

CORE BRIEF

Wisconsin State Laws Impacting Abortion Access

March 2022



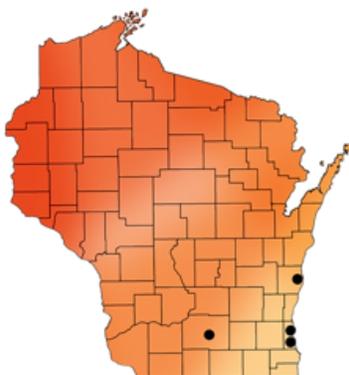
Abortion is a common healthcare procedure and a determinant of health and wellbeing across the lifecycle.¹ In the U.S., an estimated one in four people with the capacity to get pregnant¹ obtain an abortion in their lifetime.² In Wisconsin, while thousands of people have an abortion each year, others are likely unable to access desired abortion healthcare services. This brief provides a snapshot of abortion access in Wisconsin and state laws that affect access to this medical procedure.

Abortion Access

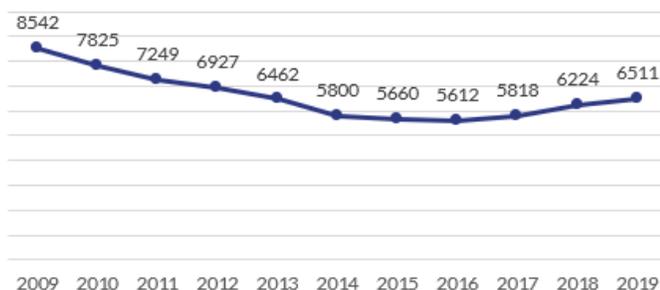
In Wisconsin, only four health clinics currently provide abortion services. These clinics are located in three counties (Dane, Sheboygan, and two in Milwaukee), meaning that 96% of the state's counties do not have an abortion provider. Nearly 70% of Wisconsin women of reproductive age (between 15 and 44 years) live in a county that lacks an abortion care clinic.³ Further, an analysis of state data from 2009-2017 showed that due to recent clinic closures, residents of some counties experienced great increases in driving distances to obtain abortion care.⁴ Increases in driving distance make obtaining an abortion more costly in terms of both time and money.⁵

The number of abortions performed in Wisconsin fell 34% between 2009 and 2016, and then increased 16% by 2019.⁶ In 2019, about 30% of abortions in the state were provided to patients between the ages of 20-24 years. More than half of Wisconsin abortions were provided to white women, and 28% were provided to Black women.

ABORTION CLINIC LOCATIONS WISCONSIN, 2022



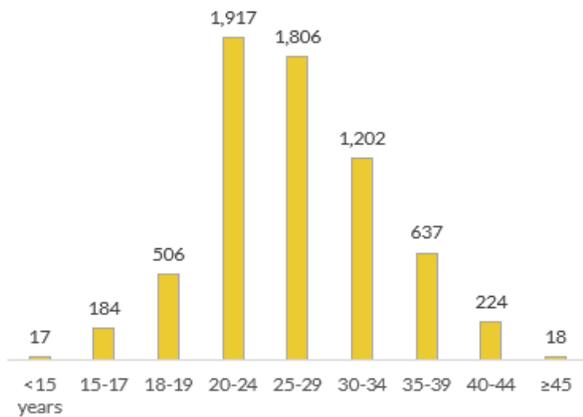
NUMBER OF ABORTIONS THAT OCCURRED IN WISCONSIN, 2009-2019



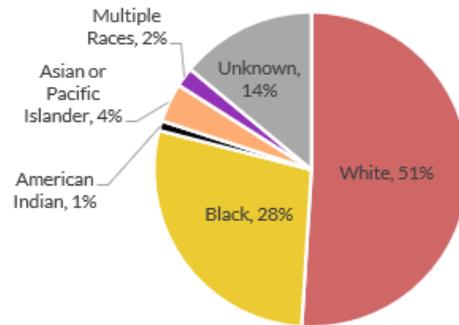
Source: Wisconsin Department of Health Services⁶

¹People who identify as women are not the only ones who obtain abortions; trans and gender-nonbinary individuals also seek this reproductive healthcare service. In this document, we endeavor to use inclusive language, but we use the term “women” when referring to data sources and documents that do not report by gender identity.

