



2020

PUBLIC HEALTH LAW
**VIRTUAL
SUMMIT**

**COVID-19 Response
and Recovery**

September
16-17

**Legal Reforms Impacting
Public Health during
COVID 19 and Beyond**

Public Health Law on the Frontlines: Changing Lessons for the 21st Century

September 17, 2020

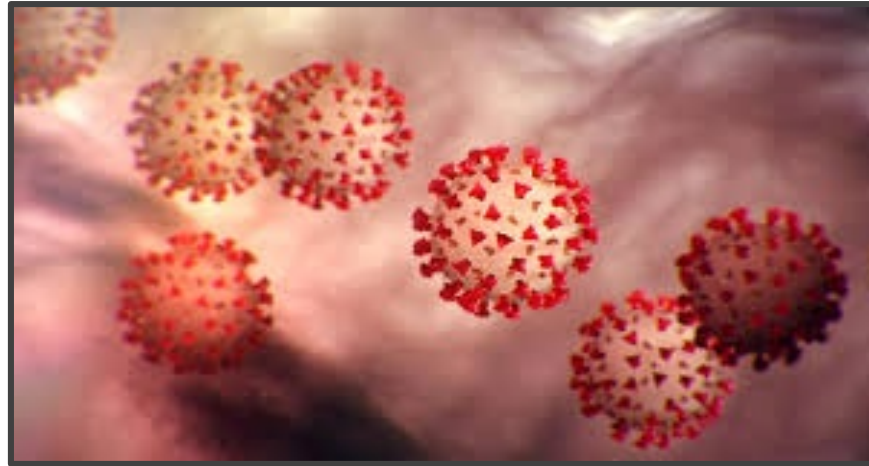
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- ☐ **The Search for “Silver Linings”**
- ☐ **“Top 10” Areas of Potential Major Health Law Reforms**
- ☐ **Questions, comments, thoughts?**

Acknowledgements



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Search for Silver Linings



2020 Election





“Top 10” Major Reforms

1. Revamping Public Health Services
2. Nationalization of Public Health Authority
3. Economic Protections
4. Improving Access
5. Equitable Tax Incentives
6. Data Unification
7. Anti-Discrimination
8. Health in All Policies
9. Constitutional Assurances
10. Maternal and Reproductive Interests

Revamping Public Health Services



Image Source: <https://africanews.space/space-science-a-panacea-for-innovative-sustainable-healthcare-delivery/>

Revamping Public Health Services

Substantial reassessment of public health services at all governmental levels to prevent future pandemics, including enhanced surveillance, testing, screening, social distancing & vaccination requirements.

Revamping Public Health Services



Uniform Law Commission

ULC established the Public Health Emergency Authorities Committee and Mitigation of Public Health Emergency Business Disruptions Committee to consider new model laws regarding social distancing powers, executive waiver authority, and governance to combat future pandemics.

