



Changing the Conversation on Abortion Restrictions

A Proactive Response to Political Interference in Health Care

By Donna Barry, Andrea D. Friedman, and Sarah Lipton-Lubet September 30, 2015

Introduction

Health care providers and women seeking abortions are increasingly subjected to legal requirements that make abortion care more difficult to obtain. These requirements are contrary to medical evidence and best practices, in addition to interfering with the relationship between health care providers and their patients.

However, an effort is emerging in several states that directly responds to these types of restrictions with bills that would protect the patient-provider relationship. State legislators, along with national and state-based advocacy groups, are drafting these bills in order to improve women's access to evidenced-based health care. As it continues to expand, this proactive policy effort can act to counter legislative interference in health care and protect both providers and patients, including women seeking abortion care.

This issue brief looks at two state efforts that seek to preserve the patient-provider relationship: one in Pennsylvania related to health care broadly and one in Ohio focused specifically on interference in abortion care. These bills are models of this emerging effort and the promise that it holds to change the conversation, protect women's health and women's relationships with their clinicians, and restore evidence-based medicine and the standard of care.

Laws that protect the patient-provider relationship will help keep health care decisions where they belong—in the examination room, not the capitol—and enable care to be based on the patient's needs and current medical standards. If passed and enacted, these bills could protect health care providers who refrain from providing inaccurate medical information or unnecessary procedures; allow providers to deliver care based on the most up-to-date medical evidence; help protect patients from inaccurate and potentially harmful information and unnecessary procedures; and protect patients from needless delays in accessing time-sensitive care. While there is no question that abortion care has been a disproportionate target of political interference, the politicization of medical care has infiltrated into other areas as well. Legislatures in a number of states are trying to impose ideologically based restrictions on health care providers regarding counseling on gun safety, exposure to environmental hazards, and more.

Background on interference in the patient-provider relationship and abortion care

States have passed an increasing number of abortion restrictions in recent years.¹ Many of these laws directly interfere in the patient-provider relationship, including: mandating biased and even inaccurate counseling; prohibiting the provision of medication abortion using modern technology; prohibiting providers from using the most up-to-date regimen for medication abortion; and requiring medically unnecessary delays in care even though abortion is a time-sensitive procedure. A majority of states now have laws that interfere in the patient-provider relationship with respect to abortion care.² Many of these laws are passed under the guise of protecting women's health and safety, though it is clear upon analysis that they accomplish the opposite and, in fact, undermine women's health care. These restrictions are written by politicians, not the medical community, and are not based on medical or scientific evidence.³ In fact, leading medical societies oppose them.⁴

In response to the increase of political interference affecting a variety of areas in the practice of medicine, in July 2012, the American College of Physicians, or ACP, issued a "Statement of Principles on the Role of Governments in Regulating the Patient-Physician Relationship." The ACP noted particular concern with "laws and regulations that require physicians to provide care not supported by evidence-based guidelines and/or not individualized to the needs of the specific patient."⁵ In October 2012, five major medical groups raised the issue of interference in the patient-provider relationship in *The New England Journal of Medicine*,⁶ discussing interference related to gun safety and end-of-life care, as well as abortion care. In 2014, medical and advocacy groups came together to launch the Coalition to Protect the Patient-Provider Relationship to respond to these laws in a unified voice. The coalition, which has 23 members as of publication, includes medical societies and advocacy groups working on gun violence prevention, environmental advocacy, and access to abortion services.⁷

Why providers and patients—not politicians—know best

Health care professionals maintain high levels of trust with their patients.⁸ That trust forms the foundation of America's health care system. Laws that dictate the content of conversations between patients and health care providers, or regulate care in ways that bear no relationship to medical evidence or need, erode that trust.