ABORTIONS THAT OCCURRED IN WISCONSIN, NUMBER, BY AGE, 2019



ABORTIONS THAT OCCURRED IN WISCONSIN, % BY RACE, 2019



Source: Wisconsin Department of Health Services⁶

State Laws Impacting Abortion Access

Abortion restrictions in Wisconsin can be traced back to an [1849 law](#) that made performing or obtaining an abortion a felony. The law was later changed to make the person obtaining the abortion immune from prosecution. Abortion provision remained illegal in Wisconsin until 1973, when the U.S. Supreme Court *Roe v. Wade* decision recognized a constitutional right to abortion in many instances. *Roe v. Wade* made the criminal penalties in Wisconsin’s 1849 law unenforceable. The 1992 Supreme Court *Planned Parenthood v. Casey* decision upheld *Roe v. Wade* but ruled that certain state restrictions on abortion procedures are permissible.⁷ Over the years, especially since 2010, Wisconsin legislators have passed and implemented a wide variety of state laws that restrict access to abortion care. If the Supreme Court overturns *Roe v. Wade*, the 1849 law, which was never removed from statute, could again be enforceable and performing abortions could become immediately illegal in Wisconsin.

Wisconsin state laws that restrict abortion access take multiple forms, including insurance and funding restrictions, mandatory counseling, waiting periods, and gestational limits. Many laws have been passed in the past decade, leading to a change in the [Guttmacher Institute’s assessment](#) of the state’s policy environment from “leans hostile” to “hostile” toward abortion rights between 2010 and 2020, placing Wisconsin in the same category as Texas, Ohio, and Alabama.

We describe these respective restrictions in more detail below, then provide a detailed list of statutes.

Insurance Restrictions and the Family Planning Safety Net

Federal law (commonly known as the “Hyde Amendment”) prohibits the use of federal Medicaid funds for abortion. Seventeen states permit the use of their *own* state Medicaid dollars to cover abortion services.⁸ Wisconsin does not. Wisconsin state law prohibits the use of state, local, or federal funding for programs that provide, promote, or encourage abortion services or make abortion referrals. Thus, while Wisconsin Medicaid pays for contraception, prenatal care, and birthing care, it is prohibited from covering abortion care in virtually all cases. State law also prohibits insurance plans for public employees, as well as for those on the ACA health exchange in Wisconsin, from covering abortion care. First-trimester abortion services cost between \$500-\$1,000, plus attendant transportation, childcare, or other costs such as loss of wages. These costs can be insurmountable for people living on low incomes.⁵

In 2019, the Trump Administration applied a ‘gag rule’ to the Title X program, the federal funding program dedicated to expanding access to family planning and preventive health services for low-income people. The rule prohibited federal funding to Title X family planning grantees that perform or refer for abortion services, or even

provide information about where a patient can obtain abortion services.⁹ (Since the program's inception, federal law has prohibited the use of Title X funds for abortion care services.) The Biden Administration has recently reversed the Trump-rule, so it is again possible for family planning providers that also provide abortion services to apply directly to the federal government for Title X funds, including in Wisconsin. Title X funds still may not be used for abortion care anywhere in the US.

However, Wisconsin has its own gag rule that prohibits the state Department of Health Services from distributing any of its Title X funds to agencies that provide or are affiliated with organizations that provide abortion services. This sub-granting system has historically been an important part of the Title X program in Wisconsin and helped expand the geographic reach of Title X services. Since abortion care providers in the state also provide reproductive healthcare services, the gag rule has constrained the provision of broader family planning healthcare in the state.

