# Policy Analysis of Texas New Abortion Law

Whitney Meyerhoeffer

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University of Virginia

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## Introduction

### New Texas Law

Currently a new law in Texas has the potential to affect each and every woman in the state. Governor Rick Perry (R) signed House Bill 2 (formerly Senate Bill 5) into law on July 18, 2013. The new laws on abortion regulations in Texas will begin to be enforced October 1st of 2013 and September 1st of 2014. These new regulations consist of new, stricter regulations on the requirements of the physician performing the procedure, prohibit abortion after 20 weeks post-fertilization, require a 24 hour counseling period and impose more regulations on abortion-inducing drugs. The critical part of the new law that has caused much controversy exists within the laws amendment to the Health and Safety Code in which all abortion facilities must meet the minimum standards for ambulatory surgical centers (HB 2, 2013). Ambulatory Surgical Center Licensing rules include regulations such as corridors that need to be 8 feet wide, 9 foot ceilings in some rooms, floor finishes in rooms for specific procedures, specific heating, ventilation and air conditioning systems among hundreds of others (§ 135, 2010).

## History

Abortion has been around since before the days of America, although in the last 50 years it has been more heatedly debated. When settlers from England first came to the 'New World' they kept their old philosophies on abortion until the early 1900s (Mohr, 1978). Before 1800 the common law did not formally recognize the existence of a fetus in criminal cases until it had quickened. Quickening happened late in the fourth month or early in the fifth month of a woman's pregnancy and was the first feeling of fetal movement. Quickening was

also the confirmation of pregnancy in women of that time because no reliable pregnancy tests had yet been developed. Home medical manuals included information on procedures for an "obstructed menses," or the stop of menstruation. These remedies included bloodletting, bathing, iron and quinine concoctions and violent purgatives (Mohr, 1978). Today abortion has been declared a fundamental right under the U.S. Constitution (Roe v. Wade, 1973) but the subject is still very controversial. The debate of when life begins goes back 5000 years and is still a very heated conversation today.

## Consequences of this Law

When completely enacted, the new law has the potential to decrease access to abortion and other women's reproductive procedures in the state of Texas causing an incredible hardship on women in high-risk populations. By increasing the requirements for abortion doctors, requiring a 24-hour counseling period and enforcing strict regulations on clinics where abortions are performed, Texas is creating a logistical, medical, economic and possibly dangerous nightmare for women across the state.

The new law requires abortion doctors to have admitting privileges at a hospital within 30 miles of the clinic in order to see patients for follow-up should there be complications during the procedure (HB 2, 2013). Most abortion doctors, however, do not generate revenue for hospitals and thus, hospitals are unlikely to allow them admitting privileges (Parks, 2013). Also, Weitz et al. (2013) found that out of 11,487 aspiration abortions performed in California, only 1.3% resulted in a complication. Similarly, a statement issued by the American Congress of Obstetricians and Gynecologists (ACOG) said that, "the risk of complications from abortion is minimal, with less than 0.5% of abortions

involving major complications," (ACOG, 2013). Although rare, complications do arise and having a doctor that has admitting privileges can be helpful, evidence and statistics show that it is not necessary for it to be mandated. The federal Emergency Medical Treatment and Active Labor Act requires hospitals to treat anyone that comes to their emergency department (42 USC § 1395dd). Therefore, regardless of the physician's admitting privileges, a woman can be seen for treatment from complications at the emergency department of any hospital.

Minors living in states with mandatory waiting periods have two-fold increased risk of having a mistimed or unwanted birth compared to teens in states without such laws (Coles et al, 2010). Sedgh et al (2010) also found that in North America and Northern Europe, adolescents' account for a large portion of abortions. These results indicate that the new Texas law may help to increase the amount of teenage parents in the state.

In 2008 there were 1,793 abortion providers with 34% being hospitals, 21% being abortion clinics where more than half of all patient visits were there for an abortion, 26% being clinics where fewer than half of all visits were for abortion and 19% were private physicians' offices. That means that 75% of women who obtained an abortion in 2008 got one at an abortion clinic, 24% at other clinics, 4% at hospitals and 1% at private physicians. In 2008, 84,610 women obtained abortions in Texas (Guttmacher Institute, 2011).