Physicians, advanced practice nurses, physician assistants, and certified nurse midwives—or providers or clinicians, the terms used in this brief—are professionally trained and certified based on national standards. All health care providers are trained to provide scientifically based, medically sound, and individualized care to their patients. Only with proper preparation and qualifications are health professionals eligible to receive licenses to practice in the United States.⁹

For example, physicians attend four years of medical school, train in multiyear specialized residencies, and complete regular continuing-education courses and seminars. In addition, according to the ACP:

[State medical boards] establish requirements for licensure, administer licensure examinations, evaluate the medical education and training of applicants, evaluate previous professional performance of applicants, and establish and administer disciplinary procedures. In doing so, they ensure patients that licensed physicians meet professional standards of care, ethics, and professionalism that, if not met, could compromise patient safety.¹⁰

Health care providers' ethical obligations to their patients are paramount. The first tenant of the American Medical Association's, or AMA's, "Principles of Medical Ethics" states, "A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights."¹¹ The principles also include physicians' commitment to the study, application, and advancement of scientific knowledge. Similarly, the American Nurses Association's, or ANA's, "Code for Nurses" creates "the standard by which ethical conduct is guided and evaluated by the profession." The ANA notes that the standard is "nonnegotiable" and may "supersede specific policies of institutions, of employers, or of practices."¹² Health care professionals are obligated to uphold these ethical codes, and their practice is grounded in the latest science and medical evidence. Laws that interfere with the patient-provider relationship are contrary to the very nature of these health professions.

Challenging interference in the courts

Health professional societies have played an important role in court challenges to patient-provider interference laws. For example, the American College of Obstetricians and Gynecologists, or ACOG, and the AMA filed a joint amicus brief in 2014 in the 4th U.S. Circuit Court of Appeals in support of abortion providers' challenge to North Carolina's mandatory ultrasound law. The North Carolina law would force a physician to perform an ultrasound on a pregnant woman at least four hours, and not more than 72 hours, prior to an abortion procedure, to place the image in the woman's view, and to provide a detailed description of the image—even if the woman asks the physician not to display or describe the image and even if the physician believes that forcing this experience on the patient would harm her.¹³ The AMA and ACOG argued in their brief that this law is in conflict with and undermines informed consent and “unduly interferes with the patient-physician relationship, which is built on trust, honesty, and confidentiality.”¹⁴

The American Public Health Association also made the case that the North Carolina law undermines the patient-provider relationship. In its amicus brief to the 4th U.S. Circuit Court of Appeals, it stated:

*The Requirement does not just risk causing substantial individual anguish—it also threatens to damage the collective public health by fundamentally subverting the trust that is at the core of the physician-patient relationship and that plays a critical role in health care of every form.*¹⁵

In December 2014, the 4th U.S. Circuit Court of Appeals held in *Stuart v. Camnitz* that forcing physicians to describe and show an abortion patient the image of her ultrasound is a violation of the First Amendment. The court honed in on the importance of a patient-provider relationship based on trust and medical expertise:

*The patient seeks in a physician a medical professional with the capacity for independent medical judgment that professional status implies. The rupture of trust comes with replacing what the doctor's medical judgment would counsel in a communication with what the state wishes told. It subverts the patient's expectations when the physician is compelled to deliver a state message bearing little connection to the search for professional services that led the patient to the doctor's door.*¹⁶

The state of North Carolina appealed and the Supreme Court denied a writ of certiorari, leaving the 4th Circuit's decision in place.¹⁷ However, other courts have reached different outcomes. In *Texas v. Lakey*, a case challenging a similar law in Texas, the 5th U.S. Circuit Court of Appeals found that a mandatory ultrasound with a forced view was acceptable as part of informed consent.¹⁸

State legislation that protects the patient-provider relationship

While courts continue to debate these issues, state legislators have begun to step in to try to safeguard public health by protecting patients and health care providers from inappropriate political interference. Bills introduced in 2014 in Pennsylvania and Ohio offer two examples of state legislation designed to keep medical decisions in the hands of patients and trained health care providers, preserving the patient-provider relationship. Given the number of regressive bills passed over the past five years that restrict access to abortion, these bills demonstrate that some state legislators want to change the direction in which states have been moving from restricting access to sustaining and improving it.

