers to give patients seeking abortions information that is often irrelevant, harmful, or untrue as a part of informed consent in order to discourage abortion care. These requirements are called biased counseling. Twenty-two states (Arkansas, Colorado, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, and West Virginia) introduced a total of 61 biased counseling and informed consent requirement bills. Arkansas,[273] Iowa,[274] Kansas,[275] Montana,[276] North Carolina,[277] and West Virginia[278] enacted laws actively requiring misinformation.

So-called Medication Abortion "Reversal"

Medication abortion "reversal" bills require providers to give additional biased counseling about the factually incorrect claim that it is possible to "reverse" a medication abortion procedure after the patient has taken the first round of medication. Such requirements are usually introduced in amendments to bills which would require biased counseling. In 2023, five states (Colorado, Kansas, Massachusetts, North Carolina, and Tennessee) introduced bills requiring biased counseling about abortion medication abortion "reversal." Kansas[279] was the only state to enact such a bill.

269 H.B. 23-1218 § 1, 74th Gen. Assemb., Reg. Sess. (Colo. 2023) (*to be codified at* COLO. REV. STAT. § 25-058-104(1)(b)).
270 S.B. 9 § 1(b), 2023 Gen. Assemb., Reg. Sess. (Conn. 2023).
271 H.F. 1 § 1, 93rd Leg., Reg. Sess. (Minn. 2023) (*to be codified at* MINN. STAT. § 145.409(2)).
272 H.B. 7 § 3, 56th Leg., Reg. Sess. (N.M. 2023) (*to be codified at* N.M. STAT. ANN. § 24-34-3).
273 S.B. 465, 94th Leg., Reg. Sess. (Ark. 2023), (*amending* ARK. CODE ANN. §§ 20-8-1001(a), 20-8-1001(d)(2), 20-8-1002, 20-8-1003).
274 H.F. 732, 90th Leg., Reg. Sess. (Iowa 2023), (*codified at* IOWA CODE ANN. § 146E.2).
275 H.B. 2264, 90th Leg. Sess., Reg. Sess. (Ka. 2023), (*to be codified at* KAN. STAT. ANN. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6723, 65-6742.)
276 H.B. 575, 68th Leg., Reg. Sess. (Mont. 2023), (*to be codified at* MONT. CODE ANN. §§ 50-20-104, 50-20- 109).
277 S.B. 20, 2023 Leg., Reg. Sess. (N.C. 2023), (*to be codified at* N.C. GEN. STAT. § 90-21.81B (2)).
278 S.B. 552, 86th Leg., Reg. Sess. (W.Va. 2023), (*amending* W. VA. CODE ANN. §16-2R-9).
279 H.B. 2264, 90th Leg. Sess., Reg. Sess. (Kan. 2023), (*to be codified at* KAN. STAT. ANN. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6723, 65-6742).

So-Called "Born Alive" Bans

So-called "Born-Alive" bills are consistently introduced during legislative sessions each year. Deceptive and stigmatizing, these bills create a duty of care for providers regarding a fetus that is "born alive." While they create no operative change in the law, as existing laws and health care providers' obligation to provide appropriate medical care already require such provision of care, they further criminalize reproductive health care providers through the risk of criminal sanctions for providing reproductive health care. In 2023, 37 bills included a provision requiring care for an infant "born alive," but only Kansas,[280] North Carolina,[281] and Montana[282] enacted three such laws.

