

## New York and Other State Abortion Guidelines

### Who Can Perform Later-Term Abortions and Where?

#### Impacts on Women

### Who Can Perform Later-Term Abortions?

New York's Reproductive Health Act (RHA) <sup>1</sup> removed NY's long-standing requirement that only duly licensed physicians perform abortions <sup>2</sup> and that a second physician be present during later-term or surgical abortions performed on fetuses 20+ weeks gestation.<sup>3</sup>

**The RHA neglected to define exactly who can perform abortions, including later-term abortions.** Under the RHA, healthcare practitioners may perform abortions, but both the RHA and the laws and regulations it generally references fail to clarify which ones; <sup>4</sup> licensed nurse practitioners, midwives, physician assistants, pathologists' assistants? <sup>5</sup>

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<sup>1</sup> NY's [Reproductive Health Act](#)

<sup>2</sup> The RHA repealed Section [125.05](#) of NY Penal Law which required duly licensed physicians to perform abortions.

<sup>3</sup> The RHA repealed NY Public Health Law [4164](#), which required a second physician be present for abortions performed on fetuses 20+ weeks gestation.

<sup>4</sup> [Capital Watch: Nurses, Midwives Look for Clarity on Abortion](#)

<sup>5</sup> The [RHA](#) states "a health care practitioner licensed, certified or authorized under Title Eight of the Education Law, acting within his or her lawful scope of practice, may perform an abortion," without defining the term 'health care practitioner.' [Title Eight](#) lists a slew of health care practitioners without denoting which health care practitioners can or cannot perform abortions. It can be argued perhaps that physicians assistants may, per their 'scope of practice,' but it is unclear, including regarding the performance of later-term abortions.

The RHA makes clear it must be construed consistent with "applicable laws and applicable and authorized regulations governing health care procedures." Applicable laws and regulations researched include, [Public Health Law 230-d](#), NYCRR, [756.1](#) and [755.3](#) as well as [NYS Surgical and Invasive Procedure Protocol](#), all of which fail to specify physicians must perform abortions, including surgical abortions, despite [Guttmacher Institute's](#) claim. See also, [NYS Department of Health](#). NY appears to provide medical staff wide discretion, beyond some guidelines regarding 'best practices,' and the possibility of professional medical [misconduct](#) concerning surgeries.

The overwhelming majority of states require that physicians perform later-term abortions, and a near majority require the presence of a second physician during a second or third trimester abortion.<sup>6</sup>

## Where Can Later-Term Abortions Be Performed?

New York's Reproductive Health Act removed NY's long-standing requirement that second and third trimester abortions be performed only in hospitals, and failed to denote where abortions must occur, including later-term abortions.<sup>7</sup> Other relevant NY laws and regulations governing health care procedures also fail to specifically direct where any abortion must occur, including later-term abortions.<sup>8</sup>

States are permitted to require that second and third trimester abortions be performed in hospitals and/or ambulatory surgery centers, similar facilities, or physicians' offices.<sup>9</sup> States with some or all of these standards in full force and effect include Pennsylvania, Michigan and Arizona.<sup>10</sup>

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<sup>6</sup> 35 states, excluding New York, require physicians to perform surgical abortions and 17 states require the presence of a second physician beginning at 20 weeks gestation, according to [Guttmacher Institute](#).

<sup>7</sup> The RHA repealed [NY Public Health Law 4164 \(1\)](#), which required abortions after the twelfth week of pregnancy to be performed only in a hospital.

The US Supreme Court struck down a similar statute requiring second trimester abortions occur only in hospitals, [Akron v. Akron Center for Reproductive Health Inc. \(1983\)](#). However, in [Simopoulos v. Virginia \(1983\)](#), the US Supreme Court upheld a requirement that abortions beginning in the second trimester occur in hospitals and/or licensed outpatient facilities. A comparable law was also upheld in [Whole Women's Health Alliance v. Rokita \(2021\)](#). The state statute upheld in *Rokita* contains a "second trimester hospital/ambulatory surgical center requirement."

Rather than simply cure the 'hospital only' defect in NY Public Health Law 4164 (1) per US Supreme Court precedent, the RHA blanketly repealed the law in its entirety, without any specific replacement.

<sup>8</sup> See footnote 3 and 5. See also, [NY Public Health Law, Chapter 45, Article 28](#), [NYCRR 86-4.13 \(4\)](#)

<sup>9</sup> See footnote 5. See also the [Guttmacher Institute](#).

<sup>10</sup> See [Regulations on Facilities and Clinicians Providing Abortions](#), Kaiser Family Foundation (KFF). See also the [Guttmacher Institute](#).

