

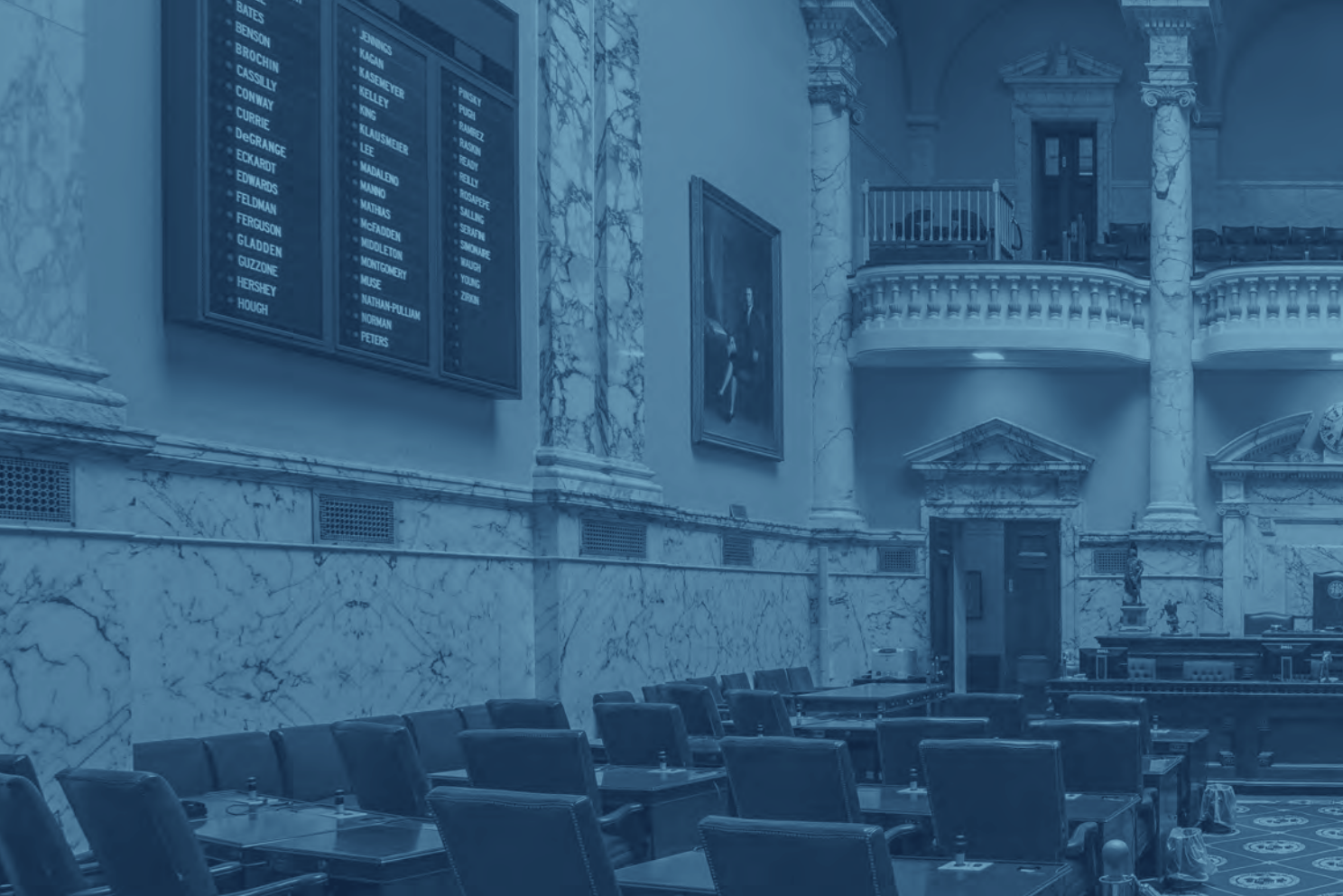


A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*

**PUBLIC
LEADERSHIP**
INSTITUTE

2016 EDITION



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The Public Leadership Institute is a nonprofit educational group organized to raise public awareness on key issues and to develop public leaders who will improve the economic and social conditions of all Americans.

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January 2016

Dear Friends:

Since 2010, the anti-abortion movement has enacted more than 300 new state laws that restrict access to abortion. They enacted procedure bans, mandatory waiting periods, restrictions on medication abortion, denials of insurance coverage for abortion, targeted regulation of abortion providers (TRAP) laws, statutes requiring hospital admitting privileges, parental consent requirements, and much more.

The battle over abortion rights is taking place at the state level, not in Congress, and that is likely to remain true for years to come. The best way to fight back is with a strong, sustained effort to drive proactive policies—and the public debate about such policies—in states, cities and counties.

That is why I am proud to introduce this new resource, *A Playbook for Abortion Rights: a guide for state and local policymakers*. The release of this *Playbook* marks the beginning of the Public Leadership Institute's new strategic initiative to promote a bold, proactive reproductive rights and justice strategy at the state and local levels—on the policy, communications and public education fronts.

This *Playbook* builds on many decades of hard work by groups in the reproductive rights, health and justice fields. Recognized on the Acknowledgements page of this book, they also deserve tremendous credit for creating new proactive policies over the past years, honing ideas for inclusion in the *Playbook*, and donating staff expertise to writing and editing. With that said, the Public Leadership Institute stands solely responsible for the research, analysis, policy and message content in this *Playbook*.

Working with our national and state allies, the Public Leadership Institute will promote the *Playbook* to its nationwide network of more than 13,000 state legislators, city council members, county commissioners, advocates and the public. I encourage you to identify proactive policies from the *Playbook* that could help improve women's access to abortion care in your community, and to contact us for strategic guidance and support. My team and I look forward to working with you to help you move ideas to action.

Your leadership, service and hard work inspires all of us at the Public Leadership Institute. This *Playbook* is dedicated to you.

Sincerely,

Gloria Totten
President

TABLE OF CONTENTS

Acknowledgements	III
------------------------	-----

FORWARD

Talking About Abortion	1
------------------------------	---

A. EXPAND ACCESS TO ABORTION

Qualified Providers of Abortion Act	10
Access to Medication Abortion Act	14
Abortion Coverage Equity Act	18
Respect Women’s Abortion Decisions Act.....	22

B. GUARANTEE MEDICALLY ACCURATE ABORTION CARE

Truth in Medicine Act.....	26
Pregnancy Center Disclosure Act	30
Crisis Pregnancy Center Fraud Prevention Act.....	34
Protect Physician Integrity from Political Interference Act	38
Patients’ Right to Abortion Information Act	42
Stop Discrimination Against Abortion Providers Act.....	46

C. STOP ANTI-ABORTION HARASSMENT AND TERRORISM

Prevent Anti-Abortion Terrorism Act	50
Accountability for Clinic Violence Act	60
Accountability for Harassment of Women Act	64
Clinic Safety Zone Act	68
Keep Bosses Out of the Bedroom Act.....	72
Abortion with Dignity Act.....	76
Pregnant Women’s Dignity Act.....	80

D. PROVIDE FULL ACCESS TO BIRTH CONTROL

Women’s Right to the Pill Act.....	84
Rape Survivor Information Act.....	88
Long-Acting Birth Control Information Act.....	92

E. REVEAL THE DECEPTION OF THE ANTI-ABORTION MOVEMENT

From Day One Act.....	96
Prevent Political Interference from Delaying Abortion Act.....	112
Keep Abortion Clinics Open Act.....	118
Prevent Double Standards in Abortion Regulation Act.....	122
Resolution Opposing “Sex-Selective Abortion Bans” that Perpetuate Racial Stereotypes.....	125

F. PRESENT A BROAD VISION FOR ABORTION RIGHTS IN AMERICA

Women’s Economic Security Act.....	128
Women’s Equality, Dignity and Fairness Act	156
Support for All Pregnancy Options Act.....	166
Abortion Is Health Care Resolution	177

Index of Resources.....	180
-------------------------	-----

About the Public Leadership Institute.....	185
--	-----

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ORGANIZATIONS

A Better Balance
ACLU of California
Advocates for Youth
All Above All
American Civil Liberties Union
Center for Reproductive Rights
Center on Reproductive Rights and Justice at Berkeley Law
Colorado Organization for Latina Opportunity & Reproductive Rights (COLOR)
ConwayStrategic
Guttmacher Institute
In Our Own Voice: National Black Women's Reproductive Justice Agenda
NARAL Pro-Choice America
National Abortion Federation
National Advocates for Pregnant Women
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National Health Law Program
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Please note: Inclusion of an organization in the Acknowledgements and/or list of resources does not indicate organizational endorsement of every policy referenced.

TALKING ABOUT ABORTION

Margaret Conway, ConwayStrategic

INTRODUCTION

A strong majority of Americans favor keeping abortion legal and oppose overturning *Roe v. Wade*, the Supreme Court decision that legalized abortion. At the same time, Americans often hold conflicting feelings about abortion and struggle to resolve the conflict. When it comes to public policy, this means that while support for legality remains strong, it is often easy to get the public to favor restrictions on a woman's right to have an abortion, such as waiting periods, burdensome rules for abortion clinics, parental consent laws, insurance bans, and more.

Recent public opinion research indicates that some of those conflicting feelings are resolved when people focus on what a woman's experience should be *after* she has made the decision to have an abortion, rather than *on* her decision. Once a woman has made her decision to have an abortion, a strong majority want her experience to be positive—that is, non-judgmental, informed by medically-accurate information, supportive, affordable and without pressure or added burdens.

Talking about abortion in the often heated political environment is no easy task. But, if you believe that women who have made the decision to have an abortion deserve our trust and respect, then your job is to position the debate in a way that helps your audience resolve their conflicting views in favor of those women. This chapter, which is based on years of opinion research and strategic message development by many leading reproductive rights, health and justice organizations in the field, can help you do just that.

LEAD WITH POSITIVE VALUES

The most effective communicators do not engage in a battle of facts. Rather, they articulate positive values that resonate deeply with their audiences. Given the complexity of people's feelings and opinions about abortion—and the complicated scope of proposed restrictions on abortion by its opponents—leading with values-based messaging is not just powerful, it's essential.

Values that work when talking about abortion:

Autonomy	<ul style="list-style-type: none">● We should respect that a woman needs to make her own important life decisions● Women deserve freedom from political interference
Recognizing Unique Circumstances	<ul style="list-style-type: none">● Everyone's situation is unique—we can't know everyone's individual personal or financial circumstances● We're not in her shoes
Health & Well-Being	<ul style="list-style-type: none">● Everyone should be able to get safe care from a licensed provider
Fair Treatment	<ul style="list-style-type: none">● We shouldn't treat people differently just because they are low-income, young, live in a conservative area, etc.

VALUES-BASED MESSAGES

Autonomy

- Once a woman has made such an important decision as whether to have an abortion, it's not for politicians to interfere. Our job is to promote people's health and well-being, not impose our beliefs on others.
- However you or I feel about abortion, it's not our place to decide for someone else whether or when they should become a parent.
- Decisions about whether to end a pregnancy, choose adoption, or raise a child are best made by a woman and her family.
- We should not judge someone who feels she is not ready to become a parent. It's not our place.

Recognizing Unique Circumstances

- We cannot know all the personal and medical circumstances behind a woman's decision to have an abortion. Every person's situation is different, and we should respect that this decision is hers to make, with her family (and in accordance with her faith).

Health and Well-Being

When a woman has decided to end her pregnancy, it is important that she have access to safe medical care. Providing insurance coverage means she can see a licensed, quality health provider.

- Our laws should support and safeguard a woman's health.
- When a woman has decided to have an abortion, it is important that she have access to safe medical care...
...and providing insurance coverage means she can see a licensed, quality health provider.
...but shutting down clinics makes it impossible for her to see to a licensed, quality health provider.
- Instead of limiting health care options, we need solutions that improve health and improve a woman's ability to make the best reproductive health decisions for her, based on her circumstances.

Fair Treatment

- When it comes to the most important decisions in life, such as whether and when to become a parent, it is vital that a woman is able to consider all the options available to her, however little money she makes or however she is insured.
- However you and I feel about abortion, we shouldn't deny a woman's health insurance coverage for it just because she is poor/just based on where she lives/etc.

FACTS THAT HELP

You should always lead with values, but here are also some facts that can help support your messages:

- When a woman is living paycheck to paycheck, denying coverage for an abortion can push her deeper into poverty. Studies show that a woman who seeks an abortion and is turned down is more likely to fall into poverty than one who is able to get an abortion.¹
- Fifty-eight percent of abortion patients say they would have had their abortion earlier if they could have. Nearly sixty percent of women who experienced a delay in obtaining an abortion cite the time it took to make arrangements and raise the money to pay for it.²
- A woman who has to pay for an abortion out of pocket may be forced to delay the procedure to raise the necessary funds.³
- When political interference restricts access to abortion, the harm falls hardest on low-income women, women of color, and young women.⁴
- Studies show that when political interference restricts Medicaid coverage of abortion, it forces one in four poor women seeking an abortion to carry an unwanted pregnancy to term.⁵
- At least half of American women will experience an unintended pregnancy by age 45, and at 2008 abortion rates, one in 10 women will have an abortion by age 20, one in four by age 30 and three in 10 by age 45.^{6,7}

APPROACHES FOR CONNECTING WITH AUDIENCES ON ABORTION

If people hold conflicting feelings about abortion, we don't want to change their views, but we do need them to hear what the consequences of imposing their views on women can have on those women's health and well-being. To that end, your job is to help resolve their conflicts in a way that respects women's decisions and health.

- Acknowledge deeply held beliefs or conflicting views.
- When talking with conflicted audiences, try to name their conflict in a way you can agree with, then model how to resolve it.

You and I—most people—can have strong feelings about pregnancy...most of us do have strong feelings...but however we feel...

WHY: This helps audiences feel okay about their feelings and shows them a way to own their feelings without judgment and to not feel like the only option is for them to have to force their beliefs on others.

1 Foster DG et al, Socioeconomic consequences of abortion compared to unwanted birth, abstract presented at the American Public Health Association annual meeting, San Francisco, Oct. 27–31, 2012. Available at <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>

2 Finer LB et al., Timing of steps and reasons for delays in obtaining abortions in the United States, *Contraception*, 2006, 74(4):334–344. Available at http://www.guttmacher.org/pubs/2006/10/17/Contraception74-4-334_Finer.pdf

3 Henshaw SK et al., Restrictions on Medicaid Funding for Abortions: A Literature Review, Guttmacher Institute, 2009. Available at <http://www.guttmacher.org/pubs/MedicaidLitReview.pdf>

4 Boonstra, HD and Nash E, "A Surge of State Abortion Restrictions Puts Providers—and the Women They Serve—in the Crosshairs." Guttmacher Policy Review, Vol. 17, No. 1, Winter 2014. Available at <http://www.guttmacher.org/pubs/gpr/17/1/gpr170109.html>

5 Henshaw SK et al., Restrictions on Medicaid Funding for Abortions: A Literature Review, Guttmacher Institute, 2009. Available at <http://www.guttmacher.org/pubs/MedicaidLitReview.pdf>

6 Henshaw SK, Unintended pregnancy in the United States, *Family Planning Perspectives*, 1998, 30(1):24–29 & 46. Available at <http://www.guttmacher.org/pubs/journals/3002498.html>

7 Jones RK and Kavanaugh ML, Changes in abortion rates between 2000 and 2008 and lifetime incidence of abortion, *Obstetrics & Gynecology*, 2011, 117(6):1358–1366. Available at http://journals.lww.com/greenjournal/Fulltext/2011/06000/Changes_in_Abortion_Rates_Between_2000_and_2008.14.aspx

- Model empathy for the audience and for the woman. Talk about your own feelings and beliefs authentically. If you have evolved on this issue, say so.

Say “I” and “we” and “us” rather than “they” or “them”

Use phrases like “it’s not for me to judge”

WHY: This helps our audience tap into their own inborn empathy, which is crucial to humanizing the women who have abortions, decreasing barriers and getting out of a judgmental stance.

- Dispel assumptions and stereotypes. Bring someone they know to mind to help dispel stereotypes. Remind people that we don’t know a woman’s circumstances. Use language that implicitly assumes a woman is competent, trustworthy and reliable.

“It’s not for me to judge someone’s decision. I don’t know her circumstances.”

Use “a woman” instead of “women”

WHY: Dispelling stereotypes increases audience empathy for a woman and her unique circumstances, and decreases judgments based on stereotypes.

- Provide context for whatever the restriction is that is up for consideration, rather than fighting restrictions one-by-one. This allows people to draw their own conclusions, and they will, about the fact that the high volume of restrictions proposed is central to the anti-abortion movement’s strategy to curtail or eliminate access outright.

Their real agenda is to ban abortion outright. Since they can’t, they are using this restrictive law to put abortion out of reach.

More than 300 laws have recently passed to try to prevent a woman from getting an abortion, even when that means lying to her, delaying her, doing tests she doesn’t need, making it cost more than it should, letting people harass her, and closing nearby clinics.

Did you know that since 2010, anti-choice state legislators have quietly passed more than 300 anti-abortion laws? In states across the country, new laws have closed clinics and pressured and shamed women who have decided to have an abortion. Abortion has quickly been put out of reach for many.

WHY: Painting the picture of individual restrictions as part of the bigger picture can help put them in context and lessen the emotional resonance of the opposition’s messages. Without resorting to hyperbole, you need to talk to people about the anti-choice agenda and its far-reaching implications, including the real numbers of restrictive laws introduced and/or enacted and the negative impact of those laws. Furthermore, once a woman has made her decision to have an abortion, a majority want her experience to be positive—that is, non-judgmental, informed by medically-accurate information, without pressure, supportive, affordable and without added burdens.

QUICK TIPS

INSTEAD OF...	SAY...
They; them	We; us
Women; all women; families	A woman; her family
Choice	Personal decision; important life decision
Right	Ability; should be able to; need
Listing details or reasons why a woman is having an abortion (e.g. rape, incest, fetal anomalies, etc.)	Mention her decision-making process: "thinking through her decision;" "talking it over with loved ones." Remind audiences that "she has made her decision"
Pro-choice	Support women's decisions; decision-making
Pro-life	Anti-abortion; abortion opponents
Language that stereotypes (e.g. poor women; woman dependent on government funding)	Family/woman working to make ends meet; woman enrolled in Medicaid insurance
Abortion should be safe, legal and rare	Legal abortion must be available and affordable
Demonizing government's role	Specify that it is some policymakers or special interest groups who want to impose their values on others
Using the terms "fair," "unfair," "fairness" or "discriminatory"	We shouldn't treat people differently just because ... (they are poor; get their insurance from the government; live in a certain zip code; etc)

PUTTING MESSAGES TO USE

A succinct way to turn talking points into a strong statement is by organizing them by:

VISION: Positive statement about what you wish the world looked like

PROBLEM: What is getting in the way of reaching your vision

SOLUTION: What needs to change to move us forward

Targeted Restriction of Abortion Providers (AKA TRAP Laws)

VISION

When a woman has decided to end her pregnancy, she should be able to get the health care she needs.

PROBLEM

Anti-abortion legislators have quietly passed hundreds of restrictive laws in the past five years and this is one more example. Their restrictions require women to have multiple unnecessary appointments to receive care, make it illegal for insurance to cover abortions, and require doctors to go against their own medical training by forcing them to provide women medically inaccurate information.

This law does nothing to make abortion safer or support a woman's decision-making. But it will make abortion more costly and difficult to get.

SOLUTION

We cannot allow those who want to put abortion completely out of reach to pass another law that stands in the way of women and the care they need.

Abortion Coverage

VISION

When it comes to the most important decisions in life, such as whether to become a parent, it is vital that a woman is able to consider all the options available to her, however little money she makes or however she is insured.

PROBLEM

For far too long, politicians have interfered in women's health decisions by banning insurance coverage for abortion care.

When politicians deny coverage, the harm falls hardest on low-income women, women of color and young women.⁸

SOLUTION

We must lift restrictions on abortion coverage so a woman struggling to make ends meet can make important, personal decisions based on what is best for her circumstances.

⁸ Boonstra, HD and Nash E, "A Surge of State Abortion Restrictions Puts Providers—and the Women They Serve—in the Crosshairs." Guttmacher Policy Review, Vol. 17, No. 1, Winter 2014. Available at <http://www.guttmacher.org/pubs/gpr/17/1/gpr170109.html>

ANSWERING TOUGH QUESTIONS

“Abortion is immoral/against my beliefs/not what God wants.”

Each of us has strong feelings about abortion. Even if we disagree, it’s not my place to make a decision for someone else. It is better that each person be able to make her own decision.

“Too many women use abortion as birth control.”

In my own experience, I know women weigh their decision carefully, think it through with their family and loved ones, or base their decision on their spiritual beliefs. We don’t know every woman’s circumstances. We aren’t in her shoes. I don’t want to make such an important decision for anyone else—that’s not my place.

“Abortion hurts women.”

Most important decisions in life trigger complex and conflicting emotions, and abortion is no exception. Some kind of reaction to serious life decisions is normal. Strong feelings are certainly not a reason to take away every woman’s ability to make important life decisions based on her own unique circumstances.

Claims that abortion leads to some kind of disorder are misleading and simply untrue.⁹

“[TRAP laws] protect women’s health”

Did you know that since 2010, anti-abortion state legislators have quietly passed more than 300 anti-abortion laws? In states across the country, new laws have closed clinics and pressured and shamed women who have decided to have an abortion. Abortion has quickly been put out of reach for many.

Specifying the type of curtain or width of a hallway has nothing to do with women’s health. These laws create higher costs, longer delays, and extra steps for women seeking abortion care. Shutting down women’s reproductive health care providers makes it difficult—and sometimes impossible—for women who have decided to end a pregnancy to get the safe, legal, high-quality care they need.

“Taxpayers shouldn’t have to foot the bill for abortion.”

However we feel about abortion, politicians shouldn’t be able to deny a woman’s health coverage for it just because she is poor.

“Abortion is genocide.”

Proponents of this statement are implying that African-American women are being duped by abortion providers. The reality is that many communities of color experience lower health outcomes as a result of poor access to health insurance, cost and fewer health providers in their communities. We are fortunate to have a provider in this community to offer safe, legal care for a woman’s reproductive health needs.

The real issue is the historic and ongoing disparities in access to quality health care and education in the African American community. These harm our community today and deny the next generation a better future. Improving access to health care, education, and family planning are better ways to reduce unintended pregnancy than trying to restrict abortion.

⁹ False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers. United States House Of Representatives Committee On Government Reform—Minority Staff Special Investigations Division. Prepared for Rep. Henry Waxman. July 2006. Available at: <http://www.chsourcebook.com/articles/waxman2.pdf>

A. EXPAND ACCESS TO ABORTION

Qualified Providers of Abortion Act 10

Access to Medication Abortion Act 14

Abortion Coverage Equity Act 18

Respect Women's Abortion Decisions Act..... 22

A PLAYBOOK FOR ABORTION RIGHTS

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QUALIFIED PROVIDERS OF ABORTION

Aspiration abortion is an extremely safe and simple procedure. The aspiration procedure is completed like any outpatient procedure in a family doctor's office or clinic. It is not surgery and requires no operating room or recovery room. The entire procedure takes just a few minutes to complete. In fact, aspiration abortion is one of the safest medical procedures in the United States.

The American College of Obstetricians and Gynecologists (ACOG) recommends allowing advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration abortions. APCs already provide a large proportion of primary health care to reproductive-aged women and play a prominent role in family planning services, making up 66 percent of full-time clinical service providers in Title X family planning centers.

Approximately 200,000 advanced practice clinicians currently practice in the United States. The majority of APCs provide primary care to women of reproductive age who are at risk for unintended pregnancy. They care for patients in diverse settings, are more likely to provide care to poor and underserved populations, and are critical to the expansion of health care access. Therefore, APCs are well positioned within the health care system to address women's needs for reproductive health services that include abortion care.

Studies show that aspiration abortion performed by advanced practice clinicians is just as safe as when performed by physicians. A major study concluded: "Abortion complications were clinically equivalent between newly trained NPs, CNMs, and PAs and physicians...." Another study found that "physicians and mid-level clinicians are equally competent, safe surgical abortion providers." In fact, research going back for decades has supported this conclusion.

The number of abortion providers has decreased due to practice restrictions and threats of violence. Women in rural areas are disproportionately affected by lack of access to abortion care. Permitting advanced practice clinicians to perform aspiration abortions can make safe and legal abortion more accessible and affordable.

California, Montana, New Hampshire, Oregon and Vermont allow trained and licensed APCs to perform aspiration abortions. The policy has been proven to work.

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

QUALIFIED PROVIDERS OF ABORTION

Summary: *The Qualified Providers of Abortion Act would allow advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration abortions.*

SECTION 1. SHORT TITLE

This Act may be cited as the “Qualified Providers of Abortion Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) The American College of Obstetricians and Gynecologists (ACOG) recommends expanding the pool of non-obstetrician/gynecologist abortion providers by training advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration abortions.
- 2) APCs provide a large proportion of primary health care to reproductive-aged women, and their contribution is expected to increase.
- 3) Research found no difference in outcomes in aspiration abortion by provider type and verified that trained APCs can provide abortion services safely.
- 4) The number of abortion providers has decreased due to practice restrictions and the threat of violence abortion providers face every day.
- 5) Women in rural areas are disproportionately affected by lack of access to abortion care.
- 6) APCs play a prominent role in family planning services, making up 66 percent of full-time clinical service providers in health centers that receive Title X family planning funding.
- 7) Abortion in the first trimester is extremely safe, with major complications occurring in less than 0.05% of cases. In fact, abortion is one of the safest medical procedures in the United States.
- 8) California, Montana, New Hampshire, Oregon and Vermont allow trained and licensed clinicians to perform aspiration abortions.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of women by increasing access to early abortion services.

SECTION 3. INCREASED ACCESS TO ASPIRATION ABORTION

After section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) DEFINITIONS—In this section:

- 1) “Aspiration abortion” means medical treatment intended to induce the termination of a pregnancy through dilating the cervix and using suction to remove the fetus and related pregnancy material from the uterus.

[Bill drafting note: the California statute on which this model is based does not define aspiration abortion; it was easier and more politically palatable to avoid such language. Determine whether or not you need to define the term in your state.]

- 2) “Certified nurse-midwife” means a person licensed under [insert relevant provision].

[Bill drafting note: some states license “certified professional midwives, and they should be included in the legislation in such states.]

- 3) “Nurse practitioner” means a person licensed under [insert relevant provision].
- 4) “Physician assistant” means a person licensed under [insert relevant provision].

(B) QUALIFIED PROVIDERS TO INCLUDE NURSE PRACTITIONERS AND NURSE-MIDWIVES

- 1) A nurse practitioner or a certified nurse-midwife is authorized to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing nurse practitioners and certified nurse-midwives].
- 2) It is unprofessional conduct for any nurse practitioner or certified nurse-midwife to prescribe or supervise an aspiration abortion without prior successful completion of training and validation of clinical competency.
- 3) Within 180 days of the enactment of this Act, the [insert relevant board governing nurse practitioners and certified nurse-midwives] shall issue rules for training, clinical competency, and standardized procedures for aspiration abortion.

(C) QUALIFIED PROVIDERS TO INCLUDE PHYSICIAN ASSISTANTS

- 1) A physician assistant is authorized to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing physician assistants].
- 2) It is unprofessional conduct for any physician assistant to perform an aspiration abortion without prior successful completion of training and validation of clinical competency.
- 3) Within 180 days of the enactment of this Act, the [insert relevant board governing physician assistants] shall issue rules for training, clinical competency, and standardized procedures for aspiration abortion.

SECTION 4. REPEAL

The following sections are hereby repealed: [list existing provisions inconsistent with this Act].

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

MODEL LEGISLATION

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

[Bill drafting note: You will have to consult with local advocates and the affected healthcare professional associations before writing this bill. Healthcare regulatory schemes often differ from state to state. In addition, there are various ways to achieve the same goal, depending on the wording of your state's "physician-only" provision (that is, existing statutory language that an abortion can be performed only by a physician):

- a) A few states have used regulatory processes and a few have used Attorney General opinions to allow APCs to practice despite so-called "physician-only" laws. These non-legislative avenues might be possible in your state.
- b) Depending on the state, you might simply repeal the "physician-only" provision; the underlying statutory and regulatory scheme might be sufficient to allow APCs to handle both aspiration and medication abortions.
- c) Alternatively, by inserting definitions of APCs or by using current definitions in state law, you might amend the existing "physician-only" provision to add APCs, making it a physician and APCs only law. Unless you add additional restrictions, this approach would cover both aspiration and medication abortions.]

ACCESS TO MEDICATION ABORTION ACT

Medication abortion, approved by the U.S. Food and Drug Administration since 2000, is an extremely safe treatment. The “abortion pill,” called mifepristone, and marketed as Mifeprex, has been available in the United States since 2000 and in other countries since 1981. Combined with another drug, misoprostol, more than two million American women, and at least three million European women have used medication abortion since it was approved. It causes no serious complications in more than 99.9 percent of cases, making it safer for use than Tylenol, aspirin and Viagra.

The American College of Obstetricians and Gynecologists (ACOG) recommends allowing advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to supervise medication abortions. APCs already provide a large proportion of primary health care to reproductive-aged women and play a prominent role in family planning services, making up 66 percent of full-time clinical service providers in Title X family planning centers.

Approximately 200,000 advanced practice clinicians currently practice in the United States. The majority of APCs provide primary care to women of reproductive age who are at risk for unintended pregnancy. They care for patients in diverse settings, are more likely to provide care to poor and underserved populations, and are critical to the expansion of health care access. Therefore, APCs are well positioned within the health care system to address women’s needs for reproductive health services that include abortion care.

Medication abortion supervised by advanced practice clinicians is just as safe as if supervised by physicians. APCs are now supervising medication abortion in 18 states. Based on a great deal of experience, it is widely recognized that APCs are fully capable of supervising medication abortion.

The number of abortion providers has decreased due to practice restrictions and threats of violence. Women in rural areas are disproportionately affected by lack of access to abortion care. Permitting advanced practice clinicians to supervise medication abortions can make safe and legal abortion more accessible and affordable.

ACCESS TO MEDICATION ABORTION ACT

Summary: *The Access to Medication Abortion Act would allow advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to prescribe and supervise medication abortions.*

SECTION 1. SHORT TITLE

This Act may be cited as the “Access to Medication Abortion Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) The use of medication for abortion is a safe, non-invasive method for terminating a pregnancy.
- 2) More than two million women in the United States have used medication to end a pregnancy since 2000.
- 3) Medication abortions have increased from six percent of all abortions in 2001 to 23 percent in 2011.
- 4) There is overwhelming evidence that medication abortion is safe for virtually all women; complications from medication abortion are exceedingly rare.
- 5) The number of abortion providers has decreased due to practice restrictions and the threat of violence abortion providers face every day.
- 6) Women in rural areas are disproportionately affected by lack of access to abortion care.
- 7) Advanced practice clinicians (APCs), including nurse practitioners, physician assistants and certified nurse–midwives, provide a large proportion of primary health care to reproductive-aged women, and their contribution is expected to increase.
- 8) APCs also play a prominent role in family planning services, making up 66 percent of full-time clinical service providers in health centers that receive Title X family planning funding.
- 9) Studies show that trained APCs can provide medication abortion services safely.
- 10) The American College of Obstetricians and Gynecologists supports the provision of medication abortion by APCs.
- 11) Permitting APCs to provide medication abortion can safely expand access and allow women to obtain integrated reproductive health.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of women by increasing access to medication abortion.

MODEL LEGISLATION

SECTION 3. INCREASED ACCESS TO MEDICATION ABORTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Certified nurse-midwife” means a person licensed under [insert relevant provision].

[Bill drafting note: some states license “certified professional midwives, and they should be included in the legislation in such states.]

- 2) “Medication abortion” means the use of medication intended to terminate a pregnancy so that it does not result in a live birth.
- 3) “Nurse practitioner” means a person licensed under [insert relevant provision].
- 4) “Physician assistant” means a person licensed under [insert relevant provision].

(B) QUALIFIED PROVIDERS TO INCLUDE NURSE PRACTITIONERS AND NURSE-MIDWIVES

- 1) A nurse practitioner or a certified nurse-midwife is authorized to prescribe and supervise medication abortions if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing nurse practitioners and certified nurse-midwives].
- 2) It is unprofessional conduct for any nurse practitioner or certified nurse-midwife to prescribe or supervise medication abortions without successful prior completion of training and validation of clinical competency.
- 3) Within 180 days of the enactment of this Act, the [insert relevant board governing nurse practitioners and certified nurse-midwives] shall issue rules for training, clinical competency, and standardized procedures for medication abortion.

(C) QUALIFIED PROVIDERS TO INCLUDE PHYSICIAN ASSISTANTS

- 1) A physician assistant is authorized to prescribe and supervise medication abortions if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing physician assistants].
- 2) It is unprofessional conduct for any physician assistant to prescribe or supervise medication abortions without prior successful completion of training and validation of clinical competency.
- 3) Within 180 days of the enactment of this Act, the [insert relevant board governing physician assistants] shall issue rules for training, clinical competency, and standardized procedures for medication abortion.

SECTION 4. REPEAL

The following sections are hereby repealed: [list existing provisions inconsistent with this Act].

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MODEL LEGISLATION

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

[Bill drafting note: You will have to consult with local advocates and the affected healthcare professional associations before writing this bill. Healthcare regulatory schemes often differ from state to state. In addition, there are various ways to achieve the same goal, depending on the wording of your state's "physician-only" provision (that is, existing statutory language that an abortion can be performed only by a physician):

- a) A few states have used regulatory processes and a few have used Attorney General opinions to allow APCs to practice despite so-called "physician-only" laws. These non-legislative avenues might be possible in your state.
- b) Depending on the state, you might simply repeal the "physician-only" provision; the underlying statutory and regulatory scheme might be sufficient to allow APCs to handle both aspiration and medication abortions.
- c) Alternatively, by inserting definitions of APCs or by using current definitions in state law, you might amend the existing "physician-only" provision to add APCs, making it a physician and APCs only law. Unless you add additional restrictions, this approach would cover both aspiration and medication abortions.]

ABORTION COVERAGE EQUITY ACT

Insurance coverage for abortion is fundamental to women's health care. When she has insurance coverage, a woman is better able to see a licensed, quality health care provider and make the best decisions for herself and her family.

It is common industry practice to cover abortion in the private, employer-sponsored insurance market. Yet, in many cases, states have interfered with and blocked insurers from including this coverage in private plans. Unfortunately, the same is true of health insurance provided by or through the federal or state governments.

On the federal level, the Hyde Amendment, enacted in 1976, bans the use of federal Medicaid funds from covering abortion except in cases of life endangerment, rape or incest. Congress has extended similar bans to several other health care programs.

Some states have stepped up to fill the gaps created by the Hyde Amendment and other discriminatory laws. Yet, thirty-three states and the District of Columbia prohibit the use of state Medicaid funds for abortion, except in limited cases. Twenty-five states restrict abortion coverage in their insurance exchanges. Twenty-one states restrict abortion coverage for state employee health plans. And ten states restrict abortion coverage in standard private insurance plans.

The lack of abortion insurance coverage hurts lower income women the most. At least one in six women of reproductive age (15-44) are enrolled in Medicaid. Studies show that when Medicaid doesn't cover abortion, it forces one in four women who would otherwise seek an abortion to carry an unwanted pregnancy to term. Further, studies show that a woman who seeks an abortion but is denied is more likely to fall into poverty than a woman who is able to obtain an abortion.

The Abortion Coverage Equity Act ensures abortion is included in health insurance plans for every woman however much she earns, however she is insured, or wherever she lives.

It respects the fact that, wherever she gets her insurance, every woman should be able to make her own decisions about pregnancy.

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ABORTION COVERAGE EQUITY ACT

Summary: *The Abortion Coverage Equity Act would ensure that women, regardless of their economic status, are able to obtain insurance coverage for abortion care.*

SECTION 1. SHORT TITLE

This Act shall be called the “Abortion Coverage Equity Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Affordable, comprehensive health insurance that includes coverage for a full range of pregnancy-related care, including abortion, is critical to the health of every woman.
- 2) Neither a woman’s income level nor her type of insurance should prevent her from having access to a full range of pregnancy-related care, including abortion services.
- 3) No woman should have the decision to have, or not to have, an abortion made for her based on her ability or inability to afford the procedure.
- 4) Since 1976, the federal government has withheld funds for abortion coverage in most circumstances. These restrictions affect women who are insured through the Medicaid program, as well as women who receive insurance or care through other federal health plans and programs.
- 5) Other states provide coverage that [state] does not: Forty states permit abortion care in standard private insurance plans; Twenty-nine states permit abortion care in state employee insurance plans; Twenty-five states permit abortion care in their insurance exchanges; Seventeen states have policies that include abortion care in their Medicaid programs. [Include what is relevant to your state.]
- 6) A report by the Center for Reproductive Rights details how restrictions on abortion coverage interfere with a woman’s personal decision-making, with her health and well-being, and with her constitutionally protected right to a safe and legal medical procedure.
- 7) Restrictions on abortion coverage have a disproportionate impact on low-income women, women of color, immigrant women, and young women who are already disadvantaged in their access to the resources, information, and services necessary to prevent an unintended pregnancy or to carry a healthy pregnancy to term.