The basic premise of the legislation is that licensed health care providers should not be required to give or withhold information or care when the requirement is not supported by evidence and recognized medical standards. This is a policy proposal that can resonate broadly, since reasonable people do not want health care providers to be forced to lie to

their patients and everyone wants accurate and medically sound information and quality health care. Polling and research confirm that individuals support measures to make sure politicians cannot force providers to give patients medically inaccurate information.¹⁹

The Pennsylvania Patient Trust Act

In July 2014, Pennsylvania State Rep. Dan Frankel (D) and Pennsylvania State Sen. Mike Stack (D) introduced the Patient Trust Act—H.B. 2303²⁰ and S.B. 1456,²¹ respectively. The bill will be reintroduced in 2015. The Pennsylvania Patient Trust Act addresses political interference in all areas of health care, including—but not limited to—abortion care. The bill aims to ensure that Pennsylvania would abide by scientific and medical evidence in drafting as well as implementing laws by stating that the commonwealth would not require inaccurate or inappropriate care nor prohibit accurate, evidence-based, and medically appropriate care. The critical language in the Patient Trust Act states:

Neither the Commonwealth nor any political subdivision of the Commonwealth shall:

- 1. Require a health care practitioner to provide a patient with:
 - (i) Information that is not medically accurate and medically appropriate for the patient.*
 - (ii) A medical service in a manner that is not evidence-based and medically appropriate for the patient.**
- 2. Prohibit a health care practitioner from providing a patient with:
 - (i) Information that is medically accurate and medically appropriate for the patient.*
 - (ii) A medical service that is evidence-based and medically appropriate for the patient.*²²*

Supporters of the Pennsylvania Patient Trust Act included women's health proponents, such as the Women's Law Project and Planned Parenthood of Pennsylvania Advocates, as well as advocates representing other issue areas, such as PennEnvironment Research and Policy Center and CeaseFirePA.²³ Leaders in the medical community also supported the Patient Trust Act: The Pennsylvania Medical Society endorsed the bill;²⁴ the Pennsylvania section of the American Congress of Obstetricians and Gynecologists featured it as a legislative priority;²⁵ and more than 50 health care providers across the state signed a letter in support of the legislation.²⁶ A similar bill, H.B. 2635, was introduced in Arizona in February 2015.²⁷

The sponsors and advocates promoted the bill because of the increase in inappropriate legislative interference in the patient-provider relationship throughout the country.²⁸ These include efforts to impose gag rules that restrict physicians from counseling patients about gun safety, efforts to deny patients full information about exposure to chemicals, and legislation that forces health care providers to give inaccurate information to women seeking abortion care.²⁹

This bill has particular resonance for abortion care. Under current Pennsylvania law, physicians are required to verbally share state-mandated information with a woman seeking abortion care, and the physician or his or her designee also must provide state-written materials.³⁰ This information includes statements that are biased and inappropriate and force health care providers to violate their medical and ethical responsibilities to prioritize the individual patient and respect her dignity. Required counseling includes medically inaccurate information that abortion may have detrimental psychological effects for the woman, and the physician must show pictures describing “probable anatomical and physiological characteristics” of a fetus in two-week increments from fertilization to full term. After the information is shared with the patient, the abortion is delayed an additional 24 hours.³¹ Pennsylvania lawmakers have tried to establish other onerous requirements as well, such as imposing a mandatory ultrasound.³²

Support for the Patient Trust Act

In September 2014, the Pennsylvania House Democratic Policy Committee convened a public hearing to discuss the bill. The hearing included testimony from physicians, patient advocates, and medical ethicists and provided a venue for discussion about the harms that arise from political interference in patient care:

*The doctor-patient relationship is one of the most private and personal that one can have. We are urged, time and again, to tell our doctors the truth in order to receive the best possible care. We are told to never lie, even about habits or practices that may be unhealthy or slightly embarrassing . . . It is very important to me that my patients feel able to tell me the truth. Unfortunately, due to political interference, I cannot make the same promise to my patients.*³³

– Dr. Sarah Wallett, Patient Trust Act Public Hearing Testimony, September 2014

And in an op-ed last year, Kate Michelman, the former president of NARAL Pro-Choice America, wrote that:

*These government-intrusion laws run the gamut from prohibitions on discussing gun storage safety with patients to gag orders preventing doctors from naming the toxic chemicals that are poisoning a patient's body. A significant number of these government-intrusion laws are proposed by lawmakers trying to disguise their opposition to contraception and abortion by disingenuously claiming that these laws promote women's health and safety. . . . Patients deserve better. Women need to be able to trust that the voice they're hearing is from their physician, not from Harrisburg's political puppeteers.*³⁴