Mandatory Counseling and Waiting Periods

Wisconsin law requires that the physician who will be performing the abortion needs to determine that the patient's consent is voluntary through an in-person counseling session. A physician must also share state-mandated information about the pregnancy and procedure in person, orally, and at least 24 hours before the procedure, necessitating at least two trips to the health clinic. In many other states, healthcare staff such as nurses, social workers, and medical assistants provide these counseling services since they are both qualified and often able to devote more time to these conversations.¹⁰ Counseling could also be provided safely and conveniently by telehealth.¹¹

The state-mandated information, delivered both orally by the physician and on a form that must be handed to the patient, includes non-evidence-based topics apart from standard-of-care medical practice. Such topics include post-abortion risk of "psychological trauma" and "danger to subsequent pregnancies and infertility," even though research widely documents that abortion is associated with neither of these things.^{12,13} The counseling process must take place in-person, prohibiting the use of telehealth for abortion services.

State law also requires that at least 24 hours before the abortion, the pregnant person must obtain an ultrasound, and that the provider must display and explain the ultrasound images and provide a means to visualize any cardiac activity. Routine ultrasound is not considered medically necessary for a first-trimester abortion, and adds cost and emotional duress to the procedure.¹⁴

State law requires that a parent, foster parent, or specific types of adult family members must give written permission for a minor to obtain an abortion. Minors have the right to petition a judge for a waiver of the parental consent. Wisconsin is one of 27 states with a parental consent law.¹⁵ Research indicates that only some minors are able to initiate or successfully navigate the judicial bypass process, and those who do are likely to experience emotional harm and later-gestation abortions as a result.^{16,17}

Gestational Limits

Wisconsin state law prohibits abortions at 20 or more weeks postfertilization (22 weeks after the last menstrual period) except in case of life endangerment. This law is based on the scientifically unsubstantiated assertion that a fetus is capable of experiencing pain at 20 weeks.

State law also prohibits abortion after the fetus reaches viability, as determined by the patient's attending physician's judgement. This post-viability ban is allowed under federal law (*Roe v. Wade* and *Planned Parenthood v. Casey*).

A medical professional who provides the abortion in violation of either of these gestational restrictions is guilty of a Class I felony.

Medication Abortion Restrictions

Medication abortion, which involves taking two sets of pills, is a safe and effective method of pregnancy termination. When able to access both in-clinic (sometimes referred to as “surgical”) and medication abortion care, anywhere from one-third to over half of patients will select medication abortion as the mode that works best for them.^{18,19} Wisconsin has some of the most restrictive medication abortion laws in the country. State law prohibits telemedicine for medication abortion, despite research documenting its safety and efficacy.^{20,21} State law also mandates that patients receive counseling from a physician and then return to the same physician to be observed while taking the medication. In effect, this requires the same physician examine the patient, obtain consent, and attend a subsequent appointment after the separately mandated 24-hour waiting period so they can watch the patient take the pill. Because of patient and provider schedules, this restriction can delay obtaining an abortion by much more than 24 hours in many cases. Research from Wisconsin indicates that the same-physician rule is one of the largest obstacles to abortion care, especially as it works in conjunction with other restrictions (e.g., the mandatory 24-hour waiting period) to constrain access.²²

Other Legislation

State law mandates that only physicians may provide abortions in Wisconsin. Research shows that abortion care can be safely provided by nurse practitioners, certified nurse midwives, and physician assistants,^{23,24} as occurs in many other states.

A physician or hospital staff may refuse to provide abortion care if it violates their religious and/or moral precepts with no penalty. Wisconsin has a high concentration of religiously-affiliated healthcare institutions,²⁵ which increases the likelihood that Wisconsin patients will not be referred for desired abortion care.

