

Bad Medicine: States Force Doctors to Refer Abortion Patients to Google

The Truth About Medication Abortion Reversal Laws

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Introduction

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side – we the people dare to create a more perfect union.

The ACLU works to ensure that every person can make the best decision for themselves and their family about whether and when to have a child without undue political interference. A decision about having a baby or having an abortion is a deeply personal, private decision best left to a woman, her family, and her doctor. Abortion is one of the most common medical procedures performed today, and it's incredibly safe. But laws that make it difficult if not impossible for a woman to get an abortion if she needs one, particularly if she is poor, are increasing at an alarming pace. Nebraska, a state with significant barriers to accessing abortion services, continues to be an incubator of bad ideas. Lawmakers should stop playing doctor and should stop their constant attempts to shut down women's health centers, reduce access to affordable birth control, and shame women who have abortions.

The headlines about the current state of abortion access seem to get worse every day. There is no question that state legislators opposed to abortion rights, emboldened by President Trump's two appointments to the Supreme Court, are rushing to pass laws that blatantly violate more than four decades of Supreme Court precedent. But this bleak landscape for abortion access is not new. Rather, it's the result of a decades-long strategy to push abortion out of reach completely with laws designed to make it impossible for people to access care. Since 2011 alone, state legislatures have quietly passed more than 400 such medically unnecessary and politically motivated laws, shutting down clinics and

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erecting so many barriers to care that the right to abortion is now a hollow one for many people across vast areas of the country. Despite these misguided political attacks, abortion remains legal in all 50 states, public opinion in support of abortion rights is strong and growing, and new resources are being developed to help people understand their rights, connect with clinics, and provide funding for low-income people in need of abortion care.¹

Abortion “Reversal” Legislation in Nebraska in 2019

In the 2019 legislative session, Nebraska lawmakers introduced LB 209, a bill requiring that health care providers inform patients seeking abortion care that medication abortions are “reversible.” This bill is deeply concerning from both a free speech perspective and a reproductive justice perspective. Regarding the free speech concern, LB 209 forces doctors to read a state-sanctioned script that has no basis in sound medical advice, as abortion “reversal” treatment is unsupported by any credible medical organization. The American College of Obstetricians and Gynecologists and the American Medical Association have both concluded that there is no reliable evidence that administering progesterone after mifepristone can stop the abortion process.² The Food and Drug Administration (FDA) has not evaluated the treatment.³ Simply put, this effort is about shaming women seeking abortion care, advancing junk science, and inserting politics into the doctor-patient relationship under the guise of informed consent.

At the committee level, the bill was opposed by the Nebraska Medical Association, a host of health care providers, social workers, civil rights advocates, and concerned citizens. The bill was considerably weakened with a committee amendment and after three rounds of lengthy debate, it was signed into law by Governor Ricketts in June 2019. In addition to the suspect forced speech requirements it places on Nebraska health care providers, the new law also requires that the Nebraska Department of Health and Human Services (DHHS) publish materials “designed to inform the woman that she may still have a viable pregnancy after taking mifepristone.”⁴ Nebraska’s DHHS must also include contact information “that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.”⁵

During legislative debate on LB 209, numerous important questions were raised as to how Nebraska’s DHHS would determine and screen health care providers who claim to offer so-called medication abortion “reversals.” A specific concern debated was that the “reversal” treatment was based on discredited “studies” by a single anti-abortion doctor, Dr. George Delgado, who is not an ob-gyn. Patient referrals would be made to his organization, called Abortion Pill Rescue, accessible via a hotline or website, which is a private religious entity. Proponents of LB 209 were unable or unwilling to describe how the department would develop a list and screen providers to publish on its

website under the new law leaving more questions than answers about what this information and referral might contain and how it might impact the health and safety of Nebraskans.

Research Methodology

In June 2019, the ACLU of Nebraska conducted legal and policy research to examine the ways in which other states with medication abortion “reversal” laws have implemented their laws to establish a baseline for monitoring the implementation of this suspect legislation in Nebraska. The ACLU of Nebraska also conducted a review of existing informed consent materials available on the department’s website and evaluated its source information.