Nationalization of Public Health Authority



Nationalization of Public Health Authority

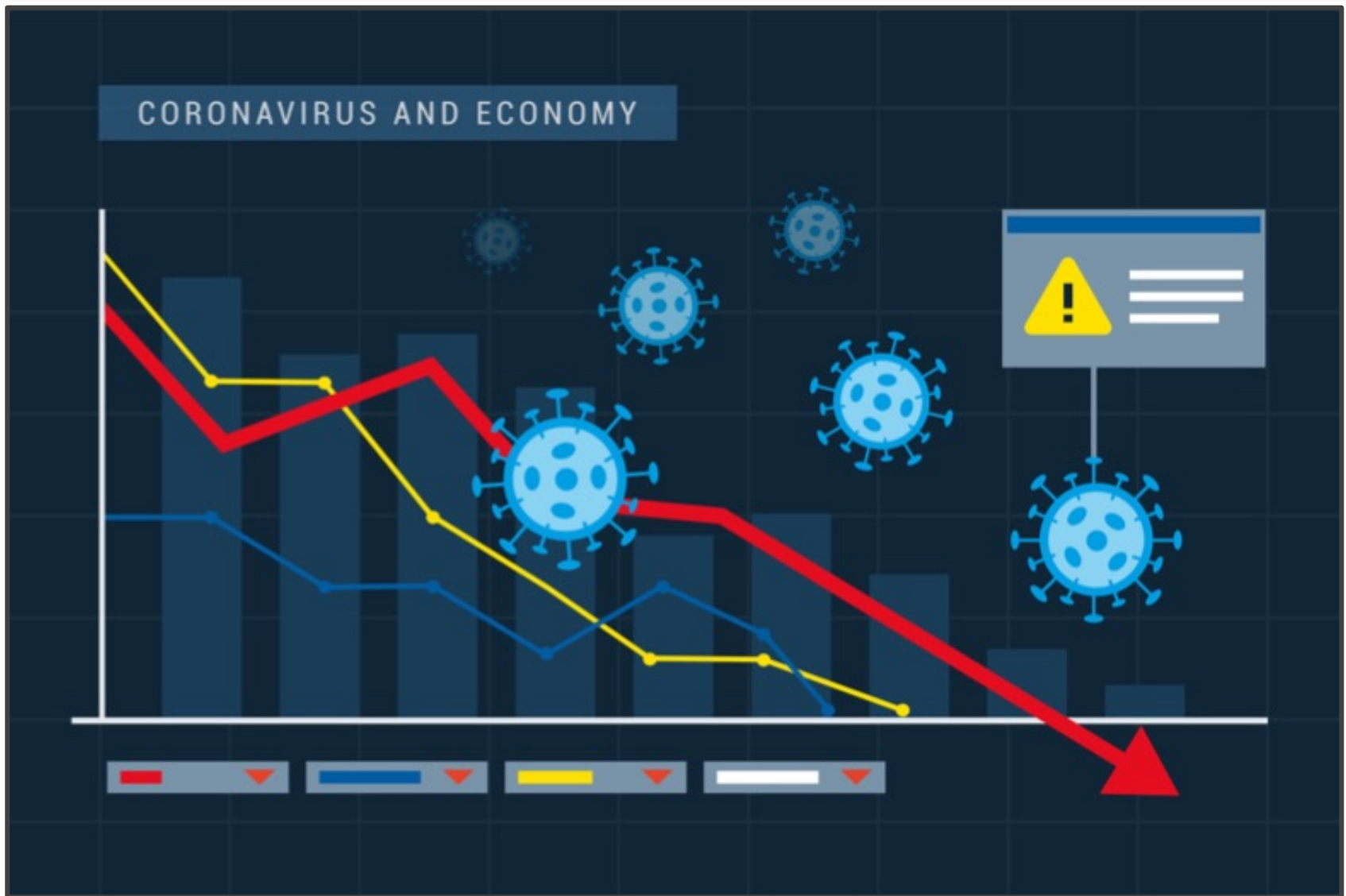
Systematic & extensive reconsideration of emergency public health laws & policies framed around heightened federal roles & responsibilities, lending to increased nationalization of public health services.

Nationalization of Public Health Authority



Presidential candidate Joe Biden's COVID-19 Plan promises to restore common government purpose in the battle against COVID-19 (and future public health emergencies) through scientifically-validated public health measures increasingly led at the federal level.

Economic Protections



Development of emergency “economic” measures to provide greater protections for individuals and families against harmful impacts of essential public health efforts designed to quell future threats.

Economic Protections



The HEROES Act, which passed the House on May 15, 2020 and awaits a Senate vote, includes new protections for essential workers regarding pay, family care, and sick leave.

Improving Access



Improving Access

Substantial reforms to assure greater access to basic health care & mental health services for all Americans via national programs coupled with other support measures.

Improving Access



President Trump's emergency Executive Order on Improving Rural Health and Telehealth Access strives to facilitate access to necessary health services by expanding remote-services flexibility and reworking payment models.

Equitable Tax Incentives



Implementation of revised federal & state tax laws & policies to incentivize greater provision/use of health services equitably across populations.