(B) PURPOSE—This law is enacted to ensure that women, regardless of their source of insurance or economic status, are able to obtain comprehensive and affordable insurance coverage for abortion care.

MODEL LEGISLATION

SECTION 3. POLICY TO COVER ABORTION CARE

After section XXX, the following new section XXX shall be inserted:

(A) POLICY TO COVER ABORTION

Abortion shall be covered in all types of health insurance offered, sold, or purchased in this state, including all private plans, all state-funded plans, and all state-provided benefits.

(B) RESTRICTIONS REPEALED

- 1) Section XXX [any provision of law that prohibits abortion care in private health insurance plans] is hereby repealed.
- 2) Section XXX [any provision of law that prohibits abortion care in state employee insurance plans] is hereby repealed.
- 3) Section XXX [any provision of law that prohibits abortion care in the state insurance exchange] is hereby repealed.
- 4) Section XXX [any provision of law that prohibits abortion care in Medicaid coverage] is hereby repealed.
- 5) Section XXX [any provision of law that prohibits abortion care in any other state-funded insurance program] is hereby repealed.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

[Bill drafting note: States have different regulatory requirements for traditional health insurance carriers and their managed care plans. Therefore, some states may need separate provisions or separate bills to amend the different statutes that cover all health care plans.]

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RESPECT WOMEN'S ABORTION DECISIONS ACT

There is no Supreme Court ruling that has been subjected to such a well-organized and well-funded attack as *Roe v. Wade*. Since it was decided in 1973, *Roe* has been under constant attack. In just the past few years alone, state legislatures have enacted hundreds of measures restricting abortion.

The fate of *Roe* probably depends on the appointment of the next justice to the Supreme Court of the United States. There seems to be a narrow 5-4 majority on the Court in favor of upholding the fundamental right to abortion. But the retirement of a single justice could devastate that ruling.

A Supreme Court decision overturning *Roe* would not by itself make abortion illegal in the United States. Instead, a reversal of *Roe* would remove federal constitutional protection and give the states full power to set abortion policy.

If *Roe* was overturned, many states have laws on the books that might automatically criminalize all abortions. Each state depends on its own circumstances. Some states have abortion bans on the books that have never been repealed or blocked by the courts, some states have abortion bans that have been blocked by courts, and many states are highly vulnerable to the enactment of new bans by their legislatures. All told, perhaps 30 to 40 states might criminalize abortion if *Roe v. Wade* is overturned.

Without access to safe, legal abortions, women will die. Maternal mortality dropped dramatically after *Roe* was decided in 1973. In the year after New York legalized abortion, maternal mortality decreased by 45 percent in New York City. Before *Roe*, an estimated 5,000 women died every year from the complications of illegal abortions. Throughout history, laws have never stopped abortions and without access to safe, early abortion, women will again turn to back-alley abortions—and thousands will die.

Without *Roe*, women and their doctors will be sent to prison. Women, their doctors, other healthcare workers, and anyone who helps a woman obtain an abortion could be prosecuted and sentenced to long prison terms without the protections of *Roe*. For example, under Alabama law, those who “aid or abet” an abortion may be sentenced to jail for up to 12 months with “hard labor.” Laws in Arizona and Oklahoma punish those who participate in an abortion procedure with two to five years in prison. Abortion is classified as a felony in Michigan, Mississippi and North Carolina. Before *Roe*, police raided the offices of doctors and arrested physicians, nurses and patients and, without *Roe*, this practice would resume.

States can and should enact statutes to protect abortion rights. Seven states have already codified the fundamental right to abortion: California, Connecticut, Hawaii, Maine, Maryland, Nevada and Washington. And polls have always shown that Americans overwhelmingly support the ruling in *Roe v. Wade*.

RESPECT WOMEN'S ABORTION DECISIONS ACT

Summary: *The Respect Women's Abortion Decisions Act would codify the fundamental right to*

abortion.

SECTION 1. SHORT TITLE

This Act shall be called the "Respect Women's Abortion Decisions Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) In the case of *Roe v. Wade*, 410 U.S.113 (1973), the United States Supreme Court found that women's fundamental right of privacy protects their right to decide whether to have an abortion.
- 2) Today, about half of pregnancies are unintended; about 40 percent of those end in abortion.
- 3) The decision to bear a child or obtain an abortion prior to the viability of the fetus should belong to the pregnant woman in consultation with her physician.
- 4) As *Roe v. Wade* made clear, a fetus is not a "person."
- 5) A pregnant woman's life and health are paramount and cannot be compromised as a result of any law or regulation governing abortion.

(B) PURPOSE—This law is enacted to protect a woman's fundamental right to make the very personal decision of whether to obtain an abortion.

SECTION 3. GUARANTEE OF THE RIGHT TO ABORTION

After Section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) "State" means the state and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.
- 3) "Viability" means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.

MODEL LEGISLATION

(B) ACCESS TO REPRODUCTIVE SERVICES

- 1) The State shall not deny a woman's right to obtain an abortion as established by the United States Supreme Court in the decision *Roe v. Wade*, 410 U.S.113 (1973). Notwithstanding any law to the contrary, the state shall protect a woman's right to terminate a pregnancy prior to viability of the fetus or when necessary to protect a woman's life or health as determined by a licensed physician.
- 2) No prosecution or proceeding shall be brought or maintained under state criminal law or otherwise for acts that are authorized or permitted pursuant to this section.

SECTION 4. REPEAL

The following are repealed: [If there are provisions in existing law that are inconsistent with this Act, this section should repeal them. Examples of such language include pre-*Roe* bans on abortion or statements of legislative policy expressing disagreement with the *Roe* decision.]

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

B. GUARANTEE MEDICALLY ACCURATE ABORTION CARE

Truth in Medicine Act..... 26

Pregnancy Center Disclosure Act..... 30

**Crisis Pregnancy Center Fraud
Prevention Act..... 34**

**Protect Physician Integrity from
Political Interference Act 38**

**Patients' Right to Abortion
Information Act..... 42**

**Stop Discrimination Against
Abortion Providers Act 46**

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*



TRUTH IN MEDICINE ACT

It is a prime tactic of the anti-abortion movement to deceive women and misrepresent medical facts about abortion.

Their misrepresentations are neither inadvertent nor infrequent. Instead they are, in fact, talking points disseminated by the movement's national leadership. All Americans have a First Amendment right to say what they want, truthful or not, but it is unconscionable for those who represent themselves as health care authorities to lie about medical facts.

Most of the 2,500 Crisis Pregnancy Centers (CPCs) across the United States are in business to deceive women who are seeking all-options medical care. According to a report by the U.S. House of Representatives Committee on Government Reform Minority Staff, Crisis Pregnancy Centers (also called "pregnancy resource centers") "are virtually always pro-life organizations whose goal is to persuade teenagers and women with unplanned pregnancies to choose motherhood or adoption." That report found: "the vast majority" of CPCs investigated "provided information about the risks of abortion that was false or misleading. In many cases, this information was grossly inaccurate or distorted." Other reports have similar conclusions.

Five lies are particularly common:

- 1) *That having an abortion can raise a woman's risk of developing breast cancer.* But in fact, this claim has been refuted by a meta-analysis by the American Cancer Society, which also cited medical journal articles; by a workshop called by the National Cancer Institute; and by the American College of Obstetricians and Gynecologists.
- 2) *That having an abortion can increase a woman's risk of infertility.* But in fact, a Guttmacher Institute survey of scientific studies found that abortion poses "virtually no long-term risks of future fertility-related problems such as infertility...". And as the medical director of Physicians for Reproductive Health explains, this myth is based upon long-outdated data.
- 3) *That having an abortion can increase a woman's risk of negative emotional or mental health problems or increase her risk of suicide ideation.* But in fact, an American Psychological Association Task Force found there is no such evidence. The same conclusion was reached by the Medical Royal Colleges, a comprehensive study in the New England Journal of Medicine, and an analysis by the Johns Hopkins School of Public Health.
- 4) *That most women regret having an abortion.* But in fact, a recent peer-reviewed study found that nearly all women having an abortion believed they had made the right decision. Another study by the University of California, San Francisco found the same result; actually, it is women who are denied an abortion who feel more regret and anger, and less relief and happiness.
- 5) *That abortion is more dangerous or poses greater health risks than the average medical procedure.* But in fact, the Centers for Disease Control found that legal abortion is significantly safer than childbirth, and a study in the American Journal of Public Health reported that first-trimester abortion is one of the safest medical procedures in America.

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TRUTH IN MEDICINE ACT

Summary: *The Truth in Medicine Act would require that no government healthcare agency, or any organization that receives government healthcare funding, shall endorse any of five specific lies about abortion: that it raises the risk of developing breast cancer, that it raises the risk of infertility, that it raises the risk of negative emotional or mental health problems, that most women regret having an abortion, or that abortion is more dangerous than the average medical procedure.*

SECTION 1. SHORT TITLE

This Act shall be called the “Truth in Medicine Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Pregnant women require medically-accurate and relevant information in order to make sound and informed health care decisions.
- 2) Too many individuals and entities, while representing themselves as healthcare professionals or advisors, assert medically-false information in an attempt to stigmatize abortion. [Bill drafting note: Place local examples in the findings.]
- 3) Lying to a woman about the effects of abortion hinders her ability to make an informed decision and may delay an abortion when time could be an important factor.
- 4) Citizens have an undeniable right to say what they want, truthful or not, but it is unconscionable for government to financially support the expression of information by medical professionals or advisors that is represented as medically accurate when that information is demonstrably false.

(B) PURPOSE—This law is enacted to ensure that government healthcare agencies and government-funded healthcare entities do not provide pregnant women with medically inaccurate information about abortion.

SECTION 3. TRUTH IN REPRODUCTIVE HEALTHCARE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Abortion” means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) “Healthcare advisor” means a person who is not licensed under federal, state or local law to provide medical or health care services to patients but who represents himself or herself as an advisor or authority on matters of medicine or health care.

MODEL LEGISLATION

- 3) “Medical professional” means a person who is licensed under federal, state or local law to provide medical or health care services to patients.
- 4) “State” means the state and every county, city, town, municipal corporation, quasi-municipal corporation, and public institution, including colleges and hospitals, in the state.

(B) MEDICALLY INACCURATE INFORMATION FROM GOVERNMENT AGENCIES—No agency of the state which delivers healthcare services, or any employee of such agency while in the course of his or her employment and while representing himself or herself as a medical professional or healthcare advisor, shall distribute oral or written information asserting any of the following or direct anyone else to distribute such information:

- 1) That having an abortion can raise a woman’s risk of developing breast cancer;
- 2) That having an abortion can increase a woman’s risk of infertility;
- 3) That having an abortion can increase a woman’s risk of negative emotional or mental health problems or increase her risk of suicide ideation;
- 4) That most women regret having an abortion; or
- 5) That abortion is more dangerous or poses greater health risks than the average medical procedure.

(C) MEDICALLY INACCURATE INFORMATION FROM ENTITIES THAT RECEIVE GOVERNMENT FUNDING

- 1) No organization that has a contract with or receives any type of grant or subsidy from the state to deliver healthcare services, or any employee or volunteer of such organization while in the course of his or her work for the organization and while representing himself or herself as a medical professional or healthcare advisor, shall distribute oral or written information asserting any of the following or direct anyone else to distribute such information:
 - a) That having an abortion can raise the risk of developing breast cancer;
 - b) That having an abortion can increase a woman’s risk of infertility;
 - c) That having an abortion can increase a woman’s risk of negative emotional or mental health problems or increase her risk of suicide ideation;
 - d) That most women regret having an abortion; or
 - e) That abortion is more dangerous or poses greater health risks than the average medical procedure.
- 2) If an organization violates subsection 1, the Attorney General [and/or insert another official] shall provide the organization with reasonable notice of noncompliance, which informs the organization that it is subject to becoming ineligible for state healthcare funding if it does not correct the violation.
- 3) If an organization violates subsection 1 and continues its violation after receiving notice of noncompliance, the Controller [and/or insert another official] shall ensure that all government healthcare funding to that organization is immediately suspended and that organization is deemed ineligible for state healthcare funding for five years subsequent.

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MODEL LEGISLATION

SECTION 4. REPEAL

The following sections are hereby repealed: [list existing provisions inconsistent with this Act].

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

PREGNANCY CENTER DISCLOSURE ACT

Crisis Pregnancy Centers (CPCs) present themselves as legitimate reproductive health clinics, but have the purpose of deceiving women seeking all-options medical care.

CPCs commonly provide unlicensed counselors or volunteers whose main objective is to do whatever it takes to convince women to forego obtaining an abortion. Most of these CPCs are in business to misrepresent medical facts.

CPCs don't need to be licensed and most are not. "CPCs are generally staffed by volunteers committed to Christian beliefs but who lack medical training," explains an article in the Cardozo Law Review. Nevertheless, CPC staff and volunteers, sometimes dressed like doctors and nurses, counsel and serve women as if they were medical professionals. For example, when an investigator posing as a pregnant woman was given a sonogram by a CPC staff member, which is not unusual, the staff member identified the investigator's IUD as her fetus.

There are about 2,500 Crisis Pregnancy Centers across the United States, and in some parts of the country, CPCs outnumber legitimate abortion clinics by far. For example, while 95 percent of Minnesota counties do not have an abortion provider, there are over 90 CPCs in the state; crisis pregnancy centers outnumber abortion providers by almost 15 to 1. In North Carolina, CPCs outnumber abortion providers by 4 to 1. Many CPCs are intentionally located near actual abortion providers, display misleading signage, and use false advertising to mislead women into believing the CPCs offer unbiased counseling and abortion services when, in fact, the opposite is true.

Women who seek health care or counseling during pregnancy require and deserve accurate information about these pregnancy-related facilities. That is why the state of California enacted legislation in 2015 to require unlicensed facilities that provide pregnancy-related services, such as Crisis Pregnancy Centers (CPCs), to disclose in both advertising and on signs at the facility that they are not licensed medical providers. A similar requirement was upheld by the federal Second Circuit Court of Appeals.

PREGNANCY CENTER DISCLOSURE ACT

Summary: *The Pregnancy Center Disclosure Act requires that unlicensed facilities which provide pregnancy-related services, such as Crisis Pregnancy Centers (CPCs), disclose that they are not licensed medical providers.*

SECTION 1. SHORT TITLE

This law shall be called the “Pregnancy Center Disclosure Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Crisis Pregnancy Centers (CPCs) are offices that purport to offer women comprehensive and unbiased reproductive health care information and services, but instead they attempt to prevent women from obtaining abortions.
- 2) There are an estimated 2,500 Crisis Pregnancy Centers across the United States while there are only about 840 licensed clinics that perform abortions. In many states, CPCs far outnumber abortion clinics.
- 3) Crisis Pregnancy Centers have a history of targeting vulnerable women with misleading ads, and providing them with false and medically inaccurate information about abortion, birth control, and a woman’s own health status.
- 4) Crisis Pregnancy Centers rarely employ licensed medical practitioners; instead, unlicensed counselors or volunteers provide “services” to pregnant women, sometimes even performing medical tests which they are unqualified to provide.
- 5) Women who seek health care or counseling during pregnancy require and deserve accurate information about these pregnancy-related facilities.

[Bill drafting note: Because of the sensitivity of First Amendment issues and the fact that abortion opponents often file suit over the First Amendment, the Findings should be carefully crafted to describe the problem in your own jurisdiction.]

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of pregnant women.

SECTION 3. DISCLOSURE OF CRITICAL INFORMATION TO PREGNANT CLIENTS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

“Limited services pregnancy facility” means a facility that has a primary purpose of providing pregnancy-related services; the facility is not licensed by the state and does not have a licensed medical provider on staff or under contract who provides or directly supervises the provision of all of the services; and the facility satisfies two or more of the following:

MODEL LEGISLATION

- a) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women.
- b) The facility offers pregnancy testing or pregnancy diagnosis.
- c) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling.
- d) The facility has staff or volunteers who collect health information from clients.
- e) The facility has staff or volunteers who are not licensed nurses or physicians but who dress in clothing that is typical of nurses or physicians.

[Bill drafting note: States have different licensing schemes. Please work with local advocates to perfect the language about “not licensed” and “licensed medical provider.”]

(C) REQUIREMENTS FOR A LIMITED SERVICES PREGNANCY FACILITY

- 1) Limited services pregnancy facilities shall disseminate to clients on site, and in any print and digital advertising materials including Internet websites, the following notice: “This facility is not licensed as a medical facility by [insert state] and has no licensed medical provider who provides or directly supervises the provision of services.”

[Bill drafting note: Because there are different state licensing schemes, please work with local advocates to perfect the language of the notice.]

- 2) In any county where more than 10 percent of the overall population speaks a language other than English at home, as measured by the U.S. Census, the notice distributed on site shall also be provided in such other language(s). Where advertising materials are in a language other than English, this notice shall be provided in the same language.
- 3) The onsite notice shall be a sign at least 11 inches by 17 inches and written in no less than 80-point type, and shall be posted conspicuously at the entrance of the facility and in at least one additional area where clients wait to receive services.
- 4) The notice in advertising material shall be clear and conspicuous, meaning in larger point type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(D) ENFORCEMENT

- 1) The Attorney General [and/or insert another official] shall bring an action to impose civil penalties against a limited services pregnancy facility that fails to comply with these requirements; such penalties shall be five hundred dollars (\$500) for a first offense and five thousand dollars (\$5,000) for each subsequent offense.
- 2) Before bringing an action to impose civil penalties, the Attorney General [and/or insert another official] shall provide the facility with reasonable notice of noncompliance, which informs the facility that it is subject to a civil penalty if it does not correct the violation within thirty (30) days from the date the notice is sent, and the Attorney General shall verify that the violation was not corrected within thirty (30) days before imposing the penalties.

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MODEL LEGISLATION

- 3) A private party may bring a civil action for injunctive relief to enforce this section. In such case, the private party shall provide the limited services pregnancy facility notice of noncompliance by certified mail at least thirty (30) days before filing suit. If the facility fails to correct the violation by the time the civil action is filed and the plaintiff prevails in the action, the plaintiff shall be entitled to recover attorney's fees and costs.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

CRISIS PREGNANCY CENTER FRAUD PREVENTION ACT

Crisis Pregnancy Centers (CPCs) present themselves as legitimate reproductive health clinics, but have the purpose of deceiving women seeking all-options medical care.

CPCs commonly provide unlicensed counselors or volunteers whose main objective is to do whatever it takes to convince women to forego obtaining an abortion. Most of these CPCs are in business to misrepresent medical facts.

CPCs don't need to be licensed and most are not. "CPCs are generally staffed by volunteers committed to Christian beliefs but who lack medical training," explains an article in the Cardozo Law Review. Nevertheless, CPC staff and volunteers, sometimes dressed like doctors and nurses, counsel and serve women as if they were medical professionals. For example, when an investigator posing as a pregnant woman was given a sonogram by a CPC staff member, which is not unusual, the staff member identified the investigator's IUD as her fetus.

There are about 2,500 Crisis Pregnancy Centers across the United States, and in some parts of the country, CPCs outnumber legitimate abortion clinics by far. For example, while 95 percent of Minnesota counties do not have an abortion provider, there are over 90 CPCs in the state; crisis pregnancy centers outnumber abortion providers by almost 15 to 1. In North Carolina, CPCs outnumber abortion providers by 4 to 1. Many CPCs are intentionally located near actual abortion providers, display misleading signage, and use false advertising to mislead women into believing the CPCs offer unbiased counseling and abortion services, when in fact, the opposite is true.

Women who seek health care or counseling during pregnancy require and deserve accurate information about the services that CPCs provide. That is why the city of San Francisco enacted legislation in 2011 to create a mechanism for law enforcement authorities to notify a limited services pregnancy center about apparent false or fraudulent advertising, with penalties accruing when the fraud continues after this notification. The federal district court in San Francisco upheld this law.

CRISIS PREGNANCY CENTER FRAUD PREVENTION ACT

Summary: *The Crisis Pregnancy Center Fraud Prevention Act would create a mechanism for a government authority to notify a limited services pregnancy center about apparent false or fraudulent advertising, and penalties would accrue if a fraud is both proven and continues after this notification.*

SECTION 1. SHORT TITLE

This Act shall be called the “Crisis Pregnancy Center Fraud Prevention Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The [legislature/council] finds that:

- 1) In recent years, facilities that seek to prohibit or discourage clients from having an abortion have become common throughout the state. These facilities are often referred to as crisis pregnancy centers (CPCs). Although some CPCs are licensed or have a health care provider on staff, most CPCs are not licensed medical clinics and do not employ health care providers for the pregnant women who come to their facility.
- 2) Some CPCs openly acknowledge in their advertising and their facilities that they do not provide abortions or refer clients to other providers of such services. Many CPCs, however, seek to mislead women contemplating abortion into believing that their facilities offer health care including abortion services and unbiased counseling.
- 3) Because of the time-sensitive and constitutionally protected nature of the decision to terminate a pregnancy, false and misleading advertising about the services offered by CPCs is of special concern. CPCs have the constitutional right to say whatever they want against abortion, but it is an entirely different matter to defraud women about the services they offer.
- 4) After carefully balancing the constitutionally protected right of a woman to choose to terminate her pregnancy, the right of individuals to express their religious and ethical beliefs about abortion, the harm to women caused by even slight delays that are a result of false advertising for pregnancy and/or abortion services, and the cost to the government that can accrue from such delay, it is clear that there exists a need to regulate false and misleading advertising by pregnancy facilities offering limited services.

[Bill drafting note: Because of the sensitivity of First Amendment issues and the fact that abortion opponents often file suit over the First Amendment, the Findings should be carefully crafted to describe the problem in your own jurisdiction.]

(B) PURPOSE—This law is enacted to protect women’s health, safety and welfare.

MODEL LEGISLATION

SECTION 3. PREGNANCY CENTER FRAUD

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Abortion” means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) “Client” means an individual who is inquiring about or seeking services at a pregnancy services center.
- 3) “Emergency contraception” means any drug or device approved by the U.S. Food and Drug Administration that prevents pregnancy after sexual intercourse.
- 4) “Health information” means any oral or written information in any form or medium that relates to health insurance and/or the past, present or future physical or mental health or condition of a client.
- 5) “Limited services pregnancy center” means a pregnancy services center that does not directly provide, or provide referrals to clients, for abortions or emergency contraception.
- 6) “Pregnancy services center” means a facility, including a mobile facility, where the primary purpose is to provide services to women who are or may be pregnant, and that either offers obstetric ultrasounds, obstetric sonograms or prenatal care to pregnant women, or has the appearance of a medical facility. A pregnancy service center has the appearance of a medical facility if two or more of the following factors are present:
 - a) The facility offers pregnancy testing and/or pregnancy diagnosis;
 - b) The facility has staff or volunteers who wear medical attire or uniforms;
 - c) The facility contains one or more examination tables;
 - d) The facility contains a private or semi-private room or area containing medical supplies and/or medical instruments;
 - e) The facility has staff or volunteers who collect health information from clients; or
 - f) The facility is located on the same premises as a state-licensed medical facility or provider or shares facility space with a state-licensed medical provider.
- 7) “Premises” means land and improvements or appurtenances or any part thereof.

(B) UNLAWFUL FRAUD

It is unlawful fraud for any limited services pregnancy center to disseminate or cause to be disseminated before the public in [insert jurisdiction], or to disseminate before the public anywhere from [insert jurisdiction], any advertising about the services or proposed services performed at that center if the management of the center knows or, by the exercise of reasonable care, ought to know is untrue or clearly designed to mislead the public about the nature of services provided. Advertising includes representations made directly to consumers; marketing practices; communication in any print medium such as newspapers, magazines, mailers or handouts; any broadcast medium such as television or radio, telephone marketing, or advertising over the Internet such as through websites and web ads.

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

MODEL LEGISLATION

[Bill drafting note: A particular state might use language that is similar to any existing Unfair and Deceptive Trade Practices Act.]

(C) ENFORCEMENT

- 1) The [insert appropriate authority] may enforce the provisions of this section through a civil action in any court of competent jurisdiction. Before filing an action under this section, [insert appropriate authority] shall give written notice of the violation to the limited services pregnancy center. The written notice shall indicate that the limited services pregnancy center has ten (10) days in which to correct the false, misleading or deceptive advertising. If the limited services pregnancy center has not responded to the written notice within ten (10) days or refuses to correct the false, misleading, or deceptive advertising within that period, [insert appropriate authority] may file a civil action.
- 2) [Insert appropriate authority] may apply to any court of competent jurisdiction for injunctive relief compelling compliance with any provision of this section and correcting the effects of the false, misleading, or deceptive advertising. Such an injunction may require a limited services pregnancy center to:
 - a) Pay for and disseminate appropriate corrective advertising in the same form as the false, misleading, or deceptive advertising.
 - b) Post a notice on its premises, in a location clearly noticeable from the waiting area, examination area, or both, stating:
 - i) Whether there is a licensed medical doctor, registered nurse, or other licensed medical practitioner on staff at the center; and
 - ii) Whether abortion, emergency contraception, or referrals for abortion or emergency contraception are available at the center.
 - c) Any other narrowly tailored relief that the court deems necessary to remedy the adverse effects of the false, misleading, or deceptive advertising on women seeking pregnancy-related services.
- 3) Upon a finding by a court of competent jurisdiction that a limited services pregnancy center has violated this section, [jurisdiction] shall be entitled to recover civil penalties from each and every party responsible for the violation of not less than [\$500] and not more than [\$5,000] per violation. In addition, if the [jurisdiction] prevails it shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.
- 4) Nothing in this section shall be interpreted as restricting, precluding or otherwise limiting a separate or concurrent criminal prosecution under the [insert relevant law].

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

PROTECT PHYSICIAN INTEGRITY FROM POLITICAL INTERFERENCE ACT

Across the country, policymakers are passing abortion laws that intrude into exam rooms and conflict with professional and ethical standards of medical care. The laws they are enacting put politicians' words in the mouths of health care providers, prohibit providers from communicating important health information, mandate unnecessary procedures or outdated modes of care, and much more. More information about the extent and impact of this interference can be found at www.BadMedicine.org.

When government regulations infringe upon medical standards or interfere in the doctor-patient relationship, they undermine patient-centered care. "Politicians are increasingly overstepping their boundaries by considering and enacting unprecedented numbers of measures that inappropriately infringe on clinical practice and patient-physician relationships and improperly intrude into the realm of medical professionalism, often without regard to established, evidence-based care guidelines" according to the executive leadership of the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American College of Surgeons. In fact, the American Medical Association adopted a resolution in opposition to "any government regulation or legislative action on the content of the individual clinical encounter between a patient and physician without a compelling evidence-based benefit to the patient, a substantial public health justification, or both."

While abortion care has been a disproportionate target of political interference, the politicization of medical care has infiltrated into other areas as well.

This includes limits on providers' ability to counsel patients about gun safety or to discuss toxic chemical exposure resulting from hydraulic fracturing (fracking). This issue provides an opportunity for unique coalition-building between different social justice issues.

Political interference in abortion care has become commonplace.

- Five states require reproductive health providers to give women seeking abortion care medically inaccurate information that falsely asserts a link between abortion and breast cancer.
- Two states require providers to tell patients that medication abortion may be "reversible," an assertion that has no medical support.
- Thirteen states require providers to perform an ultrasound; in some states providers must describe and display the image, regardless of medical need.
- Twenty-seven states force providers to delay abortion care for up to 72 hours.

All patients deserve health care that is medically appropriate and based on scientific evidence. All health care providers should be able to give their patients high quality, individualized care based on their professional judgment, without fear of political intrusion that undermines professional standards of care. All patients are entitled to receive care based on their individual needs and what is medically appropriate, not on a political ideology.

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

PROTECT PHYSICIAN INTEGRITY FROM POLITICAL INTERFERENCE ACT

Summary: *The Protect Physician Integrity from Political Interference Act would enable physicians to refuse state-dictated procedures and mandated lectures that violate accepted medical standards and the ethics of their profession.*

SECTION 1. SHORT TITLE

This Act shall be called the “Protect Physician Integrity from Political Interference Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Since antiquity, physicians have taken an oath to treat patients to the best of their ability, with knowledge rooted in clinical experience and scientific consensus.
- 2) In fact, physicians have both a professional and an ethical responsibility to provide the best possible care to their patients.
- 3) But in recent years, this state and others have made it difficult, and in some cases even illegal, for doctors to keep that sacred obligation. Laws have been enacted requiring doctors to lie to patients about medical evidence, to keep silent even when the doctor has an ethical duty to speak, to perform medical procedures that are unnecessary and contrary to good medical practices, and to delay medical procedures even when delay is not only unnecessary, but may be harmful to the patient.
- 4) Our state should provide the best possible medical care to every patient, allowing physicians to provide evidence-based, medically accurate care.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of women by supporting evidence-based, medically accurate reproductive health care.

SECTION 3. SUPPORT FOR THE PRACTICE OF SCIENCE-BASED MEDICINE

After Section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Evidence-based” means the conscientious, explicit and judicious use of current best evidence in making decisions about the care of the individual patient, integrating individual clinical expertise with the best available external clinically relevant evidence from systematic research.

[Bill drafting note: Many states have already defined “evidence-based” in their insurance codes, and if that’s true in your state, you may wish to use the same definition for consistency.]

MODEL LEGISLATION

- 2) “Medically accurate” means information that is:
 - a) Verified or supported by the weight of peer reviewed medical research conducted in compliance with accepted scientific methods;
 - b) Recognized as medically sound and objective by leading medical organizations with relevant expertise, such as the American Medical Association, the American College of Obstetricians and Gynecologists, the American Public Health Association, the American Psychological Association, the American Academy of Pediatrics, the American College of Physicians and the American Academy of Family Physicians; or government agencies such as the Centers for Disease Control, the Food and Drug Administration, the National Cancer Institute and the National Institutes of Health; and leading national or international scientific advisory groups such as the Institute of Medicine and the Advisory Committee on Immunization Practices; or
 - c) Recommended by or affirmed in the medical practice guidelines of a nationally recognized accrediting organization.
- 3) “Appropriate for the patient” means care consistent with applicable health and professional standards; the patient’s clinical and other circumstances; and the patient’s reasonably known wishes and beliefs.
- 4) “State” means the state and every county, city, town, municipal corporation, and quasi-municipal corporation in the state as well as any branch, department, agency or instrumentality, or individual acting under color of law of the state or a subdivision of the state.

(B) RIGHT TO PRACTICE SCIENCE-BASED MEDICINE

- 1) Notwithstanding any other provision of law, the state shall not require a licensed physician, or a person operating under his or her authority, to provide a patient with:
 - a) Information that is not, in the physician’s reasonable professional medical judgment, medically accurate and appropriate for the patient; or
 - b) A medical service in a manner that is not, in the physician’s reasonable professional medical judgment, evidence-based and appropriate for the patient.
- 2) Notwithstanding any other provision of law, the state shall not prohibit a licensed physician, or a person operating under his or her authority, from providing a patient with:
 - a) Information that is, in the physician’s reasonable professional medical judgment, medically accurate and appropriate for the patient; or
 - b) A medical service in a manner that is, in the physician’s reasonable professional medical judgment, evidence-based and appropriate for the patient.

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MODEL LEGISLATION

(C) DOCUMENTATION AND EXISTING STANDARDS OF CARE

- 1) A physician who determines that a state requirement is not evidence-based or medically accurate, and determines that following a state requirement is not appropriate to the patient, shall document his or her decision in writing, including the medical basis for the determination. This documentation shall be retained in the patient's file for a least XXXX years. [Customize based on state law concerning retention of medical records.]
- 2) Nothing in this section shall be construed to alter existing professional standards of care or abrogate the duty of a licensed health care practitioner to meet the applicable standard of care.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

PATIENTS' RIGHT TO ABORTION INFORMATION ACT

No refusal to provide health care services should ever be allowed to increase a patient's risk of medical complications, impair a patient's health, or cause undue delay in accessing any medical service. Pursuant to federal and state law, doctors and health care institutions can refuse to provide abortion as well as some other reproductive health care services. No denial of service should become a denial of information.

Some health care facilities have ordered doctors not to discuss abortion, even when the continuation of a pregnancy threatens a woman's life. In Colorado, for example, a hospital disciplined a physician for discussing the option of abortion with a woman who showed signs of Marfan syndrome, a condition where pregnancy can kill the woman. The doctor was told never to mention abortion again, regardless of the circumstances.

Some health care facilities, as part of a refusal to provide care, have compelled doctors to delay the delivery of accurate and medically important information to patients. Other facilities have compelled doctors to delay providing the patient with her own medical records. A hospital's refusal of services should not be used as a pretext for blocking or denying patients' own rights to care.

Some health care facilities that object to abortion will penalize health care professionals who support abortion. For example, doctors have been denied hospital admitting privileges simply because they perform abortions in other medical facilities.

Professional medical associations make it clear that every health care provider has a duty to act in the best interest of the patient and, above all, to do no harm. That means that even when a hospital seeks to refuse a particular medical service, it is the physician's ethical duty to:

- Provide the patient with full, accurate and unbiased information so she can make informed decisions about her health care;
- Provide adequate and timely notice to patients, employers and others who will be affected by a refusal of care; and
- Provide access to medical services in emergency circumstances.

The state must ensure that patients are not harmed or disadvantaged when health care facilities refuse to provide reproductive health care. And the state must ensure that doctors and other medical professionals are protected from discrimination when they are employed at a facility that refuses to provide the full range of reproductive health services.

PATIENTS' RIGHT TO ABORTION INFORMATION ACT

Summary: *The Patients' Right to Abortion Information Act would prevent any health care facility from limiting a physician's or other health care provider's ability to provide medically accurate and comprehensive information to a patient, limiting the ability to make referrals, or denying services when that could put a patient's life or health in danger.*

SECTION 1. SHORT TITLE

This Act shall be called the "Patients' Right to Abortion Information Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Some hospitals attempt to limit the ability of doctors and other medical professionals to use their own medical judgment when a patient seeks or needs reproductive health care.
- 2) No such attempts should ever be allowed to increase a patient's risk of medical complications, impair a patient's health, or cause undue delay in accessing any medical service.
- 3) The state must ensure that health care facilities cannot interfere with a physician's or other health care provider's independent ability to provide medically accurate and comprehensive information to a patient, cannot limit a medical professional's ability to make referrals, or deny medical services when that could put a patient's life or health in danger.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of the patients of health care facilities which refuse to provide reproductive healthcare services.

SECTION 3. DELIVERY OF HEALTH CARE SERVICES AND INFORMATION

After section XXX, the following new section XXX shall be inserted:

[Bill drafting note: Place this inside any existing state refusal provision.]

(A) DEFINITIONS—In this section:

- 1) "Health care facility" means any public or private hospital, clinic, center, medical school, medical training institution, laboratory or diagnostic facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center or any other institution or location where health services are provided to any person.

MODEL LEGISLATION

- 2) “Medically accurate” means information that is:
 - a) Verified or supported by the weight of peer reviewed medical research conducted in compliance with accepted scientific methods;
 - b) Recognized as correct and objective by leading medical organizations with relevant expertise; or
 - c) Recommended by or affirmed in the medical practice guidelines of a nationally recognized accrediting organization.
- 3) “Reproductive health services” means contraception, abortion, treatment of ectopic pregnancy, miscarriage management, assisted reproductive technology including infertility treatment, screening and treatment of sexually transmitted infections including HIV/AIDS, pregnancy and post-natal care, and sterilization.

(B) NO INTERFERENCE WITH PROFESSIONAL CARE

- 1) A health care facility cannot limit or otherwise interfere with a physician’s or other health care provider’s independent professional judgment concerning the practice of medicine or the diagnosis or treatment of a patient, including but not limited to:
 - a) The health care facility cannot limit a health care provider’s duty, based on the standard of care, to provide medically accurate and comprehensive information to a patient about his or her health status, including diagnosis, prognosis, recommended treatment and any potential risks to the health or life of the patient.
 - b) The health care facility cannot limit a health care provider’s referrals to another health care facility nor limit the timing of the referrals.
 - c) The health care facility cannot prohibit health care providers from providing reproductive health services in that health care facility when a denial of those services would pose a serious risk to a patient’s life or health.
- 2) A health care facility cannot impose any disadvantage, disciplinary action, retaliatory action, or any other penalty upon a physician or other healthcare professional because he or she agrees to or participates in providing any reproductive health service.
- 3) A health care facility must provide reproductive health services in cases in which there is a serious risk to an individual’s life or health.

(C) ENFORCEMENT

The Attorney General, as well as any aggrieved health care professional or patient, may initiate a civil action in a court of competent jurisdiction to enjoin further violations, or to recover damages sustained as a result of the violation of this section, or both, together with the costs of suit including reasonable attorneys’ fees.

