

# TEXAS POLICY EVALUATION PROJECT

# FACT SHEET



AUG. 13, 2015

## Components of HB2

House Bill 2 is a bill that was passed in special session by the 83rd Texas state legislature and signed into law on July 18, 2013.

The law includes four new restrictions on abortion care:

1. A requirement that **physicians have admitting privileges** at a hospital within 30 miles of the facility.
2. A **ban on abortions at 20 weeks of pregnancy post-fertilization or later**, with an exception in the case of life endangerment to the pregnant woman or severe fetal abnormality (but not for rape).
3. **Restrictions on the use of medical abortion (the abortion pill)** based on the FDA-approved regimen including 7-week gestational age limit, with certain allowances for drug dosages.
4. A requirement that all abortion facilities **meet the standards of ambulatory surgical centers (ASCs)**, including facilities that only provide medical abortion.

## Enforcement of HB2

**The admitting privileges requirement, the ban of abortion 20 weeks post-fertilization, and the medical abortion restrictions went into effect on November 1, 2013.**

These components were challenged in court by Planned Parenthood of Greater Texas Surgical Health Services v. Abbott. While Federal Judge Lee Yeakel declared the admitting privileges requirement unconstitutional, the U.S. Court of Appeals for the Fifth Circuit upheld the first three parts of the law.

**The fourth component of the law, requiring facilities to meet ASC requirements, was set to take effect on September 1, 2014; however, the requirement has been challenged in court.**

Whole Woman's Health, et al. v. Lakey, et al. challenged the law. On August 29, 2014 Federal Judge Lee Yeakel found the ASC law to be unconstitutional and blocked the state from enforcing the law. This was immediately appealed by the State of Texas, and on September 12, 2014, the Fifth Circuit Court of Appeals in New Orleans heard oral arguments for each side.

On October 2, 2014, the Fifth Circuit reversed the decision of the lower court and determined that the law could be enforced while the appeal moved forward. This led to immediate enforcement of the ASC requirement on October 3, 2014 (except as applied to one clinic in El Paso, although it enforced the admitting privileges requirement for that clinic). The plaintiffs appealed to the U.S. Supreme Court and on October 14, 2014, the U.S. Supreme Court, in a 6-3 decision, vacated the Fifth Circuit stay, allowing the clinics that were closed by the October 2 ruling to reopen on October 15.

Based on the Supreme Court ruling, the ASC requirement could be enforced while the Fifth Circuit Court of Appeals hears the entire case. Hearings opened on January 7, 2015 and on June 9, 2015, the Fifth Circuit Court of Appeals upheld the ASC requirement. A panel of the court ruled that the law, with minor exceptions, did not place an undue burden on the constitutional right to abortion. The plaintiffs filed an emergency appeal to the Supreme Court of the United States, and on June 29 the Supreme Court voted 5 to 4, approving the stay. Therefore, clinics in Texas can legally continue providing abortion care without meeting the ASC requirements at least until it is decided if the US Supreme Court will review the case.

## According to TxPEP Research

- There are currently 17 clinics open in Texas, 9 of which are ASCs. The ASCs are located in Austin, Dallas (2), Ft. Worth, Houston (2), and San Antonio (3).
- During the brief period that the ASC requirement was enforced in October 2014, only 8 facilities were able to provide care.
- When clinics were forced to close in November, 2013, many women were turned away from services. Some of those women were unable to obtain the abortion they wanted, while others faced delays.
- In the first 6 months after HB2 enforcement, the abortion rate in Texas declined 13%, and medical abortion declined by 70% compared to the year prior.
- Women of reproductive age living more than 200 miles from a clinic in Texas increased from 10,000 in April 2013 to 290,000 in April 2014. When the ASC requirement was briefly enforced, that number increased to 750,000.
- In early 2014, only 22% of abortions in Texas were performed in ASCs.

## Explanation of HB2 Components

**ADMITTING PRIVILEGES:** Requires that physicians have admitting privileges at a hospital within 30 miles of the facility.

