

Targeted Regulation of Abortion Providers: TRAP Laws

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Abortion in the United States

- **Finer and Henshaw, 2005:**
 - ✓ In 2002, **1.3 million** abortions in the U.S.
 - ✓ About **2%** of all women aged 15–44 had an abortion in 2002
 - ✓ Abortion is one of the most common surgical procedures in the U.S.
 - Adolescents, African-American, and poor women are more like to seek abortions later in pregnancy Finer, 2006
 - Abortion-related deaths are uncommon where abortion is legal (i.e., safe) Guttmacher Special Report, 2003
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Abortion Providers in the U.S. (Finer, 2003)

- 1997 survey: nearly 60% of ob/gyns who performed abortions were ≥ 50 years old
 - 2000: 37% fewer abortion providers than the peak in 1982
 - 1996 – 2000: the number of abortion providers
 - ✓ decreased in 38 states and the District of Columbia
 - ✓ increased in 9 states
 - 2000: 87% of counties in the U.S. did not have an abortion provider
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Is Abortion a Political Hot Topic?



- **Roe vs. Wade: 1973**
- **299 restrictions on abortions were enacted between 1999 and 2005**
- ✓ **Only 68 restrictions between 1985 and 1991**

Source: Yale Journal of Law and Feminism, 2006

What are TRAP laws?



- Targeted Regulation of Abortion Providers (TRAP)
 - Apply **only** to facilities in which abortions are performed
 - ✓ More stringent than regulations applied to comparable medical practices
 - **State** laws
 - **Stealth** nuisance laws
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Beginning of TRAP Laws

- Trace back to 1992 SC decision, *Planned Parenthood v Casey*
 - ✓ Re-affirmed right to abortion (i.e., overt abortion bans unlikely to be found Constitutional) but
 - ✓ States could regulate abortion providers if regulations did not place an “undue burden” on women’s ability to obtain an abortion
- Shift in strategy: chip away at abortion indirectly
 - Shift focus from a woman’s right to the medical facility and providers

TRAP Laws: Chipping Through the Back Door

- Do not overtly seem to influence the pregnant woman's **decision**
 - ✓ Laws like waiting periods and parental consent are aimed at abortion decision-making
- TRAP laws regulate the abortion **procedure**
 - ✓ They are often justified as health regulations

Kinds of TRAP Laws

- Offices of physicians who provide abortions must be **licensed** by state health department
 - ✓ Medical offices and clinics are typically not licensed
 - Civil/criminal **penalties** if facility not in compliance with state licensing laws
 - Regulatory standards that are essentially **micro-management**
 - ✓ Additional provider administrative responsibilities (e.g., written practices, policies, procedures)
 - ✓ Additional training and qualifications of staff
 - ✓ Mandatory physical examinations for employees
 - ✓ Specifications about physical design and function of facility
 - ✓ Mandatory testing of patients for STIs
 - Authority of state health departments to **search** medical offices and patient records of abortion providers subject to licensing without warrant or probable cause
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Example: South Carolina

“[Health] Department inspectors shall have access to all properties and area, objects, records, and reports [of the abortion facility], and shall have the authority to make photocopies of those documents required in the course of inspections or investigations.”

S.C. Reg. 61-12 § 102-F

Example: South Carolina

“All outside areas, grounds and/or adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard or as a haven for insects, rodents and other pests.”

S.C. Reg. 61-12 § 606

Example: Mississippi

- Regulate clinic as an outpatient surgical center
 - Requires that physician have admitting privileges at a local hospital
 - March, 2007: omnibus abortion bill requires provider to purchase ultrasound equipment and perform an ultrasound for women seeking abortion
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Example: North Carolina

Abortion procedure and recovery rooms shall have a minimum of six air changes per hour, and “all air supplied to procedure rooms shall be delivered at or near the ceiling” and must pass through “a minimum of one filterbed with a minimum filter efficiency of 80 percent.”

N.C. Admin.Code 3E.0206

Example: Texas

Licensed facilities must establish and maintain a written "quality assurance program," run by a quality assurance committee of at least four staff members, who must meet at least quarterly.

-- Tex. Admin. Code § 139.8(a)

Example: Missouri

“Each employee shall have a pre-employment health examination by a physician. The examination is to be repeated annually and more frequently if indicated to ascertain freedom from communicable diseases.”

MO Min. Stds. Of Operation for Abortion Facilities § 203.2,

Example: Missouri

- Facilities performing 2nd and 3rd trimester abortions or more than five 1st trimester abortions/month must be “ambulatory surgical centers”-- thus requiring the 3 clinics in the state to be licensed by the state
 - Hallways must be at least 6’ wide and doors at least 44” wide
 - Separate changing rooms for female and male staff
 - Recovery room with space for a minimum of 4 beds, 3 feet of clearance around each
 - **As of September 25, 2007:** a federal judge issued temporary injunction while compromise being explored
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TRAP Laws Treat Abortion Differently than Other Medical Procedures

- **Allow** a unique level of governmental **micro-management and oversight**
- **Reduce** the number of abortion providers by subjecting them to criminal and civil penalties they would not face with other types of medical practice
- **Raise** the cost of providing abortion
- **Impose** requirements that are medically unnecessary and could interfere with best medical practices

Less Regulated Procedures with Greater Risk than Abortions up to 20 Weeks

- Hysteroscopy (diagnostic/simple operative)
- Dilation and curettage (diagnostic and post-miscarriage)
- Endometrial biopsy
- Ovum retrieval for *in vitro* fertilization
- Sigmoidoscopy
- Vasectomy

Weitz, 2006

Are TRAP Laws Common?

- **Over half** of all states have some kind of TRAP laws
- State laws vary -- and some are not enforceable
- 33 states have laws subjecting abortion providers to restrictions not applied to other medical professionals
- 25 states restrict abortion care (even very early) to hospitals or special facilities

Who Suffers the Most?

“It is the women with resources who continue to be able to get abortion. And it is the low-income women, people in marginalized populations, people that live in rural areas, who just don't have good access to legal abortion and turn to very unhealthy alternatives.”

-- Jones, 2006

TRAP Laws and Public Health

“In public health we identify a problem, figure out the causes, look for solutions, and implement them. Here we see a vigorous response in the absence of a problem. It’s science run amok. It’s public health run backwards.”

-- David Grimes (former chief of the CDC branch that monitors abortion safety)

Public Health Response

- **TRAP laws don't have to be under the radar**
 - ✓ **Become informed: Planned Parenthood, NARAL, Alan Guttmacher Institute, Center for Reproductive Rights**
 - ✓ **Inform media**
 - **Educate legislators about these nuisance laws:**
 - ✓ **don't reflect best medical practices**
 - ✓ **increase costs of care**
 - ✓ **burden patients, providers, and law enforcement**
 - ✓ **decrease access of the most socially vulnerable**
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References

- **Center for Reproductive Rights**
http://www.reproductiverights.org/pub_fac_trap.html
 - **Alan Guttmacher Institute**, <http://www.Guttmacher.org> and
<http://www.guttmacher.org/statecenter/updates/index.html#TRAP>
 - **Yeoman B, The Quiet War on Abortion. Mother Jones, October 2001.**
<http://www.motherjones.com/news/feature/2001/09/abortion.html>
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