The Ohio Doctor-Patient Relationship Protection Act

A second example of legislation that sought to protect the patient-provider relationship is the Doctor-Patient Protection Act, or Ohio H.B. 585, introduced in Ohio by State Rep. Kathleen Clyde (D) in 2014. The Ohio bill took a different approach than the Pennsylvania legislation, focusing specifically on existing restrictions on abortion care. Under H.B. 585, the following language would be added to the Ohio code that regulates medical professionals, including specific references to the Ohio code that regulates the provision of abortion care:

[N]o health care professional shall be subject to a civil penalty or be liable in a civil action for failing to comply with the requirements [of the code regulating abortion] if in the health care professional's good faith medical judgment, compliance [with the code regulating abortion] would be inconsistent with accepted, evidence-based medical practices and ethical standards.³⁵

Thus, the bill would have allowed health care providers to decline to follow certain abortion restrictions that are not based on evidence or that would require them to deliver care in ways that contradict their professional and ethical mandates. The restrictions addressed by the bill include requirements to provide patients with biased or inaccurate information, perform a medically unnecessary ultrasound, and impose a 24-hour mandatory delay on abortion care.³⁶ Violation of these requirements carries civil—and in some cases, criminal—penalties.

As explained in a statement by the Minority Caucus in the Ohio House:

[The act] ensures that doctors who choose to follow their medical training and refrain from performing medically unnecessary procedures or delivering inaccurate and scientifically unsound information to patients will not be held liable or face criminal charges.³⁷

In discussing her motivation for introducing the bill, Rep. Clyde explained how the protection of the patient-provider relationship is critical for abortion care:

The Doctor-Patient Relationship Protection Act ensures that health care providers who have a professional and ethical obligation to provide evidence-based, individualized and medically-appropriate care can do so without interference. ... This bill gives Ohio's patients the confidence that their doctors are giving them information they can trust to make informed decisions about their health care.³⁸

The bill raised awareness about the issue of interference in the patient-provider relationship and had 22 sponsors.³⁹ Ohio is a close second to Texas for the number of abortion restrictions forced on women over the past few years.⁴⁰ Introducing proactive bills to counter the regressive legislation shows that there are champions for women's rights and foes of interfering with the patient-provider relationship even in the most conservative states. Similar legislation, H.B. 1210, was introduced in Texas in 2015.⁴¹

Although neither the Texas nor Ohio bills moved forward, their introductions are part of a broader movement to expand access to abortion and fight against government intrusion in the patient-provider relationship.

Medical support in Ohio

“In my 55 years of practicing medicine, I have relied on scientific facts and evidence-based practices and followed established guidelines provided by the American Academy of Pediatrics and the American Medical Association. . . . Those are the pre-eminent organizations for my specialty, and that’s where I turn for the latest standards in medicine—not to the Ohio legislature. How are doctors to provide care that is safe, individualized and medically appropriate if we are told to ignore our ethical and established medical standards?”⁴²

– Dr. Grant Morrow, neonatologist, Columbus, Ohio, June 13, 2014

Conclusion

Far too many legislators continue to embrace laws that disregard evidence and science and inappropriately mandate care and how it is delivered. New efforts by legislators committed to evidence-based, medically accurate, and quality care to put forth proposals to safeguard care and protect the patient-provider relationship present an opportunity for change. Legislators are working with the health care community to advocate for policies based on medical standards, not politics. These proactive bills make it clear that all laws and regulations should respect medical evidence, the wishes of the patient, and the professional judgment of the health care provider. Ensuring that laws reflect these core values is important to protect public health and the patient-provider relationship for care of all kinds. These lawmakers are forging a path that others should follow, and their effort should be supported.

Across the country, abortion providers are saddled with requirements that fly in the face of good medicine and are passed by abortion rights opponents who disingenuously claim that abortion restrictions benefit women’s health. Elevating the importance of medically accurate care and protecting the patient-provider relationship have the promise of transforming the way abortion restrictions are understood and beginning to reverse the imposition of junk-science laws on abortion care.

Donna Barry is the Director of the Women’s Health and Rights Program at the Center for American Progress. Andrea D. Friedman is the Senior Policy Advisor for Reproductive Health Programs at the National Partnership for Women & Families. Sarah Lipton-Lubet is the Director of Reproductive Health Programs at the National Partnership for Women & Families.

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