Religious Refusals

In 2023, 21 bills were introduced in 15 states (Florida, Illinois, Iowa, Kentucky, Michigan, Montana, Nebraska, North Carolina, Oklahoma, Oregon, Rhode Island, Vermont, Texas, West Virginia, and Wyoming) that would allow healthcare providers, payers, and institutions to refuse to participate in an abortion procedure. These bills sanction anyone's refusal to be involved in the provision of care, including but not limited to physicians and nurses, based on a conscientious objection. These bills prevent so-called retaliation from the state and employers, and were enacted in Florida,[283] Montana,[284] and North Carolina.[285]

[280] H.B. 2313, 90th Leg., Reg. Sess. (Kan. 2023), (*amending* K.S.A. 65-445).
[281] S.B. 20, 2023 Leg., Reg. Sess. (N.C. 2023), (*codified at* N.C. GEN. STAT. ANN. § Ch. 90, art. 1M).
[282] H.B. 625, 68th Leg., Reg. Sess. (Mont. 2023).
[283] S.B. 1580, 125th Leg., Reg. Sess. (Fla. 2023), (*codified at* FLA. STAT. ANN. § 381.00321).
[284] H.B. 303, 68th Leg., Reg. Sess. (Mont. 2023), (*amending* MONT. CODE ANN. §§ 37-1-308, 50-20-111).
[285] S.B. 20, 2023 Leg., Reg. Sess. (N.C. 2023), (*codified at* N.C. GEN. STAT. ANN. § Ch. 90, art. 1M).

< While several states limit information about reproductive health care and perpetuate misinformation, other states moved to enact protections against misinformation and denials of care. Photo: Royalty Free.

Ultrasound Requirements

Nineteen states (Arkansas, Hawaii, Illinois, Iowa, Maine, Maryland, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, and West Virginia) introduced a total of 39 ultrasound requirement bills. These bills would require abortion providers to perform an ultrasound, offer the patient an opportunity to view an ultrasound, or offer to perform an ultrasound before abortion care is provided. Ultrasound requirements were enacted in Arkansas,[286] Iowa,[287] Nebraska,[288] North Carolina,[289] and Montana.[290]

Repealing Long-Standing Restrictions

After Proposition 3 amended the Michigan Constitution, the state enacted a series of legislation known as the "Reproductive Health Act" (RHA).[291] In addition to creating protections and repealing criminal penalties, the RHA repealed barriers to care, such as requiring abortion facilities to meet free-standing surgical center standards, prohibiting public universities from providing referrals for abortion services, and the state's D&X ban or "Partial Birth Abortion Ban Act."[292] The RHA also repealed violations for which healthcare providers are subject to discipline for professional misconduct, including failure to physically examine a patient before an abortion.[293] In addition, the Act amended the definition of abortion to make explicit that abortion does not include "the use or prescription of a drug or device that prevents pregnancy, or a medical treatment used to remove a dead fetus or embryo whose death was the result of a spontaneous abortion."[294] These repeals are progress towards reproductive autonomy in Michigan.

286 S.B. 542, 94th Leg., Reg. Sess. (Ark. 2023), (*amending* ARK. CODE ANN. § 20-16-602(c). S.B. 465, 94th Leg., Reg. Sess. (Ark. 2023), (*amending* ARK. CODE ANN. §§ 20-8-1001(a), 20-8-1001(d)(2), 20-8-1002, 20-8-1003).
287 H.F. 732, 90th Leg., Reg. Sess. (Iowa 2023), (*codified at* IOWA CODE ANN. § 146E.2).
288 L.B. 574, 108th Leg., 1st Reg. Sess. (Neb. 2023), (*codified at* NEB. REV. STAT. ANN. § LB 574 § 4).
289 S.B. 20, 2023 Leg., Reg. Sess. (N.C. 2023), (*codified at* N.C. GEN. STAT. ANN. § 90-21.82, 90-21.83A).
290 H.B. 575, 68th Leg., Reg. Sess. (Mont. 2023), (*to be codified at* MONT. CODE ANN. §§ 50-20-104, 50-20- 109).
291 H.B. 4949, 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. §§ 750.90(h), 750.323, 333.108, 333.1091, 550.541-550.551). S.B. 474, 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §§ 333.2803, 333.2854, 333.20115, repealing 333.2835, 333.2836, 333.2837, 333.17014, 333.17016, 333.17017, 333. 17516, 333.17517, 333.2224). H.B. 4951,102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §§ 333.2803, 777.13k, 777.16d, 777.16p. S.B. 476,102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 333.1071). H.B. 4953 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 600.5711). H.B. 4954 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 388.1606) H.B. 4955, 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §339.1810). H.B. 4956 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 750.90(h)) S.B. 477, 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. § 390.1595).
292 S.B. 474, 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §333.20115). S.B. 477, 102nd Leg., Reg. Sess. (Mich. 2023) (amending Mich. Comp. Laws Ann. § 390.1595). H.B. 4949, 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. §§ 750.90(h)).
293 S.B. 474, 102nd Leg., Reg. Sess. (Mich. 2023) (*repealing* MICH. COMP. LAWS ANN. §333.17017).
294 S.B. 474, 102nd Leg., Reg. Sess. (Mich. 2023) (*amending* MICH. COMP. LAWS ANN. §333.2690).