An Overview of How Other States Have Implemented Misguided Abortion “Reversal” Laws

According to the Guttmacher Institute, beginning in 2015, some states began to require that abortion counseling include the unverified claim that medication abortion can be “reversed” if a woman is given a high dose of progesterone after she takes mifepristone, the first pill in an FDA-approved two-drug regimen for medication abortion. There is no credible medical evidence to support this assertion and no data on the safety of this unproven treatment.⁶ Today there are approximately eight states that have adopted these suspect laws.⁷

Utah

Under Utah law, informed consent laws were amended to provide that a person performing an abortion must inform the patient about “the options and consequences of aborting a medication-induced abortion.”⁸ Additionally, the Utah Department of Health must publish the following statement on its website, “Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but have not yet taken the second drug and have questions regarding the health of your fetus or are questioning your decision to terminate your pregnancy, you should consult a physician immediately.”⁹

The Utah Department of Health’s website includes this statement, but also includes the following: “*At present, there is insufficient evidence to prove that progesterone is an effective treatment.*” However, at the end of the same paragraph, website visitors are instructed, “[T]o locate a doctor in your area who is knowledgeable about mifepristone reversal, the Abortion Pill Reversal Hotline can be reached at 1-877-558-0333 or go to www.abortionpillreversal.com for more information.”¹⁰

Idaho

Idaho amended its laws to require the Idaho Department of Health and Welfare to publish on its website “information directing the patient where to obtain further information and assistance in locating a health care provider whom she can consult about chemical abortion, including the interventions, if any, that may affect the effectiveness or reversal of a chemical abortion, and informs the patient that if she wants to consult with such health care providers, she should contact those health care providers before she takes the abortifacient.”¹¹

The Idaho Department of Health and Welfare’s website includes a “Medication Abortion Provider Consultation List” dated June 2019 that provides a list of two private, religiously affiliated entities, Lifeline Pregnancy Care Center and Path of Life, that can provide such “information, assistance, or consultation about chemical abortion, including the interventions, if any that may affect the effectiveness or reversal of a chemical abortion.”¹² A prior version to satisfy the same statutory requirement referred patients to the Abortion Pill Reversal Hotline lead by Dr. Delgado.¹³

At the bottom of the current list, there is a disclaimer that reads: *“Information presented on this list is provided ‘as is’ without any representations or warranties, express or implied, in compliance with Idaho Statute 18-609 and is for information purposes only. This information is not intended to constitute medical advice or the provision of medical services. If you have any specific questions about any medical matter, you should consult your doctor or other professional healthcare provider. The Department of Health and Welfare does not inspect, certify, or endorse any of the providers listed and cannot be held liable for the action(s) of said providers.”*¹⁴

South Dakota

South Dakota state law requires an individual seeking an abortion to be told that “even after a pregnant mother takes Mifepristone it is still possible to discontinue a drug-induced abortion by not taking the prescribed Misoprostol.”¹⁵ The South Dakota Department of Health is also required to publish “information on discontinuing a drug-induced abortion.”¹⁶

The South Dakota Department of Health website states, “Even after a pregnant mother takes Mifepristone, it is still possible to discontinue a drug-induced abortion by not taking the prescribed Misoprostol. For more information, please contact your physician or medical provider.”¹⁷

Arkansas

Arkansas passed legislation on “reversal” in 2019 and therefore the law is not yet in effect. Under the new law, a provider is required to provide a written notice to a patient after he or she dispenses the first pill. The notice instructs the reader that mifepristone “alone is not always effective in ending a pregnancy.” *The notice goes on to tell a patient that if she changes her mind, she “can locate immediate help by searching the term ‘abortion pill reversal’ on the internet.”* The new law will also require this same notice to be published on the Arkansas Department of Health’s website.¹⁸

The current Arkansas Department of Health website includes a pamphlet called “Abortion: A Woman’s Right to Know.” The pamphlet reads, “The potential exists for a qualified person to reverse the effects of abortion-inducing drugs such as mifepristone and misoprostol. However, the safety and efficacy of this process have not been established. For more information, please contact your physician or medical provider.”¹⁹

Kentucky

Although the Kentucky law has not yet been implemented, Kentucky will require each prescription for an abortion-inducing medication to be accompanied by information about the potential to reverse the effects of the medication as well as how more information about providers of “reversal” can be obtained.²⁰

The DHHS website currently contains an informational booklet designed to give pregnant woman information about fetal development that not only fails to list references, but even upon request, has no references available.