Wisconsin is one of only six states that require clinics that provide abortion services to have transfer arrangements with a nearby hospital. This requirement is medically unnecessary. In the rare cases when emergency services are needed,²⁶ federal law already requires hospitals to admit anyone who needs such services. Transfer agreements have been opposed by pre-eminent professional organizations such as the [American College of Obstetricians and Gynecologists](#) and the [American Public Health Association](#). (A [2013 state law](#) requiring hospital admitting privileges for *individual* abortion providers was ruled unconstitutional in federal court in 2015.)

As of 2003, state law stipulates that a person who undergoes live birth as the result of an abortion has the same legal status and rights as a human being as a person who undergoes live birth as the result of natural or induced labor or a cesarean section. This law is unnecessary as abortion is not available after viability in Wisconsin. What’s more, the law duplicates medical ethics and state and federal criminal homicide laws.

Wisconsin law stipulates that a pregnant person who seeks an abortion or violates any abortion statute may not be fined, imprisoned, or prosecuted.

WISCONSIN STATUTES IMPACTING ACCESS TO ABORTION

As of March 2022

INSURANCE AND THE FAMILY PLANNING SAFETY NET		
TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
Insurance coverage for public employees	No abortion coverage or services may be provided in a health insurance plan or healthcare coverage plan for public employees.	40.56
Health Exchange coverage	A health plan offered through a Wisconsin health benefit exchange established under the Affordable Care Act cannot cover abortion services.	632.8985
Public funding for abortion-related activities	<p>No state, local, or federal passthrough funding can be used to</p> <ul style="list-style-type: none"> • Pay for or subsidize abortion • Provide abortion services • Promote abortion • Make abortion referrals <p>Exceptions to payment for abortion:</p> <ul style="list-style-type: none"> • To save the life of the pregnant person • Reported sexual assault • Reported incest 	20.927 20.9275(2) 59.53 (13)(a) 66.0601(1)(c)
State family planning funds	State family planning funds may not be granted to entities that provide abortion services or have an affiliate that provides abortion services.	253.07(5)(b)
Title X funds	The state may not distribute federal Title X funds to groups that provide or are affiliated with organizations that provide abortion services. (The state Department of Health Services must apply for family planning funds from the Title X program. If granted, the state must prioritize the distribution of funds to public entities. Nonpublic agencies are eligible for any remaining funds, but they cannot be provided to abortion providers).	253.075(2)(a) 253.075(5)

MANDATORY COUNSELING AND WAITING PERIODS

TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
In-person counseling by physician to determine voluntary consent	A physician must meet with a patient in-person to determine that the patient's consent to abortion is voluntary and free from coercion through a private counseling session, beyond standard informed consent requirements.	253.10(3)(b)
Consent requirements	<p>In person, orally, and at least 24 hours before the abortion, the physician performing the abortion (or any other qualified physician, for a non-medication abortion [see below]) must provide the pregnant person seeking an abortion:</p> <ul style="list-style-type: none"> • Confirmation of pregnancy • Probable gestational age of fetus • Probable postfertilization age of fetus • Odds of survival of fetus • Medical risks associated with the pregnancy • Description of fetus • Description of abortion procedure • Medical risk associated with the procedure <p>Exceptions:</p> <ul style="list-style-type: none"> • Medical emergency • Reported sexual assault • Reported incest 	253.10(3)(c)
Printed materials	The physician performing the procedure or another qualified person must physically give the pregnant person seeking an abortion printed materials created by the state health department. These materials must include information about adoption agencies, family planning services, images and descriptions of fetal development, and (purported) medical and psychological risks of abortion procedure.	253.10(3)(c) 253.10(3)(d)
Waiting period	<p>Consent (see above) must be obtained in person, orally, and at least 24 hours before the abortion.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Medical emergency • Reported sexual assault (waiting period reduced to 2 hours) • Reported incest (waiting period reduced to 2 hours) 	253.10 (3)(c) 253.10(3)(c)2 253.10(3m)(b)
Mandatory ultrasound	At least 24 hours before the procedure, the pregnant person must obtain an ultrasound. The ultrasound provider must display and explain the ultrasound	253.10 (3g)

