



LEGISLATIVE INTERFERENCE

AAFP Position

The AAFP opposes governmental interference in the physician-patient relationship, which places political and other concerns over the ethical obligations physicians have toward their patients.¹ Physicians largely remain [committed](#) to ensuring that patients' access to health care services remains unhindered by inappropriate government interference. The AAFP [respects](#) physicians who decline to partake in services they are morally opposed to as long as patients still have access to those services overall, as said in a March 2018 [letter](#) to U.S. Department of Health and Human Services (HHS) Secretary Alex Azar. The Academy has released [joint principles](#) with other organizations representing frontline physicians, calling for collaboration with policymakers to reject political interference in patient-physician relationships and instead prioritize scientific evidence and patient autonomy.

Conscience Clauses

Over the last four decades, legislatures have increasingly allowed physicians and other clinicians to opt out of certain procedures or treatments that go against their personal or religious beliefs through the expansion of "conscience clauses."² After [Roe v. Wade](#) legalized abortion nationwide, Congress passed the [Church Amendments](#) to allow health care providers and facilities receiving certain federal funds to legally refuse to provide abortion, contraception, and sterilization services if the provision of such services runs contrary to their religious beliefs.³ In January 2018, HHS formed a new [Conscientious and Religious Freedom Division](#) within the Office for Civil Rights to enforce conscience protections.

Main Types of Legislative Interference

Laws that interfere with the patient-physician relationship disregard patients' needs, preferences, and autonomy and often do not allow for exceptions for patients with unique histories and care records.

- Laws prohibiting physicians from inquiring about risk factors that may affect their patients' health or the health of their families (i.e. gun ownership)
- Laws requiring physicians to discuss specific practices that may be unnecessary or inappropriate at the time of a specific encounter with a patient (i.e. abortion services)
- Laws requiring physicians to conduct diagnostic tests or medical interventions, with the lack of supporting evidence, including those that are invasive and required to be performed even without the patient's consent (i.e. abortion services)
- Laws limiting the information that physicians can disclose to patients and/or patient care consultants (i.e. hydraulic fracturing risks)

Women's Health

Provision of women's reproductive services remains a key issue. Forty-six states (excluding CO, NH, VT, WV) allow some physicians and other clinicians to refuse to provide abortion services to patients while forty-four states (excluding CO, CT, NH, RI, VT, WV) allow health care organizations to refuse

¹ Weinberger SE, Lawrence HC, Henley DE, Alden ER, Hoyt DB. (2012). "Legislative Interference with the Patient-Physician Relationship." *New England Journal of Medicine*. Retrieved from <https://www.nejm.org/doi/full/10.1056/NEJMs1209858>

² Marshall C. (2013). "The Spread of Conscience Clause Legislation." *American Bar Association*. Web.

³ Berlinger N. (2008). "Conscience Clauses, Health Care Providers, and Parents." *The Hastings Center*. Web.

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abortion services.⁴ Similarly, nine states (AZ, AK, CO, FL, ID, IL, ME, MS, TN) allow individual providers to refuse contraceptive-related services, six (AZ, AK, GA, ID, MS, SD) permit pharmacists to refuse dispensing contraceptives, and eight states (AZ, AK, CO, IL, ME, MA, MS, TN) allow health care institutions to refuse contraception services. Lastly, 17 states (AK, GA, ID, IL, KS, KY, ME, MD, MA, MS, MT, NJ, PA, RI, WA, WV, WI) allow individual providers to refuse to provide sterilization services.

Women are required to undergo an ultrasound before receiving an abortion in 26 states (AL, AZ, AR, FL, GA, ID, IN, IA, KS, LA, MI, MS, MO, NE, NC, ND, OH, OK, SC, SD, TX, UT, VA, WV, WI, WY), while [Louisiana](#), [Texas](#), and [Wisconsin](#) require providers to display and describe the ultrasound image.⁵ Laws can also require physicians to discuss topics with a patient that may not be necessary or appropriate at the time, such as in the 34 states (AL, AK, AZ, AR, CT, FL, GA, ID, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, NE, NV, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WV, WI) that require women to receive counseling before an abortion.⁶

Gun Violence and Hydraulic Fracturing

Gag laws preventing physicians from inquiring about gun ownership, which poses risks of accidental yet preventable injury and death, have always been of concern. [Florida](#)'s law was notorious for being the most restrictive, but it has since been [struck down](#). Other states have introduced similar laws that also have all have been struck down. For example, legislation in [Minnesota](#) would have prohibited providers from inquiring about a patient's use, possession, or access to firearms or ammunition. In [West Virginia](#), legislation would have allowed license suspension or revocation of physicians who ask patients if they own or possess firearms if it was not related to the patient's medical condition.

There are also state laws limiting the information about hydraulic fracturing (fracking) that doctors are permitted to discuss with patients. There are claims that chemicals from this practice can contaminate ground water, but fracking companies seek to conceal this information and physicians can be punished for disclosing that information to patients without permission from the company, even if physicians find that their patient's ailments may be related to fracking chemicals. [North Carolina](#) and [Pennsylvania](#) have gag laws related to fracking, with Pennsylvania's related provisions since being [struck down](#).

Criminal Penalties for Physicians

Transgender Health Care for Minors

Some states are seeking to restrict the ability of health care providers to perform gender reassignment therapy or surgery on minors under age 18 by revoking licenses or imposing criminal penalties. During the 2020 state legislative session, bills were introduced in [Oklahoma](#), [South Carolina](#), [Illinois](#), and [Missouri](#) to revoke health care clinicians' licenses if they provided gender reassignment treatment, with Missouri classifying parents as child abusers if they allow such treatment. [South Dakota](#) would make gender reassignment surgery a misdemeanor offense for medical professionals, [Ohio](#) would count any gender reassignment therapy a misdemeanor and surgery a felony for mental health providers, and [Florida](#), [Kentucky](#), and [Colorado](#) laws would make any gender reassignment therapy or surgery a felony offense. Bills in South Dakota, Florida, and Colorado, and [New Hampshire](#) did not advance.

Abortions

In recent years, five states (AL, LA, MS, MO, OH) have approved legislation to penalize providers for providing abortion care, all of which have been struck down by the courts or blocked by injunction. [Alabama](#) finds physicians guilty of a felony for providing abortion care, in addition to [Ohio](#), where physicians are guilty of a felony if they perform an abortion after a fetal heartbeat is detected. Physicians in [Louisiana](#), [Missouri](#), and [Mississippi](#) are subject to fines, imprisonment, and/or revocation of their license if they perform an abortion after their state's gestational age cutoff.

Updated: December 2020

⁴ Guttmacher Institute. (2020). "Refusing to Provide Health Services." Web.

⁵ Guttmacher Institute. (2020). "Requirements for Ultrasound." Web.

⁶ Guttmacher Institute. (2020). "Counseling and Waiting Periods for Abortion." Web.