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Oklahoma

Although the Oklahoma law is not yet implemented, the law will require abortion providers to post a sign about abortion reversal that includes the Abortion Pill Reversal hotline phone number and website. This is a private, religiously affiliated entity. The law will also require a patient to be told this same information at least 72 hours before a medication abortion and be given this written information after the first pill in the regimen is dispensed. The same information is also required to be published in print and on the internet.²¹

North Dakota

North Dakota's law is not yet implemented but will require patients to be told about "reversal" as part of informed consent and will require materials including "information directing the patient where to obtain further information and assistance in locating a medical professional who can aid in the reversal of abortion-inducing drugs" to be published in print and on the department's website.²²

Summary of State Implementation

Upon review of other states' implementation of these suspect abortion "reversal" laws, it appears that every state that makes referrals for "reversal" either 1) refers to Dr. Delgado's Abortion Pill Rescue organization, which is a private, religiously affiliated entity, 2) lists providers of "reversal" but disclaims potential liability and does not provide any express or implied warranties as to the services provided, 3) frequently notes that, from a medical perspective, these claims are suspect, and/or 4) instructs patients to perform an internet search for the term "abortion pill reversal."

Should Nebraska follow the lead of other states in its implementation of LB 209, just as it has with the introduction and passage of the bill, it will be referring individuals to a private, religiously affiliated organization or entities that have not produced any credible medical or scientific evidence that the treatment works. The alternative would be to direct women to search the internet for "abortion pill reversal," a truly unprecedented statutory mandate for any medical procedure. Additionally, the state will not be able to review and screen providers who individuals are referred to by the Abortion Pill Rescue or an internet search result. By inserting politics into health care, Nebraska could risk legal consequences from delegating this authority to private organizations or by directing women to perform an internet search with clear inherent risks for patient safety.

Existing Nebraska DHHS Publications Related to Pregnancy, Abortion, and Informed Consent

LB 209 adds an additional requirement to existing Nebraska Statute 28-327.01 which requires the Nebraska Department of Health and Human Services to publish and make available various information including agencies and services available to assist pregnant and parenting individuals, locations where ultrasounds are performed, and “[m]aterials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two week gestational increments from the time when a woman can be known to be pregnant to full term.”²³

To fulfill the fetal development information requirement, Nebraska’s DHHS publishes and includes on its website an informational booklet called, “If you are Pregnant... .” The initial version was published in 1993 with major revisions in 1995 and minor revisions in 1998, 2005, and 2008. On the last page of the booklet, the final line reads, “References are available upon request.”²⁴

The ACLU of Nebraska requested these references in May 2019. In an email response, a department employee stated that they were “unable to loca[te] original source material used for the text” and also could not locate “any collection of resources or citations.”

In attempting to gain more information as to how the department carries out statutory requirements to gain additional insight into how the publication requirements of LB 209 might be implemented, the ACLU was shocked to discover that the department’s website currently contains an informational booklet designed to give pregnant Nebraskans information about fetal development that not only fails to list references, but even upon request, has no references available.

Conclusion

Reviewing what other states have done in terms of implementing abortion pill “reversal” laws leads to deeply troubling conclusions. By passing junk science into statute, we have placed ourselves in an untenable situation in which DHHS options include referring directly to religiously affiliated hotlines or organizations offering treatments unsupported by science or any independent medical organization or telling patients to google “abortion pill reversal” to rest their health care needs on whatever might pop up on the internet. In no other health care setting would we require doctors to tell their patients to google a certain term to find care.

Equally troubling is Nebraska DHHS’s acknowledgment that it cannot identify the sources used to develop a current resource designed to give pregnant Nebraskans information they need. This creates doubt that the department will be able to carry out the new mandate to provide further information under LB 209 that is medically and scientifically accurate and unbiased.

