

State abortion bans bar exceptions for suicide, mental health

December 7 2023, by Sandhya Raman, CQ-Roll Call



Credit: Unsplash/CC0 Public Domain

In the year since the Supreme Court outlawed the national right to an abortion, 18 states have implemented abortion bans that specify that mental health or suicidality do not qualify as a health-related exception

for the woman—a deviation that's occurring despite growing national momentum to treat physical and mental health equally.

Suicide is one of the leading causes of death among women of reproductive age. Nearly 23 percent of pregnancy-related deaths are attributed to [mental health conditions](#), according to the Centers for Disease Control and Prevention.

"These are the conditions that are killing women and the absolute greatest risk factors for them are mental [health](#) conditions like depression and [substance use disorders](#)," said Constance Guille, founder and director of the Women's Reproductive Behavioral Health Division at the Medical University of South Carolina. "So these conditions are absolutely just as deadly as many other conditions in medicine."

Despite the June 2022 *Dobbs v. Jackson Women's Health Organization* decision overturning the federal right to an abortion, [federal law](#) still requires [states](#) to provide abortions in the case of medical emergencies or risk losing Medicare funding—a significant source of their revenue.

But what constitutes a medical emergency is not uniform, at least not in a legal sense. While state statutes vary in specificity, no state explicitly offers protections for mental health emergencies.

The gray area has been confusing for medical providers.

"There's a lot of confusion. There's a lot of anxiety, particularly when you then link that into potential prosecution of the provider," said Guille, a reproductive psychiatrist. "People are afraid to step in and do the right thing and care because they're so worried that they're going to do something illegal, especially when the laws are confusing and it's not quite certain."

Push for parity elsewhere

The push to distance mental health from physical health in state abortion laws comes despite decreasing stigma and broader bipartisan acceptance of policies related to many areas of mental health.

Congress passed bipartisan mental health parity laws in 1996 and 2008, requiring insurers to provide equal coverage for mental health and physical conditions. And in 2022, Congress passed a bipartisan mental health and gun safety law.

Even some of the [state laws](#) that disqualify mental health from qualifying as a [medical emergency](#) acknowledge the risks certain mental health conditions can bring—but only in regard to abortion risks or complications.

In Tennessee, for example, state law specifies that physicians can seek an exemption to its ban to perform an emergency abortion to prevent death or "impairment of a major bodily function." But that language specifically excludes "psychological or emotional conditions" of the pregnant woman.

That same law, however, also requires the physician to report any medical complications following an abortion, including "psychological complications, such as depression, [suicidal ideation](#), anxiety, and sleeping disorders; and other adverse events."

"What you'll find is that legislators will talk about excluding mental health things or suicidal ideation because they don't want bad faith actors to use those as reasons why people would obtain an abortion," said N. Dawn Bingham, clinical associate professor of obstetrics and gynecology at the USC-Columbia School of Medicine. "They're looking for any reason to show that, you know, abortion actually harms women."

Origins

The United States is not the only country to question what constitutes a mental health emergency justifying an abortion.

Ireland had some of the toughest abortion restrictions in the European Union until voters repealed the ban in 2018. But the country has allowed exceptions for suicidal risk since a 1992 landmark Irish Supreme Court decision.

In the United States, state abortion laws singling out mental health have roots in a 2005-06 federal push to limit non-custodial adults from helping minors to seek abortions across state lines.

A bill introduced in 2005 included language providing an exception for cases in which a delay "would cause a substantial and irreversible impairment of a major bodily function of the minor arising from continued pregnancy, not including psychological or emotional conditions."

National Right to Life Committee lobbyist Douglas Johnson was involved in drafting versions of the bill, which passed both chambers but fell short of becoming law.

Since then, federal lawmakers have introduced 32 other abortion bills that clarify any exemptions are "not including psychological or emotional conditions"—starting in 2012 after states began adopting similar language.

In 2010, Nebraska enacted a 20-week abortion ban allowing medical exceptions but not for those related to suicidal ideation. That legislation was based on a model bill drafted by Mary Spaulding Balch, the NRLC's director of state legislation at the time.

Alabama passed its own 20-week ban in 2011, with language also barring medical exceptions related to suicidal ideation and extending it more broadly to all mental health conditions.

Two states single out only suicidal risk as ineligible for seeking a medical exemption to have an abortion, nine consider just mental health ineligible, and seven disqualify both mental health and suicidal risk, according to a CQ Roll Call analysis of laws passed in or after 2005.

Pre-Dobbs, states could implement limits related to mental health before fetal viability. The decision has allowed states to enforce stricter bans with these exceptions.

The analysis also found Oklahoma passed six laws that incorporate the most commonly used mental health exception language between 2011 and 2021. Kansas passed five between 2011 and 2023 with identical language singling out exceptions for suicidal ideation.

Narrowly tailored exceptions are rare.

In 2019, Alabama passed a separate near-total abortion ban with language that also created a narrow exception allowing some emergency mental health exceptions if an Alabama-licensed psychiatrist with at least three years of clinical experience also certifies the mental health condition is an emergency.

That provision would allow a state-licensed physician with hospital-admitting privileges to perform the abortion. The law took effect in June 2022 following the Dobbs decision and also does not include exceptions for rape or incest.

In June 2022, prior to the Dobbs decision, NRLC revealed its model bill for state-level abortion bans, which includes language clarifying that

mental health and suicidal ideation should not be considered exceptions of medical emergencies in post-Dobbs laws.

"In the past we had seen how health exceptions were basically loopholes to allow abortions for any reason. You know, like, you could have a woman saying that 'but I'm anxious or I might kill myself,'" said Ingrid Duran, director of state legislation at NRLC. "If we are really concerned about someone's mental health, then getting them an abortion is not the way to solve that."

Stigma

In practice, the laws separating mental health from [physical health](#) can make things more difficult to navigate for providers, who worry this could further stigmatize mental health.

"It's basically saying that these are not even conditions, never mind life-threatening conditions. That is not true," said Guille.

Collecting data about mental health emergencies and abortion is difficult. States are not required to report abortion statistics to the CDC. Patients who travel to a state without mental health-related restrictions may not need to disclose if mental health was a factor in seeking an [abortion](#).

"When the language was adopted in various states, there also wasn't any kind of real legislative conversation, either in committees or on the floor, about what they were doing in carving out mental health," said Elisabeth Smith, director of state policy and advocacy at the Center for Reproductive Rights.

"I don't know that these lawmakers have ever had to publicly explain their position or try to grapple with what this means."

This story is part of a series supported through the Rosalynn Carter Fellowship for Mental Health Journalism.

If you or someone you know is facing a [mental health](#) crisis, please call the toll-free, 24-hour 988 Suicide and Crisis Lifeline at 9-8-8 to be connected to a trained counselor.

2023 CQ-Roll Call, Inc.

Distributed by Tribune Content Agency, LLC.

Citation: State abortion bans bar exceptions for suicide, mental health (2023, December 7) retrieved 9 May 2024 from

<https://medicalxpress.com/news/2023-12-state-abortion-bar-exceptions-suicide.html>

| |
|--|
| <p>This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.</p> |
|--|