SECTION 4. REPEAL

Section XXX is hereby repealed. [Place here any provisions of existing law that are inconsistent with this Act.]

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

MODEL LEGISLATION

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

STOP DISCRIMINATION AGAINST ABORTION PROVIDERS ACT

Some health care facilities that object to abortion will penalize health care professionals who support abortion.

For example, doctors have been denied hospital admitting privileges simply because they perform abortions in other medical facilities. In some cases, health care professionals have been disciplined or fired because they simply approve of abortion or because they perform abortion services.

Hospitals have disciplined doctors for discussing abortion, even when the continuation of a pregnancy threatened a woman's life. In Colorado, for example, a hospital sanctioned a physician for discussing the option of abortion with a woman who showed signs of Marfan syndrome, a condition where pregnancy can kill the woman. The doctor was told never to mention abortion again, regardless of the circumstances.

Professional medical associations make it clear that every health care provider has a duty to act in the best interest of the patient and, above all, to do no harm. That means that even when a hospital seeks to refuse a particular medical service, it is the physician's ethical duty to:

- Provide the patient with full, accurate and unbiased information so she can make informed decisions about her health care;
- Provide adequate and timely notice to patients, employers and others who will be affected by a refusal of care; and
- Provide access to medical services in emergency circumstances.

Federal law offers protection against discrimination for those who provide abortion or support the right to abortion.

Yet, many state laws only provide protections for medical professionals who *refuse* to participate in abortion. Medical professionals who provide information about abortion and abortion services also need protection in state law.

STOP DISCRIMINATION AGAINST ABORTION PROVIDERS ACT

Summary: *The Stop Discrimination Against Abortion Providers Act would prohibit hospitals and other healthcare facilities from discriminating against or punishing healthcare professionals who perform or approve of abortions.*

SECTION 1. SHORT TITLE

This Act shall be called the “Stop Discrimination Against Abortion Providers Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Federal law prohibits hospitals from discriminating against medical professionals because they perform or assist in performing abortions, or because of their beliefs or moral convictions about abortions.
- 2) Nevertheless, some hospitals still discriminate by denying admitting privileges to doctors or taking employment actions against hospital staff members because they may participate in, or simply approve of, legal abortions or other reproductive health care.
- 3) The state must ensure that doctors and other medical professionals are protected from discrimination because of their beliefs about, or willingness to participate in, reproductive health care including abortion.

(B) PURPOSE—This law is enacted to prevent discrimination against medical professionals.

SECTION 3. PROTECTION FROM DISCRIMINATION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Discriminate” means termination, transfer, refusal of staff privileges, admitting privileges, or staff appointments, refusal of board certification, refusal of license, adverse administrative action, demotion or refusal to promote or advance, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to provide residency training opportunities, or any other penalty, disciplinary or retaliatory action.
- 2) “Health care provider” means a physician, physician’s assistant, nurse, nurse’s aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy employee, medical researcher, medical or nursing school faculty, student or employee, counselor, or social worker.

MODEL LEGISLATION

- 3) “Reproductive health care” means services and information related to birth control, assisted reproductive technology or infertility treatment, miscarriage, ectopic pregnancy, prenatal care, pregnancy care, abortion, sexually transmitted infections, and sterilization.
- 4) “Service” means any phase of patient care, treatment or procedure, including: screening; testing; diagnosis or prognosis; research; instruction; therapy; counseling, referrals, or any other advice or information; prescribing, dispensing or administering any device, drug, or medication; surgery or any other care or treatment.

(B) NO DISCRIMINATION

It shall be unlawful for any person, public institution, private institution, or any board to discriminate against any health care provider or individual involved in the provision of health care in any manner based on his or her participation in a reproductive health care service, or willingness to participate in or approval of a reproductive health care service.

(C) ENFORCEMENT

- 1) A civil action for damages or injunctive relief, or both, may be brought for the violation of this section.
- 2) Any health care provider injured by any public or private individual, association, agency, entity or corporation by reason of any conduct prohibited by this section may commence a civil action. Upon finding a violation of this section, the aggrieved party shall be entitled to recover threefold the actual damages, including pain and suffering, sustained by such individual, the costs of the action, and reasonable attorney’s fees; but in no case shall recovery be less than five thousand dollars (\$5,000) for each violation in addition to costs of the action and reasonable attorney’s fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.
- 3) The court in such civil action may award injunctive relief, including, but not limited to, ordering reinstatement of a health care provider to his or her prior job position.
- 4) The [agency charged with enforcing the state’s anti-discrimination law] is empowered to prevent discrimination as set forth in [reference to applicable law].

SECTION 4. REPEAL

Section XXX is hereby repealed. [Place here any provisions of law that are inconsistent with this Act.]

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

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C. STOP ANTI-ABORTION HARASSMENT AND TERRORISM

Prevent Anti-Abortion Terrorism Act	50
Accountability for Clinic Violence Act.....	60
Accountability for Harassment of Women Act	64
Clinic Safety Zone Act	68
Keep Bosses Out of the Bedroom Act	72
Abortion with Dignity Act	76
Pregnant Women's Dignity Act.....	80

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*



PREVENT ANTI-ABORTION TERRORISM ACT

Clinics that offer reproductive health care are continually subjected to violence, threats of violence and harassment. According to the National Abortion Federation, there have been 37 murders or attempted murders due to anti-abortion violence, and from 1977 to 2014 there were also 429 death threats, 662 bomb threats and 663 threats of bioterrorism; 323 bombings, arson attacks or attempted bombings or arsons against abortion clinics; 1,507 acts of clinic vandalism; 554 acts of stalking; nearly 17,000 hate mails and calls; and 801 clinic blockades with more than 33,000 arrests.

Abortion providers, clinic workers and patients are, quite reasonably, afraid for their personal safety. Among abortion providers, 92 percent worry about the safety of their patients and employees in the areas surrounding their clinics. Nearly 90 percent of abortion providers have had patients express concerns about their personal safety and more than 80 percent have been forced to call law enforcement because of concerns about safety, access or criminal activity.

Existing laws are insufficient to protect reproductive health care facilities. To prevent anti-abortion harassment and violence, the state must:

- Protect access to reproductive health clinics with a Freedom of Access to Clinic Entrances (FACE) law. Federal law and a few states currently provide FACE Acts.
- Ensure the confidentiality of the home addresses of abortion providers. California has a “Safe at Home” law for the employees of reproductive health clinics who fear for their safety.
- Provide a protected space for patients and staff entering or leaving reproductive health clinics. Colorado, Montana, and a few cities have laws that keep protesters a reasonable distance from people trying to access a clinic.
- Provide a mechanism in civil law that allows abortion providers to hold individuals accountable for acts of violence and harassment.
- Treat crimes perpetrated against clinics, clinic workers and patients that are motivated by opposition to abortion as hate crimes.

Every person has the right to be free from harassment and violence while accessing or providing reproductive health care. The Prevent Anti-Abortion Terrorism Act is intended to give providers and patients some new protections from violence, threats of violence and harassment.

PREVENT ANTI-ABORTION TERRORISM ACT

Summary: *The Prevent Anti-Abortion Terrorism Act would use five clinic protection strategies—FACE, Safe at Home, safety zones, civil lawsuits, and hate crime penalties—to protect facilities, providers, employees, volunteers and patients from anti-abortion violence and harassment.*

SECTION 1. SHORT TITLE

This Act shall be called the “Prevent Anti-Abortion Terrorism Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) According to the National Abortion Federation, there have been 37 murders or attempted murders due to anti-abortion violence, and from 1977 to 2014 there were also 429 death threats, 662 bomb threats and 663 threats of bioterrorism; 323 bombings, arson attacks or attempted bombings or arsons against abortion clinics; 1,507 acts of clinic vandalism; 554 acts of stalking; nearly 17,000 hate mails and calls; and 801 clinic blockades with more than 33,000 arrests.
- 2) To prevent anti-abortion terrorism, the state must protect access to reproductive health clinic entrances.
- 3) To prevent anti-abortion terrorism, the state must ensure the confidentiality of the home addresses of abortion providers, at least allowing them to be safe at home.
- 4) To prevent anti-abortion terrorism, the state must provide a safety zone for patients and staff entering or leaving reproductive health clinics.
- 5) To prevent anti-abortion terrorism, the state must provide a mechanism in civil law that allows abortion providers to hold individuals accountable for acts of violence and harassment.
- 6) To prevent anti-abortion terrorism, the state must treat crimes perpetrated against clinics, clinic workers and patients that are motivated by opposition to abortion as hate crimes.

[Bill drafting note: Because of the sensitivity of First Amendment issues and the fact that abortion opponents often file suit, any legislation that might implicate First Amendment rights should include Findings that are carefully crafted to describe the problem in your own jurisdiction.]

(B) PURPOSE—This law is enacted to protect the health and safety of medical professionals, health care workers, volunteers and patients.

SECTION 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES

After Section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) DEFINITIONS

- 1) “Aggrieved” means:
 - a) A person, physically present at the health care facility when the prohibited actions occur, whose access is or is about to be obstructed or impeded, or whose care is or is about to be disrupted;
 - b) The health care facility, its employees, or agents; or
 - c) The owner of the health care facility or the building or property upon which the health care facility is located.
- 2) “Reproductive health care facility” means any office or clinic that provides reproductive health care services.
- 3) “Reproductive health care services” means health care services relating to abortion, the termination of a pregnancy, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, or counseling for any of the preceding services.
- 4) “Reproductive health care provider, employee, volunteer, or patient” means a person who obtains, provides or assists, at the request of another person, reproductive health care services, or a person who owns or operates a reproductive health care facility.

(B) INTERFERENCE WITH REPRODUCTIVE HEALTH CARE FACILITY—It is unlawful for a person, except as specifically allowed by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a reproductive health care facility or willfully or recklessly disrupt the normal functioning of such facility by:

- 1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located;
- 2) Making noise that unreasonably disturbs the peace within the facility;
- 3) Trespassing on the facility or the common areas of the real property upon which the facility is located;
- 4) Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or
- 5) Threatening to inflict injury on the providers, employees, volunteers, or patients, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose.

(C) CRIMINAL PENALTIES—A violation of this section is a [Class A misdemeanor]. A person convicted of violating this act shall be punished as follows:

- 1) For a first offense, a fine of not less than two hundred fifty dollars (\$250) and a jail term of not less than twenty-four consecutive hours;
- 2) For a second offense, a fine of not less than one thousand dollars (\$1,000) and a jail term of not less than seven consecutive days; and

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MODEL LEGISLATION

- 3) For a third or subsequent offense, a fine of not less than ten thousand dollars (\$10,000) and a jail term of not less than thirty consecutive days.

(D) CIVIL REMEDIES

- 1) A person or health care facility aggrieved by the actions prohibited by this section may seek civil damages from those who committed the prohibited acts and those acting in concert with them. In addition to actual damages, a plaintiff may be entitled to recover up to five hundred dollars for each day that the actions occurred, or up to five thousand dollars (\$5,000) for each day that the actions occurred if the plaintiff is a reproductive health care facility. If the plaintiff prevails, the plaintiff is entitled to recover costs and attorneys' fees.
- 2) The [insert relevant court] of this state shall have authority to grant temporary, preliminary and permanent injunctive relief to enjoin violations of this section. In appropriate circumstances, any court having personal jurisdiction over one or more defendants may issue injunctive relief that shall have binding effect on the original defendants and persons acting in concert with the original defendants, in any county within the state. The state and its political subdivisions shall cooperate in the enforcement of court injunctions that seek to protect against acts prohibited by this section.

(E) PROTECTION OF ABORTION PATIENTS AND PROVIDERS

A court having jurisdiction over a criminal or civil proceeding under this section shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a reproductive health care provider, employee, volunteer or patient who is a party or witness in a proceeding, including granting protective orders and orders *in limine*.

(F) NO LIMIT ON REMEDIES

Nothing in this chapter shall be construed to limit the right to seek other available criminal or civil remedies. The remedies provided in this chapter are cumulative, not exclusive.

SECTION 4. SAFE AT HOME

After Section XXX, the following new section XXX shall be inserted:

[Bill drafting note: If a reproductive rights "Safe At Home" measure is being considered in one of the 36 states that already has a domestic violence address confidentiality program, it is probably easiest to amend that existing law to include reproductive health care service providers, employees, volunteers and patients.]

(A) DEFINITIONS—In this section:

- 1) "Address" means an individual's residential street address, school address or work address.
- 2) "Reproductive health care facility" means any office or clinic that provides reproductive health care services.

MODEL LEGISLATION

- 3) “Reproductive health care services” means health care services relating to abortion, the termination of a pregnancy, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, or counseling for any of the preceding services.
- 4) “Reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides or assists, at the request of another person reproductive health care services, or a person who owns or operates a reproductive health care facility.

(B) PROGRAM PARTICIPATION—A person may apply to the [Secretary of State] to have an address designated by the [Secretary of State] to serve as the person’s address. An application shall be approved if the applicant is a reproductive health care services provider, employee, or volunteer who is fearful for his or her safety or the safety of his or her family because of his or her affiliation with a reproductive health care facility, and the application is accompanied by all of the following:

- 1) Documentation showing that the individual is to commence employment or is currently employed as a provider or employee at a reproductive health care facility or is volunteering at a reproductive health care facility.
- 2) A certified statement signed by a person authorized by the reproductive health care facility stating that the facility or any of its providers, employees, volunteers, or patients is or was the target of threats or acts of violence within one year of the date of the application.
- 3) A sworn statement that the applicant fears for his or her safety or the safety of his or her family due to his or her affiliation with the reproductive health care facility.
- 4) A designation of the [Secretary of State] as agent for purposes of service of process and for the purpose of receipt of mail.
- 5) The mailing address where the applicant can be contacted by the [Secretary of State], and the telephone number or numbers where the applicant can be called by the [Secretary of State].
- 6) The address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of acts of violence toward the applicant.

(C) STATE AND LOCAL PUBLIC RECORDS

- 1) A program participant may request that state and local agencies use the address designated by the [Secretary of State] as his or her address. When creating, maintaining, or modifying a public record, excluding the record of any birth or death, state and local agencies shall accept the address designated by the [Secretary of State] as a program participant’s substitute address, unless the [Secretary of State] has determined both of the following:
 - a) The agency has a bona fide statutory or administrative requirement for the use of the address that would otherwise be confidential under this section.
 - b) This address will be used only for those statutory and administrative purposes and shall not be publicly disseminated.
- 2) A program participant may use the address designated by the [Secretary of State] as his or her work address.
- 3) The [Secretary of State] shall forward all first-class mail and all mail sent by a governmental agency to the appropriate program participants.

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MODEL LEGISLATION

- 4) A program participant who is otherwise qualified to vote may seek to register and vote in a confidential manner pursuant to [insert relevant law].
- 5) The [Secretary of State] may not make a program participant's address, other than the address designated by the [Secretary of State], available for inspection or copying, except under any of the following circumstances:
 - a) If requested by a law enforcement agency, to the law enforcement agency;
 - b) If directed by a court order, to a person identified in the order; or
 - c) If certification has been canceled.
- 6) The [Secretary of State] may adopt rules to facilitate the administration of this section by state and local agencies.

SECTION 5. ABORTION CLINIC SAFETY ZONES

After Section XXX, the following new section XXX shall be inserted:

[Bill drafting note: Because of the sensitivity of First Amendment concerns and the fact that abortion opponents often file suit over the First Amendment, the Findings should be carefully crafted to describe the problem in your own jurisdiction.]

(A) DEFINITIONS—In this section:

"Reproductive health care facility" means any office or clinic that provides abortion, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, or counseling for any of the preceding services.

(B) SAFETY ZONES FOR PROVIDERS, EMPLOYEES, VOLUNTEERS AND PATIENTS

- 1) No person shall intentionally touch or cause physical contact with an individual who is attempting to enter or exit from a reproductive health care facility, without that individual's consent.
- 2) No person shall knowingly obstruct, detain, hinder, impede, or block an individual's entry to or exit from a reproductive health care facility. Obstruction includes causing such individual to take evasive action to avoid physical contact or placing signs on a walkway in a way that restricts the flow of pedestrian traffic.
- 3) When an individual is entering or exiting a reproductive health care facility, no person shall knowingly approach within eight feet of such individual, unless the individual consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in any public way or sidewalk area within a radius of one hundred feet from any entrance door to the reproductive health care facility.

(C) ENFORCEMENT

- 1) Violation of this section is a misdemeanor punishable by a fine of one hundred dollars (\$100) for a first offense and one thousand dollars (\$1,000) for each subsequent offense.
- 2) An aggrieved person may enforce the provisions of this section by means of a civil action. An aggrieved person includes any reproductive health care facility where the violation occurred. Violators shall be liable for actual damages, but in no case less than one thousand dollars (\$1,000) plus attorneys' fees and the costs of the action.

SECTION 6. PREVENTION OF ANTI-ABORTION HARASSMENT AND VIOLENCE

(A) DEFINITIONS—In this section:

- 1) “Coercion” means when a person, with intent unlawfully to restrict freedom of action of another to the detriment of the other, threatens to commit or commits any criminal offense.
- 2) “Entity” means a partnership, limited partnership, association of two or more individuals, or any type of corporation, whether incorporated or unincorporated.
- 3) “Harassment” means a knowing and willful course of conduct that is directed at a specific person, that would cause a reasonable person to be seriously alarmed or harassed, and that in fact seriously alarms or harasses the person, and that serves no legitimate purpose.
- 4) “Interfering” means knowingly and intentionally pursuing a course of conduct designed to deter, prevent, or delay a person from providing or referring for reproductive health care through threats, intimidation, force, coercion, or misrepresentation.
- 5) “Intimidation” means an act or course of conduct directed at a specific person that causes fear or apprehension in such person and serves no legitimate purpose.
- 6) “Misrepresentation” means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.
- 7) “Reproductive health care facility” means any office or clinic that provides abortion, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, or counseling for any of the preceding services.
- 8) “Reproductive health care services” means health care services relating to abortion, the termination of a pregnancy, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, or counseling for any of the preceding services in a reproductive health care facility.
- 9) “Reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides or assists, at the request of another person reproductive health care services, or a person who owns or operates a reproductive health care facility.
- 10) “Social services office” means any office or facility in which social services are provided, or any domestic violence center, including but not limited to referral for health care services.

(B) INTERFERENCE WITH THE PROVISION OF REPRODUCTIVE HEALTH CARE PROHIBITED

- 1) Any reproductive health care provider, employee, volunteer, patient, reproductive health care facility, health care entity, or social services office or social services provider who has had his, her, or its ability to provide or refer for reproductive healthcare limited or prevented shall have a cause of action against:
 - a) The individual who, or entity that, intentionally or knowingly prevented or attempted to prevent a health care provider or health care facility’s efforts to provide reproductive and sexual health care, or a social service office’s efforts to refer for reproductive and sexual health care, except when permitted by law, by:

MODEL LEGISLATION

- i) Interfering with the performance of a duty or the exercise of a function by an employee of a health care facility where reproductive or sexual health care is provided, or;
 - ii) Interfering with the normal course of operations of a facility that provides reproductive health care; or
 - iii) Harassing, coercing or intimidating patients seeking access to reproductive health care from a health care provider or facility.
 - b) A government official or agency acting with the intent to prevent or unnecessarily delay a health care provider's or medical facility's efforts to provide reproductive or sexual health care, except when specifically required by law.
- 2) Any health care or social services provider, entity, or facility that has experienced a violation of this section may bring an action for compensatory damages or for injunctive relief for the purpose of stopping or preventing violations or threatened violations of this section, or to determine the applicability of this section to actions or threatened future actions. Such individual or entity may bring an action for statutory damages as permitted under this section, which in the event of a violation of the section shall be fifteen thousand dollars (\$15,000) per violation.
- 3) For all violations of this section, the plaintiff may recover reasonable attorneys' fees and costs.
- 4) Any plaintiff bringing a claim under this section may be entitled to the following limitations on discovery during litigation, due to the nature of the claim and the risk of harm to his or her family:
- a) A plaintiff shall be entitled to proceed under a pseudonym upon providing the court with an affidavit asserting the harm that could arise to the plaintiff and/or his or her family or home if his or her identity is not concealed. The plaintiff shall be entitled to a presumption from the court that identification poses a risk of retaliatory physical or mental harm to the requesting party and to innocent nonparties.
 - b) In a suit to which subsection (a) applies, only the following persons are entitled to know the true identifying information about the plaintiff: the judge; a party to the action; the attorney representing a party to the action; and a person authorized by a written order of a court specific to that person. The court shall order that a person entitled to know the true identifying information under this subsection may not divulge that information to anyone without a written order of the court. A court shall hold a person who violates the order in contempt.
 - c) A plaintiff shall be presumed entitled to a protective order from the court prohibiting discovery regarding the following facts and any other associated facts that the plaintiff alleges will endanger him or herself or his or her family: the plaintiff's residential address, phone number, and email address; any information about the plaintiff's children including their names, ages, where they attend school, their phone numbers, and email addresses; and any other identifying information. If the defendant or defendants believe that the above information is relevant to the defense's claims, defendant shall make a motion for discovery of that information under court seal. The court shall allow the information to be discovered only if the information is relevant to the defense's claims, and only under seal with all non-relevant information redacted by plaintiff before it is provided to the court.

MODEL LEGISLATION

SECTION 7. HATE CRIME PREVENTION

After section XXX, the following new section XXX shall be inserted:

[Bill drafting note: The model below inserts “or association with reproductive health care services as a provider, employee, volunteer, or patient” into a list of other hate crimes. If the jurisdiction already has a hate crimes law, it would be easiest to insert such language into existing law.]

(A) ENHANCED PENALTIES—If a person charged with any felony, misdemeanor, or petty misdemeanor offense is found to have intentionally selected the victim or the victim’s property because of the victim’s actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, gender identity or expression, physical or mental disability, national origin, age, or association with reproductive health care services as a provider, employee, volunteer, or patient, that person may be found guilty of a hate crime with the penalty imposed as follows:

- 1) Where the underlying offense is a petty misdemeanor, it shall be punishable as a misdemeanor.
- 2) Where the underlying offense is a misdemeanor, it shall be punishable as a class C felony.
- 3) Where the underlying offense is a class C felony, it shall be punishable as a class B felony.
- 4) Where the underlying offense is a class B felony, it shall be punishable as a class A felony.
- 5) Where the underlying offense is a class A felony, the maximum fine authorized shall be doubled and a 20-year term of imprisonment shall be imposed.

(B) CIVIL ACTION FOR HATE CRIMES

- 1) If a person commits an intentional tort and has selected the victim or the victim’s property because of the victim’s actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, gender identity or expression, physical or mental disability, national origin, age, or association with reproductive health care services as a provider, employee, volunteer, or patient, any victim of that tort may file a civil action to secure an injunction, damages or other appropriate relief at law or equity. In this subsection, a victim can be a person, corporation, association or other organization.
- 2) In any such action, whether a tort has occurred shall be determined according to the burden of proof used in other civil actions for similar relief.
- 3) Upon prevailing in such civil action, the plaintiff may recover: both special and general damages, including damages for emotional distress; punitive damages; and/or reasonable attorney fees and costs.

SECTION 8. REPEAL

The following are repealed: [If there are provisions in existing law that are inconsistent with this Act, this section should list and explicitly repeal them.]

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MODEL LEGISLATION

SECTION 9. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 10. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

ACCOUNTABILITY FOR CLINIC VIOLENCE ACT

Clinics that offer reproductive health care are continually subjected to violence, threats of violence and harassment. According to the National Abortion Federation, there have been 37 murders or attempted murders due to anti-abortion violence, and from 1977 to 2014 there were also 429 death threats, 662 bomb threats and 663 threats of bioterrorism; 323 bombings, arson attacks or attempted bombings or arsons against abortion clinics; 1,507 acts of clinic vandalism; 554 acts of stalking; nearly 17,000 hate mails and calls; and 801 clinic blockades with more than 33,000 arrests.

Abortion providers, clinic workers and patients are, quite reasonably, afraid for their personal safety. Among abortion providers, 92 percent worry about the safety of their patients and employees in the areas surrounding their clinics. Nearly 90 percent of abortion providers have had patients express concerns about their personal safety and more than 80 percent have been forced to call law enforcement because of concerns about safety, access or criminal activity.

Abortion clinic harassment frequently includes attempts to interfere with the operation of the health center. Such harassment includes planting unrelated medical waste in clinic receptacles, calling false reports in to state health officials to trigger an unnecessary inspection and divert clinic workers' time, as well as a range of other activities designed to slow or prevent the provision of care.

Existing laws are insufficient to protect reproductive health care facilities. Although criminal law addresses some of the anti-abortion violence, it has brought few criminals to justice. In contrast, the purpose of tort law is to "promote overall social welfare" by "deter[ring] socially undesirable conduct" and to "compensate any actual losses of welfare flowing from such conduct." By creating a new tort in statutory law related to reproductive health care, the state would provide an important tool to push back against the harassment and violence so commonly faced by these facilities.

Every person has the right to be free from harassment and violence while accessing or providing reproductive health care. The Accountability for Clinic Violence Act is intended to give reproductive health care providers an effective way to protect themselves, their patients, their clinics, and their staffs from the harassment and protest activity they experience on a daily basis. It allows a health care provider to bring a suit against the person or group who caused the harm and hold them accountable for their actions, both through financial damages and through injunctive relief preventing them from doing so again.

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ACCOUNTABILITY FOR CLINIC VIOLENCE ACT

Summary: *The Accountability for Clinic Violence Act would allow reproductive health care providers and facilities the ability to sue individuals for interfering in the delivery of health care.*

SECTION 1. SHORT TITLE

This Act shall be called the “Accountability for Clinic Violence Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Every person has the right to be free from harassment and violence while accessing or providing reproductive health services.
- 2) Each year, health care facilities that offer reproductive health care are subjected to harassment and violence. Over the years, hundreds of these facilities have experienced bombings, arsons, and other attacks. Employees and physicians have been targeted, physically injured, and in some cases killed. More than 700 facilities across the country have been blockaded.
- 3) Health care providers have been stalked, threatened, and harassed in person, on the phone, and through the mail. The violence and harassment associated with reproductive health care clinics makes it difficult and sometimes dangerous for patients to access care.
- 4) Although harassment and violence directed at individuals and clinics clearly causes harm and interferes with access to critical reproductive health care, individuals who have perpetrated these actions on others are rarely held accountable to the victims for their actions.
- 5) The purpose of tort law is to “promote overall social welfare” by “deter[ring] socially undesirable conduct” and to “compensate any actual losses of welfare flowing from such conduct.” By creating a new tort in statutory law, this bill gives a tool to providers and patients who have been victims of harassment and violence, who can use this to help ameliorate the harm caused to them and to deter those who consider perpetrating such actions on others.

(B) PURPOSE—This law is enacted to provide civil justice to the victims of harassment and violence.

SECTION 3. PREVENTION OF ANTI-ABORTION HARASSMENT AND VIOLENCE

After Section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Coercion” means when a person, with intent unlawfully to restrict freedom of action of another to the detriment of the other, threatens to commit or commits any criminal offense.
- 2) “Entity” means a partnership, limited partnership, association of two or more individuals, or any type of corporation, whether incorporated or unincorporated.

MODEL LEGISLATION

- 3) "Harassment" means a knowing and willful course of conduct that is directed at a specific person, that would cause a reasonable person to be seriously alarmed or harassed, and that in fact seriously alarms or harasses the person, and that serves no legitimate purpose.
- 4) "Health care provider" means any person, corporation, facility or institution licensed or otherwise authorized by the state to provide health care services, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employee or agent of such person acting in the course and scope of employment or agency related to health care services.
- 5) "Health care facility" means any office, building, or other place in which health care services are provided by a health care provider, whether or not the facility is licensed by the state.
- 6) "Interfering" means knowingly and intentionally pursuing a course of conduct designed to deter, prevent or delay a person from providing or referring for reproductive health care through threats, intimidation, force, coercion or misrepresentation.
- 7) "Intimidation" means an act or course of conduct directed at a specific person that causes fear or apprehension in such person and serves no legitimate purpose.
- 8) "Misrepresentation" means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.
- 9) "Reproductive health care" means abortion, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, as well as counseling for all of these services.
- 10) "Social services office" means any office or facility in which social services are provided, or any domestic violence center, including but not limited to referral for health care services.

(B) INTERFERENCE WITH THE PROVISION OF REPRODUCTIVE HEALTH CARE PROHIBITED

- 1) Any health care provider, health care facility, health care entity, or social services office or social services provider who has had his, her or its ability to provide or refer for reproductive healthcare limited or prevented shall have a cause of action against:
 - a) The individual who, or entity that, intentionally or knowingly prevented or attempted to prevent a health care provider or health care facility's efforts to provide reproductive and sexual health care, or a social service office's efforts to refer for reproductive and sexual health care, except when permitted by law, by:
 - i) Interfering with the performance of a duty or the exercise of a function by an employee of a health care facility where reproductive or sexual health care is provided, or;
 - ii) Interfering with the normal course of operations of a facility that provides reproductive health care; or
 - iii) Harassing, coercing or intimidating patients seeking access to reproductive health care from a health care provider or facility.
 - b) A government official or agency acting with the intent to prevent or unnecessarily delay a health care provider's or medical facility's efforts to provide reproductive or sexual health care, except when specifically required by law.

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MODEL LEGISLATION

- 2) Any health care or social services provider, entity or facility that has experienced a violation of this section may bring an action for compensatory damages or for injunctive relief for the purpose of stopping or preventing violations or threatened violations of this section, or to determine the applicability of this section to actions or threatened future actions. Such individual or entity may bring an action for statutory damages as permitted under this section, which in the event of a violation of the section shall be fifteen thousand dollars (\$15,000) per violation.
- 3) For all violations of this section, the plaintiff may recover reasonable attorneys' fees and costs.
- 4) Any plaintiff bringing a claim under this section may be entitled to the following limitations on discovery during litigation, due to the nature of the claim and the risk of harm to his or her family:
 - a) A plaintiff shall be entitled to proceed under a pseudonym upon providing the court with an affidavit asserting the harm that could arise to the plaintiff and/or his or her family or home if his or her identity is not concealed. The plaintiff shall be entitled to a presumption from the court that identification poses a risk of retaliatory physical or mental harm to the requesting party and to innocent nonparties.
 - b) In a suit to which subsection (a) applies, only the following persons are entitled to know the true identifying information about the plaintiff: the judge; a party to the action; the attorney representing a party to the action; and a person authorized by a written order of a court specific to that person. The court shall order that a person entitled to know the true identifying information under this subsection may not divulge that information to anyone without a written order of the court. A court shall hold a person who violates the order in contempt.
 - c) A plaintiff shall be presumed entitled to a protective order from the court prohibiting discovery regarding the following facts and any other associated facts that the plaintiff alleges will endanger him or herself or his or her family: the plaintiff's residential address, phone number and email address; any information about the plaintiff's children including their names, ages, where they attend school, their phone numbers and email addresses; and any other identifying information. If the defendant or defendants believe that the above information is relevant to the defense's claims, defendant shall make a motion for discovery of that information under court seal. The court shall allow the information to be discovered only if the information is relevant to the defense's claims, and only under seal with all non-relevant information redacted by plaintiff before it is provided to the court.

SECTION 4. REPEAL

The following are repealed: [If there are provisions in existing law that are inconsistent with this Act, this section should list and explicitly repeal them.]

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

ACCOUNTABILITY FOR HARASSMENT OF WOMEN ACT

Women have the right to be free from coercion and violence in making decisions about their reproductive health care. But intrusion is fairly common and it can take many forms and come from many places. “Reproductive and sexual coercion” has been recognized and defined by the American College of Obstetricians and Gynecologists as “behavior... intended to control a woman’s sexual decision-making, contraceptive use, and/or pregnancy.”

Coercion, threats, stalking and harassment are particularly common when women attempt to access health care at abortion clinics. In addition to blocking public walkways and calling patients murderers, anti-abortion protesters take pictures of patients and may post patient names and personal information (license plate number, picture, etc.) in public forums ripe for digital harassment. Of course, many of these patients are not even there to obtain an abortion since most clinics also provide cancer screenings, breast exams, birth control and all manner of reproductive health care services.

Reproductive and sexual coercion also happens by sabotaging a woman’s contraceptive method, pressuring her to become pregnant unwillingly, or forcing her to end or continue a pregnancy against her will. A number of studies have found that women who experience intimate partner violence have experienced reproductive coercion, including contraceptive sabotage.

Women should not be harassed and threatened for exercising their constitutional rights. The United States Supreme Court has firmly and repeatedly held that the Fourteenth Amendment to the United States Constitution protects people’s rights to “personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education” and that includes a woman’s right to choose to terminate a pregnancy. The Court has recognized that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”

Existing laws are insufficient to protect the clients of reproductive health care facilities. Although criminal law addresses some of the anti-abortion violence, it has brought few criminals to justice. In contrast, the purpose of tort law is to “promote overall social welfare” by “deter[ring] socially undesirable conduct” and to “compensate any actual losses of welfare flowing from such conduct.” By creating a new tort in statutory law related to reproductive health care, the state would provide an important tool to push back against the harassment and violence these facilities commonly face.

Every person has the right to be free from coercion and harassment while accessing reproductive health care. Victims of reproductive sabotage, harassment and violence need a new process to help ameliorate the harm caused them and to deter those who consider perpetrating such actions on others.

ACCOUNTABILITY FOR HARASSMENT OF WOMEN ACT

Summary: *The Accountability for Harassment of Women Act would allow reproductive health patients the ability to sue an individual for coercion, threats or violence intended to interfere with their reproductive health care.*

SECTION 1. SHORT TITLE

This Act shall be called the “Accountability for Harassment of Women Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Every individual possesses a fundamental right of privacy for personal reproductive decisions. Moreover, every person has the right to be free from coercion and violence in making decisions about and accessing reproductive health care. Accordingly, every person should have the right to access reproductive health care without interference from individuals, organizations or the government.
- 2) The United States Supreme Court has firmly and repeatedly held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution protects people’s rights to “personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education” and that includes a woman’s right to choose to terminate a pregnancy. The Court has recognized that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”
- 3) Interference with reproductive health care can take multiple forms, including through the actions of individuals, organizations and corporations. “Reproductive and sexual coercion” has been recognized and defined by the American College of Obstetricians and Gynecologists as “behavior...intended to control a woman’s sexual decision-making, contraceptive use, and/or pregnancy. Sabotaging a woman’s contraceptive method, pressuring her to become pregnant unwillingly, or forcing her to end or continue a pregnancy against her will are all examples of reproductive coercion.” A number of studies have found that women who experience intimate partner violence have specifically experienced reproductive coercion, including contraceptive sabotage.
- 4) Although reproductive coercion, harassment and violence directed at individuals clearly causes harm and interferes with access to critical reproductive health care, individuals who have perpetrated them are rarely held legally accountable to the victims for their actions.
- 5) In contrast, the purpose of tort law is to promote overall social welfare by deterring socially undesirable conduct and to compensate any actual losses of welfare flowing from such conduct.
- 6) Victims of reproductive sabotage, harassment and violence need a new process to help ameliorate the harm caused them and to deter those who consider perpetrating such actions on others.

MODEL LEGISLATION

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of the staff and patients of healthcare facilities that provide reproductive health care services.

SECTION 3. CLINIC PROTECTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Coercion” means when a person, with intent unlawfully to restrict freedom of action of another to the detriment of the other, threatens to commit or commits any criminal offense or abuses the legal process.
- 2) “Entity” means a partnership, limited partnership, association of two or more individuals, or any type of corporation, whether incorporated or unincorporated.
- 3) “Health care provider” means any person, corporation, facility or institution licensed or otherwise authorized by the state to provide health care services, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employee or agent of such person acting in the course and scope of employment or agency related to health care services.
- 4) “Health care facility” means any office, building, or other place in which a healthcare provider provides health care services, whether or not the facility is licensed by the state.
- 5) “Intimidation” means an act or course of conduct directed at a specific person that causes fear or apprehension in such person and serves no legitimate purpose.
- 6) “Misrepresentation” means a false statement of substantive fact, or conduct that leads to a false belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.
- 7) “Reproductive health care” means abortion, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, as well as counseling for all of these services.
- 8) “Social services office” means any office or facility in which social services or any domestic violence programs are provided, including but not limited to referral for health care services.

(B) INTERFERENCE PROHIBITED

- 1) An individual or entity violates this section when the individual or entity intentionally or knowingly prevents or attempts to prevent another individual’s efforts to obtain or use reproductive health care, except when permitted by law, by engaging in the following activities:
 - a) Using force, threats of force, coercion or intimidation against that individual or a third party; or
 - b) Using force, threats of force, coercion or intimidation against a health care provider or health care facility, medical office, or social services office that is assisting an individual in obtaining or using reproductive health care, or providing an individual with reproductive health care.

