

CORE BRIEF

Wisconsin State Laws Impacting Abortion Access

Revised September 2023



In June 2022, the U.S. Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization* overturned the federal right to abortion established by *Roe v. Wade*. The legality of abortion access is now determined by each state. In Wisconsin, an 1849 law interpreted as criminalizing abortion led all abortion clinics in the state to stop offering services while courts determined whether the law is enforceable. On September 18, 2023, Planned Parenthood of Wisconsin resumed abortion services in two locations based on a Dane County circuit court ruling. This ruling stated that the 1849 law does not prohibit voluntary abortions.

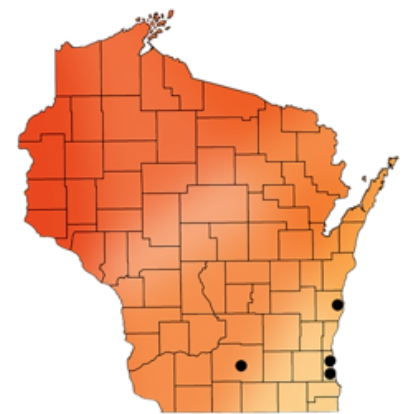
This brief provides an overview of state laws that impacted abortion access prior to *Dobbs*. These laws will again impact access as abortion care services are reinstated. Before *Dobbs*, many Wisconsinites already lacked access to abortion care due to these restrictions.

Abortion Access

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 pregnant* obtain an abortion in their lifetime.²

At the time of the *Dobbs* ruling in June 2022, only four health clinics provided abortion services in Wisconsin. These clinics were located in three counties (Dane, Sheboygan, and two in Milwaukee), meaning that 96% of the state's counties did not have an abortion provider. Nearly 70% of Wisconsin women of reproductive age (between 15 and 44 years) lived in a county that lacked 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

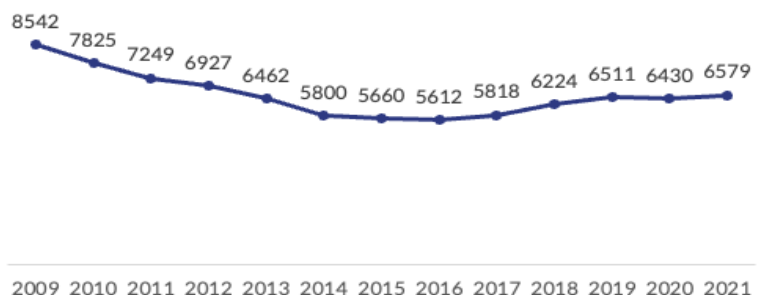
ABORTION CLINIC LOCATIONS
WISCONSIN, JUNE 2022



The number of abortions performed in Wisconsin fell 34% between 2009 and 2016, and then increased 17% by 2021.⁶ In 2021, most Wisconsin abortions (75%) were provided to patients between the ages of 18-34 years.

More than half of abortions (55%) were received by individuals with a high school education or less. More than half (52%) of Wisconsin abortions were provided to white women, and 35% were provided to Black women.⁶ Black women are more likely to have an abortion than white women due to systemic inequities in access to healthcare and economic and social opportunities.⁷

NUMBER OF ABORTIONS PROVIDED IN WISCONSIN, 2009-2021



Source: Wisconsin Department of Health Services⁶

While these data are not available for Wisconsin, national data indicate that most abortion patients have low incomes and already parent at least one child.⁸

* People 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.

State Laws Impacting Abortion Access

Abortion restrictions in Wisconsin can be traced back to the [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 U.S. Supreme Court *Planned Parenthood v. Casey* decision upheld *Roe v. Wade* but ruled that certain state restrictions on abortion procedures are permissible.⁹ **Over the years, especially since 2011, Wisconsin legislators passed and implemented a wide variety of state laws that restricted access to abortion care.** Because the 1849 state law was never repealed, the *Dobbs* decision led abortion providers to cease services in Wisconsin while the courts determined the law's enforceability. In practice, abortion was unavailable in our state—except in rare cases when a pregnant person's life was documented as being at risk—from June 2022 to September 2023, when Planned Parenthood resumed services based on a Dane County circuit court ruling that stated the 1849 law does not prohibit voluntary abortions.

The pre-*Dobbs* Wisconsin state laws that restrict abortion access remain in statute and will be applied as abortion services are reinstated. The pre-*Dobbs* laws take multiple forms, including insurance and funding restrictions, mandatory counseling, waiting periods, and gestational limits. Many laws were passed after 2010, leading the Guttmacher to change its [assessment](#) of the state's policy environment from “**leans hostile**” to “**hostile**” toward abortion rights between 2010 and 2020. Post-*Dobbs*, the state was [categorized](#) as “most restrictive,” although that designation changed to “restrictive” when Planned Parenthood of Wisconsin announced in September 2023 that they would be resuming abortion.