Equitable Tax Incentives

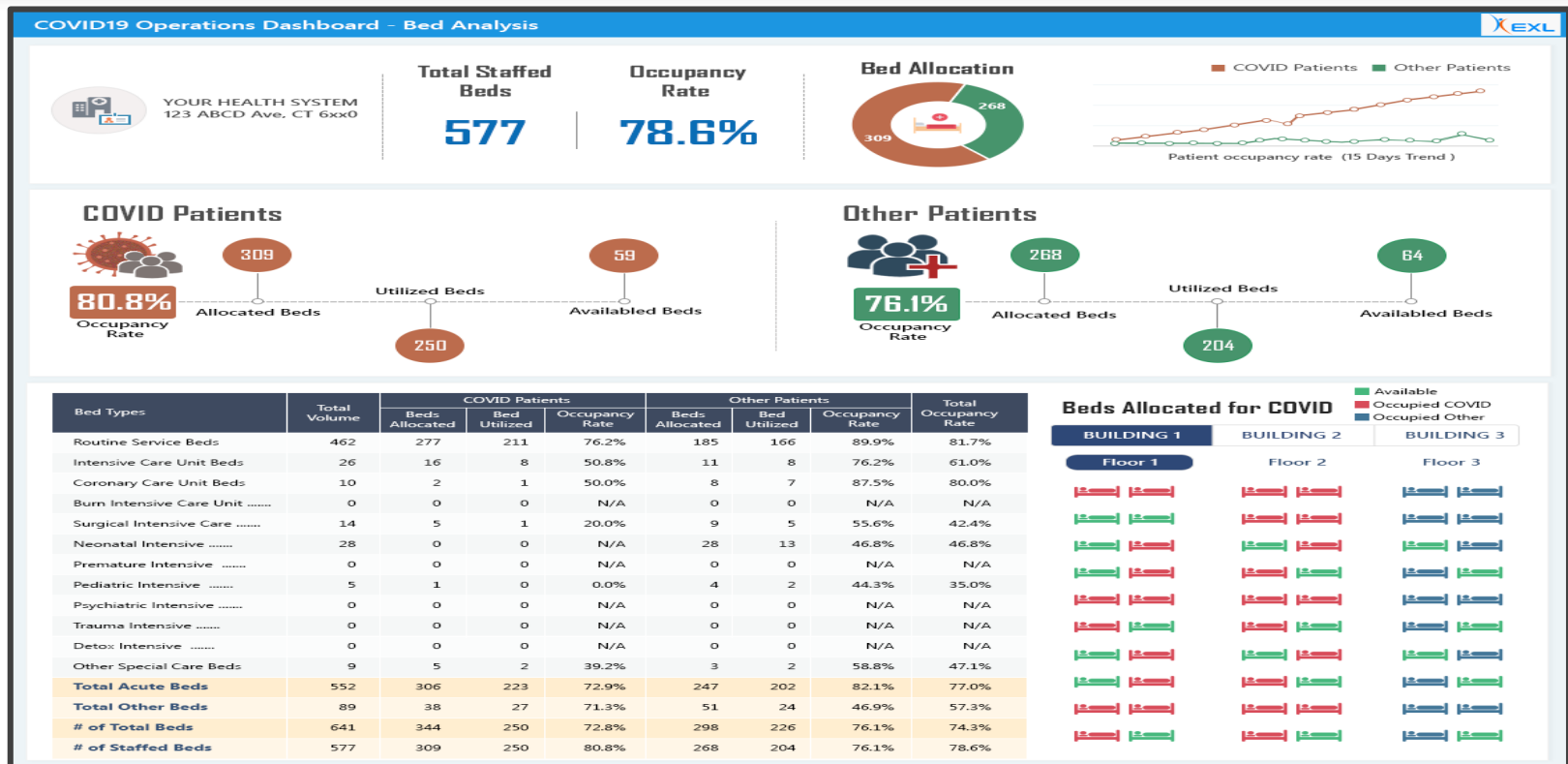


The proposed Work Safe Act, introduced on June 16, 2020 by Senator Ted Cruz (R-TX), would allow tax breaks to businesses whose employees receive COVID testing (up to a certain amount per employee).

Data Unification



Unification of data gathering, reporting & sharing practices across public & private sectors coupled with re-envisioned health information privacy concepts for the 21st century.



Senate Bill 2850, Equitable Data Collection and Disclosure on Covid-19 Act, suggests revitalized federal-based data collection and reporting measures to reduce COVID-19 related health disparities.

Anti-discrimination



Continued legal enhancements to thwart anti-discrimination in the delivery of public health services & benefits on specious grounds (e.g., race, ethnicity, sexual orientation, gender identification) in contravention of human rights.



Michigan Governor Gretchen Whitmer signed Executive Order No. 2020-100 on May 22, 2020 (extending a prior order) requiring equitable administration of health care services by prohibiting considerations based on race, sex, homelessness, and other criteria during emergency responses.