	<p>images and provide a means to visualize any fetal heartbeat. The pregnant person may turn their head and refuse to view to view the images.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Medical emergency • Reported sexual assault • Reported incest 	
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Parental consent for minors

A parent, a foster parent, a grandparent, or an aunt, uncle, or sibling who is at least 25 years old must provide written permission for a minor’s abortion and receive state-mandated information (see Consent Requirements above). The minor or clergy on the minor’s behalf may petition the court for waiver from the parental consent requirement.

[48.375\(4\)](#)
[48.375\(2\)\(b\)](#)
[48.375\(6\)](#)

Exceptions:

- Medical emergency
- Sexual assault reported by minor
- Sexual intercourse with family member, custodian, or caregiver
- Suicide risk (written statement by psychiatrist or psychologist that minor is likely to commit suicide rather than get parental/guardian consent)
- Parent/custodian abuse of minor

GESTATIONAL LIMITS

TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
20+ weeks abortion ban	Abortion is prohibited when a fetus is considered capable of experiencing pain, which is presumed to be 20 weeks postfertilization age. A person who performs an abortion in violation of this law is guilty of a Class I felony. Exception: Medical emergency	253.107(3)(a)
Post-viability ban	Abortion is prohibited after a fetus reaches viability, as determined by reasonable medical judgment of the pregnant person’s attending physician. A person who performs an abortion in violation of this law is guilty of a Class I felony.	940.15(2)

MEDICATION ABORTION

TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
Same physician	The same physician who conducts the mandated consent visit at least 24 hours before the abortion (required for all abortions-see above) must also provide the medication abortion pills.	253.105
Physical presence	Prescribing physician must be present in the room when the drug is given to the pregnant person. This prohibits the use of telemedicine for medication abortion.	253.105

PROVIDER-SPECIFIC RESTRICTIONS

TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
Physician only	Only licensed physicians may provide abortions.	940.15(5)
Religious/moral refusal	A hospital, physician, or hospital staff is not required to participate in an abortion if it violates their religious and moral precepts. Refusal must be without penalty.	253.09
Restrictions on abortion referrals	Volunteer healthcare provider in schools cannot make abortion referrals to K-6th graders.	146.89(3r)(c)

OTHER REQUIREMENTS

TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
Hospital transfer agreement	Clinics providing abortion care services must have arrangements with a hospital for admission of patients needing hospital care.	Med 11.04
Facility reporting	<p>Annually hospitals, clinics or facilities that offer abortions must file a report with the Wisconsin Department of Health Services for each abortion performed in the previous calendar year.</p> <p>Each report must include:</p> <ul style="list-style-type: none"> • State • County • Patient number • Race • Age • Marital status • Month and year abortion was performed 	69.186(1)

	<ul style="list-style-type: none"> • Education • Number of weeks since patient's last menstrual period • Probable postfertilization age • Type of procedure performed • Complications • Parental consent for minors • Capability of fetus to experience pain <p>All physicians, hospitals, sanatoriums, public and private institutions, convalescent homes, and others must report the death of any person following an abortion.</p>	979.01(1)(d)
Requirement for infant born alive	A person who undergoes a live birth as the result of an abortion has the same legal status and legal rights as a human being at any point after the human being undergoes a live birth as the result of natural or induced labor or a cesarean section.	990.001(17)(b) 990.01(19j)
No prosecution against person who obtains an abortion	A person who obtains an abortion or violates any abortion statute cannot be fined, imprisoned, or prosecuted.	940.13

Summary

Wisconsin state laws that restrict abortion access take multiple forms, including insurance and funding restrictions, mandatory counseling, waiting periods, and gestational limits. UW CORE will continue to update this brief as new state laws impacting abortion access are passed.

Suggested citation

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