

Counseling and Waiting Periods for Abortion

BACKGROUND: Every state requires that a patient consent before undergoing medical treatment and that the consent be “informed.” Three interrelated elements underlie the long-standing tradition of informed consent: Patients must possess the capacity to make decisions about their care; their participation in these decisions must be voluntary; and they must be provided adequate and appropriate information. However, abortion counseling requirements sometimes run afoul of these principles by requiring information that is irrelevant or misleading.

In addition to abortion counseling requirements, many states require that at least 24 hours elapse between the counseling and the abortion. In states in which the counseling must be obtained in person (rather than via mail, fax, Internet or phone) and the woman must then wait a specified time period, most often 24 hours, between the counseling and the procedure, the woman is effectively required to make two trips to the health care provider in order to obtain an abortion, a requirement that could constitute a hardship for some women. Moreover, several states also mandate when and how an ultrasound is performed prior to an abortion (see Requirements for Ultrasound).

HIGHLIGHTS:

- 35 states require that women receive counseling before an abortion is performed: 27 of these states detail the information a woman must be given; 8 states have abortion-specific requirements generally following the established principles of informed consent.
 - 26 of these states also require women to wait a specified amount of time—most often 24 hours—between the counseling and the abortion procedure.
 - 11 states require that counseling be provided in person and that the counseling take place before the waiting period begins, thereby necessitating two separate trips to the facility.
- 27 states direct the state health agency to develop written materials: 10 require that the materials be given to a woman seeking an abortion, 17 require that the materials be offered to her.
- 14 states require that the woman be informed that she cannot be coerced into obtaining an abortion.
- Nearly all the states that require counseling require information about the abortion procedure and fetal development.
 - 25 states require that the woman be given information about the specific procedure, while 23 require information about all common abortion procedures.
 - 33 states require that the woman be told the gestational age of the fetus.
 - 27 states include information on fetal development throughout pregnancy.
- 12 states include information on the ability of a fetus to feel pain.
- 5 states require that the woman be told that personhood begins at conception.
- 24 states include information about the risks of abortion.
 - 20 states include accurate information on the potential effect of abortion on future fertility; in 5 states, the written materials inaccurately portray this risk.
 - 5 of the 7 states that include information on breast cancer inaccurately assert a link between abortion and an increased risk of breast cancer.
 - 9 of the 22 states that include information on possible psychological responses to abortion stress negative emotional responses.
- 29 states include information on the health risks of continuing pregnancy.



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ABORTION COUNSELING & WAITING PERIODS

STATE	Length of Waiting Period (in hours)	In-Person Counseling Necessitates Two Trips to Clinic	Written Materials Given or Offered	Woman Informed that Abortion Cannot Be Coerced	Description of Procedure:		Fetal Development:		Ability of a Fetus to Feel Pain	Personhood Begins at Conception
					Specific	All Common	Gestational Age of Fetus	Throughout Pregnancy		
States with Detailed Abortion-Specific Informed Consent Requirements (27 states)										
Alabama	48		Given	V,W	V	W	V	W		
Alaska			Offered		V	W	V	W	W*	
Arizona	24	X	Offered	V,W	V	W	V	W		
Arkansas	Prior day		Offered	V,W		W	V	W	V†,W	
Georgia	24		Offered			W	V	W	W	
Idaho	24		Given	W	V	W		W		
Indiana	18	X	Given		V	W	V	W	V‡	V,W
Kansas	24		Given	W	V	W	V	W	V,W	W
Kentucky	24		Offered		V		V	W		
Louisiana	24	X	Given	W	V	W	V	W	V,W	
Massachusetts	▼									
Michigan	24		Given		V,W		V,W	W		
Minnesota	24		Offered			W	V	W	V†,W	
Mississippi	24	X	Offered		V		V	W		
Missouri	24	X	Given	W	V	W	V	W	W†	W
Montana	▼									
Nebraska	24		Offered			W	V	W		
North Carolina	24		Offered	V	V	W	V	W		
North Dakota	24		Offered	W		W	V	W		V
Ohio	24	X	Given		V		V	W		
Oklahoma	24		Offered			W	V	W	V†,W	
Pennsylvania	24		Offered	W	V	W	V	W		
South Carolina	24		Offered		V	W	V	W		
South Dakota	72 ^Ω	X	Given	V		W	V	W	W*	W
Texas	24	X ^ξ	Offered			W*	V	W	W*	
Utah	72	X [⊖]	Given	W	V	W	V	W	V†,W	
Virginia	24	X ^ξ	Offered		V	W	V	W		
West Virginia	24		Offered	W*		W	V	W		
Wisconsin	24	X	Offered	V,W	V	W	V	W		
States with Customary Informed Consent Provisions (8 states)										
California					V					
Connecticut					V		V			
Delaware	▼				V		V			
Florida					V		V			
Maine					V		V			
Nevada					V		V			
Rhode Island					V		V			
Tennessee ^ψ	▼						V			
TOTAL	26	11	27	14	25	23	33	27	12	5