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MODEL LEGISLATION

- c) A government official who or agency that acts with the intent of preventing or unnecessarily delaying an individual's efforts to obtain or use reproductive health care, except when specifically required by law.
- 2) Any individual who has suffered a violation of this section shall have a cause of action against the violating individual or entity. Such injured individual may bring an action for statutory damages as permitted under this section, which in the event of a violation of the section shall be fifteen thousand dollars (\$15,000) per violation.
 - a) A plaintiff shall be entitled to proceed under a pseudonym upon providing the court with affidavit asserting the harm that could arise to the plaintiff and/or his or her family or home if his or her identity is not concealed. The plaintiff shall be entitled to a presumption from the court that identification poses a risk of retaliatory physical or mental harm to the requesting party and to innocent nonparties.
 - b) In a suit to which this section applies, only the following persons are entitled to know the true identifying information about the plaintiff: the judge; a party to the action; the attorney representing a party to the action; and a person authorized by a written order of a court specific to that person. The court shall order that a person entitled to know the true identifying information under this subsection may not divulge that information to anyone without a written order of the court. A court shall hold a person who violates the order in contempt.
 - c) A plaintiff shall be presumed entitled to a protective order from the court prohibiting discovery regarding the following facts and any other associated facts that the plaintiff alleges will endanger him or herself or his or her family: the plaintiff's residential address, phone number and email address; any information about the plaintiff's children including their names, ages, where they attend school, their phone numbers and email addresses; and any other identifying information. If the defendant or defendants believe that the above information is relevant to the defense's claims, defendant shall make a motion for discovery of that information under court seal. The court shall allow the information to be discovered only if the information is relevant to the defense's claims, and only under seal with all non-relevant information redacted by plaintiff before it is provided to the court.
- 3) For all violations of the section, the plaintiff may recover reasonable attorneys' fees and costs.
- 4) Nothing in this section shall be construed to alter existing professional standards of care or to impose any new duties or requirements on health care providers or the provision of medical care.

SECTION 4. REPEAL

The following are repealed: [If there are provisions in existing law that are inconsistent with this Act, this section should list and explicitly repeal them.]

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

CLINIC SAFETY ZONE ACT

Women who go to health clinics that provide the full range of reproductive care services, including abortion, are continually subjected to harassment. More than 700 facilities across the country have been swarmed or blockaded by protesters attempting to dissuade or prevent patients from receiving crucial reproductive health care.

Clinic patients are stalked, threatened and harassed. In addition to blocking public walkways and calling patients murderers, anti-choice protesters often make patients fear for their personal safety. Of course, many of these patients are not even there for abortion since most clinics also provide cancer screenings, breast exams, birth control and all manner of reproductive health care services.

Existing laws are insufficient to protect the clients of reproductive health care facilities.

Although the federal Freedom of Access to Clinic Entrances (FACE) Act addresses some of the anti-abortion tactics, it is not enough.

Colorado and Montana, and several cities, have safety zone laws that work. A safety zone is a floating area around patients and staff. Protesters are prohibited from approaching without permission within a certain distance, usually eight feet. That way, protesters' right to free speech is protected—they can say whatever they want—but patients have some sense of safety and security from the harassment and violence.

Every person has the right to be free from harassment and violence while accessing reproductive health care. The Clinic Safety Zone Act is intended to give women who visit a reproductive health clinic a level of protection from this harassment.

CLINIC SAFETY ZONE ACT

Summary: *The Clinic Safety Zone Act would protect patients and staff who are trying to enter or exit a reproductive health care facility by prohibiting protestors from obstructing the way and stopping them from approaching closer than eight feet to individuals trying to access the clinic.*

SECTION 1. SHORT TITLE

This Act shall be called the “Clinic Safety Zone Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) All residents must be able to access health care facilities for the purpose of obtaining medical counseling and treatment.
- 2) The exercise of a person’s right to protest or counsel against certain medical procedures must be balanced against another person’s right to obtain medical counseling and treatment in an unobstructed manner.
- 3) Preventing the willful obstruction of a person’s access to medical counseling and treatment at a health care facility is a matter of public concern.
- 4) It is necessary and appropriate to prohibit individuals from knowingly obstructing another person’s entry to or exit from a health care facility.

[Bill drafting note: Because of the sensitivity of First Amendment concerns and the fact that abortion opponents often file suit over the First Amendment, the Findings should be carefully crafted to describe the problem in your own jurisdiction.]

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of health facility patients and staff.

SECTION 3. CLINIC SAFETY ZONES

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

“Reproductive health care facility” means any office or clinic that provides abortion, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, or counseling for any of the preceding services.

MODEL LEGISLATION

(B) PROTECTION OF REPRODUCTIVE HEALTH CARE PATIENTS AND STAFF

- 1) No person shall intentionally touch or cause physical contact with an individual who is attempting to enter or exit from a reproductive health care facility, without that individual's consent.
- 2) No person shall knowingly obstruct, detain, hinder, impede, or block an individual's entry to or exit from a reproductive health care facility. Obstruction includes causing such individual to take evasive action to avoid physical contact or placing signs on a walkway in a way that restricts the flow of pedestrian traffic.
- 3) When an individual is entering or exiting a reproductive health care facility, no person shall knowingly approach within eight feet of such individual, unless the individual consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in any public way or sidewalk area within a radius of one hundred feet from any entrance door to the reproductive health care facility.

(C) ENFORCEMENT

- 1) Violation of this section is a misdemeanor punishable by a fine of one hundred dollars (\$100) for a first offense and one thousand dollars (\$1,000) for each subsequent offense.
- 2) An aggrieved person may enforce the provisions of this section by means of a civil action. An aggrieved person includes any reproductive health care facility where the violation occurred. Violators shall be liable for actual damages, but in no case less than one thousand dollars (\$1,000) plus attorneys' fees and the costs of the action.

SECTION 4. REPEAL

The following are repealed: [list any inconsistent existing law.]

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

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KEEP BOSSES OUT OF THE BEDROOM ACT

Employees should be judged by their performance at work, without regard to their personal, private health care decisions. Yet, in recent years there have been a number of bosses retaliating against employees for their reproductive health care decisions. Examples include:

- In Wisconsin, when the state passed a law requiring insurance plans to cover contraception if they provided an otherwise comprehensive prescription drug package, the Catholic diocese told employees that if they used this benefit they would be fired.
- A woman was fired from her teaching job at a Catholic school in Indiana after she requested time off to receive in vitro fertilization (IVF) treatment.
- Another teacher in Cincinnati was fired—supposedly for becoming pregnant without being married—although her employers later said that she was fired for becoming pregnant using in vitro fertilization.
- Several women have been fired after they became pregnant without being married.

None of these women had any religious duties or responsibilities as part of their jobs. It is unfair that these women would be fired because of their personal decisions.

Some existing laws have been wrongly interpreted to not protect against discrimination based on reproductive health decisions. Many state and federal laws—especially those that protect against discrimination on the basis of sex or pregnancy—offer protections against reproductive health discrimination. Yet, bad decisions by courts and officials have created loopholes that leave women without a legal remedy.

Americans strongly favor legislation that keeps employers from interfering in their employees' private reproductive health decisions. A poll of conservative and moderate states found that 67 percent favor, and 55 percent strongly favor, legislation that would bar employers from interfering in employees' reproductive health decisions or discriminating against them because of their reproductive health decisions. In a nationwide poll, 91 percent agreed that a company should not be allowed to fire an unmarried employee who is pregnant because of the employer's personal or religious beliefs.

Medical organizations strongly agree that bosses should play no role in employees' reproductive health decisions. In a brief filed with the Supreme Court in 2014, the American College of Obstetricians and Gynecologists, American Academy of Pediatrics, American Nurses Association, American College of Nurse-Midwives, National Physicians Alliance, Society for Adolescent Health and Medicine, and other major medical organizations agreed that "decisions regarding contraception have a profound impact on a woman's health as well as on the health of her children. These important, private, medical decisions should be made by a patient in consultation with her health care provider. There is no role for a woman's employer in these decisions."

Real religious freedom gives everyone the right to make personal decisions, based on their own beliefs. It does not give bosses the right to impose their beliefs on employees and their families. It is a matter of simple fairness. That is why we need legislation to protect the right of workers to make reproductive health care decisions without fear of losing their jobs.

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KEEP BOSSES OUT OF THE BEDROOM ACT

Summary: *The Keep Bosses Out of the Bedroom Act would guarantee that employers cannot take an adverse action against an employee based on the employee's reproductive health decisions.*

SECTION 1. SHORT TITLE

This Act shall be called the “Keep Bosses Out of the Bedroom Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) There have been a number of disturbing examples of bosses retaliating against or discriminating against employees because of the employee's personal reproductive health care decisions.
- 2) Employees have been threatened with termination if they use birth control.
- 3) Employees have been fired or punished for using birth control, for undergoing in vitro fertilization in order to get pregnant, having sex outside of marriage, and having an abortion.
- 4) It is unfair for employers to fire or discriminate against an employee on the basis of his or her decision about whether to prevent pregnancy or start a family; it is time for the state to make it clear that it is employment discrimination when bosses interfere in personal reproductive health care decisions.

(B) PURPOSE—This law is enacted to prevent employment discrimination.

SECTION 3. EMPLOYMENT NON-DISCRIMINATION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

“Adverse employment action” means termination, demotion or refusal to promote or advance, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to provide training opportunities or transfer to a different department, adverse administrative action, or any other penalty, disciplinary or retaliatory action.

MODEL LEGISLATION

(B) PROHIBITION AGAINST DISCRIMINATION

- 1) An employer shall not:
 - a) Take any adverse employment action against an employee based on the use of any drug, device, or medical service related to reproductive health by the employee or the employee's spouse or dependent.
 - b) Require an employee to sign a waiver or other document which purports to deny an employee, or an employee's spouse or dependents, the right to make his or her own reproductive health care decisions, including whether to use any particular drug, device or medical service.
 - c) Take any adverse employment action in retaliation against an employee for asserting rights or remedies under this section.
- 2) An employer that provides an employee handbook to its employees must include in the handbook notice of employees' rights and remedies under this section.

(C) ENFORCEMENT

Violation of this section constitutes unlawful employment discrimination. All employment discrimination enforcement mechanisms under [cite the appropriate state law] shall apply.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

ABORTION WITH DIGNITY ACT

Many states have enacted anti-abortion statutes that directly violate the basic tenets of informed consent. These are laws that force patients to: receive biased, inaccurate or misleading information or unnecessary diagnostic testing; hear about junk science and unproven medical procedures; or listen to and view information intended to shame and demean them. These are also laws that require multiple trips to a clinic and medically unnecessary days-long waiting periods for no other reason than to show the state's disapproval of a woman's personal medical decision.

For example, patients have been denied informed consent:

- In Texas, where women who are seeking an abortion must have an ultrasound, whether or not the doctor thinks it is necessary, and the doctor is required to display the image and provide a description of the image to the patient even though these requirements have no medical basis.
- In South Dakota, where women are compelled to hear inaccurate state-mandated information from their physicians, then required to wait 72 hours before they are permitted to obtain an abortion even though this wait is not medically necessary.
- In Louisiana, where patients are required to listen to state-mandated information about a medically disproven link between abortion and mental health problems.

These laws force patients to hear information that is not only biased and misleading, but they also undermine women's ability to give true informed consent to their health care providers.

The concept of informed consent comes from the basic right of all patients "to determine what shall be done to his or her body." Therefore, health care providers must disclose to their patients "all medical information that a reasonably prudent patient would find material before deciding whether to undergo a medical procedure" so that the patient can "make an informed decision in foregoing or assenting to a medical procedure." In fact, medical ethics require that patients be offered objective, accurate information so that they can make their own decisions about treatment, and obligate health care providers to "present the medical facts accurately to the patient...and to make recommendations for management in accordance with good medical practice."

The Abortion with Dignity Act would give back to patients their right to true informed consent by allowing them to waive non-medical, ideological state requirements that are not intended to enhance informed consent. This bill recognizes that after receiving medically appropriate counseling and information from her physician or health care provider, it is not in the patient's best interests to force her to receive additional, non-medical information, or wait an unnecessary, state-imposed period of time, if she and her health care provider do not believe that such actions would add to her ability to make an informed medical decision.

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ABORTION WITH DIGNITY ACT

Summary: *The Abortion with Dignity Act would provide a reproductive healthcare patient the right to sign a waiver to eliminate waiting periods, the requirement to hear medical misinformation, or other requirements that are not part of true informed consent.*

SECTION 1. SHORT TITLE

This Act shall be called the “Abortion with Dignity Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) All patients deserve accurate information about their medical options and pregnant women are entitled to accurate information about all of their pregnancy options.
- 2) Medical ethics require that patients be offered objective, accurate information so that they can make their own decisions about treatment, obligate health care providers to present the medical facts accurately to the patient, and require providers to make recommendations for management in accordance with sound medical practice.
- 3) True informed consent, based on medical provider expertise and the patient’s individualized situation, is a critical part of health care. All patients have the right to be given information about the medical treatment they may undergo and to consider for themselves, in consultation with their health care provider, the risks and benefits of that care before they accept the treatment.
- 4) Laws that force doctors to provide state-mandated, ideological scripts to their patients, require patients to undergo mandatory ultrasounds, or impose mandatory waiting periods on patients and providers serve no medically sound purpose.
- 5) Such laws are neither medically necessary nor do they improve patient care or information. Instead, they are intended to shame and demean women, and to coerce them into making a different decision.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of women by restoring informed consent to abortion care.

SECTION 3. RESTORING INFORMED CONSENT

After section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) WOMEN MAY EXERCISE INFORMED CONSENT

In the interests of ensuring true informed consent, any patient seeking an abortion in this state may decide not to receive or review state-mandated informational materials, wait a particular state-mandated period of time before obtaining an abortion, or view an ultrasound image or listen to auscultation of the ultrasound, which would otherwise be required by [list appropriate statutes].

(B) DUTY OF HEALTH CARE PROVIDER

- 1) A health care provider shall document the patient's decision in writing and that documentation shall be kept in the patient's file.
- 2) In the event a patient has exercised her right to waive certain requirements under this section, the patient's health care provider shall not be subject to any criminal, civil or administrative penalties for failure to comply with [list appropriate statutes].
- 3) Nothing in this section shall be construed to alter the health care provider's duty to obtain the informed consent required for all medical procedures pursuant to [insert appropriate statute].

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

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PREGNANT WOMEN'S DIGNITY ACT

Law enforcement authorities are investigating and prosecuting women who have lost a pregnancy.

In recent years, 38 states have enacted so-called "fetal homicide" laws.

Although legislators generally approved these bills to prosecute people who commit a crime against a pregnant woman, they are now being used to punish women who suffer a pregnancy loss, based on the idea that they might have intentionally or negligently caused it.

The National Advocates for Pregnant Women have documented hundreds of such cases.

For example:

- In Iowa, a pregnant woman who fell down a flight of stairs was reported to the police after seeking help at a hospital. She was arrested for attempted fetal homicide.
- In Utah, a woman gave birth to twins; one was stillborn. Health care providers believed that the stillbirth was the result of the woman's decision to delay having a cesarean. She was arrested on charges of fetal homicide.
- In Louisiana, a woman who went to the hospital for unexplained vaginal bleeding was imprisoned for over a year based on charges of second-degree murder before medical records revealed she had suffered a miscarriage at 11 to 15 weeks of pregnancy.
- In South Carolina, a woman who was eight months pregnant attempted suicide by jumping out a window. She survived despite suffering severe injuries but because she lost the pregnancy, she was arrested and jailed for the crime of homicide by child abuse.

- In Mississippi, a girl became pregnant at age 15 and lost her baby in a stillbirth. Prosecutors charged her with a "depraved heart murder" after they discovered she had used cocaine, although there was "no evidence that drug abuse had anything to do with the baby's death."

In the United States, approximately one million known pregnancies end in miscarriage or stillbirth each year and it is inconceivable that any one could be the subject of criminal investigation. As many as 15 to 20 percent of known pregnancies end in miscarriage and, in addition, approximately 26,000 end in stillbirth and 19,000 in neonatal deaths.

Government investigations of women who lose a pregnancy are not worth the trauma they inflict. Such investigations will deter women from seeking medical care after they've experienced a pregnancy loss and undermine the crucial doctor-patient relationship as health care providers are pressured to collect evidence against their patients.

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

PREGNANT WOMEN’S DIGNITY ACT

Summary: *The Pregnant Women’s Dignity Act would protect women who suffer a pregnancy loss from investigation by law enforcement, judicial or administrative authorities.*

SECTION 1. SHORT TITLE

This Act shall be called the “Pregnant Women’s Dignity Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) The argument that “life begins at conception” has been used to justify police powers in response to pregnancy loss, including law enforcement investigation, arrest and prosecution.
- 2) In the United States, approximately one million known pregnancies per year end as a result of miscarriage and stillbirth.
- 3) As many as 15 to 20 percent of all pregnancies end in miscarriage. An additional one percent of pregnancies—approximately 26,000 per year—end in stillbirth and 19,000 end in neonatal deaths.
- 4) The actual number of pregnancies lost is likely to be substantially higher because many occur before women even know they are pregnant.
- 5) Some law enforcement authorities have begun investigations of women on the suspicion that they did something to intentionally or negligently end their pregnancies.
- 6) In countries where abortion is largely criminalized, such as in El Salvador, there are an increasing number of cases involving bedside interrogations and prosecutions of women who have lost their pregnancies.
- 7) Because it is difficult to distinguish between pregnancy loss that results from abortion and pregnancy loss that results from miscarriage and stillbirth, women subject to investigation have an extremely difficult time defending themselves.
- 8) Government investigations of women who lose their pregnancies inflict trauma on those who are already suffering and represent a profound disruption of the women’s family life and their ability to care for the children they already have.
- 9) Such government investigations will deter women from seeking medical care after they’ve experienced a pregnancy loss.
- 10) Such government investigations will undermine the crucial doctor-patient relationship as health care providers are pressured to collect evidence against their patients.

(B) PURPOSE—This law is enacted to ensure that women who experience pregnancy losses are not subjected to government investigation.

MODEL LEGISLATION

SECTION 3. PROTECTION OF WOMEN WHO LOSE A PREGNANCY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Pregnancy outcome” means the result of a pregnancy, including miscarriage, abortion, stillbirth, neonatal death and the birth of a child who survives.
- 2) “State” means the state and every county, city, town, municipal corporation, quasi-municipal corporation and public institution of higher education in the state.

(B) POLICY AGAINST INVESTIGATION OF WOMEN WHO LOSE A PREGNANCY

- 1) It shall be the policy of this State to prohibit government authorities from investigating women based on their pregnancy outcomes.
- 2) No police agency or sheriff’s office shall initiate a criminal investigation based on a woman’s pregnancy outcome.
- 3) No state judicial authority shall authorize a search warrant or a subpoena for health records related to a woman’s pregnancy outcome, or compel a woman or a medical professional to testify about a woman’s pregnancy outcome.
- 4) No state social services agency shall initiate an investigation of a woman based upon that woman’s pregnancy outcome.
- 5) No person who is a mandatory reporter under [state law that designates certain people like social workers, teachers and doctors as mandatory reporters of child abuse or neglect] shall be required, expected or encouraged to inform child welfare authorities about a woman’s pregnancy outcome.

SECTION 4. REPEAL

The following sections are hereby repealed: [list existing provisions inconsistent with this Act].

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

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D. PROVIDE FULL ACCESS TO BIRTH CONTROL

Women's Right to the Pill Act 84

Rape Survivor Information Act 88

Long-Acting Birth Control Information Act.... 92

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*



WOMEN'S RIGHT TO THE PILL ACT

Women seeking birth control prescriptions continue to face refusals when they go to the pharmacy. The anti-abortion movement has encouraged pharmacies and individual pharmacists to refuse to dispense contraception in a variety of circumstances. And a number of states have enacted laws that are specifically intended to permit refusals in the pharmacy. Six states (Arizona, Arkansas, Georgia, Idaho, Mississippi and South Dakota) have enacted laws that explicitly let pharmacists refuse to dispense contraception. Furthermore, refusal laws in Colorado, Florida, Kansas, Maine and Tennessee are so broadly written that they may also cover pharmacists who refuse to dispense birth control.

Refusals to provide emergency contraception have been a particular problem. Emergency contraceptives are Food and Drug Administration-approved forms of birth control that safely and effectively prevent pregnancy after unprotected sex, birth control failure or sexual assault. There are several FDA-approved emergency contraceptives: Plan B One-Step and its generics, which are pills containing the same ingredient found in many birth control pills; ella, another type of contraceptive pill; and the copper intrauterine device (IUD). Following rulings by the Food and Drug Administration and federal courts, some emergency contraceptive pills can be sold at drugs stores without a prescription.

Some of these refusals are based on the mistaken belief that emergency contraceptive pills cause abortion. Emergency contraceptive pills do not interfere with an established pregnancy. Unlike Mifeprex, commonly called the “abortion pill,” emergency contraception does not induce abortion. The anti-abortion movement has built opposition to emergency contraception by deliberately confusing it with Mifeprex—but licensed pharmacists should certainly know the difference. When pharmacists refuse to dispense contraceptive pills, they stand against birth control—not abortion.

Women have also faced refusals for other forms of birth control. The idea that pharmacists or pharmacies have the right to refuse prescriptions has emboldened some to block access to traditional contraception. Pharmacists have flatly refused to fill orders for traditional birth control prescriptions in a number of states.

Some states have laws or regulations that require pharmacists or pharmacies to provide medication to their patients, including birth control. Eight states—California, Illinois, Maine, Massachusetts, Nevada, New Jersey, Washington and Wisconsin—explicitly require pharmacists or pharmacies to provide medication, including birth control, to patients. Three of those states have passed laws, while in others, the pharmacy board or another entity has adopted regulations or policy statements.

WOMEN’S RIGHT TO THE PILL ACT

Summary: *The Women’s Right to the Pill Act would require that all pharmacies must fill lawful contraceptive prescriptions and stock emergency contraception for purchase over-the-counter.*

SECTION 1. SHORT TITLE

This Act shall be called the “Women’s Right to the Pill Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Family planning is basic health care for women. Access to contraception helps women prevent unintended pregnancy and control the timing and spacing of planned births.
- 2) Although the Centers for Disease Control and Prevention included family planning in its published list of the Ten Great Public Health Achievements in the 20th Century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations.
- 3) Each year nearly half of all pregnancies in the United States are unintended.
- 4) Women rely on contraceptives for a range of medical purposes in addition to birth control, such as regulation of cycles and endometriosis.
- 5) After reviewing data and evidence, the U.S. Food and Drug Administration determined that emergency contraception is a safe and effective method to prevent unintended pregnancy and approved over-the-counter access to some forms of emergency contraception for all individuals, regardless of age.
- 6) If taken soon after unprotected sex or primary contraceptive failure, emergency contraception can significantly reduce a woman’s chance of unintended pregnancy.
- 7) Access to the full range of contraceptive methods is fundamental to women’s health care and should not be impeded because of a refusal at the pharmacy.

(B) PURPOSE—This law is enacted to ensure that, at all pharmacies in the state, women can fill contraceptive prescriptions and purchase certain emergency contraception without a prescription.

SECTION 3. DUTY OF PHARMACIES TO ENSURE PROVISION OF FDA-APPROVED CONTRACEPTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Contraception” or “contraceptive” means any drug or device approved by the Food and Drug Administration to prevent pregnancy.

MODEL LEGISLATION

- 2) “Emergency contraception” means one or more drugs, used separately or in combination to prevent pregnancy within a medically-recommended amount of time after sexual intercourse.
- 3) “Employee” means a person hired, by contract or any other form of an agreement, by a pharmacy.
- 4) “Pharmacy” means an entity that is licensed by the state under [insert appropriate citation] to engage in the business of selling prescription drugs at retail, and employs one or more employees.
- 5) “Product” means a Food and Drug Administration-approved drug or device.
- 6) “Professional clinical judgment” means the use of professional knowledge and skills to form a clinical judgment, in accordance with prevailing medical standards.
- 7) “Without delay” with respect to a pharmacy dispensing, providing a referral for, or ordering contraception, or transferring the prescription for contraception, means within the usual and customary timeframe at the pharmacy for dispensing, providing a referral for, or ordering other products, or transferring the prescription for other products, respectively.

(B) DUTY OF PHARMACIES

- 1) If a customer requests a contraceptive that is in stock, the pharmacy shall ensure that the contraceptive is provided to the customer without delay.
- 2) If a customer requests a contraceptive that is not in stock, the pharmacy shall immediately inform the customer that the contraceptive is not in stock and without delay offer the customer the following options:
 - a) If the customer prefers to obtain the contraceptive through a referral or transfer, the pharmacy shall locate a pharmacy of the customer’s choice or the closest pharmacy confirmed to have the contraceptive in stock and refer the customer or transfer the prescription to that pharmacy.
 - b) If the customer prefers for the pharmacy to order the contraceptive, the pharmacy shall obtain the contraceptive under the pharmacy’s standard procedure for expedited ordering of medication and notify the customer when the contraceptive arrives.
- 3) The pharmacy shall ensure that its employees do not:
 - a) Intimidate, threaten, or harass customers in the delivery of services relating to a request for contraception;
 - b) Interfere with or obstruct the delivery of services relating to a request for contraception;
 - c) Intentionally misrepresent or deceive customers about the availability of contraception or its mechanism of action;
 - d) Breach medical confidentiality with respect to a request for contraception or threaten to breach such confidentiality; or
 - e) Refuse to return a valid, lawful prescription for contraception upon customer request.

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MODEL LEGISLATION

- 4) This section does not prohibit a pharmacy from refusing to provide a contraceptive to a customer in accordance with any of the following:
 - a) If it is unlawful to dispense the contraceptive to the customer without a valid, lawful prescription and no such prescription is presented;
 - b) If the customer is unable to pay for the contraceptive; or
 - c) If a licensed pharmacist refuses to provide the contraceptive on the basis of a professional clinical judgment.
- 5) Pharmacies shall stock over-the-counter emergency contraception and make it available for purchase without a prescription in accordance with the U.S. Food and Drug Administration protocol.

(C) ENFORCEMENT

- 1) The state [Board of Pharmacy] shall enforce this section in accordance with [section of law dealing with violations of Board policy].
- 2) Any person aggrieved as a result of a violation of this section may, in any court of competent jurisdiction, commence a civil action against the pharmacy involved to obtain appropriate relief, including actual and punitive damages, injunctive relief, and a reasonable attorney's fee and cost.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

[Bill drafting note: Lawmakers should be sure to consult with local advocates to select pharmacy mandates that are most appropriate for your state.]

RAPE SURVIVOR INFORMATION ACT

Every year, nearly two million women are raped and tens of thousands become pregnant as the result of a sexual assault.

According to the Centers for Disease Control, nearly one in five American women are raped at some point in their lives. Adding to the trauma of the assault, about five percent of victims (nearly 100,000 women per year) will become pregnant as a result of the attack. Yet, nearly 90 percent of these pregnancies could be prevented if the women had timely access to emergency contraception.

Emergency contraception provides women with a safe and effective method to prevent unintended pregnancies.

Emergency contraceptives are Food and Drug Administration-approved forms of birth control that safely and effectively prevent pregnancy after unprotected sex, birth control failure, or sexual assault. Unlike Mifeprex, commonly called the “abortion pill,” emergency contraception does not induce abortion. Instead, it inhibits ovulation, fertilization or implantation before a pregnancy occurs. Some emergency contraceptive pills are available without a prescription.

Despite its benefits, many women do not know about the value or accessibility of emergency contraception. Many women of childbearing age, and especially those in their teens, are not very knowledgeable about emergency contraception or how to obtain it. Only about 22 percent of sexually active female teenagers have ever used emergency contraception. Even health care providers are not very well-informed about all the options for emergency contraception.

Most rape survivors are never told about emergency contraception. Thousands of women are raped on college campuses and never report the crime to police. Thousands more report the crime but never go to a hospital seeking medical assistance. Even when they do visit the hospital they may not be offered emergency contraception. And yet, it should be obvious that every rape survivor should be informed about emergency contraception.

The U.S. Department of Justice and leading medical associations agree that emergency contraception should be offered to all survivors of sexual assault. The U.S. Department of Justice recommends that sexual assault survivors be given both information about emergency contraception and the medicine itself if requested. The American Medical Association, American Nurses Association, American Public Health Association, American College of Emergency Physicians, American College of Obstetricians and Gynecologists, and American Academy of Pediatrics have all publicly declared their official support for policies that require hospitals to offer emergency contraception to all survivors of sexual assault.

Sexual assault survivors should be offered accurate, unbiased information about abortion. Some women may not report a sexual assault or seek medical care within the time in which emergency contraception has been approved for use by the FDA. Those women, as well as any woman who requests it, should be offered accurate, unbiased information about abortion so that they are fully informed about all options available to them.

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

RAPE SURVIVOR INFORMATION ACT

Summary: *The Rape Survivor Information Act would require hospital emergency rooms, as well as police agencies and colleges that receive reports of sexual assault, to follow a protocol to assist sexual assault survivors, which includes providing survivors with medically accurate information about emergency contraception, and when medically appropriate, abortion.*

SECTION 1. SHORT TITLE

This Act shall be called the “Rape Survivor Information Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) According to the Centers for Disease Control, nearly one in five American women are raped at some point in their lives—nearly two million each year.
- 2) Adding to the trauma, about five percent of sexual assault survivors become pregnant as a result of the attack.
- 3) Nearly 90 percent of these pregnancies could be prevented if sexual assault survivors had timely access to emergency contraception.
- 4) Approved for use by the Food and Drug Administration, emergency contraception prevents pregnancy after sexual intercourse; emergency contraceptives available in the U.S. and approved by the FDA have no effect on an existing pregnancy.
- 5) While standards of emergency care established by the American Medical Association require that sexual assault survivors be counseled about their risk of pregnancy and offered emergency contraception, many hospitals fail to provide emergency contraception to sexual assault survivors.
- 6) The U.S. Department of Justice recommends that sexual assault survivors be given both information about emergency contraception and the medicine itself, if requested.
- 7) While police agencies and colleges receive thousands of reports of sexual assault each year, they often do not counsel survivors about the availability of emergency contraception.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of sexual assault survivors.

SECTION 3. EMERGENCY CONTRACEPTION FOR SEXUAL ASSAULT SURVIVORS

After section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) DEFINITIONS—In this section:

- 1) “Abortion” means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) “Colleges and Universities” means any institution of higher education that is covered by federal Title IX.
- 3) “Department” means the state Department of [Health].
- 4) “Emergency contraception” means any drug or device approved by the U.S. Food and Drug Administration that prevents pregnancy after sexual intercourse.
- 5) “Healthcare facility” means a hospital, emergency care facility, health clinic or other healthcare center that provides emergency care to sexual assault survivors.
- 6) “Law enforcement authority” means any law enforcement agency of the state or its subdivisions that receives reports of sexual assault.
- 7) “Sexual assault survivor” means any person who alleges or is alleged to have been the victim of a sexual assault where there is a possibility that the assault may result in pregnancy.

(B) HEALTH PROTOCOLS FOR ASSISTING SEXUAL ASSAULT SURVIVORS

- 1) The Department shall develop, produce and distribute informational materials about emergency contraception and abortion services that are specifically designed for sexual assault survivors, presented in a factually accurate and unbiased manner.
- 2) The Department shall develop protocols that use the informational materials and describe how healthcare facilities, law enforcement authorities and colleges and universities, respectively, should provide this information to sexual assault survivors.
- 3) In a situation when a sexual assault was recent enough that emergency contraception may be effective, the Department’s protocols for law enforcement authorities and colleges and universities shall include providing information to the sexual assault survivor about the safety, effectiveness and availability of emergency contraception, as well as the fact that emergency contraception does not cause abortion.
- 4) In a situation when a sexual assault was recent enough that emergency contraception may be effective, the Department’s healthcare facility protocols shall include the following healthcare facility requirements:
 - a) Provide the survivor with objective and factually accurate written and oral information about the full range of medical options, including the safety, effectiveness and availability of emergency contraception, as well as the fact that emergency contraception does not cause abortion;
 - b) Orally inform the survivor of the option to receive emergency contraception at the healthcare facility;
 - c) Promptly provide to the survivor emergency contraception upon request; and
 - d) Ensure that all personnel who provide care to survivors are trained to provide medically and factually accurate and objective information about emergency contraception.

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MODEL LEGISLATION

- 5) The Department's healthcare facility protocols shall include providing information to sexual assault survivors about legal abortion when medically appropriate.

(C) IMPLEMENTATION OF HEALTH PROTOCOLS

- 1) Public and private healthcare facilities, law enforcement authorities, and colleges and universities shall follow the Department's protocols for assisting sexual assault survivors written for healthcare facilities, law enforcement authorities, and colleges and universities, respectively, including the use of the Department's informational materials.
- 2) Public and private healthcare facilities, law enforcement authorities, and public and private colleges and universities shall ensure that each person who takes reports from, or provides care to, sexual assault survivors has been trained to implement the Department's protocols.

(D) ENFORCEMENT

- 1) The Department shall use its regulatory authority to ensure that healthcare facilities follow the protocols that apply to them.
- 2) The [Office of the Attorney General] shall use its regulatory authority to ensure that law enforcement authorities follow the protocols that apply to them.
- 3) The [Department of Education] shall use its regulatory authority to ensure that colleges and universities follow the protocols that apply to them.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

LONG-ACTING BIRTH CONTROL INFORMATION ACT

According to the Colorado Department of Public Health and Environment, the state's teen birth rate was cut nearly in half during the first five years of the Colorado Family Planning Initiative, which increases access to long-acting birth control. Both the birth rate and abortion rate for women ages 15-19 fell 48 percent from 2009 through 2014. Previous data for 2009-13 showed a 40 percent drop in teen births and a 35 percent decline in teen abortions.

This extremely successful initiative provided training, operational support, and 36,000 long-acting reversible contraceptives (LARCs)—intrauterine devices (IUDs) and implants—to low-income women in Title X family planning health centers. IUD and implant use among family planning clients grew from 4.5 percent before the initiative to 29.6 percent in 2014. Nationally, only 7.2 percent of women use LARCs.

The initiative also assisted young adult women and contributed to saving millions in taxpayer dollars. From 2009-2014, the birth rate for women ages 20-24 decreased 20 percent and the abortion rate by 18 percent. The state estimates that the Medicaid program avoided spending approximately \$79 million in birth-related costs from 2010-2012, meaning the initiative contributed to the savings of at least \$5.85 for every dollar spent.

LARCs are 20 times more effective in preventing pregnancy than the pill, contraceptive patch, or vaginal ring. According to a comprehensive study, the pregnancy risk for one year of real-world LARC use is less than one percent, while the pregnancy risk is 9 percent for women who use oral contraception, have the patch or use the vaginal ring; 12 percent for women using the diaphragm; and 18 percent for cervical caps, condoms and sponges.

When health care professionals have adequate training and more information is made available to women, a significantly higher percentage of women choose LARCs.

According to a committee of the American College of Obstetricians and Gynecologists, only about 50 percent of ob-gyns offer the contraceptive implant to patients, and although “obstetrician-gynecologists generally have favorable attitudes about IUDs, they may use overly restrictive criteria to identify IUD candidates.” The committee noted that LARCs do not require additional supplies or costs after insertion, making them “highly cost effective,” they have few contraindications, and fertility is restored soon after their removal. “Since implementation of the Affordable Care Act, most insurance plans cover all contraceptives, including LARC methods, with no patient cost sharing.... However, some women do not have coverage under the Affordable Care Act or do not have access to low-cost clinics and may encounter high up-front costs for an IUD or implant. Despite such costs, the implant and the IUDs are highly cost-effective, even with relatively short-term (12-24 months) use.”

LONG-ACTING BIRTH CONTROL INFORMATION ACT

Summary: *The Long-Acting Birth Control Information Act would create a health department program to make long-acting reversible contraceptives (LARCs) more accessible.*

SECTION 1. SHORT TITLE

This Act shall be called the “Long-Acting Birth Control Information Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Half of all pregnancies in the United States each year are unintended.
- 2) Long-Acting Reversible Contraceptives (LARCs) are extremely effective at preventing pregnancy, they are extremely safe, and they can provide protection for up to 12 years.
- 3) According to the Centers for Disease Control and Prevention, only about seven percent of women aged 15-44 currently use LARCs.
- 4) In Colorado, where there has been a program to make LARCs more widely accessible, the state reported a 48 percent decline in birthrates among teens and a 48 percent decline in teen abortions.
- 5) High upfront costs, a lack of adequate training for health care professionals, administrative barriers, and insufficient information and education have made LARCs more difficult to access than other forms of birth control.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of women and families by making Long-Acting Reversible Contraceptives more accessible.

SECTION 3. GREATER ACCESS TO LONG-ACTING REVERSIBLE CONTRACEPTIVES

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Family planning centers” means health clinics that receive funding under the Title X program overseen by the U.S. Department of Health and Human Services as well as other health clinics that the [Department of Health] finds are qualified and willing to perform comprehensive family planning services.
- 2) “Long-Acting Reversible Contraceptives” or “LARCs” means highly effective methods of contraception which last for several years and are easy to use. LARCs include, but are not limited to, intrauterine devices and birth control implants.