**Context:** Hospitals extend admitting privileges to physicians who admit patients, and providers who primarily perform abortion care do not admit patients to hospitals because abortion is so safe.<sup>1</sup> The risk of transferring a patient from an outpatient abortion clinic to a hospital is less than 1 out of 1,000. When such a transfer occurs, it is important that the physician most qualified to care for that patient treat her; in many cases, that may not be the abortion provider. In addition, hospitals are obligated to provide emergency care to any patient experiencing a medical emergency under the federal Emergency Medical Treatment and Labor Act of 1986 (EMTALA). Therefore, requiring doctors to have admitting privileges is not medically relevant and does not increase the safety of the patients undergoing procedures in clinics.<sup>2</sup>

**What it means for Texas clinics and women:** Many clinics rely on visiting providers who find it difficult to obtain privileges at local hospitals for reasons not associated with the quality of the doctor's care. Some clinics are surrounded by religiously affiliated hospitals that may deny abortion providers admitting privileges. Clinics that were unable to secure privileges for their providers have been forced to close, thus limiting access to safe, legal abortions. Importantly, in the case of *Whole Woman's Health, et al v. Lakey, et al.*, the plaintiffs requested that two clinics be exempt from the admitting privileges requirement - one clinic in El Paso and one in McAllen. The request was based on the fact that these two clinics were in regions of Texas - West Texas and the Lower Rio Grande Valley - where all abortion clinics had closed. As a result, women's access to abortion services in these regions has been greatly impacted by HB2. Currently these two clinics are allowed to provide abortion services without admitting privileges. At this time, one of the clinics has reopened.

**Timeline:** Went into effect November 2013. The two clinics with exceptions are able to provide services.

**20-WEEK BAN:** Bans abortions at 20 weeks of pregnancy post-fertilization or later, with an exception in the case of life endangerment to the pregnant woman or severe fetal anomaly (but not for rape).

**Context:** Abortions that occur at 20 weeks of pregnancy post-fertilization or more are rare (only about 0.8% of abortions), but they are sought by a particularly vulnerable population of women.<sup>3</sup> Research indicates that a variety of circumstances can lead to second-trimester abortion, including delays in suspecting and testing for pregnancy, delay in obtaining insurance or other funding, delay in obtaining referrals from other physicians, and difficulties in locating and traveling to a provider. Poverty and having multiple disruptive life events have been associated with higher rates of seeking second-trimester abortion.

**What it means for Texas clinics and women:** The 20-week post-fertilization ban disproportionately impacts women with difficulty accessing reproductive healthcare, including young women, women with chronic illness, poor women, and women who became pregnant because of a rape. Women with chronic illness may recognize pregnancy later because their menstrual cycle and weight were already affected by their treatment. In addition, HB2 does not have an exception for victims of sexual assault.

Women who experience rape may be more likely to hide the pregnancy or be in denial about the pregnancy due to the traumatic circumstances, and only a minority of women seek medical care after a rape.<sup>4</sup> This may lead to late recognition of the pregnancy and need for abortion after 20 weeks of pregnancy post-fertilization.

**Timeline:** Went into effect November 2013.

**RESTRICTIONS ON MEDICAL ABORTION:** Restricts physicians to using specified protocols for medical abortion that are neither commonly used nor based on the most up-to-date evidence.

**Context:** A medical abortion is one brought about by taking medications that will end a pregnancy. HB2 legislation restricts physicians to outdated medical abortion protocols described in the drug label approved by the Food and Drug Administration (FDA) in 2000 or the medication dosages described in the American College of Obstetricians and Gynecologists (ACOG) Practice Bulletin that was written in 2005. Since mifepristone (also known as Mifeprex or RU-486) was approved in 2000 and the Practice Bulletin was written in 2005, medical practice has evolved, and more effective protocols that allow medical abortion later in pregnancy have been developed.<sup>5</sup> The HB2 medical abortion restrictions reduced the gestational age eligibility from 63 days to 49 days from the last menstrual period, taking away this option from many women who could safely and effectively use it and who may prefer it.

**What it means for Texas clinics and women:** The restrictions on medical abortion limit access to this method by forcing providers to use regimens that are inferior to the current, evidence-based protocols. The restrictions, in combination with Texas's 24-hour waiting period, can require a woman to make up to four separate trips to the clinic: one primary consultation visit, two appointments to take the consecutive doses of medication, and one follow-up visit. For women who do not have the time, money, transportation, or other resources needed to make these four separate trips, medical abortion is no longer a viable option. Furthermore, few clinics are able to bring in the same doctor for these four separate appointments; as a result, many clinics in Texas are no longer able to offer medical abortion as an option. As noted above, medical abortion declined 70% in the first 6 months after HB2 was enforced.