## Policy Alternatives

### Alternative 1

The first policy alternative is to have the new Texas law enforced. In this alternative the law will go into effect per the scheduled times. This law will require physicians to have

admitting privileges at hospitals no more than 30 miles away from a clinic, mandate a 24 hour counseling period before an abortion procedure, ban all abortions after 20 weeks except in cases of rape, incest and in order to maintain the health of the mother and finally it will require all clinical facilities that perform abortions to meet Ambulatory Surgical Center Licensing requirements (HB 2, 2013).

Alternative 2

The second policy alternative is to enforce the Affordable Care Act that was signed into law in March of 2010 (Pub. L. 111-148). Under this act, all Food and Drug Administration-approved contraceptive methods prescribed by a woman's doctor by an in-network provider are covered without a copayment, coinsurance or a deductible (HealthCare.gov, 2013).

Alternative 3

The third policy alternative is to increase funding for clinics to be built that meet the guidelines required under the new Texas law so that more clinics can be made available to their female population.

Evaluation Criteria

Efficiency is the achievement of program goals in relationship to the cost. This criterion measures whether or not an alternative is able to operate with the least cost and largest benefit. Equity and liberty were utilized in this analysis to determine the fairness and restrictions on the rights of individuals. Both of these assess whether the services are available to everyone and whether or not there are basic freedoms that are affected by the

implementation of the policies. Because this is such a highly debated topic in the political world, political feasibility was utilized to determine whether or not elected officials would support or oppose an alternative. Administrative feasibility was utilized to determine if the policy could become a reality given the resources and agencies available today.

Alternative 1 against Criteria

Efficiency: The new Texas law will require the closing of all but 5 clinics in the state, which could increase efficiency. On the other hand, the closing of the majority of clinics will require that the approximately 84,000 abortions that are performed annually in Texas at 42 abortion clinics will now have to be done in only 5 clinics. The busiest clinics in Texas to up to 4,000 abortions a year and under the new Texas law, the 5 remaining surgical centers would have to conduct about 14,400 abortions a year in order to maintain the previous demand (Associated Press, 2013). This increase in volume would likely decrease efficiency in these clinics. For these conflicting reasons I gave this alternative a mediocre score for efficiency as show in Table 1.

Equity: Under the new Texas law there will be a substantial amount of women who will be underserved. Family planning clinics, such as abortion clinics, often serve as a woman's regular source for medical care (Gold et al, 2009). In addition to contraceptive services these clinics often provide regular gynecological check-ups, general health screenings and referrals for conditions such as high blood pressure and diabetes (Frost et al, 2012). In small border towns that are mostly populated by Hispanics, women have been coming from Mexico to receive safe abortions in Texas (Meany, 2013). However, under the new law these women will not be able to receive these safe services because clinics will be

farther north into the state. It is feared by physicians, pharmacists and abortion rights advocates that some women will now cross the border from Texas into Mexico to get a pill that supposedly gives you an abortion (Meany, 2013; Davies, 2013). The pill, misoprotosol is unregulated and can be bought in flea markets on the Mexican side of the border. Experts fear that these unregulated pills could be very harmful to women and could cause bleeding infections and more complications (Davies, 2013). The new Texas law does not provide equal access to everyone for family planning needs and receives a low score in equity, but there is more.

Abortion clinics seem to be singled out under the new law. Currently the ASC offer exemptions to offices or clinics of a licensed physician, dentist or podiatrist, a licensed nursing home or a licensed hospital (§ 135, 2010). These facilities do not need to meet all of the requirements under the ASC, however they also perform small surgeries and in-patient services. Because there doesn't seem to be an equal scale that determines which procedures are dangerous and need to be in ASC facilities this criteria receives an even lower score.

Liberty: As we have seen above, enforcing the new Texas law will severely limit the number of women that can access clinics in the state. This results in a very low score in liberty because not all women have access to the basic right of healthcare.

Political Feasibility: Although there has been uproar in the state of Texas from women and others who oppose the new law, it has still been signed by the Governor and will begin to be enforced as of October 1, 2013. This makes the law incredibly feasible, however, there are still many battles taking place to reverse the law. A score of 9 reflects the fact that the law has already been put into place but is heavily fought against.

