Chemical Abortion Bans

by Chantel Hoyt

While many states have enacted pro-life laws in recent years, the abortion industry has been searching for ways to circumvent such laws. The best way to do this, it has determined, is through risky, do-it-yourself chemical abortions, which leave mothers to endure the trauma of abortion alone in their bathrooms, with no support or medical follow-up.

Twenty years ago, the U.S. Food and Drug Administration (FDA) approved mifepristone (Mifeprex®; also known as RU-486 or simply "the abortion pill") to chemically induce abortions. Since then, the abortion industry has latched on to the abortion pill as a lower-cost alternative to surgical abortions—and one that can be carried out virtually anywhere. As a result, abortion pill usage has surged even as the overall number of abortions in the United States is in decline. According to the Centers for Disease Control (CDC), the use of early "medical abortions" (a euphemistic term for chemical abortions) increased 114 percent from 2006 to 2015.[1] And according to statistics provided by the Guttmacher Institute, 39 percent of abortions in 2017 were chemical, a 25 percent increase since 2014.[2]

Chemical abortion is praised by pro-abortion activists for expanding abortion availability, particularly for women who don't live near an abortion business since they push mothers to self-administer the drugs at home. These activists choose to overlook chemical abortion's higher rate of risk compared to surgical abortion and push for the removal of the FDA's safety standards, arguing they are unnecessary and unduly limit "abortion access."[3] The abortion industry seems willing to gamble with women's lives and health.

The good news is that many states are not. Since 2011, **74** bills to ban or place regulations on chemical abortion have been introduced in **29** states. Of these bills, **21** have been enacted in **14** states. These bills vary in approach. Some seek to ban chemical abortion outright, while others seek to regulate chemical abortions in an effort to mitigate its health-damaging and life-threatening risks to mothers. Bills typically include some combination of the following key provisions:

- Require that the pre-abortion exam be performed, and the abortion pills be administered, in-person by a licensed physician. (These laws are often referred to as "Skype abortion" bans, since without them abortionists can abuse telehealth to dispense chemical abortion drugs without ever physically examining the mother.)
- Require that physicians meet certain certification and qualification standards, including:
    - Being certified by an "Abortion Inducing Drug Certification Program" at the state board of pharmacy.
    - Being capable of performing an in-person exam to confirm the pregnancy, the absence of an ectopic pregnancy and determine the gestational age and intrauterine location of the unborn child, as well as document said information in the patient's medical chart.
- Require follow-up appointments (minimum of two).
- Require patients to be informed of the "final printed label" (FPL) of each drug.
- Require informed consent for mothers.
- Require reporting of Adverse Event Complications and reporting to the state board of pharmacy.
- Provide a penalty for noncompliance (criminal, civil, and/or professional).
- Create a civil cause of action (*i.e.*, abortion providers who violate the law can be sued).

In 2021 so far, a record-high **22** bills have been introduced and **seven** enacted in **six** states. Here is a rundown of the seven bills enacted so far this year:

- **Alabama HB 377** banned chemical abortions completely and imposed a criminal penalty for noncompliance. Specifically, it prohibits any person or entity from manufacturing, distributing, prescribing, dispensing, selling, or transferring the abortion pill or any substantially similar

generic or non-generic abortifacient drug in the state. This is the strongest measure to be enacted this year.

- **Oklahoma SB 778** also requires the person administering the abortifacient drug to be a licensed physician, establishes informed consent and reporting requirements (*i.e.*, number of chemical abortions), codifies criminal, professional, and civil penalties for noncompliance, and creates a civil cause of action for the mother, father, and maternal grandparents of the unborn child if these rules are not adhered to. This bill also prohibits the distribution of abortifacient drugs in schools or on other state grounds.
- **Oklahoma SB 779** additionally requires the person administering the abortifacient drug to be a licensed physician but adds that this physician must have admitting privileges at a local hospital. This bill also establishes the Oklahoma Abortion-Inducing Drug Certification Program, which requires manufacturers, distributors, and physicians to be certified to manufacture, distribute, or provide abortifacient drugs, and establishes requirements for certification. This bill also requires the physician to schedule a follow-up appointment, establishes informed consent requirements, creates a reporting system, establishes criminal penalties for noncompliance, and creates a civil cause of action for the mother of the unborn child. This bill, together with SB 778, puts strong regulations in place, ensuring proper safety precautions are taken and enforced.
- **Montana HB 171** requires that abortifacients be administered in-person by a "qualified medical practitioner" and prohibits the drug from being provided through a courier, delivery, or mail service, which targets the "mail-order abortion" model that the abortion industry is moving toward. It also requires the physician to perform an in-person exam of the mother prior to administering the drug to verify that a pregnancy exists, determine the mother's blood type (since being Rh negative could cause complications), and establish the gestational age and intrauterine location of the unborn child. This bill also provides informed consent requirements, reporting requirements, civil and criminal penalties for noncompliance, a civil cause of action, and requires the physician to schedule a follow-up appointment. In addition, the bill also prohibits anyone from providing an abortifacient drug at a school or on school grounds.

- **Arkansas HB 1402** requires persons administering abortifacients to be licensed physicians, credentialed to manage abortion complications, or have an agreement with an associated physician who is credentialed to handle abortion complications. The bill also requires the physician to perform an in-person exam of the mother prior to administering the abortion pill in order to verify that an intrauterine pregnancy exists, determine the mother's blood type, and establish the gestational age of the child. This bill additionally requires the physician to schedule a follow-up appointment (making all reasonable efforts to ensure that the mother returns) and prohibits the distribution of abortifacient drugs via a courier, delivery, or mail service. It did not establish any new penalties.
- **Ohio SB 260** requires physicians to be physically present when abortifacients are administered and requires the physician to perform an in-person exam prior to administering the drug. It also mandates a 24-hour waiting period before the administration of abortifacients and imposes criminal penalties for noncompliance.
- **Arizona SB 1457** places leaner regulations on chemical abortion. It requires that abortifacient drugs only be provided by a qualified physician (elsewhere defined in law) and prohibits a manufacturer, supplier, physician, or any other person from providing an abortifacient drug via a courier, delivery, or mail service. This bill doesn't establish regulations as robust as the others, above. However, to the bill's credit, it establishes strong abortion regulations in other areas not related to chemical abortion, such as prohibiting an abortion solely based on a diagnosis of a genetic abnormality of the unborn child.

No other year has seen so many bills to regulate or ban chemical abortion introduced, let alone enacted. State legislators are seeing the lack of restraint and regulation of chemical abortions and taking action to establish necessary safeguards. All Americans should agree that the abortion industry should not be allowed to operate at the expense of the health and safety of mothers. States are sending a clear message that they will not stand idly by and allow abortion businesses like Planned Parenthood to profit from the cheaper but riskier abortion pill regimen. Given the dramatic increase of chemical abortions over the past few years, more states are sure to respond with their own legislative efforts to reign in this growing sector of the abortion industry.

For more information on chemical abortions and why safety restrictions are necessary for the sake of women's health, please refer to FRC's issue analysis.[4]

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[1] https://www.cdc.gov/mmwr/volumes/67/ss/ss6713a1.htm

[2] https://www.guttmacher.org/evidence-you-can-use/medication-abortion

[3] http://citeseerx.ist.psu.edu/viewdoc/download

[4] https://www.frc.org/chemicalabortion