We describe the Wisconsin state laws in more detail below, then provide a detailed list of statutes.

Abortion Legality

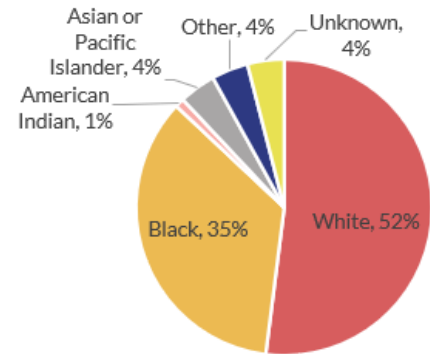
The 1849 law made performing an abortion a felony except to “preserve the life of [the] mother.” In a lawsuit to determine the 1849 law's enforceability, a Dane County district court issued a ruling on July 7, 2023, stating that the law does not apply to abortions provided with the consent of the pregnant person. The court has yet to issue a final decision in this case, and an appeal to the state supreme court is possible.

A later law stipulates that a pregnant person who seeks an abortion or violates any abortion statute may not be fined, imprisoned, or prosecuted. This law still stands, post-*Dobbs*.

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.¹⁰ 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-

ABORTIONS THAT OCCURRED IN WI, BY RACE, 2021



Source: Wisconsin Department of Health Services⁶

\$1,000, plus attendant transportation, childcare, or other costs such as loss of wages.¹¹ 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.¹² (Since the program’s inception, federal law has prohibited the use of Title X funds for abortion care services.) The Biden Administration 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.¹³ Counseling could also be provided safely and conveniently by telehealth.¹⁴

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.^{15,16} 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.¹⁷

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.¹⁸ 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.^{19,20}

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.

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.²¹ When able to access both procedural 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.^{22,23} 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.^{24,25} 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.²⁶

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,^{27,28} 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,²⁹ which increases the likelihood that Wisconsin patients will not be referred for desired abortion care.

Wisconsin is one of only five states that require clinics that provide abortion services to have transfer arrangements with a nearby hospital.³⁰ This requirement is medically unnecessary. In the rare cases when emergency services are needed,³¹ 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 Statutes Impacting Access to Abortion

As of September 2023

ABORTION LEGALITY		
TOPIC	SUMMARY OF STATUTE	STATUTE NUMBER
Legality of providing abortion	Any person, other than the pregnant person, who “destroys the life of an unborn child” is guilty of a felony. The only exception is to save the life of the mother.	940.04
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
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 (scientifically unsupported) 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	<p>At least 24 hours before the procedure, the pregnant person must obtain an ultrasound. The ultrasound provider must display and explain the ultrasound 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 	253.10 (3g)

Parental consent for minors	<p>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.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • 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 	48.375(4) 48.375(2)(b) 48.375(6)
-----------------------------	---	--

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 • 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>	<p>69.186(1)</p> <p>979.01(1)(d)</p>
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.	<p>990.001(17)(b)</p> <p>990.01(19j)</p>

Summary

The pre-*Dobbs* Wisconsin state laws that restrict abortion access remain in statute and will be applied again as the enforceability of the state's 1849 abortion ban is clarified and abortion services are reinstated. These laws take multiple forms, including insurance and funding restrictions, mandatory counseling, waiting periods, and gestational limits, and they had earned Wisconsin a "hostile to abortion access" status prior to the overturning of *Roe v. Wade*. UW CORE will continue to update this brief as new state laws impacting abortion access are passed.

Suggested citation

Williamson A, Ufot MI, Higgins JA. Wisconsin state laws impacting abortion access. CORE Brief. Madison, WI: University of Wisconsin Collaborative for Reproductive Equity. 2023.