Health In All Policies



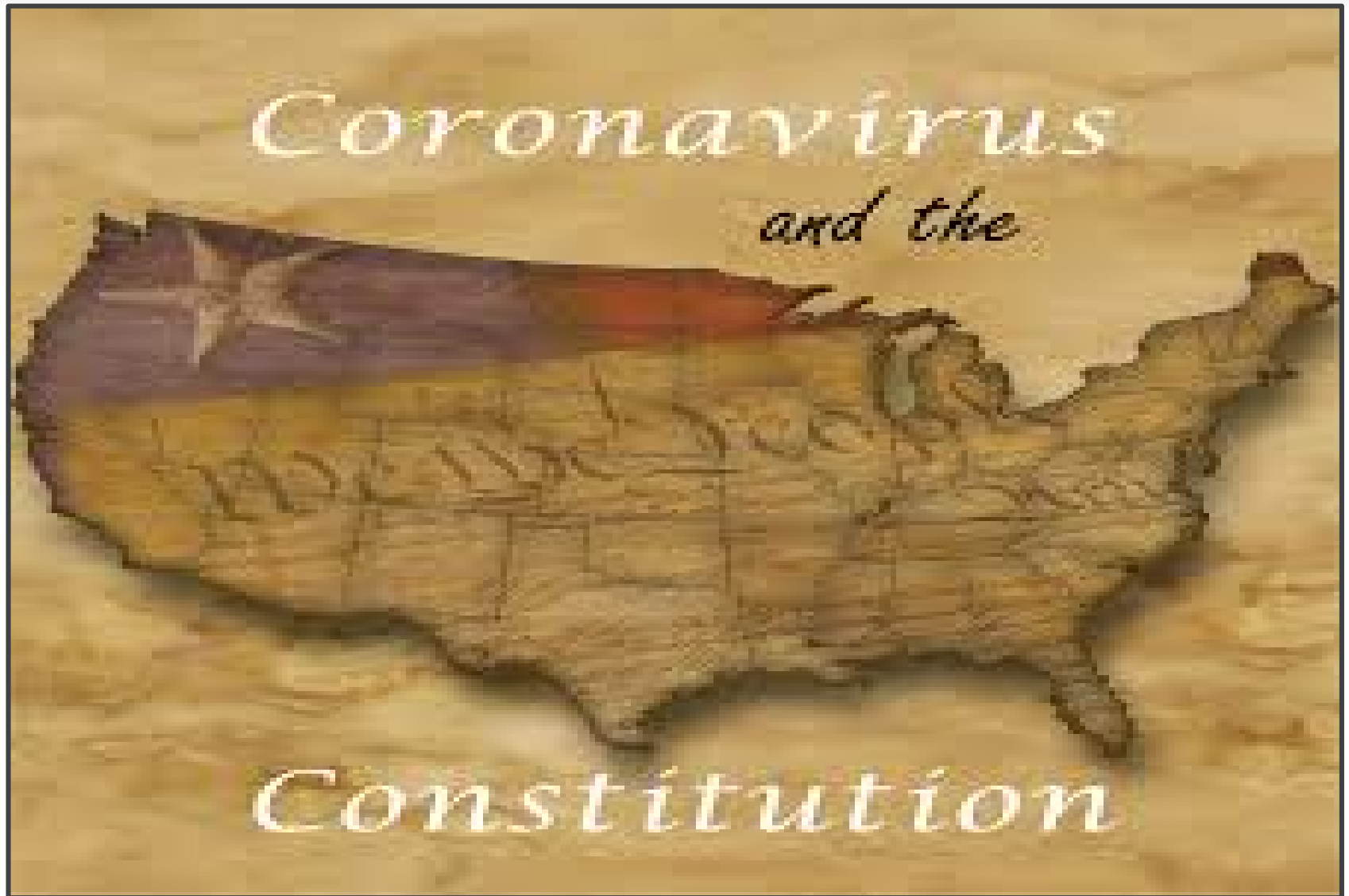
**Renewed acclimation of
“health-in-all-policies” as a
mantra for legislative or
regulatory reforms across all
sectors with definable,
accomplishable goals for
states and their local
communities.**

Health in All Policies



On Sept. 2, 2020, CDC Director Robert Redfield signed a declaration temporarily halting evictions pursuant to authority under the Public Health Service Act. Qualifying renters with an income below \$99k can avoid eviction by describing their economic hardships due to COVID-19.

Constitutional Assurances



Source: <https://graydon.law/coronavirus-and-the-constitution/>

Generation of constitutional assurances & corresponding legislative reforms to address health disparities reflected in lack of access to public health services, housing, transportation, or other critical governmental benefits.