The ACLU of Nebraska has opposed LB 209 since its introduction and our opposition remains today, especially in light of the troubling discoveries discussed above. There are a host of potential legal challenges to this misguided legislation that will not go unexplored. We cannot allow the heavy hand of government to force providers to give patients false and misleading information that serves only to shame women who seek abortion care. The ACLU of Nebraska will never stop fighting for reproductive justice and will continue to steadfastly monitor this situation and take appropriate action.

Endnotes

- 1 See *Find A Provider*, National Abortion Federation, <https://prochoice.org/think-youre-pregnant/find-a-provider/> (last visited June 10, 2019); The National Network of Abortion Funds, <https://abortionfunds.org/> (last visited June 10, 2019).
- 2 *Countering Misinformation: What You Need to Know About Abortion Pill “Reversal,”* Mifepristone Coalition (2019).
- 3 *Abortion Pill “Reversal”: Where’s the Evidence?*, Advancing New Standards in Reproductive Health (Mar. 2019), https://www.ansirh.org/sites/default/files/publications/files/MedicationAbortionReversal_IB.pdf.
- 4 L.B. 209, 106th Leg., 1st Sess. (Neb. 2019), <https://nebraskalegislature.gov/FloorDocs/106/PDF/Final/LB209.pdf>.
- 5 *Id.*
- 6 *Evidence You Can Use: Medication Abortion*, Guttmacher Inst., <https://www.guttmacher.org/evidence-you-can-use/medication-abortion> (last visited June 7, 2019).
- 7 See L.B. 209, *supra* note 4; S.B. 341, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019); Idaho Code Ann. § 18-609; S.B. 50, 2019 Gen. Assemb., Reg. Sess. (Ky. 2019); H.B. 1336, 66th Leg. Assemb., Sess. (N.D. 2019); S.B. 614, 2019 Leg., Reg. Sess. (Ok. 2019); S.D. Codified Laws § 34-23A-10.1; Utah Code Ann. § 76-7-305.5.
- 8 Utah Code Ann. § 76-7-305.5.
- 9 *Id.*
- 10 Utah Dep’t of Health, *Abortion Procedures*, <https://informedconsent.health.utah.gov/information-module/abortion/abortion-procedures/> (last visited June 7, 2019).
- 11 Idaho Code Ann. § 18-609.
- 12 Idaho Dep’t of Health & Welfare, *Medication Abortion Provider Consultation List* (June 2019), http://healthandwelfare.idaho.gov/Portals/0/Health/ReproductiveHealth/MedAbortList_June2019.pdf.
- 13 Idaho Dep’t of Health & Welfare, *Chemical Abortion Information*, https://healthandwelfare.idaho.gov/Portals/0/Health/ReproductiveHealth/Website_Chemical_Abortion_Info.pdf.
- 14 Idaho Dep’t of Health & Welfare, *supra* note 12.
- 15 S.D. Codified Laws § 34-23A-10.1.
- 16 *Id.*
- 17 S.D. Dep’t of Health, *Induced Abortion Methods & Risks*, <https://doh.sd.gov/abortion/induced-abortion-methods-risks.aspx> (last visited June 7, 2019).
- 18 S.B. 341, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019).
- 19 Ark. Dep’t of Health, *A Woman’s Right to Know*, https://www.healthy.arkansas.gov/images/uploads/pdf/A_Womens_Right_to_Know_Brochure.pdf.
- 20 S.B. 50, 2019 Gen. Assemb., Reg. Sess. (Ky. 2019).
- 21 S.B. 614, 2019 Leg., Reg. Sess. (Ok. 2019).
- 22 H.B. 1336, 66th Leg. Assemb., Sess. (N.D. 2019).
- 23 Neb. Rev. Stat. § 28-327.01.
- 24 Neb. Dep’t of Health & Hum. Servs., *If you are Pregnant...* (2012), <http://dhhs.ne.gov/Maternal%20Infant%20Health%20Resources/If%20You%20are%20Pregnant%20Booklet.pdf#search=If%20you%20are%20pregnant>.