Codifying Reproductive Choice

Description of the policy and how it works in practice

Some states have codified abortion measures that affirm state protections for the right to an abortion and other reproductive rights through amending their state constitutions or through legislative actions.

Health Impact

States with the most restrictive abortion laws, primarily Southern states, have the worst maternal and infant health outcomes as they often have inadequate and unsustainable Medicaid and children's health programs needed to support mothers and babies.[117] Additionally, these states also have some of the highest rates of Medicaid births despite failing to choose to expand Medicaid programs.[118] Limitations on reproductive rights and health services have been linked to lower educational attainment and opportunity, income, political participation, and well-being among women.[119] Access to abortion and reproductive services is vital to the physical, mental, and financial health of individuals. Research has demonstrated that access to these services has been linked to improved mental health, decreased likelihood of adverse maternal health outcomes, increased economic and social well-being, and decreased likelihood of financial hardship.[119]

Feasibility

In June 2022, the Supreme Court struck down a landmark case—Roe v. Wade—ruling that the accessibility and legality of abortion and abortion-related services in the U.S. was a decision left to the states, rather than a guaranteed federal right.[120] This includes services that allow abortion care even in traumatic instances such as rape or incest regardless of age.[120] In response to the Supreme Court action, some states have moved to codify abortion measures that affirm state protections for the right to an abortion through amending their state constitutions or through legislative actions.

Since 1977, the Hyde Amendment has prohibited federal funds from being used to provide coverage for abortion services, except for circumstances that endangered the life of the woman or resulted from rape and incest.[121] However, the amendment is not a permanent law and has been attached to every Congressional appropriations bill since 1976.[121] Therefore, the amendment must be renewed annually

in the Congressional appropriations bill for the Department of Health and Human Services (HHS). Given Medicaid is a joint financial venture between federal and state governments, states may elect to cover abortion care for Medicaid enrollees in certain instances using state funds rather than federal funding.[121] Of the states that have not banned abortion, 19 and the District of Columbia use state funds to cover abortion care for Medicaid enrollees.

In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned Roe v. Wade, fundamentally shifting the legal landscape surrounding reproductive rights and abortion care to be state-law dependent. States are in a unique position to continue to uphold reproductive rights that are no longer recognized or secured by federal law. States are able to use their own constitutions, legislative processes, and court systems to regulate and protect abortion care and reproductive rights. Some states have begun codifying reproductive rights into their state constitutions, while others have used this authority to create more restrictive approaches to reproductive rights, including preempting local governments from allocating funds to certain reproductive services and sex education programming or altering ballot measure rules to make it more difficult to amend state constitutions.[122] Additionally, some states are attempting to criminalize abortion access for individuals who travel to a state that offers abortion services, as well as to criminalize the actions of out-of-state providers who perform these services to these individuals.[123] As of May 2025, 23 states and the District of Columbia protect access to abortion through their state constitutions, statutes, or state court decisions.[124] Those protections were established in different ways. Arizona, Colorado, Missouri, Montana, New York, and Ohio acted through ballot measures amending their constitutions.

Others acted through legislation. In Alaska and Kansas, protection rests on state supreme court rulings rather than on an enacted law. In contrast, 27 states have laws that severely limit or prohibit abortion.[124]

Overview of the policy's impact on Black health and racial equity

Legislation that limits access to or coverage of abortion services and care places significant threats to the economic, financial, and physical well-being of Black women/birthing people. This is particularly concerning considering the high rates of Black women residing in the South, which have the most hostile abortion laws.[120] Currently, six in ten Black women ages 18–49 reside in states with abortion bans or restrictions.[125] Black women are more likely than white women to experience contraceptive failure, poor contraception counseling, higher rates of maternal mortality and morbidity, high-risk pregnancy, and race-based discrimination in seeking contraceptive care.[126] Additionally, Black women experience disparate outcomes in wage and economic equality that impacts access to and affordability of childcare services, transportation, and leave from work.[119] These laws will decrease medical training opportunities for providers, place barriers on access to abortion care, and result in an overall increase in Black maternal morbidity and mortality rates.[127] Access to reproductive services is important to promote economic, financial, and physical well-being of Black women.[128]

Summary information from policy assessment

- **Policy status**
  Moderate — This policy has been implemented in a limited number of states and localities with the potential to increase in commonality as more ballot initiatives and litigation efforts continue to unfold.

- **Jurisdiction authority (federal, state, county, municipality, other)**
  STATE AND LOCAL — Reproductive rights can be passed at the state and local level; however, most strategies focus on state level initiatives.

- **Resource requirements (high, moderate, low)**
  LOW — Few financial resources will be needed; however, political power and organization will be key to initiate and support ballot initiatives and potential litigation.

- **Return on investment (no, yes—social, yes—environmental, yes—economic)**
  YES — ECONOMIC — Research has demonstrated that access to abortion services and other reproductive rights improves women's economic well-being.[129]

- **Legal considerations**
  There are implications for preemption of any federal laws that directly or indirectly relate to reproductive access. For example, there have been federal attempts to remove Mifepristone and Misoprostol—a drug used to terminate pregnancies—as an FDA approved drug for abortion.[130]

- **Strength of evidence (strong, moderate, weak)**
  MODERATE— As demonstrated above, there is strong evidence demonstrating the need for the protection of reproductive rights and abortion care due to socioeconomic factors. There is little evidence that focuses on how protecting access to reproductive rights will specifically impact Black families and women. Additionally, there is little evidence that has examined the outcomes of Black families and women in states that have protected abortion access.

- **Equity (yes, unclear/sometimes, no)**
  YES— Access to reproductive services and abortion care will improve equitable outcomes, with some of the highest potential benefits being for Black women.

- **Operational approach to equity (distributional, procedural, structural)**
  PROCEDURAL AND STRUCTURAL— Expanding access to reproductive rights and abortion care would significantly decrease the financial, social, and physical burden experienced by individuals. One study found that women living in the South, where 13 states have banned or restricted abortion care, have had to drive as much as six times more than people in other states to end a pregnancy.[131]

Examples of the successful implementation of the policy in Black communities

Others doing work in this space include organizations such as National Black Women's Reproductive Justice Agenda, Black Women's Health Imperative, Guttmacher Institute, the Center for Reproductive Rights, and Sister Song. Codifying reproductive choice is one of the strongest actions states can take to protect reproductive rights and abortion access. State and local level legal and policy strategies should include considerations for both patients who choose to utilize abortion services, as well as providers who are administering these services.

- **New York:** NY voters approved an amendment that will strengthen legal foundations for protecting the state's current access to abortion along with additional protections for various forms of discrimination. The amendment holds that "no one can face discrimination due to sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive health care and autonomy."[132]
- **Colorado:** Residents of CO approved an amendment that codifies protections for abortion, including preempting local governments from passing their own laws to try to restrict the procedure. Additionally, the amendment removed the state's previous constitutional ban against public funding for abortions, and it allows the state to cover the procedure under Medicaid and add it to state employee health plans.[132]