

ISSUE BRIEF, FEBRUARY 2018

## State law approaches to facility regulation of abortion and other office interventions

### Key Points:

- **TRAP (Targeted Regulation of Abortion Providers) laws do not bring abortion-providing facilities in line with other health care facilities, but instead subject them to different and more stringent requirements.**
- **This differential treatment suggests a lack of health benefit from TRAP laws, indicating they reduce access without justification.**
- **Legislators and policymakers seeking to protect women's health would be better served by addressing abortion provision within the context of comparable health care services rather than via separate and different requirements.**

### Background

- Abortion is a very safe procedure, with less than one-quarter of one percent having a major complication.<sup>1</sup> The vast majority of abortions in the U.S. are provided in freestanding medical offices and clinics.<sup>2</sup>
- Over the last four decades, states have enacted laws specifically targeting facilities in which abortions are performed; these laws may impose requirements regarding licensing, accreditation, physical plant, and/or operations.<sup>3</sup> Proponents of these laws purport they promote the safety of abortion. There is no evidence indicating that these laws create any safety benefits; at the same time, research

suggests that these laws reduce patients' access to services.<sup>4</sup>

- The constitutionality of such TRAP laws has been called into question by the 2016 Supreme Court decision *Whole Woman's Health vs. Hellerstedt*, which struck down a Texas TRAP law as unconstitutional.<sup>5</sup> The Court found that the law's imposition of requirements only on abortion provision, rather than on a broader swathe of procedures or providers, suggested that those requirements lacked health benefits.
- It is important to understand the extent to which states regulate abortion-providing facilities differently than facilities providing other office-based services, as differential treatment suggests the laws do not serve the legitimate purpose of protecting maternal health, and thus may be unconstitutional.
- In this study, researchers conducted a legal assessment of laws governing facilities in which abortions or other office-based surgeries or procedures are performed in all 50 states and the District of Columbia.

### Findings

- States have enacted 55 TRAP laws in 34 states, 25 office-based surgery (OBS) laws in 25 states, and one law in one state governing cosmetic surgical services. Nineteen states have enacted both TRAP and OBS laws; 14 states have enacted TRAP laws but no OBS laws; and six states have enacted an OBS law but no TRAP law.

For more information about this and other ANSIRH research, please visit [www.ansirh.org](http://www.ansirh.org).

### Applicability

**92%** of **OBS** laws only apply to facilities using a specified level of anesthesia or sedation.

**0%** of **TRAP** laws apply to abortion-providing facilities based on the level of anesthesia or sedation they use.

**12%** of **OBS** laws apply to facilities regardless of whether they provide any procedures or surgeries.

**80%** of **TRAP** laws apply to facilities that provide medication abortion even if they provide no procedures or surgeries at all.

### 25 OBS Laws

### 39 TRAP Laws

#### Facility Requirements

##### Facility Licensing

**16%** **92%**

##### Separate Recovery Room

**16%** **51%**

##### Specific Minimum Hallway and Door Widths

**8%** **36%**

#### Arrangements for Patient Transfers

*The majority of OBS laws and TRAP laws require arrangements for patient transfers but the type of arrangements required differ significantly.*

##### Plan or Protocol Satisfactory for Transfers

**40%** **10%**

##### Hospital Transfer Agreements and/or Physician Admitting Privileges Required

**40%** **87%**

#### Penalties for Non-Compliance

##### Criminal Penalties, Fines, and/or Licensing Sanctions

**28%** **95%**

### Conclusions

- States have frequently singled out abortion provision for targeted regulation, enacting more TRAP laws than laws governing other office-based procedures and surgeries. In only one instance has a state singled out specific office interventions other than abortion (cosmetic surgical services) for separate legal treatment.
- Unlike OBS laws, many TRAP laws apply regardless of whether the facility performs procedures (e.g. some TRAP laws apply to facilities that provide medication abortions but no procedures of any kind) and/or regardless of what level of sedation/anesthesia the facility uses. As a result, facilities that would not be subject to their state's office-based facility laws are subject to regulation if the services they provide include abortion.
- TRAP laws impose more numerous and more stringent requirements than OBS laws. These laws do not align abortion provision with existing healthcare standards, but instead go beyond the standards for other health care facilities, despite the lack of any evidence they create safety-related benefits.
- TRAP laws are significantly different from and more onerous than facility requirements imposed on other office-based medical procedures.
- Legislators and policy makers who want to protect women's health should address abortion provision within the context of comparable health services rather than via separate and different requirements.

#### References

1. Upadhyay UD, Desai S, Zlidar V, et al. Incidence of emergency department visits and complications after abortion. *Obstetrics & Gynecology*. 2015;125(1):175-183.
2. Jones RK, Jerman J. Abortion Incidence and Service Availability In the United States, 2014. *Perspect Sex Reprod Health*. Mar 2017;49(1):17-27.
3. Medoff MH. State Abortion Policies, Targeted Regulation of Abortion Provider Laws, and Abortion Demand. *Review of Policy Research*. 2010;27(5):577-594.
4. Berglas NF, Battistelli MF, Nicholson WK, Sobota M, Urman RD, Roberts SCM (2018) The effect of facility characteristics on patient safety, patient experience, and service availability for procedures in non-hospital-affiliated outpatient settings: A systematic review. *PLoS ONE* 13(1): e0190975. <https://doi.org/10.1371/journal.pone.0190975>.
5. *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292, 2309-10, 2315-16.