MODEL LEGISLATION

(B) PROGRAM TO MAKE LARCS MORE ACCESSIBLE

- 1) There shall be a program administered by the [Department of Health] to improve access to Long-Acting Reversible Contraceptives for women.
- 2) The program shall include:
 - a) Training for family planning centers regarding LARC methods, non-coercive counseling strategies, and managing side effects;
 - b) Training for all public health facilities to ensure that they are qualified and able to insert and remove LARCs;
 - c) Assistance to family planning centers regarding administrative or technical issues such as coding, billing, pharmacy rules, and clinic management related to the provision of LARC methods;
 - d) General financial support to expand the capacity of family planning centers to provide LARCs, and to keep them in stock and available for same day access by patients;
 - e) Education and outreach to the public about the availability, effectiveness and safety of LARCs; and
 - f) A study of making as many contraceptive methods as possible available both over-the-counter and directly through pharmacies, as California and Oregon have done; and
 - g) Other services the [Department] deems necessary to improve access to LARCs.

(C) APPROPRIATION

For the [fiscal year] Fiscal Year: \$5,000,000 [or appropriate amount] is appropriated to the [Department of Health] to improve access to LARC services.

SECTION 4. REPEAL

The following sections are hereby repealed: [list existing provisions that are inconsistent with this Act].

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

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E. REVEAL THE DECEPTION OF THE ANTI-ABORTION MOVEMENT

From Day One Act 96

**Prevent Political Interference
from Delaying Abortion Act.....112**

Keep Abortion Clinics Open Act118

**Prevent Double Standards
in Abortion Regulation Act 122**

**Resolution Opposing “Sex-Selective
Abortion Bans” that Perpetuate
Racial Stereotypes 125**

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*



FROM DAY ONE ACT

The anti-abortion movement describes itself as “pro-life” but it doesn’t advocate for “life” once a child is born. The same politicians who oppose abortion (and often birth control and sex education) also oppose providing basic supports after birth.

Saying that “children are our future” is not just a slogan, it’s the truth. Anyone who cares about protecting human life today and for years in the future must step up and do more for young children now.

Twenty-two percent of all children in the United States live in poverty. Poverty can impede a child’s ability to learn and contributes to social, emotional and behavioral problems. Poverty also causes poor physical and mental health. In fact, poverty is the single greatest threat to children’s well being. And yet, those who advocate for “life” do nothing to help keep children out of poverty.

Pre-Kindergarten for all is essential for young children. Yet many children—particularly low-income children who stand to benefit the most—lack access to early education. Researchers, educators and economists have long noted an achievement gap for low-income and minority students compared to their more advantaged peers and that gap is often already evident when children first enter school.

Health coverage for all is essential, but this is especially true for young children. Unhealthy children tend to grow up to be unhealthy adults, and uninsured preschoolers struggle more when they reach grade school because of untreated medical conditions. Approximately seven percent of all children age five and younger are uninsured, many of them because they live in states without Medicaid expansion under the Affordable Care Act.

The ability for parents to use paid family leave is essential for young children. Nearly forty percent of private sector workers are without any paid sick time and many more cannot use leave time to care for their sick children. Low-income workers are also significantly less likely to have paid sick time than other members of the workforce. Nationally, only one in five of the lowest-income workers (21 percent) has access to paid sick time.

The From Day One Act would offer a range of vital programs for young children. It would directly and indirectly provide essential support for children during the crucial time of their first years of life.

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FROM DAY ONE ACT

Summary: *The From Day One Act would offer a range of vital programs that directly and indirectly provide essential support for young children during their first five years of life.*

SECTION 1. SHORT TITLE

This Act shall be called the “From Day One Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) State and local governments need to do more to support young children during their first five years of life.
- 2) Young children all-too-often live in poverty. Twenty-two percent of all children in the United States, and [insert] percent of children in [jurisdiction], live in families with incomes below the federal poverty level.
- 3) Pre-Kindergarten for all is essential for young children. All children need early education, but lower-income children require it the most. Researchers, educators and economists have long noted an achievement gap for low-income and minority students compared to their more advantaged peers that is often already evident when children first enter school.
- 4) Health coverage for all is essential, but this is especially true for young children. Unhealthy children tend to grow up to be unhealthy adults, and uninsured preschoolers struggle more when they reach grade school because of untreated medical conditions. Approximately seven percent of all children age five and younger are uninsured, many of them because they live in states without Medicaid expansion under the Affordable Care Act.
- 5) The ability for parents to use paid family leave is essential for young children. Only 13 percent of workers in the United States have access to employer-provided paid family leave, and fewer than 40 percent have access to personal medical leave through employer-provided temporary disability insurance to address a personal serious medical need that requires time away from work. Lower-wage workers are hit even harder: only five percent of workers in the bottom wage quartile have access to employer-provided paid family leave, and 17 percent have access to employer-provided short-term disability insurance. Research and the successful programs in California, New Jersey and Rhode Island demonstrate that paid leave promotes economic security and financial independence for working families; businesses experience benefits and cost-savings in the form of increased employee retention and morale; and health care outcomes are improved for mothers, children and elderly relatives.
- 6) All adults in [jurisdiction] have a responsibility to all young children in our state. It is the government’s job to help support them in this responsibility.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of young children during their first years of life.

MODEL LEGISLATION

SECTION 3. PREPARE ALL KIDS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Department” means the Department of [Education].
- 2) “Early Childhood Education Program” means a public, private or collaborative public-private pre-kindergarten program providing early development and learning experiences to [three] and [four] year-old children.
- 3) “Resident” means a person who resides in the state as defined in [relevant statutory section].

(B) VOLUNTARY UNIVERSAL PRE-KINDERGARTEN ESTABLISHED

Beginning no later than school year [201X-201X], and continuing thereafter, all children who are residents of the State and [three or four] years of age on or before [September 15] of a school year shall be entitled, but not required, to attend an early childhood education program free of charge. The Department shall be responsible for implementing, administering and evaluating the early childhood education program and shall collaborate with [other state departments involved].

(C) PROGRAM REQUIREMENTS AND STANDARDS—The Department shall promulgate rules and standards for early childhood education programs. At minimum, the rules and standards shall include:

- 1) Curricula. Curricula and teaching strategies shall be research-based, developmentally appropriate, and designed to support child development and learning in each of the following areas:
 - a) cognitive development;
 - b) creative arts;
 - c) language development;
 - d) literacy;
 - e) mathematics;
 - f) motor skills and physical development;
 - g) science; and
 - h) social and emotional development.
- 2) Operating Schedule. Programs shall operate during the school year and shall provide for coordination with extended and/or year-round services.
- 3) Minimum Hours of Operation. Programs shall provide no less than [30 hours] of instruction per week. For the purposes of this subsection, “instruction” includes direct one-on-one instruction, instruction in small and larger groups, and facilitated child initiated engagements.

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MODEL LEGISLATION

- 4) Teacher Credentials, Training and Compensation.
 - a) Programs shall employ at least one lead teacher in every classroom.
 - b) Each lead teacher shall be required to hold a degree in early childhood education or in a related field with specialized training in early childhood education.
 - c) Each assistant teacher shall be required to hold at least a [Child Development Associate] credential or equivalent, based on coursework.
 - d) All teachers shall be required to have at least [15 hours] of annual in-service training or its equivalent.
- 5) Class Size and Staff-Child Ratio.
 - a) Class size shall not exceed [twenty] children.
 - b) There shall not be more than [ten] children per teacher in the classroom.
- 6) Meals. A program shall provide at least one full meal per day for every student enrolled in the program.
- 7) Health Services. A program shall provide screenings and referrals for vision, hearing, dental and general health services.
- 8) Family Involvement.
 - a) A program shall include regular events for meaningful family involvement which, at minimum, includes:
 - i) guidelines for communicating with parents or guardians;
 - ii) involving parents and guardians in decisions about the instructional needs of their children and;
 - iii) opportunities for effective and meaningful parental or guardian participation in the program.
 - b) Programs shall also include regular parent or guardian conferences, home or workplace visits, or other parental or guardian opportunities for participation and interaction with a child's preschool program.
- 9) Community Collaboration. Programs shall collaborate with participating families, early care providers, and community partners to assure that all children are offered access to quality preschool education, and that there is coordination with child care and other services the state provides to young children and their families.
- 10) Each program shall employ at least one teacher with credentials or experience working with children with special needs and creating Individualized Education Plans.

(D) FUNDING—The Department shall develop a plan to finance the early childhood education program and submit the plan to the [legislature] no later than [6 months from enactment]. The plan shall include the following provisions:

- 1) Funding is not dependent on any tuition fee.
- 2) Allocation of funds shall be based upon [the enrollment of eligible students and incorporated into the state's school funding formula, such that each early childhood education program receives funds sufficient to provide for high quality programs and cover the costs associated with each of the standards set forth in this section.] [Or whatever is appropriate under your state's education funding system.]

MODEL LEGISLATION

- 3) The Department encourages maximum use of federal and other available funds for early childhood education programs, including funds provided under the Elementary and Secondary Education Act, 20 U.S.C. 6301, et seq.; federal funds provided under Head Start pursuant to 42 U.S.C. 9831, et seq; federal funds for temporary assistance to needy families pursuant to 42 U.S.C. 60, et seq; and any other public or private funds.

(E) PROGRAM EVALUATION—The Department shall implement procedures to support and monitor the quality of the early childhood education program. Program evaluation shall not be used to retain students, deny access to educational programs, or be linked to program funding or teacher pay.

- 1) The Department shall evaluate:
 - a) Progress of children enrolled in early education programs using measures of progress such as advancement in cognitive development; creative arts; language development; literacy; mathematics; motor skills and physical development; science; and social and emotional development.
 - b) Longitudinal effects of attending an early childhood education program on a student's school success in [kindergarten through elementary and secondary school] compared to students who did not attend an early childhood education program.
 - c) Program expenditures including:
 - i) The costs of each early childhood education program, in order to assure that the funds for the program are used expressly for purposes of educational programming. Programs must affirm that parents and guardians are not assessed any fees for children to participate in the program; and
 - ii) The annual expenditure of the statewide program specifying the funding source from which expenditures were made.
- 2) The Department shall work with educational experts to select, administer and analyze program evaluations.

SECTION 4. MEDICAID EXPANSION

After section XXX, the following new section XXX shall be inserted:

[Bill drafting note: In some states, Medicaid expansion can be achieved without enacting a new statute.]

(A) DEFINITIONS

"Department" means the Department of [Health].

(B) EXPAND ELIGIBILITY FOR MEDICAL ASSISTANCE UNDER PATIENT PROTECTION AND AFFORDABLE CARE ACT

- 1) Subject to the availability of federal financial participation pursuant to an approved state plan amendment, the following individuals or groups shall receive medical assistance through [state Medicaid program] pursuant to this section and [insert relevant state law pertaining to Medicaid eligibility]:

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MODEL LEGISLATION

- a) Parents and caretaker relatives of children who are eligible for the medical assistance program or the children's basic health plan, whose family income does not exceed 133 percent of the federal poverty line, adjusted for family size.
 - b) Individuals without a dependent child in the home, as described in section 1902 (a) (10) (A) (i) (VIII) of the Social Security Act, 42 U.S.C. SEC 1396a, who have attained 19 years of age but have not attained 65 years of age, and whose family income does not exceed 133 percent of the federal poverty line, adjusted for family size.
 - c) In accordance with Section 1902(a)(10)(A)(i)(IX) of the federal Social Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(i)(IX)), individuals who are in foster care on his or her 18th birthday until his or her 26th birthday. In addition, the Department shall implement the federal option to provide [name of program] benefits to individuals who were in foster care and enrolled in Medicaid in any state.
- 2) A foster care adolescent who is in foster care in this state on his or her 18th birthday shall be enrolled to receive benefits under this section without any interruption in coverage and without requiring a new application.
 - 3) The Department shall develop procedures to identify and enroll individuals who meet the criteria for eligibility in this section, including, but not limited to, former foster care adolescents who were in foster care on their 18th birthday and who lost coverage as a result of attaining 21 years of age. The Department shall work with counties to identify and conduct outreach to former foster care adolescents who lost coverage as a result of attaining 21 years of age, to ensure they are aware of the ability to reenroll under the coverage provided pursuant to this section.
 - 4) The Department shall develop and implement a simplified redetermination form for this program. A beneficiary qualifying for the benefits extended pursuant to this section shall fill out and return this form only if information known to the Department is no longer accurate or is materially incomplete.
 - 5) The Department shall seek federal approval to institute a renewal process that allows a beneficiary receiving benefits under this section to remain on [Medicaid] after a redetermination form is returned as undeliverable and the county is otherwise unable to establish contact. If federal approval is granted, the recipient shall remain eligible for services under the [Medicaid] fee-for-service program until the time contact is reestablished or ineligibility is established, and to the extent federal financial participation is available.
 - 6) The Department shall terminate eligibility only after it determines that the recipient is no longer eligible and all due process requirements are met in accordance with state and federal law.

SECTION 5. PAID FAMILY AND MEDICAL LEAVE

[Note: Drafting a new paid family and medical leave bill requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. The National Partnership for Women & Families and A Better Balance are available to do any necessary legal research and drafting, and to work with you to customize this model.]

After section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) DEFINITIONS

- 1) "Application year" means the 12-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits.
- 2) "Covered active duty" means as defined in Section 101(14) of the Family and Medical Leave Act, 29 U.S.C. 2611(14).
- 3) "Covered individual" means:
 - a) Any person who: [Note: select one or more of the first three options below, and include the fourth option if allowing self-employed individuals to opt in.]
 - i) Contributed [X dollars] to the paid leave system during the 12-month period prior to submitting an application; or
 - ii) Worked for [X amount of time] for any employer during the 12-month period prior to submitting an application; or
 - iii) Earned [X dollars] from work during the 12-month period prior to submitting an application; or
 - iv) Is self-employed, elects coverage and meets the requirements of section 5(M);
 - b) Meets the administrative requirements outlined in this section and in regulations; and
 - c) Submits an application.
- 4) "Covered servicemember" means as defined in Section 101(15) of the Family and Medical Leave Act, 29 U.S.C. 2611(15).
- 5) "Department" means the [X].
- 6) "Director" means the Director of the Department.
- 7) "Employee" means as defined in [state wage and hour law].
- 8) "Employer" means as defined in [state law with the broadest possible definition of employer, or if no state law is usable, can use Fair Labor Standards Act, 29 U.S.C. 203(d).]
- 9) "Family and medical leave insurance benefits" means the benefits provided under the terms of this Section.
- 10) "Family member" means:
 - a) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the covered individual stands in loco parentis;
 - b) A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or a covered individual's spouse or domestic partner or a person who stood in loco parentis when the covered individual or the covered individual's spouse or domestic partner was a minor child;
 - c) A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual [as defined under X state law or] as registered under the laws of any state or political subdivision;
 - d) A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or the covered individual's spouse or domestic partner; or

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MODEL LEGISLATION

- e) A designated person, which shall mean one additional person designated by a covered individual for whom the covered individual will provide care under this Section if the designated person has a serious health condition.
- 11) “Health care provider” means any person licensed under Federal or [State] law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel, or certified midwives.
- 12) “Next of kin” means as defined in Section 101(17) of the Family and Medical Leave Act, 29 U.S.C. 2611(17).
- 13) “Qualifying exigency leave” means leave for the family member of a military member for the purposes specified in subsections (i) through (iv) of 29 C.F.R. 825.126(b)(3) and subsections (i) through (iv) of 29 C.F.R. 825.126(b)(8), as well as the following reasons:
 - a) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;
 - b) To attend any official ceremony, program or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member;
 - c) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;
 - d) To make or update financial or legal arrangements to address the military member’s absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust;
 - e) To act as the military member’s representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member’s covered active duty status;
 - f) To attend counseling provided by someone other than a healthcare provider, for oneself, for the military member, or for the biological, adopted or foster child, stepchild or legal ward of the military member, a child of the military member’s domestic partner, or a child to whom the military member stands in loco parentis, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;
 - g) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment. Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;
 - h) To attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member’s covered active duty status;

MODEL LEGISLATION

- i) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements and attending funeral services; or
 - j) To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.
- 14) "Retaliatory personnel action" means denial of any right guaranteed under this Section including but not limited to any threat, discharge, suspension, demotion, reduction of hours, any other adverse action against an employee for the exercise of any right guaranteed herein, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency. Retaliatory personnel actions shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Section.
- 15) "Serious health condition" means an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider [OR "Serious health condition" is as defined at Section 101(11) of the Family and Medical Leave Act, 29 U.S.C. 2611(11) or the [state FMLA].]

(B) ELIGIBILITY FOR BENEFITS

Beginning [X days] following establishment of the Family and Medical Leave Insurance Program [Bill drafting note: X here must match the second X in Section 5(N)(1)], family and medical leave insurance benefits are payable to an individual who:

- 1) Meets the definition of "covered individual" under Section 5(A)(3); and
- 2) Meets one of the following requirements:
 - a) Because of birth, adoption or placement through foster care, is caring for a new child during the first year after the birth, adoption or placement of that child;
 - b) Is caring for a family member with a serious health condition;
 - c) Has a serious health condition (including pregnancy) that makes the covered individual unable to perform the functions of the position of such employee;
 - d) Is caring for a covered servicemember who is the covered individual's next of kin;
 - e) Because of any "qualifying exigency leave" arising out of the fact that the family member of the covered individual is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces; or
 - f) Any reason set forth in [the state FMLA].

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(C) DURATION OF BENEFITS

- 1) The maximum number of weeks during which family and medical leave insurance benefits are payable under Section 5(B)(2)(c) in an application year is [X weeks]. The maximum number of weeks during which family and medical leave insurance benefits are payable under Section 5(B)(2)(a), (b), (d), or (e) in an application year is [X weeks]. A covered individual is eligible for [X weeks] of leave under (a) of this subsection and also [X weeks] of leave under (b) of this subsection in an application year.
- 2) Family and medical leave insurance benefits are not payable for the first five calendar days in an application year that a covered individual meets the eligibility requirements of Section 5(B)(1) and (2). This shall be known as the “waiting period” referred to in subsection (3) of this Section.
- 3) If the covered individual uses ten (10) or more days of family and medical leave insurance benefits in an application year, the covered individual shall be paid for the waiting period. The waiting period need only be served once every application year.
- 4) The first payment of benefits must be made to an individual within [X] weeks after the claim is filed and subsequent payments must be made [semimonthly] thereafter.

(D) AMOUNT OF BENEFITS

- 1) The amount of family and medical leave insurance benefits shall be determined as follows:
[Choose one of the first three options below:]
 - a) The weekly benefit shall be [X%] of the covered individual’s average weekly wages during the 12 months preceding submission of the application (or the average weekly wages during the time the covered individual worked if it was less than 12 months), up to a maximum of [X%] of the statewide average weekly wage. [OR]
 - b) The weekly benefit shall be [a sliding scale percentage of average weekly wages, with a higher percentage of wage replacement for low wage workers], up to a maximum of [X dollars]. [OR]
 - c) The weekly benefit shall be [X dollars] per week.
 - d) In no case shall the weekly benefit be less than [X dollars].
- 2) Family and medical leave insurance benefits are not payable for less than eight hours of family and medical leave taken in one work week.

(E) CONTRIBUTIONS

- 1) Payroll contributions shall be authorized in order to finance the payment of benefits under the family and medical leave insurance program.
- 2) Payroll contributions shall be paid by employers and employees in the ratio of [XX] in an amount to be determined by the [state investment board or other state entity/official responsible for making investment or other financial decisions in the state] [OR specify contributions of X% of wages or X dollars for the program’s first year]. In no case shall payroll contributions from an employee exceed [X dollars] total [or X% of wages, up to X dollars total] in any 12-month period. The [state investment board or other state entity/official above] shall be responsible for evaluating and determining on an annual basis the amount of payroll contributions and maximum employee contribution necessary to finance the family and medical leave insurance benefits program.

MODEL LEGISLATION

(F) REDUCED LEAVE SCHEDULE

- 1) A covered individual shall be entitled, at the option of the covered individual, to take paid family and medical leave on an intermittent or reduced leave schedule in which all of the leave authorized under this Section is not taken sequentially. Family and medical leave insurance benefits for intermittent or reduced leave schedules shall be prorated.
- 2) The covered individual shall make a reasonable effort to schedule paid family and medical leave under this section so as not to unduly disrupt the operations of the employer. The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will be taking the leave, to the extent practicable. Paid family and medical leave taken under this section shall not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.
- 3) Nothing in this section shall be construed to entitle a covered individual to more leave than required under Section 5(C).

(G) LEAVE AND EMPLOYMENT PROTECTION

- 1) Any covered individual who exercises his or her right to family and medical leave insurance benefits or earns waiting period credits under Section 5(C)(2) shall, upon the expiration of that leave, be entitled to be restored by the employer to the position held by the covered individual when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment including fringe benefits and service credits that the covered individual had been entitled to at the commencement of leave.
- 2) During any leave taken pursuant to Section 5(B), the employer shall maintain any health care benefits the covered individual had prior to taking such leave for the duration of the leave as if the covered individual had continued in employment continuously from the date he or she commenced the leave until the date the family and medical leave insurance benefits terminate; provided, however, that the covered individual shall continue to pay the covered individual's share of the cost of health benefits as required prior to the commencement of the leave.
- 3) This section shall be enforced as provided in [X - Could be state FMLA, state civil rights law, or state unemployment law—or new enforcement language if necessary].

(H) RETALIATORY PERSONNEL ACTIONS PROHIBITED

- 1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Section.
- 2) An employer, temporary help company, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because he or she exercised rights protected under this Section. Such rights include but are not limited to the right to request, file for, apply for or use benefits provided for under this Section; communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or has testified or is about to testify or has assisted in any investigation, hearing or proceeding under this Section, at any time,

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MODEL LEGISLATION

including during the waiting period and the period in which the person receives family and medical leave insurance benefits under this Section; inform any person about any employer's alleged violation of this Section; and the right to inform any person of his or her rights under this Section.

- 3) It shall be unlawful for an employer's absence control policy to count paid family and medical leave taken under this Section as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.
- 4) Protections of this section shall apply to any person who mistakenly, but in good faith, alleges violations of this Section.
- 5) This section shall be enforced as provided in [X—Could be state FMLA, state civil rights law, or state unemployment law—or new enforcement language if necessary].

(I) COORDINATION OF BENEFITS

- 1) Leave taken with wage replacement under this Act that also qualifies as leave under the federal [or state] FMLA shall run concurrently with leave taken under the federal [or state] FMLA.
- 2) An employer may require that payment made pursuant to this section be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer must give employees written notice of this requirement.
- 3) This section does not diminish an employer's obligation to comply with any of the following that provide more generous leave: a collective bargaining agreement; an employer policy; or any law.
- 4) An individual's right to leave under this section may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after the effective date of this Section. Any agreement by an individual to waive his or her rights under this section is void as against public policy.

(J) NOTICE

- 1) Each employer shall provide written notice to each employee upon hiring and annually thereafter. An employer shall also provide written notice to an employee when the employee requests leave under this Section, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under Section 5(B)(2). Such notice shall include:
 - a) the employee's right to family and medical leave insurance benefits under this Section and the terms under which it may be used;
 - b) the amount of family and medical leave insurance benefits;
 - c) the procedure for filing a claim for benefits;
 - d) the procedure for selecting a designated person as defined in this Section;
 - e) the right to job protection and benefits continuation under Section 5(G);
 - f) that discrimination and retaliatory personnel actions against a person for requesting, applying for or using family and medical leave insurance benefits is prohibited under Section 5(H); and
 - g) that the employee has a right to file a complaint for violations of this Section.

MODEL LEGISLATION

- 2) An employer shall also display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by this section in English, [X, X,] and any language that is the first language spoken by at least X% of the employer's workforce, provided that such notice has been provided by the Department. The Director may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice.
- 3) An employer may establish a uniform process for employees to select a "designated person" as defined in this Act within thirty days of the individual's date of hire. Thereafter, the employer must permit the employee to make or change such a designation, as applicable, on an annual basis. If an employer establishes a uniform process, the covered employee must make such a designation using the employer's process. If an employer does not establish such a uniform process, the employee may make such a designation when filing a claim for benefits.
- 4) Employees shall provide notice to their employers as soon as practicable of their intention to take leave under this Act.

(K) ENFORCEMENT

- 1) The Director shall establish a system for appeals in the case of a denial of family and medical leave insurance benefits. In establishing such system, the Director may utilize any and all procedures and appeals mechanisms established under the [state unemployment compensation law].
- 2) Judicial review of any decision with respect to family and medical leave insurance benefits shall be permitted in a court of competent jurisdiction after a party aggrieved thereby has exhausted all administrative remedies established by the Director.
- 3) The Director shall implement procedures to ensure confidentiality of all information related to any claims filed or appeals taken to the maximum extent permitted by applicable laws.

(L) ERRONEOUS PAYMENTS AND DISQUALIFICATION FOR BENEFITS

- 1) A covered individual is disqualified from family and medical leave insurance benefits for one year if the individual is determined by the Director to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this Section.
- 2) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the Department may seek repayment of benefits from the recipient. The Director shall exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

MODEL LEGISLATION

(M) ELECTIVE COVERAGE

- 1) A self-employed person, including a sole proprietor, partner or joint venturer, may elect coverage for an initial period of not less than three years. The self-employed person must file a notice of election in writing with the Director, as required by the Department. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed person must agree to supply any information concerning income that the Department deems necessary.
- 2) A self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the Director may prescribe by rule, by filing written notice with the Director, such withdrawal to take effect not sooner than 30 days after filing the notice.

(N) FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

- 1) Within [X days] of the effective date of this Section, the Department shall establish and administer a family and medical leave insurance program and within [X months] following establishment of the program pay family and medical leave insurance benefits as specified in this Act.
- 2) The Department shall establish reasonable procedures and forms for filing claims for benefits under this Act and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.
- 3) The Department shall notify the employer within five business days of a claim being filed pursuant to this Section.
- 4) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.
- 5) Information contained in the files and records pertaining to an individual under this Section are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records upon the presentation of the individual's signed authorization.
- 6) The Director shall adopt rules as necessary to implement this Section.

(O) FEDERAL INCOME TAX

- 1) If the Internal Revenue Service determines that family and medical leave insurance benefits under this Section are subject to federal income tax, the Department must advise an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:
 - a) The Internal Revenue Service has determined that benefits are subject to federal income tax;
 - b) Requirements exist pertaining to estimated tax payments;
 - c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the federal internal revenue code; and
 - d) The individual is permitted to change a previously elected withholding status.

MODEL LEGISLATION

- 2) If the individual elects to have federal tax payments withheld, the Department shall deduct and withhold the amount specified in the Internal Revenue Code in a manner consistent with [laws of the state], and amounts deducted and withheld from benefits must remain in the Family and Medical Leave Insurance Fund established in Section 5(P) until transferred to the federal taxing authority as a payment of income tax.
- 3) The Director shall follow all procedures specified by the Internal Revenue Service pertaining to the deducting and withholding of income tax.

(P) FAMILY AND MEDICAL LEAVE INSURANCE ACCOUNT FUND—ESTABLISHMENT AND INVESTMENT

- 1) The Family and Medical Leave Insurance Fund is created in the custody of the [X, such as the state financial officer]. Expenditures from the Fund may be used only for the purposes of the family and medical leave insurance benefits program. Only the Director of the Department or the Director's designee may authorize expenditures from the Fund.
- 2) Whenever, in the judgment of the [X, such as the state financial officer], there shall be in the Family and Medical Leave Insurance Fund an amount of funds in excess of that amount deemed by [X, such as the state financial officer] to be sufficient to meet the current expenditures properly payable there from, [X, such as the state financial officer] shall have full power to invest, reinvest, manage, contract, sell or exchange investments acquired with such excess funds in the manner prescribed by [state law].

(Q) REPORTS

Beginning [X date], the Department shall report to the legislature by [September 1st] of each year on projected and actual program participation by Section 5(B)(2) purpose, gender of beneficiary, premium rates, fund balances, outreach efforts, and, for leaves taken under Section 5(B)(2)(b), family members for whom leave was taken to provide care.

(R) PUBLIC EDUCATION

The Department shall conduct a public education campaign to inform workers and employers regarding the availability of family and medical leave insurance benefits. The Department may use [X%] of the funds collected for the family and medical leave insurance benefits program in a given year to pay for the public education program. Outreach information shall be available in English, [X, X,] and other languages spoken by more than [X%] of the state's population.

(S) SHARING TECHNOLOGY

The Department is encouraged to use state data collection and technology to the extent possible and to integrate the program with existing state policies.

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MODEL LEGISLATION

SECTION 6. REPEAL

The following are repealed: [If there are provisions in existing law that are inconsistent with this Act, this section should repeal them.]

SECTION 7. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision, or application thereof to any person or circumstance, is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 8. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

PREVENT POLITICAL INTERFERENCE FROM DELAYING ABORTION ACT

Abortion is one of the safest and most common medical procedures in the United States. The Centers for Disease Control found that legal abortion is significantly safer than childbirth, and a study in the American Journal of Public Health reported that first-trimester abortion is one of the safest medical procedures in America. Approximately three in ten women will have an abortion in their lifetimes and will need access to safe, legal facilities to obtain abortion care.

Mandatory waiting periods delay abortions. Twenty-seven states have mandatory waiting periods requiring women to wait from 24 to 72 hours before obtaining an abortion. Thirteen states require in-person anti-abortion “counseling” before the waiting period begins, thereby requiring two trips to the clinic. Yet, there are no waiting periods or “counseling” when people receive far more serious medical procedures.

Lack of insurance coverage delays abortions. Thirty-three states and the District of Columbia prohibit the use of state Medicaid funds for abortion, except in limited cases. Twenty-five states restrict abortion coverage in their insurance exchanges. Twenty-one states restrict abortion coverage for state employee health plans. Ten states restrict abortion coverage in standard private insurance plans. And eighteen states have more than one of the above restrictions.

A lack of qualified abortion providers delays abortions. Because of restrictive laws and physical threats, the number of abortion providers has declined over the years. The American College of Obstetricians and Gynecologists (ACOG) recommends allowing trained advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration and medication abortions, yet only a few states allow it.

TRAP laws which cause high-quality health clinics to close, delay abortions. Currently, 24 states have Targeted Regulation of Abortion Providers or “TRAP laws” that are intended to close abortion clinics. Most often, the restrictions dictate that abortions be performed at sites that are the functional equivalent of ambulatory surgical centers, or even hospitals, which makes the delivery of health care services prohibitively expensive. Other TRAP laws require clinicians at abortion facilities to have admitting privileges at a local hospital or mandate transfer agreements with hospitals, effectively giving hospitals veto power over whether an abortion clinic can exist.

Delays serve no positive medical purpose and, in fact, often make a woman’s health care harder to access and more expensive. Laws that delay abortion are not intended to protect a woman’s safety; they are designed to coerce women to give birth to unwanted children.

The practice of abortion care, like all medical care, should be driven by evidence-based standards. Like other areas of medicine, standards should be developed and supported by medical professionals, not by ideologues.

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PREVENT POLITICAL INTERFERENCE FROM DELAYING ABORTION ACT

Summary: *The Prevent Political Interference from Delaying Abortion Act would remove restrictions that delay access to early abortion care, such as waiting periods and TRAP laws, and it would expand access to abortion providers as well as guarantee public and private insurance coverage for abortion.*

SECTION 1. SHORT TITLE

This Act shall be called the “Prevent Political Interference from Delaying Abortion Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Abortion care is one of the safest medical procedures in the United States.
- 2) Approximately three in ten women will have an abortion in their lifetimes, and will need access to safe, legal facilities to obtain abortion care.
- 3) If a woman seeks an abortion and her access is delayed, it may increase the risk of adverse health outcomes as well as the cost.
- 4) If a woman seeks an abortion and her access is delayed, it frustrates a woman’s constitutionally protected capacity to make her own personal medical decisions.
- 5) Abortion care may be delayed by lack of insurance coverage.
- 6) Abortion care may be delayed by an insufficient number of health care professionals who perform abortions.
- 7) Abortion care may be delayed by arbitrary waiting periods.
- 8) Abortion care may be delayed by lack of nearby clinics because of closures caused by arbitrary regulation of healthcare facilities that handle abortion.
- 9) The practice of abortion care, like all medical care, should be driven by evidence-based standards developed and supported by medical professionals, not by arbitrary requirements that delay medical care.

(B) PURPOSE—This law is enacted to ensure that women, regardless of their economic status, are able to obtain access to abortion care without medically unnecessary delay.

SECTION 3. ABORTION COVERAGE EQUITY

After section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) DEFINITIONS—In this section:

- 1) “Abortion” means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) “State” means the state and every county, city, town, municipal corporation, quasi-municipal corporation, and public institution of higher education in the state.

(B) POLICY TO COVER ABORTION

Abortion shall be covered in all types of health insurance offered, sold, or purchased in this State, including all private plans, all state-funded plans, and all state-provided benefits.

(C) RESTRICTIONS REPEALED

- 1) Section XXX [any provision of law that prohibits abortion care in private health insurance plans] is hereby repealed.
- 2) Section XXX [any provision of law that prohibits abortion care in state employee insurance plans] is hereby repealed.
- 3) Section XXX [any provision of law that prohibits abortion care in the state insurance exchange] is hereby repealed.
- 4) Section XXX [any provision of law that prohibits abortion care in Medicaid coverage] is hereby repealed.
- 5) Section XXX [any provision of law that prohibits abortion care in any other state-funded insurance program] is hereby repealed.

(D) SEVERABILITY

The provisions of this Section shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

SECTION 4. QUALIFIED PROVIDERS OF ABORTION

(A) DEFINITIONS—In this section:

- 1) “Aspiration abortion” means medical treatment intended to induce the termination of a pregnancy by dilating the cervix and using suction to remove the fetus and related pregnancy material from the uterus.
- 2) “Certified nurse-midwife” means a person licensed under [insert relevant provision].
- 3) “Medication abortion” means the use of medication intended to terminate a pregnancy so that it does not result in a live birth.

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MODEL LEGISLATION

- 4) “Nurse practitioner” means a person licensed under [insert relevant provision].
- 5) “Physician assistant” means a person licensed under [insert relevant provision].

(B) QUALIFIED PROVIDERS TO INCLUDE NURSE PRACTITIONERS AND NURSE-MIDWIVES

- 1) A nurse practitioner or a certified nurse-midwife is authorized to prescribe and supervise medication abortions and to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing nurse practitioners and certified nurse-midwives].
- 2) It is unprofessional conduct for any nurse practitioner or certified nurse-midwife to prescribe or supervise an aspiration or medication abortion without prior successful completion of training and validation of clinical competency.
- 3) The [insert relevant board governing nurse practitioners and certified nurse-midwives] shall issue rules for training, clinical competency, and standardized procedures for medication abortion and aspiration abortion.

(C) QUALIFIED PROVIDERS INCLUDE PHYSICIAN ASSISTANTS

- 1) A physician assistant is authorized to prescribe and supervise medication abortions and to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing physician assistants].
- 2) It is unprofessional conduct for any physician assistant to prescribe or supervise an aspiration or medication abortion without prior successful completion of training and validation of clinical competency.
- 3) The [insert relevant board governing physician assistants] shall issue rules for training, clinical competency, and standardized procedures for medication abortion and aspiration abortion.

[Bill drafting note: You will have to consult with local advocates and the effected healthcare professional associations before writing this bill. Healthcare regulatory schemes often differ from state to state. In addition, there are various ways to achieve the same goal, depending on the wording of your state’s “physician-only” provision (that is, existing statutory language that an abortion can be performed only by a physician):

- a) A few states have used regulatory processes and a few have used Attorney General opinions to allow APCs to practice despite so-called “physician-only” laws. These non-legislative avenues might be possible in your state.
- b) Depending on the state, you might simply repeal the “physician-only” provision; the underlying statutory and regulatory scheme might be sufficient to allow APCs to handle both aspiration and medication abortions.
- c) Alternatively, by inserting definitions of APCs or by using current definitions in state law, you might amend the existing “physician-only” provision to add APCs, making it a physician and APCs only law. Unless you add additional restrictions, this approach would cover both aspiration and medication abortions.]

MODEL LEGISLATION

SECTION 5. REPEAL OF TARGETED REGULATION OF ABORTION PROVIDERS

- 1) Section XXX [any provision of law that singles out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures] is hereby repealed.
- 2) Section XXX [any provision of law that is the proximate cause of the closure of an abortion facility or facilities and which has not been proven by clear and convincing evidence necessary to prevent a bona fide threat to patient safety] is hereby repealed.
- 3) Section XXX [any provision that includes onerous licensing standards comparable or equivalent to the standards of ambulatory surgical centers e.g. procedure room size, corridor width, required minimum distance from hospital, transfer agreement with hospitals] is hereby repealed.
- 4) Section XXX [any provision that includes onerous requirements on clinicians that perform abortions e.g. admitting privileges] is hereby repealed.

