

Issue: MI Reproductive Rights

Reproductive Rights in Michigan

Summary

Although abortion is still legal in the United States, Michigan Republicans have been passing state-level legislation that has incrementally chipped away at women's reproductive rights. In 2019 alone, Republicans passed legislation outlawing certain abortion procedures and increasing criminal sentences for physicians providing such services.¹ By passing legislation restricting access to abortion, the Legislature has effectively limited not only a woman's right to choose, but also her access to contraception and healthcare in general. Strategies to limit access include insurance coverage restrictions; costly, unnecessary licensing and administrative regulations on facilities; a mandatory waiting period and mandatory biased counseling; a ban on telemedicine for abortion services; parental consent requirements; and funding limitations. These attacks hurt poor women, women of color, and rural women the most, and they ultimately cost the government money. With the fate of *Roe v. Wade* now in the hands of a conservative U.S. Supreme Court, it is now more important than ever that Democrats take back the Legislature to protect reproductive rights in Michigan.

Current Restrictions on Access to Services

Insurance limitations

In Michigan, in 2019, 94.3 percent of abortions were paid out-of-pocket by the patient. Only 5.4 percent were paid by insurance.² State law prohibits health insurance plans (including plans offered in the state's healthcare exchange under the Affordable Care Act) from covering abortions, except when it is necessary to save the mother's life. Women must purchase an optional rider and pay an additional premium to cover abortions under any other circumstances, including rape and incest. Insurance companies are not required to offer such riders, and people typically wouldn't buy them even if they could because people do not generally plan for an unplanned pregnancy.³ Obviously, the lack of insurance coverage and public funding hits lower-income women the hardest because they do not have the resources to pay for the procedure themselves.⁴

Onerous facility regulations

The Republican-led Michigan Legislature has imposed costly and unnecessary Targeted Regulation of Abortion Providers (TRAP) regulations—regulations that essentially require that doctors who provide abortion services convert their offices into mini-hospitals. They must comply with the requirements of a free-standing surgical outpatient facility. The regulations go so far as to specify the size of the procedure room and the width of corridors.⁵ The doctors must have a transfer agreement with a hospital not more than 30 minutes away, with no exceptions for rural areas that have no local hospital or for situations in which the nearby hospitals refuse to grant transfer agreements.⁶ The transfer agreement regulation is significant because the most recent statistic suggests that roughly 25 percent of hospital beds in Michigan are in Catholic medical facilities that refuse to provide not only abortion services, but also contraception, sterilization, and infertility treatment.⁷ Only those physicians' offices and facilities where fewer than 50 percent of their patients seek abortions are exempt from the TRAP requirements.⁸ While most TRAP restrictions remain enforceable in Michigan, the hospital-transfer-agreement regulation could be challenged due to two recent U.S.

Supreme Court decisions. In the Texas case *Whole Women's Health v. Hellerstedt* decided in 2016 and the Louisiana case *June Medical Services v. Russo* decided in 2020, the Court ruled that state laws placing hospital admission requirements on abortion clinic doctors are unconstitutional.⁹

Mandatory waiting period and counseling

At least 24 hours before an abortion, a qualified health professional must confirm that the patient is pregnant and orally describe to the patient the probable gestational age of the fetus. In addition, the woman must receive materials that use illustrations or photographs showing the anatomy of a fetus at two-week gestational increments, include information on prenatal care and parenting, describe complications associated with abortion, identify public agency adoption services, and state that some women experience depression, guilt, sleeplessness, anger, and loss of interest in work and sex after an abortion. A woman seeking an abortion must wait 24 hours between the time that she receives those materials and signs an informed consent form and the time that the procedure is performed. Prior to an abortion, if the woman receives an ultrasound, the health professional must offer the woman an opportunity to view the ultrasound images.¹⁰