References

- ¹ Miller S, Wherry L, Greene DF. [What happens after an abortion denial? A review of results from the Turnaway Study](#). AEA Papers and Proceedings. 2020;110:226-30.
- ² Jones R, Jerman J. [Population group abortion rates and lifetime incidence of abortion: United States, 2008-2014](#). Am J Public Health. 2017;107(12):1904-1909.
- ³ Based on population data provided in the [Wisconsin Interactive Statistics on Health \(WISH\) data query system](#) maintained by the Wisconsin Department of Health Services.
- ⁴ Venator J, Fletcher F. [Undue burden beyond Texas: An analysis of abortion clinic closures, births, and abortions in Wisconsin](#). J Policy Anal Manage. 220;40(3):774-813.
- ⁵ Higgins J, Lands M, Valley T, et al. [Real-time effects of payer restrictions on reproductive healthcare: A qualitative analysis of cost-related barriers and their consequences among US abortion seekers on Reddit](#). Int J Environ Res Public Health. 2021;18(17):9013.
- ⁶ Wisconsin Department of Health Services. [Reported induced abortions in Wisconsin 2021](#). 2022.
- ⁷ Fuentes, L. [Inequity in US abortion rights and access: The end of Roe is deepening existing divides](#). New York: The Guttmacher Institute. 2023
- ⁸ Jones R, Chiu D. [Characteristics of abortion patients in protected and restricted states accessing clinic-based care 12 months prior to the elimination of the federal constitutional right to abortion in the United States](#). Perspect Sex Reprod Health. 2023;55(2):80-85.
- ⁹ Ritche D. [Abortion laws in Wisconsin](#). Wisconsin Legislative Reference Bureau. 2015.
- ¹⁰ Guttmacher Institute. [State funding of abortion under Medicaid](#). Accessed September 21, 2023.
- ¹¹ UW Collaborative for Reproductive Equity. [What it costs Wisconsinites to obtain abortion care in the post-Roe landscape](#). 2023.
- ¹² Dawson R. [Trump Administration's domestic gag rule has slashed the Title X network's capacity by half](#). Guttmacher Institute. 2020.
- ¹³ American Public Health Association. [Provision of abortion care by advanced practice nurses and physician assistants](#). November 2011.
- ¹⁴ Kohn J, Snow J, Simons H, et al. [Medication abortion provided through telemedicine in four US states](#). Obstetrics & Gynecology. 2019;134(2):343-350.
- ¹⁵ American Psychological Association. [Abortion and mental health](#). 2018.
- ¹⁶ National Academies of Sciences, Engineering, and Medicine. [The safety and quality of abortion care in the United States](#). 2018. Washington, DC: The National Academies Press.
- ¹⁷ Upadhyay U, Kimport K, Belusa E, et al. [Evaluating the impact of a mandatory pre-abortion ultrasound viewing law: A mixed methods study](#). PLoS One. 2017;12(7):e0178871.
- ¹⁸ Guttmacher Institute. [An overview of abortion laws](#). Accessed September 21, 2023.
- ¹⁹ Coleman-Minahan K, Stevenson A, Obront E, et al. [Young women's experiences obtaining judicial bypass for abortion in Texas](#). J Adolesc Health. 2019;64(1):20-25.
- ²⁰ Ralph L, Chaiten L, Werth E, et al. [Reasons for and logistical burdens of judicial bypass for abortion in Illinois. J Adolesc Health](#). 2021;68(1):71-78.
- ²¹ American College of Obstetricians and Gynecologists. [Medication abortion up to 70 days of gestation](#). Practice Bulletin 225. 2020.
- ²² Jones R, Jerman J. [Abortion incidence and service availability in the United States, 2011](#). Perspect Sex Reprod Health. 2014;46(1):3-14.
- ²³ Costescu D, Guilbert E, Bernardin J, et al. [Medical abortion](#). J Obstet. Gynaecol. Can. 2016;38(4):366-389.
- ²⁴ Grossman D, Grindlay K. [Safety of medical abortion provided through telemedicine compared with in person](#). Obstetrics & Gynecology. 2017;130(4):778-782.
- ²⁵ Upadhyay UD, Grossman D. [Telemedicine for medication abortion](#). Contraception. 2019;100(5):351-353.
- ²⁶ UW Collaborative for Reproductive Equity. [Medication abortion care regulations in Wisconsin: Healthcare provider perspectives](#). 2020.

- ²⁷ Weitz T, Taylor D, Desai S, et al. [Safety of aspiration abortion performed by nurse practitioners, certified nurse midwives, and physician assistants under a California legal waiver](#). Am J Public Health. 2013;103(3):454-461.
- ²⁸ Mainey L, O'Mullan C, Reid-Searl K, et al. [The role of nurses and midwives in the provision of abortion care: A scoping review](#). J Clin Nurs. 2020;29(9-10):1513-152
- ²⁹ Solomon T, Uttley L, HasBrouck P, et al. [Bigger and bigger: The growth of Catholic health systems](#). Community Catalyst. 2020.
- ³⁰ Guttmacher Institute. [Targeted regulation of abortion providers](#). Accessed September 21, 2023.
- ³¹ Upadhyay U, Desai S, Slidar V, et al. [Incidence of emergency department visits and complications after abortion](#). Obstetrics & Gynecology. 2015;125(1):175-183.