SECTION 6. REPEAL WAITING PERIODS AND MANDATORY BIASED COUNSELING

- 1) Section XXX [any provision of law that requires a waiting period before an abortion is performed] is hereby repealed.
- 2) Section XXX [any provision of law that necessitates multiple trips to a clinic for reasons other than medical necessity] is hereby repealed.
- 3) Section XXX [any provision of law that necessitates an ultrasound or sonogram for reasons other than medical necessity] is hereby repealed.

SECTION 7. REPEAL

The following are repealed: [If there are provisions in existing law that are inconsistent with this Act, and have not been directly addressed in sections above, this section should repeal them.]

SECTION 8. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 9. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

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KEEP ABORTION CLINICS OPEN ACT

Abortion is one of the safest and most common medical procedures in the United States. The Centers for Disease Control found that legal abortion is significantly safer than childbirth, and a study in the American Journal of Public Health reported that first-trimester abortion is one of the safest medical procedures in America. Approximately three in ten women will have an abortion in their lifetimes, and will need access to safe, legal facilities to obtain abortion care.

Despite the safety of the procedure, abortion clinics are frequently required to follow burdensome and unnecessary regulations that are actually designed to close those facilities. Currently, 24 states have Targeted Regulation of Abortion Providers or “TRAP laws,” designed to close abortion clinics. Most often, the restrictions dictate that abortions be performed at sites that are the functional equivalent of ambulatory surgical centers, or even hospitals, which makes the delivery of health care services prohibitively expensive. Other TRAP laws require clinicians at abortion facilities to have admitting privileges at a local hospital or mandate transfer agreements with hospitals—setting standards that are extremely difficult for providers to meet and effectively giving hospitals veto power over whether an abortion clinic can exist.

TRAP laws have done what their proponents intended—they have closed scores of abortion clinics. In 2015, four states had only one abortion provider, and at least ten states had five or fewer abortion providers. Today, almost 90 percent of U.S. counties have no abortion facility at all.

Leading medical associations oppose TRAP laws as unnecessary and counterproductive.

In a court brief opposing the Texas TRAP law that is being reviewed by the U.S. Supreme Court, the American Medical Association (AMA) and the American College of Obstetricians and Gynecologists (ACOG) oppose requiring abortion facilities to meet ambulatory surgical facilities requirements and physicians providing abortion services to have admitting privileges at a local hospital. They explain that such a law “does not serve the health of women...but instead jeopardizes women’s health by restricting access to abortion providers.”

The Keep Abortion Clinics Open Act would restore medical standards to abortion law.

It would ensure that no clinic could be shut down under TRAP laws without a due process administrative proceeding that proves it is a *bona fide* threat to public health.

KEEP ABORTION CLINICS OPEN ACT

Summary: *The Keep Abortion Clinics Open Act would ensure that no clinic could be shut down under TRAP laws without a due process administrative proceeding that proves it is a bona fide threat to public health.*

SECTION 1. SHORT TITLE

This Act shall be called the “Keep Abortion Clinics Open Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Approximately three in ten women will have an abortion in their lifetimes, and will need access to safe, legal facilities to obtain abortion care.
- 2) Women often rely on these same facilities for other preventive care and reproductive health services, including cancer screenings, family planning, pap smears, gynecological and other well-woman health care services, as well as STI treatment and counseling.
- 3) Almost 90 percent of U.S. counties lack an abortion facility. Laws that impose medically unnecessary and costly requirements on these facilities force additional facilities to close, further reducing women’s access to crucial reproductive health services.
- 4) Clinic closures can force women to travel long distances to reach the nearest clinic, or force women to delay care as they arrange transportation, time off from work, and save additional money for travel or lodging costs. [Add state specific information about how far a woman would have to travel if a clinic closed.]
- 5) Clinic closures can make women more likely to seek out less safe alternatives to legal abortion, thus putting their health at risk.
- 6) Major health care organizations, including the American Medical Association and the American College of Obstetricians and Gynecologists, oppose medically-unnecessary regulation of abortion facilities.
- 7) In evaluating whether a law imposes an undue burden, federal courts have held that regulations of abortion facilities that purport to protect women’s health must be justified by legitimate medical evidence. For instance, the U.S. Court of Appeals for the Seventh Circuit held that “[t]he feebleness of the medical grounds [justifying an abortion restriction], the likelier the burden, even if slight, to be ‘undue.’”

(B) PURPOSE—This law is enacted to protect the health and safety of women by blocking the enforcement of laws that unjustifiably force clinics to close.

MODEL LEGISLATION

SECTION 3. DISCLOSURE OF CRITICAL INFORMATION TO PREGNANT CLIENTS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Abortion facility” means a medical office or other facility in which abortions are provided or performed.
- 2) “Bona fide threat to patient safety” means a condition or set of conditions in an abortion facility that has caused or is likely to cause serious injury, harm, impairment, or death to a patient or patients.
- 3) “Department” means [insert name of relevant state agency].
- 4) “Proximate cause” means a cause that produces a result in a natural and probable sequence and without which the injury would not have occurred.
- 5) “State” means the state of [insert state name] and includes any branch, department, agency, instrumentality or individual acting under color of law of the state or a subdivision of the State.

(B) PROCEDURES REQUIRED FOR ABORTION FACILITY CLOSURES

- 1) General rule. The State shall not enforce any law(s) or regulation(s) that was the proximate cause of the closure of an abortion facility or facilities and which the Department fails to prove, by clear and convincing evidence, was necessary to prevent a bona fide threat to patient safety.
- 2) Presumption of improper legislative purpose or effect.
 - a) The closure of an abortion facility or facilities in this State within two years prior to or after the effective date of this section creates a presumption that a state law or regulation had the improper legislative purpose or effect to close the abortion facility or facilities.
 - b) Such closure triggers an investigation by the Attorney General within 180 days of the effective date of this section.
 - c) If the Attorney General fails to commence such an investigation within 180 days, an abortion facility that closed within two years prior to the effective date of this Act may petition the Attorney General to commence an investigation. The Attorney General shall commence an investigation upon 30 days of receipt of such petition.
 - d) An abortion facility may waive an investigation required by this section.
- 3) Investigation requirements. In conducting an investigation required by subsection (2), the Attorney General shall determine whether a state law(s) or regulation(s) was the proximate cause of the closure of an abortion facility or facilities. If such a determination is made, the Attorney General shall require the Department to prove by clear and convincing evidence that such a state law(s) or regulation(s) was necessary to prevent a bona fide threat to patient safety. In determining whether the Department has met its burden, the Attorney General shall consider, but not be limited to, the following factors:
 - a) The purported need for the law(s) or regulation(s);
 - b) The actual need for the law(s) or regulation(s) based on patient safety;

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MODEL LEGISLATION

- c) Alternative means by which the purported or actual need could be met;
 - d) The safety record of the abortion facility or facilities throughout the state;
 - e) The documented benefits of the law(s) or regulation(s)' requirements for patient safety as it applies to the provision of abortion;
 - f) Evidence from medical institutions, organizations, or experts that address the necessity of this type of law or regulation for the safety of patients who obtain an abortion, or evidence of opposition to this type of law by such institutions, organizations or experts;
 - g) Evidence of threats to patient safety at abortion facilities throughout the state prior to enactment;
 - h) Legislative history documenting the abortion facility's projected inability to comply;
 - i) Legislative history indicating animus toward abortion or improper purpose, including but not limited to prior bills introduced by the law's sponsors, statements made during committee hearings or floor debates, and statements made to the media;
 - j) Evidence of similar laws or regulations closing abortion facilities in other states; and
 - k) The community need for the abortion facility, including service to underserved patients or communities.
- 4) Written findings. The Attorney General shall issue a written report that includes:
- a) Whether a state law(s) or regulation(s) was the proximate cause of the closure of an abortion facility or facilities pursuant to subsection (3);
 - b) The Department's response related to each of the factors considered in the assessment of the Department's burden; and
 - c) The Attorney General's analysis and conclusions as to whether the Department met its burden to prove, by clear and convincing evidence, that a state law(s) or regulation(s) was necessary to prevent a bona fide threat to patient safety pursuant to subsection (3).

SECTION 4. ENFORCEMENT

If an investigation conducted pursuant to Section 3 concludes that a state law(s) or regulations(s) was the proximate cause of the closure of an abortion facility or facilities and that the Department failed to prove by clear and convincing evidence that the law(s) or regulations(s) was necessary to prevent a bona fide threat to patient safety, the Attorney General [and/or relevant prosecutorial entity] shall not enforce such law or regulation against any abortion facility in the State.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

[Bill drafting note: This bill can also be used as an amendment to a pending TRAP bill with the following language: The closure of an abortion facility or facilities in this State on or after the effective date of this Act triggers an investigation by the State Attorney General within 180 days of such closure pursuant to subsection (2). Then insert the rest of this bill.]

PREVENT DOUBLE STANDARDS IN ABORTION REGULATION ACT

Abortion is one of the safest and most common medical procedures in the United States. The Centers for Disease Control found that legal abortion is significantly safer than childbirth, and a study in the American Journal of Public Health reported that first-trimester abortion is one of the safest medical procedures in America. Approximately three in ten women will have an abortion in their lifetimes, and will need access to safe, legal facilities to obtain abortion care.

Despite the safety of the procedure, abortion clinics are frequently required to follow burdensome and unnecessary regulations that are actually designed to close those facilities. Currently, 24 states have Targeted Regulation of Abortion Providers or “TRAP laws,” designed to close abortion clinics. Most often, the restrictions dictate that abortions be performed at sites that are the functional equivalent of ambulatory surgical centers, or even hospitals, which makes the delivery of health care services prohibitively expensive. Other TRAP laws require clinicians at abortion facilities to have admitting privileges at a local hospital or mandate transfer agreements with hospitals—setting standards that are extremely difficult for providers to meet and effectively giving hospitals veto power over whether an abortion clinic can exist.

TRAP laws have done what their proponents intended—they have closed scores of abortion clinics. In 2015, four states had only one abortion provider, and at least ten states had five or fewer abortion providers. Today, almost 90 percent of U.S. counties have no abortion facility at all.

Leading medical associations oppose TRAP laws as unnecessary and counterproductive. In a court brief opposing the Texas TRAP law that is being reviewed by the U.S. Supreme Court, the American Medical Association (AMA) and the American College of Obstetricians and Gynecologists (ACOG) oppose requiring abortion facilities to meet ambulatory surgical facilities requirements and physicians providing abortion services to have admitting privileges at a local hospital. They explain that such a law “does not serve the health of women...but instead jeopardizes women’s health by restricting access to abortion providers.”

The Prevent Double Standards in Abortion Regulation Act would restore medical standards to abortion law. It would prohibit the implementation of TRAP laws that single out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures.

PREVENT DOUBLE STANDARDS IN ABORTION REGULATION ACT

Summary: *The Prevent Double Standards in Abortion Regulation Act would prohibit the implementation of laws that single out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures.*

SECTION 1. SHORT TITLE

This Act shall be called the “Prevent Double Standards in Abortion Regulation Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Abortion is one of the safest medical procedures in the United States.
- 2) Comprehensive reproductive health care, including safe abortion care, is a vital component of a woman’s overall health.
- 3) Like other medical procedures, the safety of abortion care is secured through evidence-based practices developed and supported by medical professionals.
- 4) Any regulation of medical care should be carried out in a way that increases, rather than decreases, access and allows for affordable, high quality care in the least complex facility that is medically appropriate.
- 5) Laws and regulations that place obstacles in the paths of women seeking safe abortion care infringe on a woman’s constitutionally protected capacity to make personal medical decisions and threaten the health and safety of women and families.
- 6) Major health care organizations, including the American Medical Association and the American College of Obstetricians and Gynecologists, oppose medically-unnecessary regulation of abortion facilities.
- 7) It is therefore the intent of the legislature to ensure that no law jeopardizes women’s health by singling out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures.

(B) PURPOSE—This law is enacted to protect the health and safety of women by blocking the enforcement of laws that unjustifiably force clinics to close.

SECTION 3. PREVENTION OF DOUBLE STANDARDS

After section XXX, the following new section XXX shall be inserted:

MODEL LEGISLATION

(A) DEFINITIONS—In this section:

- 1) “Department” means [insert appropriate state agency for enforcement].
- 2) “Medically comparable procedures” means procedures with similar needs regarding the facility setting and personnel. Those needs are based on the procedure’s risks, complexity, and duration, including the level and duration of anesthesia or sedation to be used, and the degree of sterile precautions indicated by the nature of the procedure.
- 3) “Personnel” means an individual providing health care services at an abortion facility, regardless of whether the individual is a contract or full-time employee.
- 4) “State” means the state of [insert state name] and includes any branch, department, agency, instrumentality, or individual acting under color of law of the state or a subdivision of the state.

[Bill drafting note: Depending on your state’s laws, the term “abortion” may need to be defined, or an existing definition may need to be referenced in this bill.]

(B) CONSISTENCY IN REGULATION

- 1) The State may not, by law or regulation, impose on a medical facility where abortions are provided or performed requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures, including but not limited to requirements related to the facility’s physical plant, construction or renovations thereof; requirements related to the facility’s equipment, staffing, infection control and sanitation, or medical waste disposal; or the hospital transfer arrangements of such facilities.
- 2) The State may not, by law or regulation, impose on the personnel of a medical facility where abortions are provided or performed, requirements that are more burdensome than that imposed on the personnel of facilities that provide medically comparable procedures, including but not limited to requirements related to the credentials, hospital privileges, or other arrangements with hospitals of such personnel.

SECTION 4. REPEAL

Section XXX is hereby repealed. [Place here any provisions of existing law that are inconsistent with this Act.]

SECTION 5. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016.

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RESOLUTION OPPOSING “SEX-SELECTIVE ABORTION BANS” THAT PERPETUATE RACIAL STEREOTYPES

Summary: *The Resolution Opposing “Sex-Selective Abortion Bans” That Perpetuate Racial Stereotypes would declare opposition to “sex-selective abortion bans” which serve the purpose of exploiting racial stereotypes and anti-immigrant sentiment in order to undermine the power women of color have to make their own reproductive healthcare decisions.*

SECTION 1. SHORT TITLE

This Resolution shall be called the “Resolution Opposing ‘Sex-Selective Abortion Bans’ That Perpetuate Racial Stereotypes.”

SECTION 2. RESOLUTION OPPOSING RACIAL STEREOTYPES

Whereas, In 2014 and 2015, sex-selective abortion bans were introduced in 21 states and passed in eight states: Arizona, Illinois, Kansas, North Carolina, North Dakota, Oklahoma, Pennsylvania, and South Dakota; and

Whereas, A sex-selective abortion ban prohibits abortions performed on the basis of sex; doctors who perform such a procedure could face jail time, fines or lawsuits from a patient or her spouse, parent, sibling or guardian; a doctor or nurse who suspects a patient is seeking a sex-selective abortion is required to report her to authorities; and

Whereas, Lawmakers across the country have successfully advocated for sex-selective abortion bans by perpetuating false and harmful racial stereotypes that such laws are necessary to stop an influx of Asian immigrants from spreading this practice and that Asian American communities do not value the lives of women and girls; and

Whereas, Sex-selective abortion bans encourage racial profiling of women by some medical providers, can lead to the denial of reproductive health care services to women by some medical providers, and lead to further stigmatization of women, particularly Asian American women; and

Whereas, In 2012, a sex-selective abortion ban was proposed in the U.S. Congress, benignly named the Prenatal Nondiscrimination Act, and has since been reintroduced in Congress; and

Whereas, Some versions of sex-selective abortion bans have also included a race-selective ban, that would ban abortions performed on the basis of race and are based on suggestions that African American women are not capable of responsible reproductive health decisions and that abortion providers have a racist agenda; and

MODEL LEGISLATION

Whereas, A coalition of Asian American and reproductive rights, health and justice organizations has formed to educate the public about the stereotyping inherent in sex-selective abortion bans, to condemn the rhetoric of ban advocates as deeply offensive, and to organize to defeat such discriminatory policies.

Whereas, a few jurisdictions have already taken a position to publicly oppose sex-selective abortion bans; now, therefore, be it:

RESOLVED, That the [insert relevant government entity] urges [insert relevant government entity] to reject any future attempts to pass a state sex-selective abortion ban; and, be it

Further RESOLVED, [insert relevant government entity] calls upon other cities, states and the federal government to likewise reject these discriminatory measures.

Further RESOLVED, [Insert state] rejects any future attempts to pass a state sex-selective abortion ban; and calls upon other cities, states, and the federal government to likewise reject these discriminatory measures.

SECTION 3. DATE

This Resolution was signed and took effect on XXXX 1, 2016.

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F. PRESENT A BROAD VISION FOR ABORTION RIGHTS IN AMERICA

Women's Economic Security Act 128

**Women's Equality, Dignity
and Fairness Act..... 156**

**Support for All Pregnancy
Options Act 166**

Abortion Is Health Care Resolution..... 177

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*



WOMEN'S ECONOMIC SECURITY ACT

Women's economic security is inherently connected to their access to reproductive health care, including abortion. This is conclusively proven by a 2015 report from the Reproductive Health Technologies Project (RHTP). Drawing on data from a longitudinal study by Advancing New Standards In Reproductive Health (ANSIRH), the RHTP study shows:

- **Most women who seek abortion are already struggling financially.** Over two-thirds of women obtaining abortions have incomes below 200 percent of the federal poverty level. The ANSIRH study found that two-thirds of them had incomes below the poverty line.
- **The most common reasons cited for seeking an abortion are financial concerns.** Forty percent of women seeking an abortion were not financially prepared to have a baby. They had general financial concerns, were unemployed or underemployed, were uninsured or could not get TANF funds, or did not want government assistance. In short, they could not afford to have a child.

- **Women denied an abortion are more likely to be in poverty two years later.**

According to the ANSIRH data, women who were turned away from abortion care had a three times greater chance of ending up below the federal poverty line than similarly-situated women who were able to access abortion care.

- **Many women cannot afford the cost of an abortion.** The median price of an abortion in the ANSIRH study ranged from \$490 for a first trimester abortion to \$1,750 for an abortion at 20 weeks or beyond. For more than half of the women who had an abortion, out-of-pocket costs for the procedure were more than one-third of their monthly personal incomes.
- **Financial barriers are often a complete obstacle to abortion care.** About one in four women who would have an abortion if Medicaid funding were available instead carry their pregnancy to term.

Policymakers often ignore the connection between women's economic security and access to reproductive health care. But the issues are completely intertwined. Policymakers cannot effectively address one issue without addressing the other.

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WOMEN'S ECONOMIC SECURITY ACT

Summary: *The Women's Economic Security Act would provide economic and workplace equity for women and families.*

SECTION 1. SHORT TITLE

This Act shall be called the "Women's Economic Security Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) In many ways, women have fewer rights in the United States than other nations around the world, especially Western democracies.
- 2) Of 193 members of the United Nations, only seven countries have never ratified the Convention on the Elimination of Discrimination Against Women (CEDAW); the United States joins Iran, Palau, Somalia, South Sudan, Sudan and Tonga as one of the few holdouts. The constitutions of 165 nations explicitly guarantee gender equality; the United States Constitution does not.
- 3) Therefore, it should be no surprise that women in the United States struggle to achieve and maintain economic security.
- 4) The right to abortion is essential to women's economic security. Since about three in ten women will have an abortion in their lifetimes, abortion is an essential component of health care. Thus, it is crucial to provide women with the ability to plan their pregnancies or terminate unwanted pregnancies to maintain or improve both physical and economic wellbeing. Evidence demonstrates that if a woman seeks an abortion and access is delayed or denied, she may experience adverse health and economic outcomes. A woman's economic status should not determine her access to abortion and her access to abortion should not determine her economic status.
- 5) Pay equity is essential to women's economic security. Women make up nearly half of the workforce and support nearly two-thirds of families with children. Despite confirmation that pay inequity results in poverty for more families, women still make on average 79 cents for every dollar a man makes, and the gap increases when referring to women of color (e.g. African American women make 64 cents and Latina women make 56 cents). More than 15 million households are headed by women, half of them single mothers. This gap is the equivalent of \$10,876 less per year in median earnings, which would make a significant difference in these families.
- 6) Paid sick and safe time is essential to women's economic security. Nearly forty percent of private sector workers and nearly eighty percent of the lowest-income workers do not have any paid sick time. Some workers that have paid sick time are penalized for using it or cannot use this time to care for sick family members. Absences can result in job loss which can devastate a family. Additionally, it is important that paid time off is accessible for the one in four women who report physical or sexual abuse at some point in their lives. Without paid sick and safe

MODEL LEGISLATION

days, women are in grave danger of losing their jobs, which can be particularly damaging for survivors of domestic violence. Allowing workers to prioritize the health care and safety needs of their families will create a more productive workforce.

- 7) Family leave is essential to women's economic security. Only 13 percent of workers in the United States have access to employer-provided paid family leave, and fewer than 40 percent have access to personal medical leave through employer-provided temporary disability insurance to address a personal serious medical need that requires time away from work. Lower-wage workers are hit even harder: only five percent of workers in the bottom wage quartile have access to employer-provided paid family leave, and 17 percent have access to employer-provided short-term disability insurance. Research and successful existing programs in California, New Jersey and Rhode Island demonstrate that paid leave promotes economic security and financial independence for working families; businesses experience benefits and cost-savings in the form of increased employee retention and morale; and health care outcomes are improved for mothers, children, and elderly relatives.
- 8) Tax laws that recognize the high cost of raising a child are essential to women's economic security. In 23 states, the cost of child care for two children exceeds housing costs. In every region of the United States, child care costs are more than double the average amount spent on food for the family and exceed transportation costs. Establishing a dependent care tax credit would make child care more affordable and promote the overall welfare of families.
- 9) Eliminating workplace discrimination and ensuring fair treatment of pregnant women is also essential to women's economic security. Women in the workplace who request accommodations in order to maintain a healthy pregnancy or to recover from childbirth are being removed from their positions, placed on unpaid leave, harassed or fired. Not only do these policies harm pregnant women and mothers, but all women who employers may perceive negatively because of their potential to get pregnant.
- 10) It is beneficial to this state and all its residents to improve women's economic security.

(B) PURPOSE—This law is enacted to protect and promote the health, safety, welfare and economic condition of women.

SECTION 3. ABORTION COVERAGE EQUITY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) "State" means the state and every county, city, town, municipal corporation, quasi-municipal corporation, and public institution of higher education in the state.

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MODEL LEGISLATION

(B) POLICY TO COVER ABORTION

Abortion shall be covered in all types of health insurance offered, sold, or purchased in this State, including all private plans, all state-funded plans, and all state-provided benefits.

(C) RESTRICTIONS REPEALED

- 1) Section XXX [any provision of law that prohibits abortion care in private health insurance plans] is hereby repealed.
- 2) Section XXX [any provision of law that prohibits abortion care in state employee health insurance plans] is hereby repealed.
- 3) Section XXX [any provision of law that prohibits abortion care in the state insurance exchange] is hereby repealed.
- 4) Section XXX [any provision of law that prohibits abortion care in Medicaid coverage] is hereby repealed.
- 5) Section XXX [any provision of law that prohibits abortion care in any other state-funded insurance program] is hereby repealed.

(D) SEVERABILITY

The provisions of this Section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

SECTION 4. FAIR PAY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Employer” means [cite existing definition in state employment law].
- 2) “Employee” means any permanent full-time or part-time employee and any temporary employee who has worked for a period of at least three months. “Employee” shall not include any individual employed by his or her parents, spouse or child.
- 3) “Equivalent jobs” means jobs or occupations that are equal within the meaning of the Equal Pay Act of 1963, 29 U.S.C. 206(d), or jobs or occupations that are dissimilar but whose requirements are equivalent, when viewed as a composite of skill, effort, responsibility and working conditions.
- 4) “Person” means an individual, partnership, association, corporation or other legal entity, including the state and all of its political agencies and subdivisions.
- 5) “Labor organization” means any organization that exists for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.
- 6) “Market rates” means the rates that employers within a prescribed geographic area actually pay, or are reported to pay for specific jobs, as determined by formal or informal surveys, wage studies, or other means.

MODEL LEGISLATION

- 7) "Wages and wage rates" shall include all compensation in any form that an employer provides to employees in payment for work done or services rendered, including but not limited to base pay, bonuses, commissions, awards, tips, or various forms of non-monetary compensation, if provided in lieu of or in addition to monetary compensation, and that have economic value to an employee.

(B) PROHIBITION AGAINST DISCRIMINATION IN WAGES

- 1) It shall be an unlawful employment practice, in violation of this section, for an employer to discriminate between employees on the basis of sex, race or national origin by:
 - a) Paying wages to employees at a rate less than the rate paid to employees of the opposite sex, or of a different race or national origin, for work in equivalent jobs; or
 - b) Paying wages to employees in a job that is dominated by employees of a particular sex, race or national origin at a rate less than the rate at which the employer pays to employees in another job that is dominated by employees of the opposite sex, or of a different race or national origin, for work on equivalent jobs.
- 2) It shall not be an unlawful employment practice for an employer to pay different wage rates to employees where such payments are made pursuant to:
 - a) A bona fide seniority or merit system;
 - b) A system that measures earnings by quantity or quality of production; or
 - c) Any bona fide factor other than sex, race or national origin, provided that wage differentials based on varying market rates for equivalent jobs, or the differing economic benefits to the employer of equivalent jobs, shall not be considered differentials based on bona fide factors other than sex, race or national origin. The bona fide factor defense shall only apply if it (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job related with respect to the position in question; (iii) is consistent with business necessity; and (iv) accounts for the entire differential in compensation at issue. Such a defense shall not apply where the employee demonstrates an alternative employment practice exists that would serve the same business purpose without producing such differential that the employer has refused to adopt.
- 3) An employer who pays wages in violation of this section shall not, in order to comply with the provisions of this section, reduce the wages of any employee.
- 4) No labor organization, or agents that represent employees of an employer that is subject to any provision of this section, shall cause or attempt to cause such an employer to discriminate against an employee in violation of this section.
- 5) The [State Department of Labor or other appropriate agency] shall promulgate regulations that specify the criteria for determining whether a job is dominated by employees of a particular sex, race or national origin. Criteria shall include, but not be limited to, factors such as whether the job has ever been formally classified as, or traditionally considered to be, a "male" or "female" or "white" or "minority" job; whether there is a history of discrimination against women or people of color with regard to wages, assignments or access to jobs, or other terms and conditions of employment; and the demographic composition of the workforce in equivalent jobs (e.g., numbers or percentages of women, men, white persons, and people of color). The regulations shall not include a list of jobs.

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MODEL LEGISLATION

(C) OTHER PROHIBITED ACTS—It shall be an unlawful employment practice in violation of this section for an employer:

- 1) To take adverse actions or otherwise discriminate against any individual because such individual has opposed any act or practice made unlawful by this section; has sought to enforce rights protected under this section; or has testified, assisted or participated in any manner in an investigation, hearing or other proceeding to enforce this section; or
- 2) To discharge, or in any other manner discriminate against, coerce, intimidate, threaten, or interfere with any employee or any other person because an employee inquired about, disclosed, compared or otherwise discussed an employee's wages, or because an employee exercised, aided, or encouraged any other person to exercise any right granted or protected by this section.
- 3) To require an employee to sign a contract or waiver that would prohibit the employee from disclosing information about the employee's wages.
- 4) To seek salary history information from a potential employee for an interview or as a condition of employment; or for an employer to release the salary history of any current or former employee to any prospective employer in response to a request as part of an interview or hiring process without written authorization from the employee.

(D) WAGE DISCLOSURE, RECORDKEEPING AND REPORTING REQUIREMENTS

- 1) Upon commencement of an individual's employment, and at least annually thereafter, every employer subject to this section shall provide to each employee a written statement sufficient to inform the employee of his or her job title, wage rate, and how the wage is calculated. This notice shall be supplemented whenever an employee is promoted or reassigned to a different position with the employer, provided that the employer is not required to issue supplemental notifications for temporary reassignments that are of no more than three months in duration.
- 2) Every employer subject to this section shall make and preserve records that document the wages paid to employees, and that document and support the method, system, calculations and other bases used to establish, adjust and determine the wage rates paid to said employer's employees. Every employer subject to this section shall preserve records and make reports from the records as prescribed by the [State Department of Labor or other appropriate agency].
- 3) The regulations promulgated under this section relating to the form of reports required shall provide for protection of the confidentiality of employees, and shall expressly require that reports shall not include the names or other identifying information from which readers could discern the identities of employees. The regulations may also identify circumstances that warrant a prohibition on disclosure of reports or information identifying the employer.
- 4) The [State Department of Labor] may use the information and data it collects pursuant to this section for statistical and research purposes, and may compile and publish such studies, analyses, reports and surveys, based on the information and data, as it considers appropriate.

(E) ENFORCEMENT

- 1) This section may be enforced by a private cause of action under [appropriate section of state law].

MODEL LEGISLATION

- 2) This section shall be enforced by [appropriate government agency], which shall promulgate such regulations as are necessary to implement and administer compliance. Regulations shall include procedures to receive, investigate and attempt to resolve complaints, and to bring actions in any court of competent jurisdiction to recover appropriate relief for aggrieved employees.
- 3) In any action under this section in which an employee prevails:
 - a) The employee shall be awarded monetary relief, including back pay in an amount equal to the difference between the employee's actual earnings and what the employee would have earned if not for the employer's unlawful practices, and an additional amount in compensatory and punitive damages as appropriate.
 - b) The employer shall be enjoined from continuing to discriminate against employees, and the employer may be ordered to take such additional affirmative steps as are necessary, including reinstatement or reclassification of affected workers, to ensure an end to unlawful discrimination.
 - c) The employer shall pay reasonable attorney's fees, reasonable expert witness fees, and other costs of the action.

(F) STATUTE OF LIMITATIONS

An action may be brought under this section no later than two years after the date of the last event constituting the alleged violation for which the action is brought.

SECTION 5. EARNED PAID SICK AND SAFE TIME

[Note: Drafting an earned paid sick and safe time bill requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. The National Partnership for Women & Families and A Better Balance are available to do any necessary legal research and drafting, and to work with you to customize this model.]

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS

- 1) "Agency" means [state, county or city agency responsible for enforcement of labor laws or the county/city agency best suited to enforcing this law, if there is no local labor enforcement agency].
- 2) "Domestic violence" means as defined in [state statute or local law].
- 3) "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in section 5(C), but in no case shall this hourly amount be less than that provided under 29 U.S.C. §206(a) (1) [or your state or local minimum wage law].

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MODEL LEGISLATION

- 4) “Employee” means as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(e))] but does not include those who work in [X] for fewer than [#] hours in a calendar year. “Employee” includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance. [May also specifically add: “Employee” does not include any railroad worker exempted under the Railroad Unemployment Insurance Act, 45 U.S.C. 363(b).]
- 5) “Employer” means as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(d))]. For the purposes of this section, “employer” does not include any of the following:
 - a) The United States Government.
 - b) [For local bills only: The State of X including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.]
 - c) [For local bills only: Any county or local government other than X. OR For local bills if necessary due to limitations on authority of legislative body to determine benefits for locality’s own workers: Any county or local government.]
- 6) “Family member” means:
 - a) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis, regardless of age;
 - b) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or domestic partner or a person who stood in loco parentis when the employee or employee’s spouse or domestic partner was a minor child;
 - c) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee [as defined under X state/county/city law or] as registered under the laws of any state or political subdivision;
 - d) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the covered individual or the covered individual’s spouse or domestic partner;
 - e) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or
 - f) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- 7) “Harassment” means as defined in [state statute or local law].
- 8) “Health care professional” means any person licensed under Federal [or State] law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.
- 9) “Retaliatory personnel action” means denial of any right guaranteed under this section and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Section. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this section.

MODEL LEGISLATION

- 10) "Sexual assault" means as defined in [state statute or local law].
- 11) "Stalking" means as defined in [state statute or local law].
- 12) "Year" means a regular and consecutive 12-month period as determined by the employer; except that for the purposes of sections 5(F) and (H), "year" shall mean a calendar year.

(B) ACCRUAL OF EARNED PAID SICK TIME

After section XXX, the following new section XXX shall be inserted:

- 1) All employees shall accrue a minimum of one hour of earned paid sick time for every [#] hours worked. Employees shall not [use] more than [#] hours of earned paid sick time in a year, unless the employer selects a higher limit. [Note: It is also possible to limit accrual: Employees will not accrue more than [#] hours of earned paid sick time in a year, unless the employer selects a higher limit.]
- 2) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.
- 3) Earned paid sick time as provided in this Section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year.
- 4) Employees shall not be entitled to use accrued earned paid sick time until the [#] calendar day following commencement of their employment, [or the # calendar day following the date this law goes into effect, whichever is later,] unless otherwise permitted by the employer. On and after the [#] calendar day of employment, employees may use earned paid sick time as it is accrued.
- 5) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of this Section that is available for the employee's immediate use at the beginning of the subsequent year.
- 6) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this Section that may be used for the same purposes and under the same conditions as earned paid sick time under this Section is not required to provide additional paid sick time.
- 7) Nothing in this Section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.
- 8) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this Section. When there is a separation from employment and the employee is rehired within

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MODEL LEGISLATION

[#] months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

- 9) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.
- 10) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

(C) USE OF EARNED PAID SICK TIME

- 1) Earned paid sick time shall be provided to an employee by an employer for:
 - a) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;
 - b) Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or in the case of a child, to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition or disability, domestic violence, sexual assault, harassment or stalking;
 - c) Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or
 - d) Absence necessary due to domestic violence, sexual assault, harassment or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:
 - i) Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual assault, harassment or stalking;
 - ii) Services from a victim services organization;
 - iii) Psychological or other counseling;
 - iv) Relocation or taking steps to secure an existing home due to the domestic violence, sexual assault, harassment or stalking; or
 - v) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual assault, harassment or stalking.

MODEL LEGISLATION

- 2) Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.
- 3) When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.
- 4) An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.
- 5) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.
- 6) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.
- 7) For earned paid sick time of 3 or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by section 5(C)(1). Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this Section. In cases of domestic violence, sexual assault, harassment or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation:
 - a) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, harassment or stalking;
 - b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or
 - c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, harassment or stalking. An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence, sexual assault, harassment or stalking. If an employer chooses to require documentation for earned paid sick time and the employer does not offer health insurance to the employee, then the employer is responsible for paying all out of pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. The employer is responsible for paying any costs charged to the employee for documentation of domestic violence, sexual assault, harassment or stalking required by the employer.

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MODEL LEGISLATION

(D) EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED

- 1) It shall be unlawful for an employer or any other person to interfere with, restrain, deny the exercise of, or the attempt to exercise, any right protected under this Section.
- 2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this Section. Such rights include, but are not limited to, the right to request or use earned paid sick time pursuant to this Section; the right to file a complaint with the Agency or courts or inform any person about any employer's alleged violation of this Section; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the Agency in its investigations of alleged violations of this Section; and the right to inform any person of his or her potential rights under this Section.
- 3) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Section as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.
- 4) Protections of this Section shall apply to any person who mistakenly, but in good faith, alleges violations of this Section.
- 5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this Section whenever an employer takes adverse action against a person within 90 days of when that person:
 - a) files a complaint with the Agency or a court alleging a violation of any provision of this Section;
 - b) informs any person about an employer's alleged violation of this Section;
 - c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Section;
 - d) opposes any policy, practice, or act that is unlawful under this Section; or
 - e) informs any person of his or her rights under this Section.

(E) NOTICE AND POSTING

- 1) Employers shall give employees written notice of the following at the commencement of employment or by [Date], whichever is later: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this Section, that retaliatory personnel action against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint or bring a civil action if earned paid sick time, as required by this Section, is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the Agency where questions about rights and responsibilities under this Section can be answered.
- 2) The notice required in section 5(E)(1) shall be in English, [X, X,] and any language that is the first language spoken by at least X% of the employer's workforce, provided that such notice has been provided by the Agency.
- 3) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

MODEL LEGISLATION

- 4) Employers shall display a poster that contains the information required in (1) in a conspicuous and accessible place in each establishment where such employees are employed. The poster displayed shall be in English, [X, X,] and any language that is the first language spoken by at least X% of the employer's workforce, provided that such poster has been provided by the Agency.
- 5) The Agency shall create and make available to employers, in all languages spoken by more than X% of the [State's/County's/City's] workforce and any language deemed appropriate by the Agency, model notices and posters that contain the information required under section 5(E)(1) for employers' use in complying with Section 5(E)(1) and (4).
- 6) An employer who willfully violates the notice and posting requirements of this Section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

(F) EMPLOYER RECORDS

Employers shall retain records documenting hours worked by employees and earned paid sick time taken by employees, for a period of [three] years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Section. When an issue arises as to an employee's entitlement to earned paid sick time under this Section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned paid sick time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the Section, absent clear and convincing evidence otherwise.