Telemedicine ban

In the early stages of pregnancy, women have the option of taking a pill (RU486 or mifepristone) instead of undergoing a surgical procedure. About 28 percent of abortions involve RU486.¹¹ In 2012, the Republicans enacted a law (HB 5711) that prohibited the use of telemedicine (clinical services provided remotely via secure video and audio technology) to prescribe and monitor medication-type abortion. This ban created service barriers, particularly to women in rural areas who would have to travel long distances to receive in-person treatment at a clinic. Due to a sunset provision in that law, the telemedicine ban was due to expire in six years. In 2018, the Republicans in the Michigan House and Senate passed a bill (SB 1198) to extend the ban indefinitely. However, Gov. Snyder vetoed that bill before leaving office.¹²

Parental consent

Parental consent, not just parental notification, is required under virtually all circumstances for a minor seeking an abortion in Michigan. A woman under age 18 may not obtain an abortion unless the physician receives the written consent of at least one parent. This mandate does not contain a waiver for minors who are victims of rape, incest, or child abuse. Parental consent is waived only in cases of a medical emergency. The young woman may request a waiver from a judge by proving either that she is mature and well-informed enough to make her own decision or that waiving parental consent is in her best interest.¹³

Funding cuts

Federal and state laws prevent the use of public funds for abortions, except in cases of life endangerment, rape, or incest.¹⁴ However, public funds are used for non-abortion family planning and pregnancy prevention services, including birth control, preventative health exams, pregnancy testing and counseling, sexually transmitted disease testing and treatment, and cervical and breast cancer screening. Most of these funds come from two federal programs: Medicaid and the Title X Family Planning Program. These programs provide birth control and non-abortion reproductive healthcare to low-income people who otherwise could not afford services.¹⁵

A state law enacted in 2002 requires the Michigan Department of Health and Human Services (DHHS) to distribute family planning funds first to healthcare providers that do not perform

abortions. Planned Parenthood of Michigan receives money from the state but gets only what is left over after the non-abortion healthcare providers receive the amounts for which they applied.¹⁶

But that was not enough for Republicans. In the 2019 state budget, the Republican-led Legislature tried to eliminate funding for Planned Parenthood altogether. They inserted into the budget a provision prohibiting DHHS from contracting for non-abortion family planning services with an entity that performs abortions unless no alternative providers exist in the same county. Although he signed the budget bill, Republican Governor Rick Snyder said that the provision is unenforceable because it is unconstitutional. The state constitution prohibits legislators from changing an existing statute (the one adopted in 2002) through boilerplate budget language.¹⁷

In 2019, the Trump administration also implemented a gag rule requiring that all Title X recipients refrain from performing or referring women for abortion procedures.¹⁸ Rather than comply with such a restrictive policy, Planned Parenthood of Michigan opted to reject their Title X funding altogether. Planned Parenthood of Michigan, which served 70 percent of Michigan’s Title X patients, had been receiving 20 percent of its funding from Title X.¹⁹ The gag rule continues to put tremendous financial stress on Planned Parenthood clinics throughout the state, affecting their ability to provide not only abortions but also family planning services to roughly 42,000 patients.²⁰

Instead of allocating additional state funds to legitimate family planning organizations like Planned Parenthood, the Republican-controlled Legislature attempted to pass a 2020 budget that would have funneled funds to Real Alternatives, a crisis pregnancy center.²¹ Crisis pregnancy centers (CPCs) are dangerous organizations that market themselves as clinics offering prenatal care, counseling, and healthcare plans for pregnant women. In reality, CPCs are tools of the pro-life movement. CPC employees discourage women from seeking abortions by presenting biased counseling as well as inaccurate medical information about family planning and conception. Many CPCs do not even have licensed medical professionals on staff.²² CPCs across the country have also been accused of deceptive business practices. In fact, the watchdog group Campaign for Accountability is currently investigating Real Alternatives for their misuse of public monies.²³