All states waive mandatory waiting period requirements in a medical emergency or when the woman's life or health is threatened. In Utah, the counseling is waived if the pregnancy is the result of rape or incest or the patient is younger than 15. In Alabama, the counseling requirement is waived in cases of ectopic pregnancy or severe fetal impairment and in Georgia and Rhode Island it is waived in cases of medical emergency.

§ Enforcement temporarily enjoined by court order; policy is not in effect, pending the outcome of litigation.

▼ Enforcement permanently enjoined by court order; policy not in effect.

♦ Alabama waiting period of 48 hours is scheduled to take effect in May.

V= verbal counseling; W= written materials

* Included in written counseling materials although not specifically mandated by state law.

† Information given only to women who are at 20 weeks of pregnancy or more; in Missouri the law applies at 22 weeks of pregnancy and in Utah a physician may waive the requirement if the abortion is because of rape, incest, life endangerment, a severe health problem or if the fetus has a lethal condition.

‡ In Indiana, the provision is not enforced against Planned Parenthood of Indiana due to a court case.

Ω The law prohibits the inclusion of weekends and annual state holidays as part of the waiting period.

ψ Enforcement of a provision of the Tennessee law requiring that a woman be told that an abortion constitutes major surgery is enjoined.

ξ In person counseling is not required for women who live more than 100 miles from an abortion provider.

⊖ Counseling must be conducted "face-to-face" at "any location in the state."

ABORTION COUNSELING & WAITING PERIODS

STATE	COUNSELING ON HEALTH RISKS OF ABORTION						COUNSELING ON HEALTH RISKS OF PREGNANCY
	Future Fertility		Breast Cancer		Mental Health		
	Accurately Portrays Risk	Inaccurately Portrays Risk	Correctly Reports No Link	Inaccurately Asserts Possible Link	Correctly Reports Range of Emotional Responses	Describes Negative Emotional Responses	
States with Detailed Abortion-Specific Informed Consent Requirements (27 states)							
Alabama					W [†]		W
Alaska	W [†]			W [†]	W		W
Arizona		W			W		V
Arkansas	W [†]				W		V, W
Georgia	W [†]				W		V, W
Idaho	V				W [†]		V, W [†]
Indiana	V, W		W				V [‡]
Kansas		W [†]		V, W		W	V, W
Kentucky							V
Louisiana	W [†]					W	V, W
Massachusetts							
Michigan	W					W	V, W
Minnesota	V, W [†]		V, W [†]		W		V, W
Mississippi	V, W		V	W [†]			V, W
Missouri	V				V, W		
Montana							
Nebraska	V, W [†]					W	V, W
North Carolina						W	V
North Dakota	V						V
Ohio							V
Oklahoma	W [†]			W [†]	W		V, W
Pennsylvania	W [†]				W		V, W
South Carolina	W [†]				W		W
South Dakota	V	W [†]					V, W [†]
Texas	V	W	V	W			V, W
Utah	W					V, W	V, W
Virginia	W				W		W
West Virginia	V	W				W	V, W
Wisconsin	V, W				V, W		V, W
States with Customary Informed Consent Provisions (8 states)							
California							
Connecticut							
Delaware							
Florida							V
Maine							V
Nevada					Φ		
Rhode Island							
Tennessee							V
TOTAL	21	5	4	5	13	9	29

V= verbal counseling; W= written materials

† Included in written counseling materials although not specified by state law.

‡ Φ Law requires discussion of emotional impact of abortion.

CONTINUED

FOR MORE INFORMATION:

For information on state legislative and policy activity, click on Guttmacher's [Monthly State Update](#), for state-level policy information see Guttmacher's [State Policies in Brief](#) series, and for information and data on reproductive health issues, go to Guttmacher's [State Center](#). To see state-specific reproductive health information go to Guttmacher's [Data Center](#), and for abortion specific information click on [State Facts About Abortion](#). To keep up with new state relevant data and analysis sign up for the [State News Quarterly Listserv](#).

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