Administrative Ease: In order to enforce the new laws there would have to be quite a bit of oversight to inspect physician credentials and abortion clinics around the state. At the beginning of implementation there would be quite a bit of administrative reinforcement needed to make sure everyone is in compliance with the law. After that first hurdle, however, there will not be much else to implement. This alternative got a high score for administrative ease of implementation.

Alternative 2 against Criteria

Efficiency: This criterion is one of the major hurdles that the Affordable Care Act is currently seeking to overcome. With numerous new regulations, policies and laws the implementation of this program faces loopholes and computer system rewrites in order to make it efficient. As of January 2014, all medical records will be required to be computer based, however, and this poses great potential for the Act to be highly efficient after all the bugs have been worked out. Alternative 2 receives a mediocre score for efficiency because there is still a long way to go before running smoothly.

Equity: Under the Affordable Care Act most contraceptives are provided to women free of charge through their regular insurance. This means a high score for equity. However, some states, including Texas, allow for a few businesses to decide whether or not they will allow their employees to receive this benefit. The majority of women in will be able to receive contraceptives and this leads to a very high score in equity.

Liberty: Alternative 2 makes contraceptives available to all women and in most cases at no or little cost. This allows for the utmost freedom for women to choose if they

would prefer to utilize those contraceptives or not. Liberty gets the highest score for this alternative.

Political Feasibility: Like the new Texas law, this Act has already been set into motion and has been passed. As this administration prepares to leave office, however, there are many who are still fighting against it. Although the Act may not entirely be repealed, some parts could be overturned in the next administration. This unstable status of the Affordable Care Act makes the political feasibility for this alternative a bit low.

Administrative Ease: Although the Affordable Care Act is in place already, there are still quite a few administrative details that are still being worked out. As a result, the ease with which this program can be implemented is less than perfect, however, the contraception program is already in place and working. For the most part, women should be able to get their free contraceptives as long as they meet the requirements. There is still a bit of work to be done to make the system more efficient and for this reason the administrative ease score is an 8.

Alternative 3 against Criteria

Efficiency: In order for funds to be made available for new family planning facilities, there would need to be millions of dollars reallocated. In our economy today, funds are few and far between. All monies would have to be tracked and budgets approved before clinics could utilize the funds. The third alternative scores low in efficiency because of the regulations needed to report to the government.

Equity: By building new clinics that meet the ASC standards you are serving the vast majority of people as have been done in the past, with greater safety and better access. For this reason equity has the highest score possible.

Liberty: As with equity, these services that women are seeking will be provided and easily accessible for them. This gives liberty the highest score possible as well.

Political Feasibility: Although great for equity and liberty, this alternative is not very politically feasible. Most states have regulations on where family planning funds are allowed to go. Texas only allows family planning funds to be provided to public facilities or private comprehensive health clinics. Texas also has a statute that includes specific requirements for separation from agencies providing abortion so that those entities may not receive funds (Guttmacher Institute, 2013). Unless new laws are passed for the state of Texas, family planning funds would never be able to benefit abortion clinics. Political feasibility in this alternative gets a low score.

Administrative Ease: Although there are agencies and departments that are already in place to monitor the funds and make them available for use, the probability that this could be put into place is low. A major overhaul in the family planning department would need to take place in order to efficiently be able to deliver funds to organizations for building and renovating abortion clinics.

## Conclusion

Based on the analysis and evidence policy alternative 2 is the best option. This alternative provides the best efficiency, political feasibility and administrative ease while serving the basic human right of and being equitable. Under the Affordable Care Act, free

contraceptives are made available for the majority of women making this alternative fair and equal to all population groups. By utilizing this policy alternative we are able to keep our basic fundamental freedoms as was fought for by our forefathers.

| Table 1: Public Policy Evaluative Criteria and Policy Alternatives to the New Texas Law | | | |
|---|---|---|---|
| **Evaluative Criteria** | **Policy Alternative 1: New Texas Law Enforced** | **Policy Alternative 2: Affordable Care Act Enforced** | **Policy Alternative: 3 Funds Made Available for More Clinics** |
| **Efficiency** | 5 | 6 | 2 |
| **Equity** | 2 | 9 | 10 |
| **Liberty** | 2 | 10 | 10 |
| **Political Feasibility** | 8 | 7 | 1 |
| **Administrative Ease** | 9 | 8 | 4 |
| **Total** | **26** | **40** | **28** |

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