(G) REGULATIONS

The Agency shall be authorized to coordinate implementation and enforcement of this Section and shall promulgate appropriate guidelines or regulations for such purposes.

(H) ENFORCEMENT

[Bill drafting note: There are several different ways to enforce an earned paid sick time law, and a bill can contain a combination of them as long as the jurisdiction permits the types of enforcement selected. The model language includes all options.]

- 1) *Administrative Enforcement*
 - a) The Agency shall enforce the provisions of this Section. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Section and investigate complaints received by the Agency in a timely manner.
 - b) Any person alleging a violation of this Section shall have the right to file a complaint with the Agency within [X days/weeks/months/years] of the date the person knew or should have known of the alleged violation. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Section or for other appropriate purposes.

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MODEL LEGISLATION

- c) Upon receiving a complaint alleging a violation of this Section, the Agency shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.
 - d) The Agency shall have the power to impose penalties provided for in this Section and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to:
 - i) for each instance of earned paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Section or \$X, whichever is greater;
 - ii) for each instance of earned paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: \$X;
 - iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, an additional amount of at least \$X and equitable relief as appropriate; and
 - iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, \$X and equitable relief, including reinstatement, as appropriate.
 - e) Any entity or person found to be in violation of the provisions of this Section shall be liable for a civil penalty payable to [state/county/city] not to exceed \$X for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$X for the second violation and not to exceed \$X for each successive violation.
 - f) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Section, the results of investigations undertaken pursuant to this Section, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Section, and the average time for a complaint to be resolved pursuant to this chapter.
- 2) *Civil Enforcement*
- a) The Agency, the Attorney General [or City/County Attorney], any person aggrieved by a violation of this Section, or any entity a member of which is aggrieved by a violation of this Section, may bring a civil action in a court of competent jurisdiction against an employer violating this Section. Such action may be brought by a person aggrieved by a violation of this Section without first filing an administrative complaint.
 - b) Upon prevailing in an action brought pursuant to this Section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of this Section plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.
 - c) Upon prevailing in an action brought pursuant to this Section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

MODEL LEGISLATION

- d) Any person aggrieved by a violation of this Section may file a complaint with the Attorney General [or City/County Attorney]. The filing of a complaint with the Attorney General [or City/County Attorney] will not preclude the filing of a civil action.
 - e) The Attorney General [or City/County Attorney] may bring a civil action to enforce this Section. The Attorney General [or City/County Attorney] may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Section, the Attorney General [or City/County Attorney] may seek to impose a fine of X [example: \$1,000] per violation, payable to the [City/County/State].
 - f) The statute of limitations for a civil action brought pursuant to this Section shall be for a period of # years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.
 - g) Actions brought pursuant to this Section may be brought as a class action pursuant to the laws of [state].
- 3) [City/County/State] officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this Section in making decisions on [city/county/state] contracts, land use approvals and other entitlements to expand or operate within the [city/county/state]. The [city/county/state] is authorized to either deny approval or to condition approval on the employer's future compliance.

(I) CONFIDENTIALITY AND NONDISCLOSURE

An employer may not require disclosure of details relating to domestic violence, sexual assault, harassment or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this Section. If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

(J) ENCOURAGEMENT OF MORE GENEROUS EARNED PAID SICK TIME POLICES; NO EFFECT ON MORE GENEROUS POLICIES OR LAWS

- 1) Nothing in this Section shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.
- 2) Nothing in this Section shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Section shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in [laws of the state pertaining to public employees].
- 3) [For State laws] Nothing in this Section shall be construed to supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this Section.

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MODEL LEGISLATION

(K) OTHER LEGAL REQUIREMENTS

This Section provides minimum requirements pertaining to earned paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of earned paid sick time or that extends other protections to employees.

(L) PUBLIC EDUCATION AND OUTREACH

The Agency [or another relevant official, administrative agency] shall develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this Section. This program shall include the distribution of notices and other written materials in English, [X, X,] and any language that is the first language spoken by at least X% of the [state's/county's/city's] population to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

SECTION 6. PAID FAMILY AND MEDICAL LEAVE

[Note: Drafting a new paid family and medical leave bill requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. The National Partnership for Women & Families and A Better Balance are available to do any necessary legal research and drafting, and to work with you to customize this model.]

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS

- 1) "Application year" means the 12-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits.
- 2) "Covered active duty" means as defined in Section 101(14) of the Family and Medical Leave Act, 29 U.S.C. 2611(14).
- 3) "Covered individual" means:
 - a) Any person who: [Note: select one or more of the first three options below, and include the fourth option if allowing self-employed individuals to opt in.]
 - i) Contributed [X dollars] to the paid leave system during the 12-month period prior to submitting an application; or
 - ii) Worked for [X amount of time] for any employer during the 12-month period prior to submitting an application; or
 - iii) Earned [X dollars] from work during the 12-month period prior to submitting an application; or
 - iv) Is self-employed, elects coverage and meets the requirements of section 6(M);
 - b) Meets the administrative requirements outlined in this section and in regulations; and
 - c) Submits an application.
- 4) "Covered servicemember" means as defined in Section 101(15) of the Family and Medical Leave Act, 29 U.S.C. 2611(15).

MODEL LEGISLATION

- 5) "Department" means the [X].
- 6) "Director" means the Director of the Department.
- 7) "Employee" means as defined in [state wage and hour law].
- 8) "Employer" means as defined in [state law with the broadest possible definition of employer, or if no state law is usable, can use Fair Labor Standards Act, 29 U.S.C. 203(d).]
- 9) "Family and medical leave insurance benefits" means the benefits provided under the terms of Section 6 of this Act.
- 10) "Family member" means:
 - a) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the covered individual stands in *loco parentis*;
 - b) A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or a covered individual's spouse or domestic partner or a person who stood in loco parentis when the covered individual or the covered individual's spouse or domestic partner was a minor child;
 - c) A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual [as defined under X state law or] as registered under the laws of any state or political subdivision;
 - d) A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or the covered individual's spouse or domestic partner; or
 - e) A designated person, which shall mean one additional person designated by a covered individual for whom the covered individual will provide care under section 6 of this Act if the designated person has a serious health condition.
- 11) "Health care provider" means any person licensed under Federal or [State] law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel, or certified nurse-midwives.
- 12) "Next of kin" means as defined in Section 101(17) of the Family and Medical Leave Act, 29 U.S.C. 2611(17).
- 13) "Qualifying exigency leave" means leave for the family member of a military member for the purposes specified in subsections (i) through (iv) of 29 C.F.R. 825.126(b)(3) and subsections (i) through (iv) of 29 C.F.R. 825.126(b)(8), as well as the following reasons:
 - a) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;
 - b) To attend any official ceremony, program or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member;
 - c) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

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MODEL LEGISLATION

- d) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust;
 - e) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status;
 - f) To attend counseling provided by someone other than a healthcare provider, for oneself, for the military member, or for the biological, adopted or foster child, stepchild or legal ward of the military member, a child of the military member's domestic partner, or a child to whom the military member stands in loco parentis, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;
 - g) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment. Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;
 - h) To attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status;
 - i) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements and attending funeral services; or
 - j) To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.
- 14) "Retaliatory personnel action" means denial of any right guaranteed under this Section including but not limited to any threat, discharge, suspension, demotion, reduction of hours, any other adverse action against an employee for the exercise of any right guaranteed herein, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency. Retaliatory personnel actions shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Section.
- 15) "Serious health condition" means an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider [OR "Serious health condition" is as defined at Section 101(11) of the Family and Medical Leave Act, 29 U.S.C. 2611(11) or the [state FMLA].]

MODEL LEGISLATION

(B) ELIGIBILITY FOR BENEFITS

Beginning [X days] following establishment of the Family and Medical Leave Insurance Program [note: X here must match the second X in Section 6(N)(1)], family and medical leave insurance benefits are payable to an individual who:

- 1) Meets the definition of “covered individual” under Section 6(A)(3); and
- 2) Meets one of the following requirements:
 - a) Because of birth, adoption or placement through foster care, is caring for a new child during the first year after the birth, adoption or placement of that child;
 - b) Is caring for a family member with a serious health condition;
 - c) Has a serious health condition (including pregnancy) that makes the covered individual unable to perform the functions of the position of such employee;
 - d) Is caring for a covered servicemember who is the covered individual’s next of kin;
 - e) Because of any “qualifying exigency leave” arising out of the fact that the family member of the covered individual is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces; or
 - f) Any reason set forth in [the state FMLA].

(C) DURATION OF BENEFITS

- 1) The maximum number of weeks during which family and medical leave insurance benefits are payable under Section 6(B)(2)(c) in an application year is [X weeks]. The maximum number of weeks during which family and medical leave insurance benefits are payable under Section 6(B)(2)(a), (b), (d), or (e) in an application year is [X weeks]. A covered individual is eligible for [X weeks] of leave under (a) of this subsection and also [X weeks] of leave under (b) of this subsection in an application year.
- 2) Family and medical leave insurance benefits are not payable for the first five calendar days in an application year that a covered individual meets the eligibility requirements of Section 6(B)(1) and (2). This shall be known as the “waiting period” referred to in subsection (3) of this Section.
- 3) If the covered individual uses 10 or more days of family and medical leave insurance benefits in an application year, the covered individual shall be paid for the waiting period. The waiting period need only be served once every application year.
- 4) The first payment of benefits must be made to an individual within [X] weeks after the claim is filed and subsequent payments must be made [semimonthly] thereafter.

(D) AMOUNT OF BENEFITS

- 1) The amount of family and medical leave insurance benefits shall be determined as follows: [Choose one of the first three options below:]
 - a) The weekly benefit shall be [X%] of the covered individual’s average weekly wages during the 12 months preceding submission of the application (or the average weekly wages during the time the covered individual worked if it was less than 12 months), up to a maximum of [X%] of the statewide average weekly wage. [OR]

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MODEL LEGISLATION

- b) The weekly benefit shall be [a sliding scale percentage of average weekly wages, with a higher percentage of wage replacement for low wage workers], up to a maximum of [X dollars]. [OR]
 - c) The weekly benefit shall be [X dollars] per week.
 - d) In no case shall the weekly benefit be less than [X dollars].
- 2) Family and medical leave insurance benefits are not payable for less than eight hours of family and medical leave taken in one work week.

(E) CONTRIBUTIONS

- 1) Payroll contributions shall be authorized in order to finance the payment of benefits under the family and medical leave insurance program.
- 2) Payroll contributions shall be paid by employers and employees in the ratio of [XX] in an amount to be determined by the [state investment board or other state entity/official responsible for making investment or other financial decisions in the state] [OR specify contributions of X% of wages or X dollars for the program's first year]. In no case shall payroll contributions from an employee exceed [X dollars] total [or X% of wages, up to X dollars total] in any 12-month period. The [state investment board or other state entity/official above] shall be responsible for evaluating and determining on an annual basis the amount of payroll contributions and maximum employee contribution necessary to finance the family and medical leave insurance benefits program.

(F) REDUCED LEAVE SCHEDULE

- 1) A covered individual shall be entitled, at the option of the covered individual, to take paid family and medical leave on an intermittent or reduced leave schedule in which all of the leave authorized under this Section is not taken sequentially. Family and medical leave insurance benefits for intermittent or reduced leave schedules shall be prorated.
- 2) The covered individual shall make a reasonable effort to schedule paid family and medical leave under this section so as not to unduly disrupt the operations of the employer. The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will be taking the leave, to the extent practicable. Paid family and medical leave taken under this section shall not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.
- 3) Nothing in this section shall be construed to entitle a covered individual to more leave than required under section 6(C).

(G) LEAVE AND EMPLOYMENT PROTECTION

- 1) Any covered individual who exercises his or her right to family and medical leave insurance benefits or earns waiting period credits under section 6(C)(2) shall, upon the expiration of that leave, be entitled to be restored by the employer to the position held by the covered individual when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment including fringe benefits and service credits that the covered individual had been entitled to at the commencement of leave.

MODEL LEGISLATION

- 2) During any leave taken pursuant to section 6(B), the employer shall maintain any health care benefits the covered individual had prior to taking such leave for the duration of the leave as if the covered individual had continued in employment continuously from the date he or she commenced the leave until the date the family and medical leave insurance benefits terminate; provided, however, that the covered individual shall continue to pay the covered individual's share of the cost of health benefits as required prior to the commencement of the leave.
- 3) This section shall be enforced as provided in [X - Could be state FMLA, state civil rights law, or state unemployment law—or new enforcement language if necessary].

(H) RETALIATORY PERSONNEL ACTIONS PROHIBITED

- 1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Section.
- 2) An employer, temporary help company, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because he or she exercised rights protected under this Section. Such rights include but are not limited to the right to request, file for, apply for or use benefits provided for under this Section; communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or has testified or is about to testify or has assisted in any investigation, hearing or proceeding under this Section, at any time, including during the waiting period and the period in which the person receives family and medical leave insurance benefits under this Section; inform any person about any employer's alleged violation of this Section; and the right to inform any person of his or her rights under this Section.
- 3) It shall be unlawful for an employer's absence control policy to count paid family and medical leave taken under this Section as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.
- 4) Protections of this section shall apply to any person who mistakenly, but in good faith, alleges violations of this Section.
- 5) This section shall be enforced as provided in [X - Could be state FMLA, state civil rights law, or state unemployment law—or new enforcement language if necessary].

(I) COORDINATION OF BENEFITS

- 1) Leave taken with wage replacement under this Section that also qualifies as leave under the federal [or state] FMLA shall run concurrently with leave taken under the federal [or state] FMLA.
- 2) An employer may require that payment made pursuant to this section be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer must give employees written notice of this requirement.
- 3) This section does not diminish an employer's obligation to comply with any of the following that provide more generous leave: a collective bargaining agreement; an employer policy; or any law.

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MODEL LEGISLATION

- 4) An individual's right to leave under this section may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after the effective date of this Section. Any agreement by an individual to waive his or her rights under this section is void as against public policy.

(J) NOTICE

- 1) Each employer shall provide written notice to each employee upon hiring and annually thereafter. An employer shall also provide written notice to an employee when the employee requests leave under this Section, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under Section 6(B)(2). Such notice shall include:
 - a) the employee's right to family and medical leave insurance benefits under this Section and the terms under which it may be used;
 - b) the amount of family and medical leave insurance benefits;
 - c) the procedure for filing a claim for benefits;
 - d) the procedure for selecting a designated person as defined in this Section;
 - e) the right to job protection and benefits continuation under Section 6(G);
 - f) that discrimination and retaliatory personnel actions against a person for requesting, applying for or using family and medical leave insurance benefits is prohibited under Section 6(H); and
 - g) that the employee has a right to file a complaint for violations of this Section.
- 2) An employer shall also display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by this section in English, [X, X,] and any language that is the first language spoken by at least X% of the employer's workforce, provided that such notice has been provided by the Department. The Director may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice.
- 3) An employer may establish a uniform process for employees to select a "designated person" as defined in this Section within thirty days of the individual's date of hire. Thereafter, the employer must permit the employee to make or change such a designation, as applicable, on an annual basis. If an employer establishes a uniform process, the covered employee must make such a designation using the employer's process. If an employer does not establish such a uniform process, the employee may make such a designation when filing a claim for benefits.
- 4) Employees shall provide notice to their employers as soon as practicable of their intention to take leave under this Section.

(K) ENFORCEMENT

- 1) The Director shall establish a system for appeals in the case of a denial of family and medical leave insurance benefits. In establishing such system, the Director may utilize any and all procedures and appeals mechanisms established under the [state unemployment compensation law].
- 2) Judicial review of any decision with respect to family and medical leave insurance benefits shall be permitted in a court of competent jurisdiction after a party aggrieved thereby has exhausted all administrative remedies established by the Director.

MODEL LEGISLATION

- 3) The Director shall implement procedures to ensure confidentiality of all information related to any claims filed or appeals taken to the maximum extent permitted by applicable laws.

(L) ERRONEOUS PAYMENTS AND DISQUALIFICATION FOR BENEFITS

- 1) A covered individual is disqualified from family and medical leave insurance benefits for one year if the individual is determined by the Director to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this Section.
- 2) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the Department may seek repayment of benefits from the recipient. The Director shall exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(M) ELECTIVE COVERAGE

- 1) A self-employed person, including a sole proprietor, partner or joint venturer, may elect coverage under this Act for an initial period of not less than three years. The self-employed person must file a notice of election in writing with the Director, as required by the Department. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed person must agree to supply any information concerning income that the Department deems necessary.
- 2) A self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the Director may prescribe by rule, by filing written notice with the Director, such withdrawal to take effect not sooner than 30 days after filing the notice.

(N) FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

- 1) Within [X days] of the effective date of this Section, the Department shall establish and administer a family and medical leave insurance program and within [X months] following establishment of the program pay family and medical leave insurance benefits as specified in this Section.
- 2) The Department shall establish reasonable procedures and forms for filing claims for benefits under this Section and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.
- 3) The Department shall notify the employer within five business days of a claim being filed pursuant to this Section.
- 4) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.

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MODEL LEGISLATION

- 5) Information contained in the files and records pertaining to an individual under this Section are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records upon the presentation of the individual's signed authorization.
- 6) The Director shall adopt rules as necessary to implement this Section.

(O) FEDERAL INCOME TAX

- 1) If the Internal Revenue Service determines that family and medical leave insurance benefits under this Section are subject to federal income tax, the Department must advise an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:
 - a) The Internal Revenue Service has determined that benefits are subject to federal income tax;
 - b) Requirements exist pertaining to estimated tax payments;
 - c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the federal internal revenue code; and
 - d) The individual is permitted to change a previously elected withholding status.
- 2) If the individual elects to have federal tax payments withheld, the Department shall deduct and withhold the amount specified in the Internal Revenue Code in a manner consistent with [laws of the state], and amounts deducted and withheld from benefits must remain in the Family and Medical Leave Insurance Fund established in Section 6(P) until transferred to the federal taxing authority as a payment of income tax.
- 3) The Director shall follow all procedures specified by the Internal Revenue Service pertaining to the deducting and withholding of income tax.

(P) FAMILY AND MEDICAL LEAVE INSURANCE ACCOUNT FUND—ESTABLISHMENT AND INVESTMENT

- 1) The Family and Medical Leave Insurance Fund is created in the custody of the [X, such as the state financial officer]. Expenditures from the Fund may be used only for the purposes of the family and medical leave insurance benefits program. Only the Director of the Department or the Director's designee may authorize expenditures from the Fund.
- 2) Whenever, in the judgment of the [X, such as the state financial officer], there shall be in the Family and Medical Leave Insurance Fund an amount of funds in excess of that amount deemed by [X, such as the state financial officer] to be sufficient to meet the current expenditures properly payable there from, [X, such as the state financial officer] shall have full power to invest, reinvest, manage, contract, sell or exchange investments acquired with such excess funds in the manner prescribed by [state law].

(Q) REPORTS

Beginning [X date], the Department shall report to the legislature by [September 1st] of each year on projected and actual program participation by Section 6(B)(2) purpose, gender of beneficiary, premium rates, fund balances, outreach efforts, and, for leaves taken under Section 6(B)(2)(b), family members for whom leave was taken to provide care.

MODEL LEGISLATION

(R) PUBLIC EDUCATION

The Department shall conduct a public education campaign to inform workers and employers regarding the availability of family and medical leave insurance benefits. The Department may use [X%] of the funds collected for the family and medical leave insurance benefits program in a given year to pay for the public education program. Outreach information shall be available in English, [X, X,] and other languages spoken by more than [X%] of the state's population.

(S) SHARING TECHNOLOGY

The Department is encouraged to use state data collection and technology to the extent possible and to integrate the program with existing state policies.

SECTION 7. DEPENDENT CARE TAX CREDIT

After section XXX, the following new section XXX shall be inserted:

DEPENDENT CARE TAX CREDIT

- 1) A taxpayer shall be allowed a tax credit calculated as a percentage of the child and dependent care tax credit under section 21 of the Internal Revenue Code for the same taxable year before it has been reduced by the taxpayer's federal tax liability and without regard to whether the taxpayer claimed this federal credit.
- 2) The applicable percentage for a taxpayer is:
 - a) 100 percent of the allowable federal credit if state Adjusted Gross Income is \$24,999 or less.
 - b) 80 percent of the allowable federal credit if state Adjusted Gross Income is \$25,000-34,999.
 - c) 60 percent of the allowable federal credit if state Adjusted Gross Income is \$35,000-44,999.
 - d) 40 percent of the allowable federal credit if state Adjusted Gross Income is \$45,000-54,999.
 - e) 20 percent of the allowable federal credit if state Adjusted Gross Income is \$55,000-64,999.
- 3) The credit under this section shall be allowed against the taxes imposed by this article for the taxable year, reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller shall pay as an overpayment, without interest, the amount of such excess.

SECTION 8. PREGNANT WORKERS FAIRNESS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) "Pregnancy" means pregnancy, childbirth, or a related condition, including, but not limited to, lactation.

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MODEL LEGISLATION

- 2) “Reasonable accommodation” means any accommodation that can be made for an employee that shall not cause undue hardship in the conduct of the employer’s business as determined through a good faith, timely interactive process between the employee and employer. Accommodations may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.
- 3) “Undue hardship” means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer. The fact that the employer provides, or would be required to provide, a similar accommodation to another employee or employee(s) shall create a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

(B) SEX DISCRIMINATION—It is unlawful sex discrimination for an employer to:

- 1) Fail or refuse to treat an employee or applicant for employment that the employer knows or should know is affected by pregnancy as well as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee’s or applicant’s ability or inability to work;
- 2) Fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy of an applicant for employment or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer;
- 3) Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;
- 4) Require an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such an applicant or employee does not have a known limitation related to pregnancy, or if such an accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;
- 5) Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations related to the pregnancy of the employee; or
- 6) Take adverse action against an employee in the terms, conditions or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy of the employee.

(C) NOTICE OF RIGHTS

- 1) An employer shall provide written notice in a form and manner to be determined by the [Equal Rights Commission] of the right to be free from discrimination in relation to pregnancy, including the right to reasonable accommodations:

MODEL LEGISLATION

- a) To all employees within 120 days of the effective date of this provision;
 - b) To new employees at the commencement of employment;
 - c) To any employee who notifies the employer of her pregnancy, within 10 days of such notification; and
 - d) By conspicuously posting at an employer's place of business in an area accessible to employees.
- 2) The [Equal Rights Commission] shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies and job applicants about their rights and responsibilities under this provision.

(D) NO DIMINUTION OF RIGHTS

This provision shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage for pregnancy under any other provision of law.

SECTION 9. REPEAL OF TARGETED REGULATION OF ABORTION PROVIDERS

- 1) Section XXX [any provision of law that singles out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures] is hereby repealed.
- 2) Section XXX [any provision of law that is the proximate cause of the closure of an abortion facility or facilities and which has not been proven by clear and convincing evidence necessary to prevent a bona fide threat to patient safety] is hereby repealed.
- 3) Section XXX [any provision that includes onerous licensing standards comparable or equivalent to the standards of ambulatory surgical centers e.g. procedure room size, corridor width, required minimum distance from hospital, transfer agreement with hospitals] is hereby repealed.
- 4) Section XXX [any provision that includes onerous requirements on clinicians that perform abortions e.g. admitting privileges] is hereby repealed.

SECTION 10. REPEAL WAITING PERIODS AND MANDATORY BIASED COUNSELING

- 1) Section XXX [any provision of law that requires a waiting period before an abortion is performed] is hereby repealed.
- 2) Section XXX [any provision of law that necessitates multiple trips to a clinic for reasons other than medical necessity] is hereby repealed.
- 3) Section XXX [any provision of law that necessitates an ultrasound or sonogram for reasons other than medical necessity] is hereby repealed.

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MODEL LEGISLATION

SECTION 11. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision, or application thereof to any person or circumstance, is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 12. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

WOMEN'S EQUALITY, DIGNITY AND FAIRNESS ACT

Abortion is one of the safest and most common medical procedures in the United States. The Centers for Disease Control found that legal abortion is significantly safer than childbirth, and a study in the American Journal of Public Health reported that first-trimester abortion is one of the safest medical procedures in America. Approximately three in ten women will have an abortion in their lifetimes and will need access to safe, legal facilities to obtain abortion care.

Women's equality, dignity and fairness requires that women have access to abortion regardless of their economic status or source of insurance coverage. And yet, 33 states and the District of Columbia prohibit the use of state Medicaid funds for abortions, except in limited cases. Twenty-five states restrict abortion coverage in their insurance exchanges. Twenty-one states restrict abortion coverage for state employee health plans. And ten states restrict abortion coverage in standard private insurance plans.

Women's equality, dignity and fairness requires that women are able to access reproductive healthcare clinics without fear of assault. And yet, patients are stalked, threatened, and harassed. In addition to being blocked on public walkways and being called murderers, anti-choice protesters often make patients fear for their personal safety.

Women's equality, dignity and fairness requires that abortion, provided by qualified medical professionals, be accessible to all women. And yet, because of restrictive laws and physical threats, the number of abortion providers has declined in recent years. The American College of Obstetricians and Gynecologists (ACOG) recommends allowing trained advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration and medication abortions, yet only a few states allow it.

Women's equality, dignity and fairness requires that reproductive health care clinics are not forced to close because of politics. And yet, 24 states have Targeted Regulation of Abortion Providers or "TRAP laws" that are intended to close abortion clinics. Most often, the restrictions dictate that abortions be performed at sites that are the functional equivalent of ambulatory surgical centers, or even hospitals, which makes the delivery of health care services prohibitively expensive. Other TRAP laws require clinicians at abortion facilities to have admitting privileges at a local hospital or mandate transfer agreements with hospitals, effectively giving hospitals veto power over whether an abortion clinic can exist.

The Women's Equality, Dignity and Fairness Act lays out a broad abortion rights vision. Abortion rights includes the right to abortion coverage in both public and private insurance, the right of clinics and clinic patients to be safe from violence, the right of women to truthful medical information, and the right of all patients to medically appropriate care.

WOMEN'S EQUALITY, DIGNITY AND FAIRNESS ACT

Summary: *The Women's Equality, Dignity and Fairness Act would lay out a broad abortion rights vision including the right of women to abortion coverage in both public and private insurance, the right of clinics to operate in safety and as medically appropriate, the right of patients to receive the truth about reproductive medicine, and the right of qualified medical professionals to deliver abortion services.*

SECTION 1. SHORT TITLE

This Act shall be called the "Women's Equality, Dignity and Fairness Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Approximately three in ten women will have an abortion in their lifetimes, and will need access to safe, legal facilities to obtain abortion care without delay.
- 2) Abortion is one of the safest medical procedures in the United States.
- 3) Women's equality, dignity and fairness requires that women have access to abortion regardless of their economic status and that no woman should have the decision to have, or not to have, an abortion made for her based on her ability or inability to afford the procedure. Since 1976, the federal government has withheld funds for abortion coverage through the Medicaid program as well as other federal health plans and programs. Seventeen states, however, have policies that include Medicaid abortion coverage because it is wrong to coerce women who cannot afford abortion to, for no other reason, carry a pregnancy to term.
- 4) Women's equality, dignity and fairness requires that women are able to access reproductive healthcare clinics without fear of assault. Every individual should be free to make personal health care decisions without fear of harassment and violence. Over the years, hundreds of reproductive health care facilities have experienced bombings, arsons and other attacks. Employees and physicians have been targeted, physically injured, and in some cases killed. Health care providers have been stalked, threatened, and harassed in person, on the phone, and through the mail.
- 5) Women's equality, dignity and fairness requires that women are given truthful science-based information about reproductive health care clinics. Some Crisis Pregnancy Centers (CPCs) use advertising to mislead women contemplating abortion into believing that their facilities offer abortion services and unbiased counseling—when the opposite is true. Because of the time-sensitive and constitutionally protected nature of the decision to terminate a pregnancy, false and misleading advertising about the services offered by CPCs is of special concern.

MODEL LEGISLATION

- 6) Women’s equality, dignity and fairness requires that abortion, provided by qualified medical professionals, be accessible to all women. The number of abortion providers has decreased due to practice restrictions and threats of violence. The American College of Obstetricians and Gynecologists (ACOG) recommends allowing advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration abortions and medication abortions. Studies show that trained APCs are fully qualified to provide aspiration and medication abortion services.
- 7) Women’s equality, dignity and fairness requires that reproductive health care clinics are not forced to close because of politics. In 2011, 89 percent of U.S. counties lacked an abortion facility. In 2015, four states had only one abortion provider, and at least ten states had three or fewer abortion providers. Clinic closures can force women to travel long distances to reach the nearest clinic, or force women to delay care as they arrange transportation, time off from work, and save additional money for travel or lodging costs. Women who face these obstacles are more likely to seek out less safe alternatives to legal abortion.

(B) PURPOSE—This law is enacted to guarantee women’s equality, dignity and fairness by ensuring the availability of abortion free from violence and political and economic obstacles.

SECTION 3. ABORTION COVERAGE EQUITY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Abortion” means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth and any related services, including but not limited to diagnostic, counseling, referral, or follow up services.
- 2) “State” means the state, any state agency, and every county, city, town, municipal corporation, quasi-municipal corporation, and public institution in the state.

(B) POLICY TO COVER ABORTION

Abortion shall be covered in all types of health insurance offered, sold, or purchased in this State, including all private plans, all state-funded plans, and all state-provided benefits.

(C) RESTRICTIONS ON ABORTION CARE REPEALED

- 1) Section XXX [any provision of law that prohibits abortion care in private health insurance plans] is hereby repealed.
- 2) Section XXX [any provision of law that prohibits abortion care in state employee insurance plans] is hereby repealed.
- 3) Section XXX [any provision of law that prohibits abortion care in the state insurance exchange] is hereby repealed.

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MODEL LEGISLATION

- 4) Section XXX [any provision of law that prohibits abortion care in Medicaid coverage] is hereby repealed.
- 5) Section XXX [any provision of law that prohibits abortion care in any other state-funded insurance program] is hereby repealed.

(D) SEVERABILITY

The provisions of this section shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words will not be enforced only to the extent they jeopardize federal funding or the validity of the Act.

SECTION 4. ACCOUNTABILITY FOR HARASSMENT OF WOMEN

After Section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS— In this section:

- 1) “Coercion” means when a person, with intent unlawfully to restrict freedom of action of another to the detriment of the other:
 - a) Threatens to commit any criminal offense;
 - b) Makes any scheme, plan, or pattern intended to cause a person to believe that the decision to seek reproductive or sexual health care or failure to seek reproductive health care would result in serious harm to or physical restraint against any person; or
 - c) Abuses or threatens the abuse of the legal process.
- 2) “Entity” means a partnership, limited partnership, association of two or more individuals, or any type of corporation, whether incorporated or unincorporated.
- 3) “Harassment” means a knowing and willful course of conduct that is directed at a specific person, that would cause a reasonable person to be seriously alarmed or harassed, and that in fact seriously alarms or harasses the person, and that serves no legitimate purpose.
- 4) “Health care provider” means any person, corporation, facility or institution licensed or otherwise authorized by the state to provide health care services, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employee or agent of such person acting in the course and scope of employment or agency related to health care services.
- 5) “Health care facility” means any office, building, or other place in which health care services are provided by a health care provider, whether or not the facility is licensed by the state.
- 6) “Interfering” means knowingly and intentionally pursuing a course of conduct designed to deter, prevent or delay a person from providing or referring for reproductive health care through threats, intimidation, force, coercion or misrepresentation.
- 7) “Intimidation” means an act or course of conduct directed at a specific person that causes fear or apprehension in such person and serves no legitimate purpose.
- 8) “Misrepresentation” means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

MODEL LEGISLATION

- 9) “Reproductive health care” means abortion, contraception, infertility treatment, prenatal care, miscarriage management, treatment for STIs, as well as counseling for all of these services.
- 10) “Social services office” means any office or facility in which social services, or any domestic violence center or are provided, including but not limited to referral for health care services.

(B) INTERFERENCE WITH THE PROVISION OF REPRODUCTIVE HEALTH CARE PROHIBITED

- 1) An individual or entity may not intentionally or knowingly prevent or delay, or attempt to prevent or delay, a health care provider or health care facility’s efforts to provide reproductive health care, or a social services office’s efforts to refer for reproductive health care, by:
 - a) Harassing, coercing or intimidating a health care provider, or interfering with the performance of a duty or the exercise of a function by an employee of a health care facility where reproductive health care is provided;
 - b) Interfering with the normal course of operations of a facility that provides reproductive health care; or
 - c) Harassing, coercing or intimidating patients seeking access to reproductive health care from a health care provider or facility.
- 2) No government official or agency may act with the intent of preventing or unnecessarily delaying a health care provider’s or medical facility’s efforts to provide reproductive health care, except when specifically required by law.

(C) CIVIL CAUSE OF ACTION AND INJUNCTIVE RELIEF

- 1) Any individual or entity who has had his, her or its ability to provide reproductive health care limited or prevented as a result of a violation of this section shall have a cause of action against the individual or entity that engaged in that conduct. Any health care provider, entity or facility that has experienced a violation of this section may bring an action for compensatory damages and/or for injunctive relief for the purpose of stopping or preventing violations or threatened violations of this section, or to determine the applicability of this section to actions or threatened future actions. Such individual or entity may bring an action for statutory damages as permitted under this section, which in the event of a violation of the Act shall be fifteen thousand dollars (\$15,000) per violation.
- 2) For all violations of this section, the plaintiff may recover reasonable attorneys’ fees and costs.
- 3) Any plaintiff bringing a claim under this section shall be entitled to proceed under a pseudonym upon providing the court with affidavit asserting the harm that could arise to the plaintiff and/or his or her family or home if his or her identity is not concealed. The plaintiff shall be entitled to a presumption from the court that identification poses a risk of retaliatory physical or mental harm to the requesting party and to innocent nonparties. In a suit to which this section applies, only the following persons are entitled to know the true identifying information about the plaintiff: the judge and any court personnel working with the judge on the action in question; a party to the action; the attorney representing a party to the action; and a person authorized by a written order of a court specific to that person. The court shall order that no person shall divulge that information to anyone without a written order of the court, and a court shall hold a person who violates the order in contempt.

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MODEL LEGISLATION

- 4) Any plaintiff bringing a claim under this section shall be presumed entitled to a protective order from the court prohibiting discovery regarding the following facts and any other associated facts that the plaintiff alleges will endanger him or herself or his or her family: the plaintiff's residential and work addresses, phone numbers and email addresses, any information about the plaintiff's children, parents, or other family members including their names, ages, where they attend school, their phone numbers and email addresses, any information about contractors with whom the plaintiff works; and any other identifying information. If the defendant or defendants believe that the above information is relevant to the defense's claims, defendant shall make a motion for discovery of that information under court seal. The court shall allow the information to be discovered only if the information is relevant to the defense's claims, and only under seal with all non-relevant information redacted by plaintiff before it is provided to the court.

SECTION 5. CRISIS PREGNANCY CENTER FRAUD

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.
- 2) "Client" means an individual who is inquiring about or seeking services at a pregnancy services center.
- 3) "Emergency contraception" means any drug or device approved by the U.S. Food and Drug Administration that prevents pregnancy after sexual intercourse.
- 4) "Health information" means any oral or written information in any form or medium that relates to health insurance and/or the past, present or future physical or mental health or condition of a client.
- 5) "Limited services pregnancy center" means a pregnancy services center that does not directly provide, or provide referrals to clients, for abortions or emergency contraception.
- 6) "Pregnancy services center" means a facility, including a mobile facility, where the primary purpose is to provide services to women who are or may be pregnant, and that either offers obstetric ultrasounds, obstetric sonograms or prenatal care to pregnant women, or has the appearance of a medical facility. A pregnancy service center has the appearance of a medical facility if two or more of the following factors are present:
 - a) The facility offers pregnancy testing and/or pregnancy diagnosis;
 - b) The facility has staff or volunteers who wear medical attire or uniforms;
 - c) The facility contains one or more examination tables;
 - d) The facility contains a private or semi-private room or area containing medical supplies and/or medical instruments;
 - e) The facility has staff or volunteers who collect health information from clients; or
 - f) The facility is located on the same premises as a state-licensed medical facility or provider or shares facility space with a state-licensed medical provider.
- 7) "Premises" means land and improvements or appurtenances or any part thereof.

MODEL LEGISLATION

(B) UNLAWFUL FRAUD

It is unlawful fraud for any limited services pregnancy center to disseminate or cause to be disseminated before the public in [insert jurisdiction], or to disseminate before the public anywhere from [insert jurisdiction], any advertising about the services performed at that center if the management of the center knows or, by the exercise of reasonable care, ought to know is untrue or clearly designed to mislead the public about the nature of services provided. Advertising includes representations made directly to consumers; marketing practices; communication in any print medium such as newspapers, magazines, mailers or handouts; any broadcast medium such as television or radio; or over the Internet such as through websites and web ads.