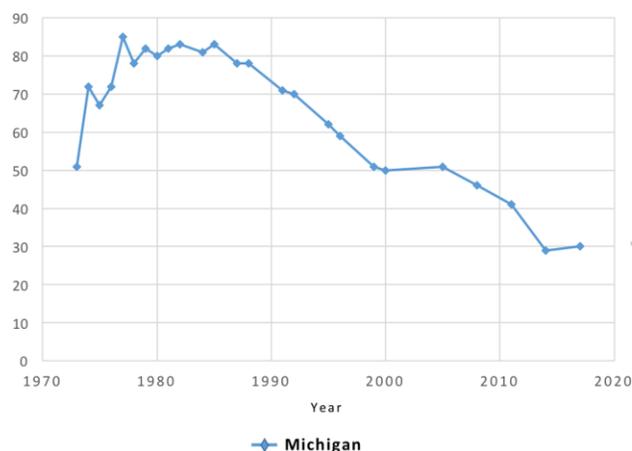
Fortunately, Gov. Whitmer vetoed a \$700,000 line item for Real Alternatives in the 2020 budget.²⁴ Every term, the Republicans introduce an onslaught of bills attacking reproductive rights, and only strong Democratic leadership can protect women’s reproductive rights against those threats.

Consequences of Republican Restrictions

The combined effect of the Republicans’ legislative restrictions on abortion has been to force the closure of many family planning clinics. In 2011, Michigan had 41 abortion providers; as of 2014, only 29 remained, representing a 29 percent drop (see Figure 1)²⁵ A provider is a hospital, clinic, or physician’s office where abortions are performed. A clinic is a non-hospital facility that reported 400 abortions or more a year, whether an abortion clinic or a non-specialized clinic. Physicians’ offices that report 400 or more abortions a year are classified as clinics.

In 2017, 87 percent of Michigan counties had no abortion-providing clinic, and 35 percent of Michigan women lived in those counties.²⁶

Number of Abortion Providers



Furthermore, Michigan is currently experiencing a shortage of OBGYNs. According to the Michigan Health and Hospital Association, 43 percent of Michigan counties have no hospitals offering obstetric care.²⁷ Without those clinics and those doctors, Michigan women lose access to contraception and other types of healthcare, not just abortion services.

Contraceptive use is a key predictor of whether or not a woman will have an abortion. Of the total unintended pregnancies in the United States, half are due to failing to use any form of contraception. Unintended pregnancy disproportionately affects poor women. Low-income women often have little to no access to employer-sponsored health insurance, and over 19 million of these women live in “contraceptive deserts” where the number of family planning clinics is not sufficient to serve those in need.²⁸

Therefore, family planning clinics funded by Medicaid and Title X are critical to providing contraceptive supplies, services, and education to low-income women. By providing birth control services, publicly supported clinics in Michigan helped avert 25,100 unintended pregnancies in 2014, which would have resulted in 12,200 unplanned births and 9,100 abortions.²⁹

However, only 16 percent of low-income Michigan women who needed family planning services in 2014 received care. While 635,660 women in Michigan were in need of subsidized family planning services that year, the publicly funded clinics served 103,600 patients.³⁰ Rather than closing clinics, *more* clinics are needed to avert unintended pregnancies, reduce abortion rates, and prevent low-income women from falling further into poverty.

That strategy serves state fiscal policy, too. Avoiding unintended pregnancies saves the government money. In 2010, the federal and Michigan state governments saved \$212.4 million due to the family planning services provided by publicly funded clinics.³¹

In addition to contraception, public opinion and patient demand also support the need for abortion services. The majority of people in Michigan are pro-choice. A survey by the Pew Research Center revealed that 54 percent of adults in Michigan think abortion should be legal in all or most cases.³² Roughly 45 percent of all pregnancies are unintended, and one in four women in the United States will have an abortion by age 45.^{33,34} In 2019, 65 percent of Michigan women who had abortions had already had a previous term pregnancy, and 84 percent of abortion patients were unmarried.³⁵

Furthermore, studies show that political interference that restricts access to abortion:

- Hurts low-income women of color the most;
- Makes women more likely to experience poverty, domestic violence, and poor health; and
- Makes women more likely to seek abortion illegally, putting their lives at risk.³⁶

Looming Threats

Outlawing dilation and evacuation

The Michigan House and Senate recently passed legislation (HB 4320; SB 229) outlawing dilation and evacuation abortions. Under related laws (HB 4321; SB 230), any physician who performs such a procedure can face up to two years in prison.³⁷ Dilation and evacuation is currently the safest and most commonly used abortion procedure for women in their second trimester. In light of this ban, physicians are forced to either deny their patients care or else risk a woman’s health by suggesting alternative, less safe methods. Such bans also force women to delay care as they seek out other options, leading to increased costs and an even smaller pool of qualified physicians who can assist

them. Thus, the ban on dilation and evacuation only serves to increase the financial and legal obstacles women endure while seeking reproductive care.³⁸