Constitutional Assurances



CONSTITUTIONAL COHESION AND THE RIGHT TO PUBLIC HEALTH*

James G. Hodge, Jr., J.D., LL.M.*

Daniel Aaron*

Haley R. Augur*

Ashley Cheff*

Joseph Daval*

Drew Hensley*

53 U. MICH. J. L. REFORM __ (forthcoming 2019)

Generation and development of a plausible and purposeful constitutional right to public health to address inherent vices stemming from government failures to equitably provide base levels of health services.



Reevaluation of laws & policies affecting women's maternal & reproductive rights and interests to assure stronger safeguards against unwarranted infringements & alterations amid crises.



Introducing Professor Rachel Rebouché for her presentation, *Assuring Access to Abortion and Reproductive Services*.

Questions & Comments



- **Ask the Network** re: questions/comments relating to this information or other legal preparedness & response efforts
- **james.hodge.1@asu.edu** | **[@jghodgejr](https://twitter.com/jghodgejr)**

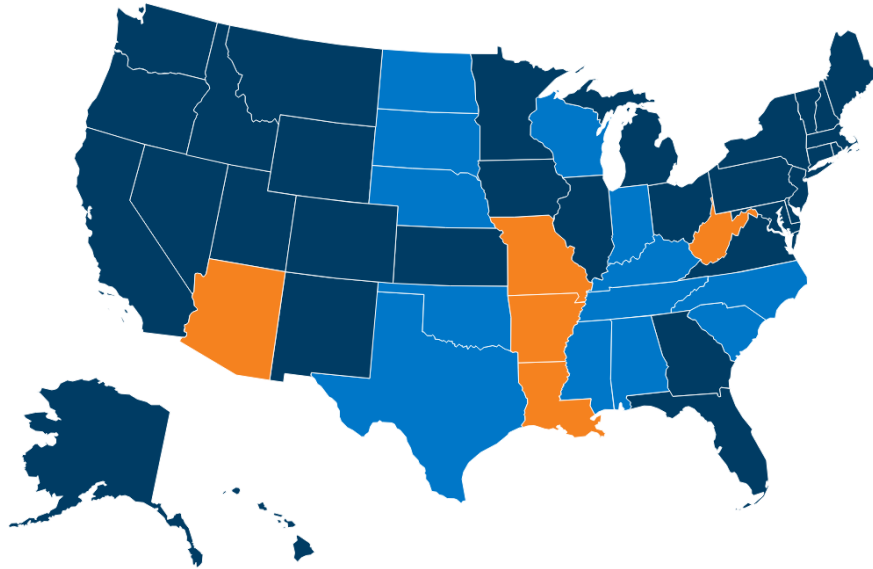
Assuring Access to Abortion

Rachel Rebouché

James E. Beasley Professor of Law

Associate Dean for Research

- No ban on telemedicine for abortion
- Physical presence of prescribing clinician required
- Explicit ban on the use of telemedicine for abortion



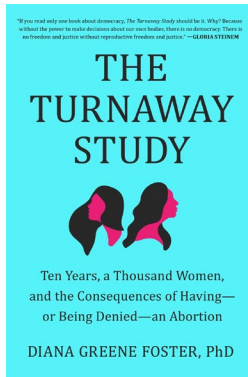
2020 Abortion Suspensions

(KFF Medication Abortion
and Telemedicine)

In re Abbott I, II, III

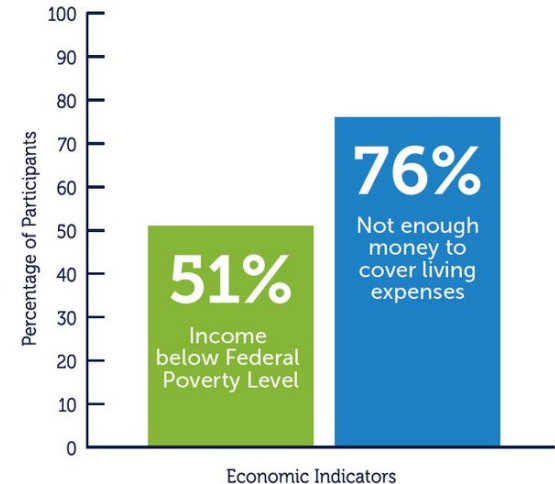


The Costs of Delayed and Denied of Abortion



Many women already experience economic hardships at the time they seek an abortion. In fact, not having enough money to care for a child or another child is the most common reason for seeking an abortion.