**Timeline:** Went into effect November 2013.

**ASC REQUIREMENT:** This provision mandates that all abortion facilities meet the standards of ambulatory surgical centers (ASCs), including facilities that only provide medical (or nonsurgical) abortion.

**Context:** Standards of ambulatory surgical centers often include requirements for the physical plant, such as room size and corridor width, beyond what is necessary to ensure patient safety in the event of an emergency. This means many clinics and facilities would have to undergo very expensive, excessive physical modifications in order to meet the standards of an ASC. Clinics that are not able to bear this expense will be forced to close. Expanding the ASC requirement to include all abortions, rather than just those beyond 16 weeks, is not medically necessary, and it would decrease access without improving patient safety.<sup>6</sup>

**What it means for Texas clinics and women:** Currently it appears that only nine facilities in Texas are able to meet the ASC requirement if it is enforced again. This would have a serious impact on abortion access; in early 2014 only 22% of abortions in Texas were performed in ASCs. It seems unlikely that these facilities will be able to increase their capacity four-fold to meet the demand for services across the state. Many women will have to travel farther, therefore taking more time off from work or school and spending more money to access abortion care. Clinics that do become ASCs may have to charge more for abortion services, again limiting access for women, particularly a woman who is already struggling to make ends meet.

**Timeline:** Was set to go into effect September 2014. The law was challenged in the case *Whole Woman's Health, et al. v. Lakey, et al.* and Judge Yeakel issued a temporary stay. The Fifth Circuit Court of Appeals imposed a stay on the district court decision and enforced the ASC requirement as of October 3, 2014, as the appeals process continued. However, the U.S. Supreme Court vacated the stay of the Fifth Circuit Court of Appeals on October 14, 2014, allowing the clinics closed by the October 2 ruling to reopen on October 15. Hearings opened on January 7, 2015 and on June 9, 2015, the Fifth Circuit Court of Appeals upheld the ASC requirement. The plaintiffs filed an emergency appeal to the Supreme Court of the United States and on June 29 the Supreme Court voted 5 to 4 to approve the stay. Therefore, clinics in Texas are legally permitted to continue providing abortion care without meeting the ASC requirement at least until the US Supreme Court decides whether it will review the case.

## References

- <sup>1</sup> Upadhyay U, Desai S, Zlidar V, Weitz T, Anderson P, Taylor D. Prevalence of abortion complications and incidents of emergency room visits among 55,000 abortions covered by the California Medi-Cal Program. *Contraception*. 2013 Sept.; 88(3):434-4535.
- <sup>2</sup> Grossman D, Baum S, Fuentes L, White K, Hopkins K, Stevenson A, Potter JE. Change in abortion services after a restrictive law in Texas. *Contraception*. 2014 Nov.; 90(5): 496-501.
- <sup>3</sup> Starling J 3rd, Thosani MK, Coldiron BM. Determining the safety of office-based surgery: what 10 years of Florida data and 6 years of Alabama data reveal. *Dermatol Surg*. 2012 Feb.;38(2):171-7.
- <sup>4</sup> Drey EA, Foster DG, Jackson RA, Lee SJ, Cardenas LH, Darney PD. Risk factors associated with presenting for abortion in the second trimester. *Obstet Gynecol*. 2006 Jan;107(1):128-35.
- <sup>5</sup> American College of Obstetricians and Gynecologists and Society of Family Planning. Medical management of first-trimester abortions. *Practice Bulletin*. 2014 March; 143.
- <sup>6</sup> Jones RK, Finer LB. Who has second-trimester abortions in the United States? *Contraception*. 2012 Jun;85(6): 544-551.



*TxPEP is a five-year comprehensive effort to document and analyze the impact of the measures affecting reproductive health passed by the 82nd and 83rd Texas Legislatures. The project team includes researchers at the University of Texas Population Research Center, Ibis Reproductive Health, and the University of Alabama-Birmingham.*

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