The bill has not yet gone into effect, as it has not yet arrived on Gov. Whitmer's desk for her signature. She has pledged to veto this legislation, but the likelihood of dilation and evacuation being outlawed soon is still high. Pro-life groups anticipated Gov. Whitmer's veto and consequently drafted an indirect state statute to ban and criminalize dilation and evacuation abortions. Michigan Values Life amassed 379,419 signatures for their initiative and submitted them to the Bureau of Elections to be reviewed, after which they will be sent to the State Board of Canvassers to be verified. If the Board of Canvassers verifies 340,047 of those signatures, then the statute will go to the Legislature, where the House and Senate will have 40 days to adopt it.³⁹ This mechanism allows the statute to go into effect despite the Governor's veto. With a Republican-controlled Legislature, it is highly likely the statute will pass. Currently, Planned Parenthood of Michigan has challenged the validity of some signatures, but Michigan Values Life plans to submit a counter-challenge as soon as the Bureau of Elections announces a deadline to do so.⁴⁰

Fetal heartbeat bills

In 2019, Republicans introduced legislation (HB 4664; SB 357) that would have required healthcare providers to test for a fetal heartbeat before performing an abortion, prohibited an abortion if a fetal heartbeat was detected, and classified an abortion performed under those circumstances as a felony offense.⁴¹ A separate bill (HB 4665; SB 358) would have imposed a two- to four-year criminal sentence for performing an abortion after detecting fetal cardiac activity. Neither bill made it to a vote in either the House or Senate, but the threat of an identical, citizen-led ballot initiative still looms.

Michigan Heartbeat Coalition, a pro-life group, drafted an indirect state statute mirroring the text of the two heartbeat bills introduced in 2019. Like the petition outlawing dilation and evacuation abortions, the heartbeat petition required 340,047 signatures to be validated by the State Board of Canvassers before it could move to a vote in the Legislature. Michigan Heartbeat Coalition fell just slightly short of its goal, but the group has already planned to draft an identical indirect state statute in 2022.⁴² If Michigan Heartbeat Coalition successfully amasses enough valid signatures, a Republican-controlled Legislature would likely approve the initiative and thus restrict abortion even further—all while bypassing Gov. Whitmer's veto power.

Reproductive Healthcare Act

During the 2019 legislative session, Democratic legislators and Gov. Whitmer introduced omnibus legislation aimed at restoring reproductive rights in Michigan. The Reproductive Healthcare Act never made it to a vote, but it nevertheless demonstrated Democrats' commitment to removing barriers to reproductive healthcare.

The Reproductive Healthcare Act proposed by Democrats included the following provisions:

- Repeal a 1931 law prohibiting physicians from performing abortions
- Remove the requirement that clinics providing abortions be licensed as free-standing surgical centers
- Lift the 24-hour waiting period requirement for a person seeking an abortion
- Remove the parental consent requirement for minors requesting an abortion
- Remove barriers from healthcare providers such as Planned Parenthood from receiving state and federal funding

- Lift restrictions on the use of private insurance to cover abortion procedures
- Remove barriers restricting medication abortion via telemedicine⁴³

If the Democrats win a majority of seats in the 2020 election, the Legislature can reintroduce and adopt this bill so that Michigan women can reclaim their right to reproductive healthcare.

Ominous Future

In 1931, Michigan passed a near-total ban on abortion, making anyone who causes an abortion guilty of a felony, unless the abortion is necessary to preserve the woman's life. There are no exceptions for rape or incest. That law is still on the books. Michigan has not repealed the ban, even after the Supreme Court's decision in *Roe v. Wade*.^{44,45} Although currently unenforceable, it would be automatically resurrected in the event that the sitting Supreme Court overturns *Roe v. Wade*. Repealing the 1931 abortion ban is yet another reason to elect a Democratic majority in the Michigan Legislature in 2020.

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