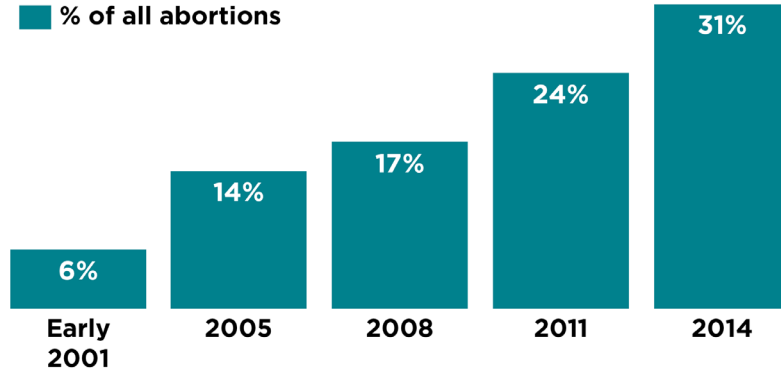
Many women seeking abortion are already experiencing economic hardship.



Increasing Use of Medication Abortion

GUTTMACHER INSTITUTE

1 Medication abortions are an increasingly common method of abortion



Source: Guttmacher Institute.

Now, studies estimate almost 40% of abortions in the United States are medication abortions

Figure 1

Delivery Models for Telemedicine Medication Abortion

No-Test Model

(Used during COVID-19)

1. Patient consults with clinician via phone or video. Pregnancy confirmed with home pregnancy test and date of last menstrual period. No labs, ultrasound or pelvic exam required
2. If eligible, patient picks up medications from clinic (misoprostol and mifepristone)
3. Patient takes medications at home
4. Follow up via phone or video

Site-to-Site Model

1. Patient goes to participating clinic for intake appointment and ultrasound
2. Remote provider determines eligibility. If eligible, remotely unlocks a medication drawer in the patient's room
3. Patient takes mifepristone in clinic, misoprostol at home
4. Follow up appointment at clinic

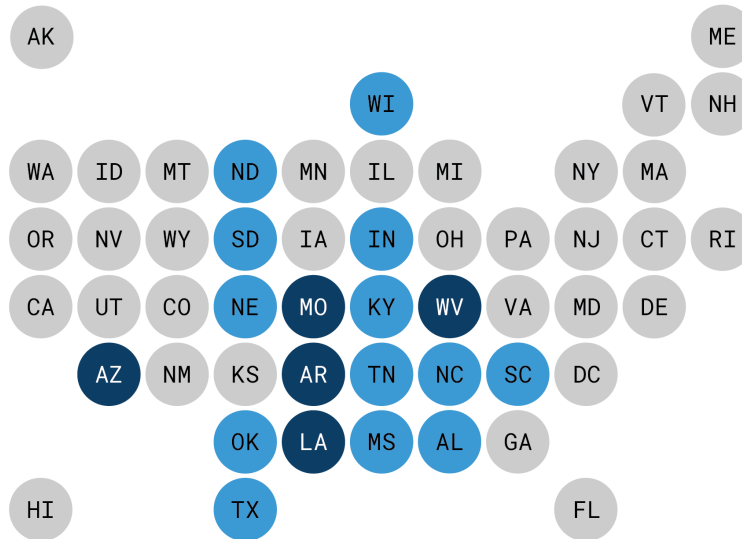
Direct-to-Patient Model

1. Patient goes to any nearby clinic for pre-treatment labs and ultrasound
2. Sends results to provider, who remotely determines eligibility
3. If eligible, patient mailed* medications to take at home
4. Follow up via phone or video

Notes: *The TelAbortion study using the DTP model is permitted to send mifepristone by mail due to FDA waiver granted for research purposes.
Sources: Raymond et. al. "No-Test Medication Abortion: A Sample Protocol for Increasing Access During a Pandemic and Beyond." Contraception. 2020
Planned Parenthood Video TELEMAD <https://www.youtube.com/watch?v=4Th5tRZj8yU>; TelAbortion study <https://telabortion.org/>.