[Bill drafting note: A particular state might use language that is similar to any existing Unfair and Deceptive Trade Practices Act.]

(C) ENFORCEMENT

- 1) The [insert appropriate authority] may enforce the provisions of this section through a civil action in any court of competent jurisdiction. Before filing an action under this section, [insert appropriate authority] shall give written notice of the violation to the limited services pregnancy center. The written notice shall indicate that the limited services pregnancy center has ten (10) days in which to correct the false, misleading, or deceptive advertising. If the limited services pregnancy center has not responded to the written notice within ten (10) days or refuses to correct the false, misleading, or deceptive advertising within that period, [insert appropriate authority] may file a civil action.
- 2) [Insert appropriate authority] may apply to any court of competent jurisdiction for injunctive relief compelling compliance with any provision of this section and correcting the effects of the false, misleading, or deceptive advertising. Such an injunction may require a limited services pregnancy center to:
 - a) Pay for and disseminate appropriate corrective advertising in the same form as the false, misleading, or deceptive advertising.
 - b) Post a notice on its premises, in a location clearly noticeable from the waiting area, examination area, or both, stating:
 - i) Whether there is a licensed medical doctor, registered nurse, or other licensed medical practitioner on staff at the center; and
 - ii) Whether abortion, emergency contraception, or referrals for abortion or emergency contraception are available at the center.
 - c) Any other narrowly tailored relief that the court deems necessary to remedy the adverse effects of the false, misleading, or deceptive advertising on women seeking pregnancy-related services.
- 3) Upon a finding by a court of competent jurisdiction that a limited services pregnancy center has violated this section, [jurisdiction] shall be entitled to recover civil penalties from each and every party responsible for the violation of not less than [\$500] and not more than [\$5,000] per violation. In addition, if the [jurisdiction] prevails it shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

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MODEL LEGISLATION

- 4) Nothing in this section shall be interpreted as restricting, precluding or otherwise limiting a separate or concurrent criminal prosecution under the [insert relevant law]. Jeopardy shall not attach as a result of any court action to enforce the provisions of this section.

[Bill drafting note: Because of the sensitivity of First Amendment issues and the fact that abortion opponents often file suit over the First Amendment, Findings should be carefully crafted to describe the problem in your own jurisdiction.]

SECTION 6. QUALIFIED PROVIDERS OF ABORTION

(A) DEFINITIONS—In this section:

- 1) “Aspiration abortion” means medical treatment intended to induce the termination of a pregnancy by dilating the cervix and using suction to remove the fetus and related pregnancy material from the uterus.
- 2) “Certified nurse-midwife” means a person licensed under [insert relevant provision].
- 3) “Medication abortion” means the use of medication intended to terminate a pregnancy so that it does not result in a live birth.
- 4) “Nurse practitioner” means a person licensed under [insert relevant provision].
- 5) “Physician assistant” means a person licensed under [insert relevant provision].

(B) QUALIFIED PROVIDERS TO INCLUDE NURSE PRACTITIONERS AND NURSE-MIDWIVES

- 1) A nurse practitioner or a certified nurse-midwife is authorized to prescribe and supervise medication abortions and to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing nurse practitioners and certified nurse-midwives].
- 2) It is unprofessional conduct for any nurse practitioner or certified nurse-midwife to prescribe or supervise an aspiration or medication abortion without prior successful completion of training and validation of clinical competency.
- 3) The [insert relevant board governing nurse practitioners and certified nurse-midwives] shall issue rules for training, clinical competency, and standardized procedures for medication abortion and aspiration abortion.

(C) QUALIFIED PROVIDERS INCLUDE PHYSICIAN ASSISTANTS

- 1) A physician assistant is authorized to prescribe and supervise medication abortions and to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing physician assistants].
- 2) It is unprofessional conduct for any physician assistant to prescribe or supervise an aspiration or medication abortion without prior successful completion of training and validation of clinical competency.
- 3) The [insert relevant board governing physician assistants] shall issue rules for training, clinical competency, and standardized procedures for medication abortion and aspiration abortion.

MODEL LEGISLATION

[Bill drafting note: You will have to consult with local advocates and the effected healthcare professional associations before writing this bill. Healthcare regulatory schemes often differ from state to state. In addition, there are various ways to achieve the same goal, depending on the wording of your state's "physician-only" provision (that is, existing statutory language that an abortion can be performed only by a physician):

- a) A few states have used regulatory processes and a few have used Attorney General opinions to allow APCs to practice despite so-called "physician-only" laws. These non-legislative avenues might be possible in your state.
- b) Depending on the state, you might simply repeal the "physician-only" provision; the underlying statutory and regulatory scheme might be sufficient to allow APCs to handle both aspiration and medication abortions.
- c) Alternatively, by inserting definitions of APCs or by using current definitions in state law, you might amend the existing "physician-only" provision to add APCs, making it a physician and APCs only law. Unless you add additional restrictions, this approach would cover both aspiration and medication abortions.]

SECTION 7. REPEAL OF TARGETED REGULATION OF ABORTION PROVIDERS

- 1) Section XXX [any provision of law that singles out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures] is hereby repealed.
- 2) Section XXX [any provision of law that is the proximate cause of the closure of an abortion facility or facilities and which has not been proven by clear and convincing evidence necessary to prevent a bona fide threat to patient safety] is hereby repealed.
- 3) Section XXX [any provision that includes onerous licensing standards comparable or equivalent to the standards of ambulatory surgical centers e.g. procedure room size, corridor width, required minimum distance from hospital, transfer agreement with hospitals] is hereby repealed.
- 4) Section XXX [any provision that includes onerous requirements on clinicians that perform abortions e.g. admitting privileges] is hereby repealed.

SECTION 8. REPEAL WAITING PERIODS AND MANDATORY BIASED COUNSELING

- 1) Section XXX [any provision of law that requires a waiting period before an abortion is performed] is hereby repealed.
- 2) Section XXX [any provision of law that necessitates multiple trips to a clinic for reasons other than medical necessity] is hereby repealed.
- 3) Section XXX [any provision of law that necessitates an ultrasound or sonogram for reasons other than medical necessity] is hereby repealed.

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MODEL LEGISLATION

SECTION 9. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 10. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

SUPPORT FOR ALL PREGNANCY OPTIONS ACT

The abortion rights movement supports the full range of options for women who are or might become pregnant. Reproductive rights and justice includes policies to reduce unintended pregnancy; to make abortion safe, accessible and affordable to all; and to support women who bring their pregnancies to term.

Women need access to all reproductive options and, therefore, we must make all forms of contraception available and affordable. Each year nearly half of pregnancies are unintended. As a Colorado program dramatically proved, when all contraceptive options are made fully available to women, it contributes to the dramatic decline of unintended pregnancies.

Women need access to all reproductive options and, therefore, we must make abortion more affordable. Thirty-three states and the District of Columbia prohibit the use of state Medicaid funds for abortions, except in limited cases. Twenty-five states prohibit abortion coverage in their insurance exchanges. Twenty-one states prohibit abortion coverage for state employee health plans. And ten states prohibit abortion coverage in standard private insurance plans. No woman should have the decision to have, or not to have, an abortion made for her based on her ability or inability to afford the procedure.

Women need access to all reproductive options and, therefore, we must we make abortion more accessible. Because of restrictive laws and physical threats, the number of abortion providers has declined in recent years. The American College of Obstetricians and Gynecologists (ACOG) recommends allowing trained advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration and medication abortions, yet only a few states allow it.

Women need access to all reproductive options and, therefore, we must ensure fair workplace treatment of pregnant women and mothers. Pregnant women and women who have recently given birth need reasonable accommodations in the workplace.

Women need access to all reproductive options and, therefore, we must ensure that reproductive healthcare clinics are not forced to close because of politics. At least 24 states have Targeted Regulation of Abortion Providers or “TRAP laws” that are designed to close abortion clinics. Most often, the restrictions dictate that abortions be performed at sites that are the functional equivalent of ambulatory surgical centers, or even hospitals, which makes the delivery of health care services prohibitively expensive. Other TRAP laws require clinicians at abortion facilities to have admitting privileges at a local hospital or mandate transfer agreements with hospitals, effectively giving hospitals veto power over whether an abortion clinic can exist.

SUPPORT FOR ALL PREGNANCY OPTIONS ACT

Summary: *The Support for All Pregnancy Options Act demonstrates how the abortion rights movement supports a range of common sense solutions to reduce unintended pregnancy, to make abortion safe, accessible and affordable to all, and to support women who bring their pregnancies to term.*

SECTION 1. SHORT TITLE

This Act shall be called the “Support for All Pregnancy Options Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

- 1) Family planning is basic health care for women. Access to contraception helps women prevent unintended pregnancy and control the timing and spacing of planned births.
- 2) Abortion is one of the safest medical procedures in the United States.
- 3) Approximately three in ten women will have an abortion in their lifetimes, and will need access to safe, legal facilities to obtain abortion care without delay.
- 4) Women need access to all reproductive options and, therefore, we must make all forms of contraception available and affordable. The United States has one of the highest rates of unintended pregnancy among industrialized nations. Each year, nearly half of pregnancies are unintended. Women rely on contraception for a range of medical purposes in addition to birth control, such as regulation of cycles and endometriosis. Women need complete and medically accurate information about every contraceptive option, including emergency contraception, and they need pharmacies to deliver the chosen option without delay.
- 5) Women need access to all reproductive options and, therefore, we must make abortion more affordable. No woman should have the decision to have, or not to have, an abortion made for her based on her ability or inability to afford the procedure. Since 1976, the federal government has withheld funds for abortion coverage through the Medicaid program as well as other federal health plans and programs. Seventeen states, however, have policies that include Medicaid abortion coverage because it is wrong to coerce women who cannot afford abortion to, for no other reason, carry a pregnancy to term.
- 6) Women need access to all reproductive options and, therefore, we must we make abortion more accessible. The number of abortion providers has decreased due to practice restrictions and threats of violence. The American College of Obstetricians and Gynecologists (ACOG) recommends allowing advanced practice clinicians (APCs)—nurse practitioners, certified nurse-midwives and physician assistants—to perform aspiration abortions and medication abortions. Studies show that trained APCs are fully qualified to provide aspiration and medication abortion services.

MODEL LEGISLATION

- 7) Women need access to all reproductive options and, therefore, we must ensure fair workplace treatment of pregnant women and mothers. Women in the workplace who request accommodations in order to maintain a healthy pregnancy or to recover from childbirth are being removed from their positions, placed on unpaid leave, or fired. Not only do these policies harm pregnant women and mothers, but all women who employers may perceive negatively because of their potential to get pregnant.
- 8) Women need access to all reproductive options and, therefore, we must expand Medicaid to ensure that women and their families have access to health care coverage. Health coverage for all is essential, but this is especially true for pregnant women and young children. Pregnant women are far more likely to obtain needed pre-natal care when they have insurance. Further, unhealthy children tend to grow up to be unhealthy adults, and uninsured preschoolers struggle more when they reach grade school because of untreated medical conditions. Approximately seven percent of all children age five and younger are uninsured, many of them because they live in states without Medicaid expansion under the Affordable Care Act.
- 9) Women need access to all reproductive options and, therefore, we must ensure that reproductive healthcare clinics are not forced to close because of politics. In 2011, 89 percent of U.S. counties lacked an abortion facility. In 2015, four states had only one abortion provider, and at least ten states had three or fewer abortion providers. Clinic closures can force women to travel long distances to reach the nearest clinic, or force women to delay care as they arrange transportation, time off from work, and save additional money for travel or lodging costs. Women who face these obstacles are more likely to seek out less safe alternatives to legal abortion.
- 10) Women need access to all reproductive options and, therefore, we must prevent discrimination that limits the availability of foster care and adoption. There is a shortage of qualified individuals willing to adopt or foster a child in the child welfare system. As a result, thousands of foster children lack a permanent and safe home. Child welfare agencies must not use sexual orientation, gender identity or marital status as a means to discriminate in adoption and foster care recruitment, selection and placement.

(B) PURPOSE—This law is enacted to protect the health, safety and welfare of women by supporting their rights to avoid pregnancy, obtain an abortion, or have children.

SECTION 3. WOMEN'S RIGHT TO THE PILL

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) "Contraception" or "contraceptive" means any drug or device approved by the Food and Drug Administration to prevent pregnancy.
- 2) "Emergency contraception" means one or more drugs, used separately or in combination to prevent pregnancy within a medically-recommended amount of time after sexual intercourse.
- 3) "Employee" means a person hired, by contract or any other form of an agreement, by a pharmacy.

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MODEL LEGISLATION

- 4) “Pharmacy” means an entity that is licensed by the state under [insert appropriate citation] to engage in the business of selling prescription drugs at retail, and employs one or more employees.
- 5) “Product” means a Food and Drug Administration-approved drug or device.
- 6) “Professional clinical judgment” means the use of professional knowledge and skills to form a clinical judgment, in accordance with prevailing medical standards.
- 7) “Without delay” with respect to a pharmacy providing, providing a referral for, or ordering contraception, or transferring the prescription for contraception, means within the usual and customary timeframe at the pharmacy for providing, providing a referral for, or ordering other products, or transferring the prescription for other products, respectively.

(B) DUTY OF PHARMACIES

- 1) If a customer requests a contraceptive that is in stock, the pharmacy shall ensure that the contraceptive is provided to the customer without delay.
- 2) If a customer requests a contraceptive that is not in stock, the pharmacy shall immediately inform the customer that the contraceptive is not in stock and without delay offer the customer the following options:
 - a) If the customer prefers to obtain the contraceptive through a referral or transfer, the pharmacy shall locate a pharmacy of the customer’s choice or the closest pharmacy confirmed to have the contraceptive in stock; and refer the customer or transfer the prescription to that pharmacy.
 - b) If the customer prefers for the pharmacy to order the contraceptive, the pharmacy shall obtain the contraceptive under the pharmacy’s standard procedure for expedited ordering of medication and notify the customer when the contraceptive arrives.
- 3) The pharmacy shall ensure that its employees do not:
 - a) Intimidate, threaten, or harass customers in the delivery of services relating to a request for contraception;
 - b) Interfere with or obstruct the delivery of services relating to a request for contraception;
 - c) Intentionally misrepresent or deceive customers about the availability of contraception or its mechanism of action;
 - d) Breach medical confidentiality with respect to a request for contraception or threaten to breach such confidentiality; or
 - e) Refuse to return a valid, lawful prescription for contraception upon customer request.
- 4) This section does not prohibit a pharmacy from refusing to provide a contraceptive to a customer in accordance with any of the following:
 - a) If it is unlawful to dispense the contraceptive to the customer without a valid, lawful prescription and no such prescription is presented;
 - b) If the customer is unable to pay for the contraceptive; or
 - c) If a licensed pharmacist refuses to provide the contraceptive on the basis of a professional clinical judgment.
- 5) Pharmacies shall stock over-the-counter emergency contraception and make it available for purchase without a prescription in accordance with the U.S. Food and Drug Administration protocol.

MODEL LEGISLATION

(C) ENFORCEMENT

- 1) The state [Board of Pharmacy] shall enforce this section in accordance with [section of law dealing with violations of Board policy].
- 2) Any person aggrieved as a result of a violation of this section may, in any court of competent jurisdiction, commence a civil action against the pharmacy involved to obtain appropriate relief, including actual and punitive damages, injunctive relief, and a reasonable attorney's fee and cost.

SECTION 4. ABORTION COVERAGE EQUITY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth and any related services, including but not limited to diagnostic, counseling, referral, or follow up services.
- 2) "State" means the state, any state agency, and every county, city, town, municipal corporation, quasi-municipal corporation, and public institution in the state.

(B) POLICY TO COVER ABORTION

Abortion shall be covered in all types of health insurance offered, sold, or purchased in this state, including all private plans, all state-funded plans, and all state-provided benefits.

(C) RESTRICTIONS REPEALED

- 1) Section XXX [any provision of law that prohibits abortion care in private health insurance plans] is hereby repealed.
- 2) Section XXX [any provision of law that prohibits abortion care in state employee health insurance plans] is hereby repealed.
- 3) Section XXX [any provision of law that prohibits abortion care in the state insurance exchange] is hereby repealed.
- 4) Section XXX [any provision of law that prohibits abortion care in Medicaid coverage] is hereby repealed.
- 5) Section XXX [any provision of law that prohibits abortion care in any other state-funded insurance program] is hereby repealed.

(D) SEVERABILITY

The provisions of this Section shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid, is preempted by federal law or regulation, or results in noncompliance with federal requirements that are a condition to the allocation of federal funds to the state, those words are inapplicable and the validity of the remainder of this Act shall not be affected.

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MODEL LEGISLATION

SECTION 5. QUALIFIED PROVIDERS OF ABORTION

(A) DEFINITIONS—In this section:

- 1) “Aspiration abortion” means medical treatment intended to induce the termination of a pregnancy by dilating the cervix and using suction to remove the fetus and related pregnancy material from the uterus.
- 2) “Certified nurse-midwife” means a person licensed under [insert relevant provision].
- 3) “Medication abortion” means the use of medication intended to terminate a pregnancy so that it does not result in a live birth.
- 4) “Nurse practitioner” means a person licensed under [insert relevant provision].
- 5) “Physician assistant” means a person licensed under [insert relevant provision].

(B) QUALIFIED PROVIDERS TO INCLUDE NURSE PRACTITIONERS AND NURSE-MIDWIVES

- 1) A nurse practitioner or a certified nurse-midwife is authorized to prescribe and supervise medication abortions and to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing nurse practitioners and certified nurse-midwives].
- 2) It is unprofessional conduct for any nurse practitioner or certified nurse-midwife to prescribe or supervise an aspiration or medication abortion without prior successful completion of training and validation of clinical competency.
- 3) The [insert relevant board governing nurse practitioners and certified nurse-midwives] shall issue rules for training, clinical competency, and standardized procedures for medication abortion and aspiration abortion.

(C) QUALIFIED PROVIDERS INCLUDE PHYSICIAN ASSISTANTS

- 1) A physician assistant is authorized to prescribe and supervise medication abortions and to perform an aspiration abortion if he or she has successfully completed training and achieved clinical competency and adheres to standardized procedures approved by the [insert relevant board governing physician assistants].
- 2) It is unprofessional conduct for any physician assistant to prescribe or supervise an aspiration or medication abortion without prior successful completion of training and validation of clinical competency.
- 3) The [insert relevant board governing physician assistants] shall issue rules for training, clinical competency, and standardized procedures for medication abortion and aspiration abortion.

[Bill drafting note: You will have to consult with local advocates and the effected healthcare professional associations before writing this bill. Healthcare regulatory schemes often differ from state to state. In addition, there are various ways to achieve the same goal, depending on the wording of your state’s “physician-only” provision (that is, existing statutory language that an abortion can be performed only by a physician):

- a) A few states have used regulatory processes and a few have used Attorney General opinions to allow APCs to practice despite so-called “physician-only” laws. These non-legislative avenues might be possible in your state.

MODEL LEGISLATION

- b) Depending on the state, you might simply repeal the “physician-only” provision; the underlying statutory and regulatory scheme might be sufficient to allow APCs to handle both aspiration and medication abortions.
- c) Alternatively, by inserting definitions of APCs or by using current definitions in state law, you might amend the existing “physician-only” provision to add APCs, making it a physician and APCs only law. Unless you add additional restrictions, this approach would cover both aspiration and medication abortions.]

SECTION 6. PREGNANT WORKERS FAIRNESS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

- 1) “Pregnancy” means pregnancy, childbirth, or a related condition, including, but not limited to, lactation.
- 2) “Reasonable accommodation” means such accommodation that can be made for an employee that shall not cause undue hardship in the conduct of the employer’s business. Accommodations may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.
- 3) “Undue hardship” means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer. The fact that the employer provides or would be required to provide a similar accommodation to another employee or employee(s) shall create a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

(B) SEX DISCRIMINATION—It is unlawful sex discrimination for an employer to:

- 1) Fail or refuse to treat an employee or applicant for employment that the employer knows or should know is affected by pregnancy as well as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee’s or applicant’s ability or inability to work;
- 2) Fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy of an applicant for employment or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer;

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MODEL LEGISLATION

- 3) Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;
- 4) Require an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such applicant or employee does not have a known limitation related to pregnancy or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;
- 5) Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations related to the pregnancy of the employee; or
- 6) Take adverse action against an employee in the terms, conditions or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy of the employee.

(C) NOTICE OF RIGHTS

- 1) An employer shall provide written notice in a form and manner to be determined by the [Equal Rights Commission] of the right to be free from discrimination in relation to pregnancy, including the right to reasonable accommodations:
 - a) To all employees within 120 days of the effective date of this provision;
 - b) To new employees at the commencement of employment;
 - c) To any employee who notifies the employer of her pregnancy, within 10 days of such notification; and
 - d) By conspicuously posting at an employer's place of business in an area accessible to employees.
- 2) The [Equal Rights Commission] shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies and job applicants about their rights and responsibilities under this provision.

(D) NO DIMINUTION OF RIGHTS

This provision shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage for pregnancy under any other provision of law.

SECTION 7. MEDICAID EXPANSION

After section XXX, the following new section XXX shall be inserted:

[Bill drafting note: In some states, Medicaid expansion can be achieved without enacting a new statute.]

(A) DEFINITIONS

"Department" means the Department of [Health].

MODEL LEGISLATION

(B) MEDICAID EXPANSION UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

- 1) Subject to the availability of federal financial participation pursuant to an approved state plan amendment, the following individuals or groups shall receive medical assistance through [state Medicaid program] pursuant to this section and [insert relevant state law pertaining to Medicaid eligibility]:
 - a) Parents and caretaker relatives of children who are eligible for the medical assistance program or the children's basic health plan, whose family income does not exceed 133 percent of the federal poverty line, adjusted for family size.
 - b) Individuals without a dependent child in the home, as described in section 1902 (a) (10) (A) (i) (VIII) of the Social Security Act, 42 U.S.C. SEC 1396a, who have attained 19 years of age but have not attained 65 years of age, and whose family income does not exceed 133 percent of the federal poverty line, adjusted for family size.
 - c) In accordance with Section 1902(a)(10)(A)(i)(IX) of the federal Social Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(i)(IX)), individuals who are in foster care on his or her 18th birthday until his or her 26th birthday. In addition, the Department shall implement the federal option to provide [name of program] benefits to individuals who were in foster care and enrolled in Medicaid in any state.
- 2) A foster care adolescent who is in foster care in this state on his or her 18th birthday shall be enrolled to receive benefits under this section without any interruption in coverage and without requiring a new application.
- 3) The Department shall develop procedures to identify and enroll individuals who meet the criteria for eligibility in this section, including, but not limited to, former foster care adolescents who were in foster care on their 18th birthday and who lost coverage as a result of attaining 21 years of age. The Department shall work with counties to identify and conduct outreach to former foster care adolescents who lost coverage as a result of attaining 21 years of age, to ensure they are aware of the ability to reenroll under the coverage provided pursuant to this section.
- 4) The Department shall develop and implement a simplified redetermination form for this program. A beneficiary qualifying for the benefits extended pursuant to this section shall fill out and return this form only if information known to the Department is no longer accurate or is materially incomplete.
- 5) The Department shall seek federal approval to institute a renewal process that allows a beneficiary receiving benefits under this section to remain on [Medicaid] after a redetermination form is returned as undeliverable and the county is otherwise unable to establish contact. If federal approval is granted, the recipient shall remain eligible for services under the [Medicaid] fee-for-service program until the time contact is reestablished or ineligibility is established, and to the extent federal financial participation is available.
- 6) The Department shall terminate eligibility only after it determines that the recipient is no longer eligible and all due process requirements are met in accordance with state and federal law.

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SECTION 8. REPEAL OF TARGETED REGULATION OF ABORTION PROVIDERS

- 1) Section XXX [any provision of law that singles out abortion facilities or personnel for requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures] is hereby repealed.
- 2) Section XXX [any provision of law that is the proximate cause of the closure of an abortion facility or facilities and which has not been proven by clear and convincing evidence necessary to prevent a bona fide threat to patient safety] is hereby repealed.
- 3) Section XXX [any provision that includes onerous licensing standards comparable or equivalent to the standards of ambulatory surgical centers e.g. procedure room size, corridor width, required minimum distance from hospital, transfer agreement with hospitals] is hereby repealed.
- 4) Section XXX [any provision that includes onerous requirements on clinicians that perform abortions e.g. admitting privileges] is hereby repealed.

SECTION 9. REPEAL WAITING PERIODS AND MANDATORY BIASED COUNSELING

- 1) Section XXX [any provision of law that requires a waiting period before an abortion is performed] is hereby repealed.
- 2) Section XXX [any provision of law that necessitates multiple trips to a clinic for reasons other than medical necessity] is hereby repealed.
- 3) Section XXX [any provision of law that necessitates an ultrasound or sonogram for reasons other than medical necessity] is hereby repealed.

SECTION 10. EVERY CHILD DESERVES A FAMILY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

“Placement decision” means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

(B) DISCRIMINATION PROHIBITED—An entity that receives state assistance or contracts with an entity that receives state assistance, and is involved in adoption or foster care placements shall not:

- 1) Deny to any person the opportunity to become an adoptive or a foster parent on the basis of the sexual orientation, gender identity or marital status of the person, or the sexual orientation or gender identity of the child involved;
- 2) Delay or deny the placement of a child for adoption or into foster care on the basis of the sexual orientation, gender identity or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child; or
- 3) Make any other decision on the basis of the sexual orientation, gender identity or marital status of the prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

MODEL LEGISLATION

(C) ENFORCEMENT

In addition to all other remedies, any individual who is aggrieved by an action in violation of this section may bring a lawsuit seeking relief in [insert court of appropriate jurisdiction].

SECTION 11. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 12. EFFECTIVE DATE

This Act shall take effect on XXXX 1, 2016

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ABORTION IS HEALTH CARE RESOLUTION

Summary: *The Abortion Is Health Care Resolution would demonstrate the jurisdiction's commitment to quality health care for all residents, including abortion care as a vital component of any health care system.*

SECTION 1. SHORT TITLE

This Resolution shall be called the "Abortion Is Health Care Resolution."

SECTION 2. RESOLUTION

Whereas, [the jurisdiction] is committed to a quality health care system that meets the needs of all of its citizens and affordable abortion care is an essential component of this health care system. Since about three in ten women will have an abortion in their lifetimes, it is one of the most common medical procedures in the United States; and

Whereas, abortion is one of the safest medical procedures in the United States. Aspiration abortion, for example, causes no complications in 99 percent of cases, and medication abortion causes no complications in more than 99.9 percent of cases, making it safer than Tylenol, aspirin and Viagra; and

Whereas, abortion has become less accessible. The number of abortion clinics has declined by about 40 percent over the past three decades. Today, almost 90 percent of counties in the United States do not have an abortion provider and 38 percent of women of reproductive age live in those counties. Four states have only one provider and at least ten states have three or fewer providers; and

Whereas, abortion is an essential component of health care because it provides all women the ability to plan and space their pregnancies which clearly improves women's physical, psychological and economic wellbeing. For example, evidence shows that women who have a wanted abortion are better able to maintain a positive future outlook and achieve their aspirational life plans. Similarly, evidence clearly demonstrates that if a woman seeks an abortion and access is delayed or denied, she is at greater risk of experiencing adverse health and economic outcomes; and

Whereas, abortion is an essential component of health care for women with lower incomes. A five-year examination of the effects of unintended pregnancy on women's lives by ANSIRH (Advancing New Standards in Reproductive Health) found that the main reason women terminate their pregnancies is because they can't afford to have a child; and

Whereas, abortion is an essential component of health care for women who face medical problems, for example, a woman who is diagnosed with cancer in the middle of pregnancy and must make a choice between obtaining an abortion or forgoing lifesaving chemotherapy; and

MODEL LEGISLATION

Whereas, abortion is an essential component of health care for young teenagers who become pregnant, for example, a girl who must make a choice between obtaining an abortion or running the risk of enduring severe, lasting damage to her physical health; and

Whereas, abortion is an essential component of health care for women who experience major problems in pregnancy, for example a woman who finds out that her fetus would only live for a few hours past birth and carrying that pregnancy to term might severely damage her ability to bear other children in the future; and

Whereas the practice of abortion care, like all health care, should be driven by evidence-based standards developed and supported by medical professionals. But instead, patients and providers are required to overcome numerous barriers erected by abortion opponents. These barriers—waiting periods, so-called “counseling” requirements, bans on insurance coverage, limits on who can perform abortions, and TRAP laws—are not intended to protect a woman’s safety, they are designed to coerce women into giving birth to unwanted children. They serve no purpose other than to make abortion more difficult and expensive.

Whereas, when abortion opponents argue for onerous regulations and procedures, they are treating abortion care as if it is a separate issue apart from health care. But abortion is, in fact, health care.

Be it therefore RESOLVED, [the jurisdiction] is committed to ensuring that:

- Abortion shall be recognized as an essential component of women’s health care; and
- Abortion care shall be made affordable and accessible throughout the [jurisdiction] and integrated into the health care safety net; and
- State, city and county health departments shall promote policies and take steps to increase access to abortion care; and
- Both public and private health insurance shall cover abortion care; and
- Facilities providing abortion care or health care professionals providing abortion care shall not be subjected to regulations more burdensome than those imposed on facilities or health care professionals that provide medically comparable procedures; and
- All qualified health care professionals shall be able to provide abortion care; and
- Health care professionals providing abortion care shall be able to follow best medical practices developed and supported by scientific evidence.

SECTION 3. DATE

This resolution was signed on XXXX 1, 2016.

For direct hyperlinks to source materials, go to www.publicleadershipinstitute.org/playbook

INDEX OF RESOURCES

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*



A Better Balance

80 Maiden Lane, Suite 606
New York, NY 10038
(212) 430-5982
www.abetterbalance.org

Advocates for Youth

2000 M Street NW, Suite 750
Washington, DC 20036
(202) 419-3420
www.advocatesforyouth.org

All Above All

1201 Connecticut Ave NW, Suite 300
Washington, DC 20036
(347) 719-3255
www.allaboveall.org

American Civil Liberties Union

125 Broad Street
New York, NY 10004
(212) 549-2500
www.aclu.org

American Congress of Obstetricians and Gynecologists

409 12th Street SW
Washington, DC 20024
(202) 863-2509
www.acog.org

Center for Reproductive Rights

199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3600
www.reproductiverights.org

Center on Reproductive Rights and Justice at Berkeley Law

Boalt Hall
Berkeley, CA 94720
(510) 642-1741
www.law.berkeley.edu/centers/center-on-reproductive-rights-and-justice

Colorado Organization for Latina Opportunity & Reproductive Rights (COLOR)

PO Box 40991
Denver, CO 80204
(303) 393-0382
www.colorlatina.org

ConwayStrategic

1875 Connecticut Avenue NW, 10th Floor
Washington, DC 20009
(202) 888-6169
www.conwaystrategic.com

Guttmacher Institute

125 Maiden Lane, 7th Floor
New York, NY 10038
(212) 248-1111
www.guttmacher.org

In Our Own Voice: National Black Women's Reproductive Justice Agenda

1300 Eye Street NW, Suite 400E
Washington, DC 20005
(202) 749-8365
www.blackrj.org

NARAL Pro-Choice America

1156 15th Street NW, Suite 700
Washington, DC 20005
(202) 973-3012
www.prochoiceamerica.org

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National Abortion Federation

1660 L Street NW, Suite 450
Washington, DC 20036
(202) 667-5881
www.prochoice.org

**National Advocates for
Pregnant Women**

875 6th Avenue, Suite 1807
New York, NY 10001
(212) 255-9252
www.advocatesforpregnantwomen.org

**National Asian Pacific American
Women's Forum**

1730 Rhode Island Avenue NW, Suite 210
Washington, DC 20036
(202) 470-3170
www.napawf.org

National Health Law Program

1444 Eye Street NW, Suite 1105
Washington, DC 20005
(310) 204-6010
www.healthlaw.org

**National Institute for
Reproductive Health**

470 Park Avenue South, 7th Floor South
New York, NY 10016
(212) 343-2031
www.nirhealth.org

**National Latina Institute for
Reproductive Health**

1411 K Street NW, Suite 602
Washington, DC 20005
(202) 621-1435
www.nlirh.org

**National Partnership for Women
& Families**

1875 Connecticut Avenue NW, Suite 650
Washington, DC 20009
(202) 986-2600
www.nationalpartnership.org

National Women's Law Center

11 Dupont Circle NW, Suite 800
Washington, DC 20036
(202) 588-5180
www.nwlc.org

Physicians for Reproductive Health

55 W 39th Street, 10th Floor
New York, NY 10018
(646) 366-1890
www.prh.org

**Planned Parenthood Federation
of America**

434 W. 33rd Street
New York, NY 10001
(212) 541-7800
www.plannedparenthood.org

**Reproductive Health
Technologies Project**

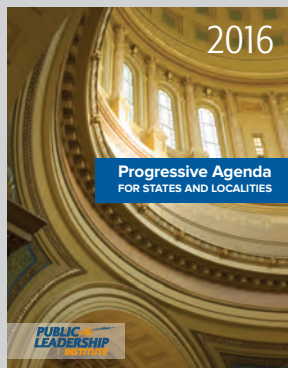
1634 Eye Street NW, Suite 650
Washington, DC 20006
(202) 530-4401
www.rhnp.org

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ABOUT THE PUBLIC LEADERSHIP INSTITUTE

The Public Leadership Institute is a nonprofit, nonpartisan policy and leadership center organized to explore and raise public awareness about key public policy issues of equity and justice and to develop public leaders who will improve the economic and social conditions of all Americans.

PUBLIC POLICY INITIATIVES



Public Leadership Institute (PLI) creates and disseminates research, talking points and model legislation on a wide range of state and local issues related to economic opportunity, civil rights, education, healthcare, the environment and reproductive freedom.

Our best known policy tool is the *Progressive Agenda for States and Localities*, a menu of specific policy ideas and model legislation. Legislators in more than 40 states and council members more than 50 cities have handed 5,000 copies of the *Progressive Agenda* to their colleagues. PLI also reports on progressive and conservative legislation with our annual *Progress in the States and Localities* and monthly *Compendium of State and Local Legislation*. All of our policy resources are accessible through the PLI website.

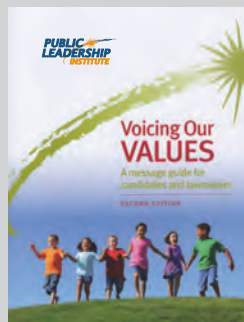
NATIONWIDE NETWORK



The Public Leadership Institute hosts the largest network of progressive lawmakers in the nation, with more than 13,000 legislators, council members, commissioners and supervisors, as well as thousands of state-level activists. We communicate with

our network every other Thursday through the *PLI Bulletin*, an emailed newsletter that provides hyperlinks directing lawmakers and advocates to the most timely policy news, legislative models, reports, arguments and polls. We also organize networking events, workshops, webinars and conferences, both formal and informal. Whenever appropriate, we link members of our network to policy organizations that can provide special expertise on particular issues.

VOICING OUR VALUES MESSAGE TRAINING



The Public Leadership Institute conducts a program of message and communications training for policy leaders called *Voicing Our Values*. The cornerstone of the program is the annual publication of a message book, also titled *Voicing Our Values*, which includes

practical messaging on many specific issue areas (e.g. budget and taxes, education, environment). We have distributed more than 2,500 copies of the book in paperback, it's available on Amazon.com, and it can also be downloaded from our website in PDF format. In addition, we offer bi-weekly message webinars led by policy and communications specialists, and when invited, we present in-state message framing workshops for both elected officials and policy advocates.

LEADERSHIP TRAINING



The Public Leadership Institute conducts policy, communications, media and coalition-building webinars, conferences, trainings, and

workshops for policymakers and grassroots leaders. When invited, PLI staff and allied experts present leadership training workshops at meetings across the nation. We hold dozens of training webinars and workshops each year, and in 2016, we will begin a values-based fellowship program to provide several dozen lawmakers with an in-depth leadership training experience.

Public Leadership Institute

1825 K Street NW, Suite 400
Washington DC 20006
202-454-6200
www.publicleadershipinstitute.org
leadership@publicleadershipinstitute.org

A PLAYBOOK FOR ABORTION RIGHTS

*a guide for state and
local policymakers*

The battle over abortion rights is taking place at the state level, not in Congress, and that is likely to remain true for years to come. The best way to fight back is with a strong, sustained effort to drive proactive policies—and the public debate about such policies—in states, cities and counties.

A Playbook for Abortion Rights: a guide for state and local policymakers marks the beginning of a new strategic initiative to promote a bold, proactive reproductive rights and justice strategy at the state and local levels—on the policy, communications, and public education fronts.

We encourage you to identify proactive policies from the *Playbook* that could help improve women's access to abortion care in your community, and to contact the Public Leadership Institute for strategic guidance, support, and connections to experts in the field.



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