Conclusion

As a nation, the U.S. will continue to identify and measure the impacts of Dobbs for years to come; some of the immediately visible harms include forcing pregnant people to travel out-of-state to get procedural abortion care or to carry pregnancies that threaten their health and well-being, the closure of maternity units, limitations on IVF, and accelerated relocations in medical education and residency programs. The lack of abortion care harms pregnant people, their families, and whole communities. Today 23.7% of Americans live in states that have criminalized abortion. The patchwork of access determined by the laws of individual states has created the absurd reality of border regions where, in adjoining states, abortion is legal and accessible or a criminal act, e.g., Washington, Oregon, and Idaho; Minnesota, North Dakota, and South Dakota; Illinois, Missouri, Indiana, and Kentucky; New Mexico and Texas.

In 2023, the first full state legislative session after the *Dobbs* decision, the intense polarization between gerrymandered state legislatures that oppose reproductive rights and legislatures that support reproductive rights was evident in the legislation introduced and enacted. This year supportive states moved to enshrine abortion rights into state law and strengthen interstate shield protections, including protections for providers who provide medication abortion across state lines. Also in those states, we saw efforts to support individuals and families using assisted reproduction to build their families in the form of insurance coverage for fertility care, including fertility preservation, and laws to secure their child-parent relationships – an issue of particular importance to LGBTQ families. States also made strides to support pregnant and birthing people, including by providing Medicaid coverage for doula services, pushing for universal paid leave, and enacting laws that extend the length of postpartum Medicaid coverage to 12 months.

Meanwhile, states hostile to reproductive health, rights, and justice worked to enact more extreme abortion bans and make it more difficult for people to obtain care out of the state. Some of these states further undermined efforts to improve maternal health by eliminating public health infrastructure (Idaho's MMRC) or tying Medicaid coverage eligibility to pregnancy outcomes and excluding people who have abortions (Utah).

With *Roe* overturned, the trends from this year are likely to continue into 2024, with states introducing legislation to restrict and protect access to

abortion, including efforts by supportive states to enshrine abortion rights in state constitutions and enhance protections for patients, providers, and helpers; as ban states attempt to further restrict patients from accessing medication abortion, including criminalizing self-managed abortion. Furthermore, we expect states to continue their efforts to bolster existing protections for people needing assisted reproduction to build their families and for pregnant and birthing people. These efforts will be critical in the face of continued attacks on abortion, a high maternal mortality and morbidity rate that disparately impacts Black and Indigenous people, and escalating attacks on the LGBTQ community.

Currently in the U.S., a person's geography and identity determine their access to reproductive health care. However, the future holds the promise of reproductive freedom for all individuals and families, so they can decide when, how, and whether to grow their families. Please know that the Center for Reproductive Rights is committed to ensuring state statutory and constitutional protections for bodily autonomy and access to abortion care, maternal health care, and assisted reproduction. We will not give up until each person in this country can chart the course of their reproductive lives.

Questions? Please contact us at statepolicy@reproductiverights.org.