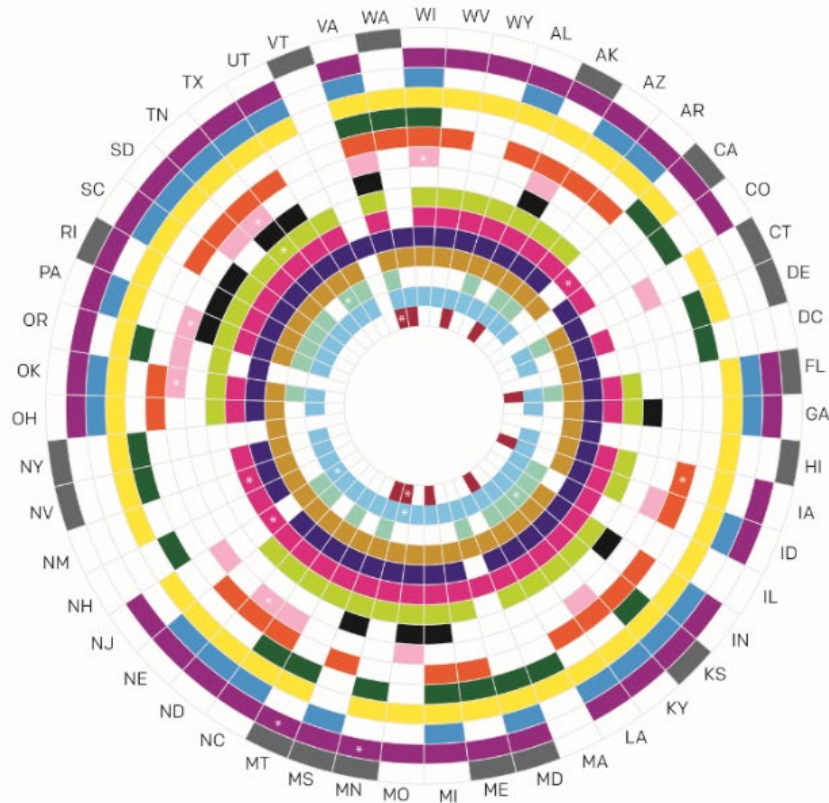
State Restrictions on Medication Abortion

- 32 states require clinicians to be a physician
- 18 states require clinician to be physically present
- 9 states explicitly ban telehealth for abortion



- Physical presence of prescribing clinician required
- Explicit ban on the use of telemedicine for abortion

Abortion Restrictions Generally



State Abortion Laws (Summary Dataset)

- Abortion Advertising Restrictions
- Abortion Bans
- Abortion Facility Licensing Requirements (TRAP Law)
- Abortion Provider Qualifications
- Abortion Reporting Requirements
- Abortion Requirements for Minors
- Abortion Waiting Period Requirements
- Ambulatory Surgical Center Requirements (TRAP Law)
- Hospitalization Requirements (TRAP Law)
- Medication Abortion Requirements
- Protecting Access to Abortion Clinics
- Refusal to Perform Abortions
- Restrictions on Insurance Coverage of Abortion
- Restrictions on Public Funding of Abortion
- Statutory and Constitutional Right to Abortion

* Indicates states have relevant laws but are held unenforceable by a court or attorney general opinion

The Abortion Law Project

CPHLR's comprehensive database of state statutes, regulations, court decisions, and Attorney General opinions regulating abortion in 50 states and D.C.



Tell the FDA to **do the right thing!**

Current restrictions on the abortion pill

(MEDICALLY UNNECESSARY & DANGEROUS DURING COVID-19)

A person seeking an abortion must be **handed the pill by a clinician** who meets special criteria.



Safer method

Clinician meets with patient via **tele health** from home and receives pill by **home delivery**.



FDA Restrictions on Medication Abortion



In the
Supreme Court of the United States

U.S. FOOD AND DRUG ADMINISTRATION, *et al.*,

Applicants,

v.

AMERICAN COLLEGE OF OBSTETRICIANS AND GYNCOLOGISTS, *et al.*,

Respondents.

RESPONSE IN OPPOSITION TO APPLICATION FOR A
STAY OF THE PRELIMINARY INJUNCTION ISSUED BY THE U.S.
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The ACOG Challenge to FDA Requirements

Paths Toward Change

- Community
 - Exert political pressure through collaborations among social justice movements
 - Lobby for policies that facilitate access to social, economic resources
- State
 - Repeal abortion restrictions and penalties for self-managed abortion
 - Repeal restrictions on tele-abortion and lift restrictions on telehealth modes, locations, delivery
- Federal
 - Urge FDA to abandon the REMS protocol and to establish medication abortion's safety and efficacy
 - Introduce legislation that advances rather than impedes medication abortion and telehealth for abortion