States can also require abortion clinics that provide later-term abortions to be accredited or licensed and undergo annual or random state health department inspections, and many states do.<sup>11</sup> NY does not.<sup>12</sup>

NY legislators have introduced numerous abortion clinic inspection bills throughout the years, with no success.<sup>13</sup>

## Are Less Abortion Guidelines Safer For Women?

### Abortion Complication Rates

Oregon, which has abortion policies similar to New York, has **more than double the averaged abortion complication rate** (36.68) than all states (15.76) required to track, report, and that also publish abortion complication rates, with more abortion guidelines than Oregon and NY.<sup>14</sup>

The majority of these states have nearly **five times less abortion complications** than Oregon. Some examples include Pennsylvania (7.44), Michigan (2.76) and Arizona (2.41).<sup>15</sup>

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<sup>11</sup> States that require abortion clinics (non-hospitals) to be accredited or licensed and undergo annual or random state health department inspections include, [Pennsylvania](#) (clinics that perform surgical abortions), [Michigan](#) (clinics that “perform 120 or more surgical abortions annually and publicly advertise abortion services”), [Arizona](#) (where an abortion clinic conducts “five or more first-trimester abortions in any month or any procedures beyond the first trimester” of pregnancy) and [Rhode Island](#) (where the abortion procedure occurs at [19+ weeks](#) of fetal gestation).

<sup>12</sup> [NY Abortion Clinics ‘inspected less than pizzerias’ radio ads](#)

<sup>13</sup> <https://www.nysenate.gov/legislation/bills/2019/A4664>

<sup>14</sup> All state abortion complication rates denoted were calculated from each state’s department of health’s most recent figures, through dividing the number of abortion complications in each state by the state’s total number of abortions, multiplied by 1,000. Thus, the rates reported herein represent abortion complications per 1,000 abortions. [Guttmacher Institute](#) reports that 28 states are required to report abortion complication data, yet only 16 of these states publish such data, including Oregon, [36.68](#). 15 of these 16 states (excluding Oregon) contain [more abortion guidelines](#) than Oregon, including the [‘physicians only’](#) directive regarding abortion.

<sup>15</sup> Of these 15 states (see above) a majority (8 states) had abortion complication rates lower than 7.64.

Like NY, Oregon does not require that later-term abortions be performed by physicians, in hospitals and/or ambulatory surgery centers, similar facilities, or physicians' offices.<sup>16</sup>

Like NY, Oregon also fails to require that all abortion facilities be accredited, licensed or undergo state health department inspections.<sup>17</sup>

NY neglects to publish any categorized data on abortion complications. Oregon is the only state with 'liberal' or few abortion guidelines required to track, report, and that also publishes abortion complication data.

### **How Often Do Women Obtain Later-Term Abortions?**

Approximately 10,000-15,000 abortions occur on unborn children 20+ weeks gestation annually in the United States.<sup>18</sup> New York contributes disproportionately to these numbers, with an average of 1,660 reported abortions at 20+ weeks gestation each year.<sup>19</sup>

### **PEOPLE OVER PROFITS?**

Planned Parenthood is the largest single provider of abortion in the United States. According to their most recent report (2019-2020) Planned Parenthood had annual revenue of [1.6 billion dollars and possessed over 2 billion dollars](#) in net assets. Abortion services account for a [substantial](#) portion of Planned Parenthood's revenue.

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<sup>16</sup> See [Trap Laws-Abortion Facility Licensing Requirements](#), [NARAL](#), [Regulations on Facilities and Clinicians Providing Abortions](#), Kaiser Family Foundation (KFF), and the [Guttmacher Institute](#).

<sup>17</sup> <https://www.politifact.com/factchecks/2013/jan/26/gayle-atteberry/are-abortion-clinics-oregon-not-held-basic-health/>

<sup>18</sup> [Late Term Abortion and Medical Necessity: A Failure of Science](#)

<sup>19</sup> This number was calculated by averaging the number of induced abortions in NY at 20+ weeks gestation published by [NY's Department of Health/Vital Statistics](#), Annual Vital Statistics (Table 19) 2016, 2017, 2018, and 2019. 2020-2021 have not yet been published.

Additionally, [Planned Parenthood's reports](#) show that between 2009 and 2019, the number of abortions they provide has grown, while their provision of other health services has significantly declined. Planned Parenthood operates a major portion of the abortion clinics in [New York](#). NY has the [highest abortion rate](#) of any state in the U.S., with approximately [252](#) abortion providing facilities.

**\*If any research and analysis above contains known flaws, please provide Feminists Choosing Life of New York (FCLNY) with additional and/or opposing data. FCLNY is interested in accurately educating on abortion policy in NY and elsewhere.**