

July 12, 2022

To: Democratic Attorneys General Association

From: Rachel Sussman, Vice President of State Policy + Advocacy, Planned Parenthood Action Fund

Re: JWHO Decision: AG Response

In states where access to abortion is unlikely to be disrupted in the wake of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Services* (Access States), we know that many Attorneys General are looking for ways to strengthen their state laws as well as provide support to out-of-state patients seeking abortion. Many of these states are uniquely positioned to increase access for patients and further support the movement. In this time of crisis, **Attorneys General may wish to focus on changes that will have an immediate impact on abortion access in their state, as well as consider novel solutions that could be created with increased state and federal funding.**

This memo offers some **practical solutions for Access States to increase access for all patients seeking abortion care - regardless of state residency.** Please note that these potential actions may or may not be appropriate for each specific state, and nothing in this memo is intended as legal advice.

Access State Attorneys General (AG) Actions

1. Statement reassuring patients, and affirming commitment to protecting abortion access:

To address community uncertainty and reassure patients, AG offices could go on the record - whether in a written statement or a press conference accompanied by trusted community partners - regarding their commitment to protecting access to care.

A statement could include content:

- Making it clear that abortion will continue to be provided in their state, and the commitment of the AG office to ensuring access for all.
- Reiterating the state's existing laws protecting the right to abortion. This should reference all of the current laws that provide protections, including state statutes, state constitutional rights (i.e. privacy), as well as the state Equal Rights Amendment (if applicable).
- Underlining the state's commitment to ensuring abortion care is accessible to all patients regardless of where they live.
- Announcing funding for abortion providers and out-of-state patient logistics, and the creation of a state website with information on abortion services and funding, and CPCs in the state.

2. Support direct funding for abortion providers and out-of-state patient logistics: Administrations seeking to support patient access could allocate funding to cover the costs of abortion services and help ensure that patients who need to travel for abortion can afford to do so. This funding could provide financial support for patients and in-state organizations, such as abortion funds, that already provide this type of aid. For example:

- New York Governor Kathy Hochul recently announced that the state will allocate \$25 million for an abortion-provider support fund.
- California Governor Gavin Newsom announced a \$125 million Reproductive Health Package included in his proposed budget to include workforce incentives, grants to community organizations, coverage subsidies, and additional security funds.
- Elected officials in Massachusetts have demonstrated their support for over \$2 million dollars in funding to be distributed to in-state abortion funds and other reproductive health organizations.
- Oregon recently established a \$15 million Reproductive Equity Fund to be administered by a third-party non-profit with the goal of helping patients obtain abortions by paying for the services and logistical needs, as well as expanding the network of abortion providers in the state.
- Maryland allocated \$3.5 million to provide training in abortion care for nurse midwives, physician assistants, and others as part of recent legislation.

3. Support Funding for Security: For example, New York has allocated \$10 million dollars worth of security grants to help abortion providers shore up their protections for patients and staff.

4. Clinic Access: Work with law enforcement to protect clinics, patients, and staff, including providing training for local and state law enforcement on existing state laws. States should utilize all state laws, including state FACE Acts, to protect health care facilities that provide abortion.

5. Review all relevant laws and clarify ambiguities: Even in states that have repealed the vast majority of restrictions, there may be questions about how the Supreme Court decision will impact a state's laws. AGs could issue opinions and agencies could issue guidance to clarify questions around barriers to access. For example, states that do not have a law governing a minor's right to consent to an abortion could issue guidance explicitly asserting consent to abortion rights for minors.

6. Cross-border Protections: State legislators have enacted laws to attempt to shield providers, helpers, and patients from criminal and civil investigations and/or liability. Some of these actions may be more appropriately issued by the AG or Governor. For instance, an administration could announce a policy on refusal to extradite providers in violation of another state's abortion ban or a refusal to utilize state resources to investigate such violations. Please keep in mind that some of the legislative provisions being debated are more helpful than others, but it is unlikely that an access state can provide comprehensive protection. Some of these proactive provisions may also invite legal challenges. We urge state officials to prioritize actions to increase access.

7. Constitutional amendments: While constitutional amendments can be helpful, both symbolically and to protect abortion access, there are many factors to consider before adopting this strategy. Significantly, even uncontested ballot measures on a statewide ballot require budgets in the millions of dollars. It is important to consider whether this protection is necessary in the state and whether it is the best avenue to secure abortion access. It's also important to consider whether it could be part of a broader framework that would encompass other important rights and potentially appeal to more constituents, such as freedom from sex discrimination.

8. CPCs: Provide information to the public about CPCs and take steps to curb their misleading and deceptive practices. For example, CA issued a [Consumer Alert](#).

9. Protection from prosecution: Make a public statement refusing to prosecute individuals for their pregnancy outcomes or for having an abortion. For example, California Attorney General Rob Bonta pledged to not prosecute women for pregnancy loss and has urged his colleagues in other states to do the same.

10. Network coordination: Convene law firms and organizations to provide legal representation for patients, providers, and those who could be considered helpers, including abortion funds and individuals. For example, New York Attorney General Letitia James is putting together a task force of law firms and not-for-profit reproductive rights legal organizations that will assist in providing pro bono legal services to individuals, New York health care providers, and others who help pregnant people access abortion in the state.

11. Data - Investigate and address data privacy concerns as they relate to the provision of reproductive health care: This could include actions to place limitations on state collection of personal data; creating data privacy-focused divisions or positions; promulgating rulemaking or guidance to strengthen existing state protections; issuing an AG letter or statement interpreting current data and privacy laws; or convening stakeholders and issuing reports exploring emerging data privacy issues.

12. Support legislation that increases access: Examples include private/public coverage of abortion services or the creation of a fund for reproductive health care coverage for undocumented residents.

13. Support the Repeal of State Restrictions: Remove any existing restrictions on abortion care. This could include but is not limited to, prohibitions of funding/insurance coverage, parental involvement, physician-only laws, etc. For states where restrictions may be difficult to repeal, an immediate step could be for a Governor or AG to call for a review of state law to examine existing restrictions

14. Federal Asks: Reiterate our federal asks in your own conversations with the Biden-Harris administration, and in some cases, work directly with the federal government to obtain specific funding and resources for their state.

- 1) **Public Health Emergency:** Declare a public health emergency (PHE) and a national disaster, and use all disaster relief authorities under their discretion to support states, providers, and abortion funds. Declaration of a PHE and use of other federal authorities makes a national statement and frees up authorities for use in other parts of the country.
- 2) **Access to Care:** Utilize federal resources and, where possible, federal facilities, to help people access abortion. This includes assisting those forced to travel out of state access in the forms of transportation, hotels, time off work, child care, and other needs. Ensure that federal employees and federal contractors are able to access abortion and are reimbursed for relevant expenses. Ensure that all people regardless of immigration status in addition to individuals supporting them can safely travel cross-state and cross-border to access abortion without risk of detention or deportation.

- 3) **Information about Medication Abortion:** Launch a public education campaign about the safety and accessibility of medication abortion and ensure that providers and individuals have the information they need to safely access care, particularly in light of existing misinformation. The Federal Trade Commission (FTC) should also target misinformation perpetuated by crisis pregnancy centers regarding medication abortion.