

GAINING GROUND

2021 MIDYEAR REPORT

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The first six months of 2021 have been tumultuous for lawmakers and advocates seeking to protect and advance reproductive health, rights, and justice.

Despite President Biden's steps to roll back the harmful restrictions imposed by the previous administration, relentless legislative attacks on abortion in some states and the Supreme Court's decision to hear *Dobbs v. Jackson Women's Health Organization* have made it clear that the United States has reached a turning point regarding abortion rights and access. Even against this backdrop – and the continuing COVID-19 pandemic – many states have continued to push policies that increase access to reproductive health care, including by seeking to secure abortion rights, expand access to care to all who need it, and address many of the racial and economic disparities laid bare by the pandemic.

The National Institute for Reproductive Health's core mission is to advance proactive reproductive health, rights, and justice policies at the state and local level to ensure that everyone has the freedom and ability to control their reproductive and sexual lives. This brief report documents the progress made through June 1, 2021, by state legislatures on proactive legislation in NIRH's priority areas and highlights two prominent state legislative issues from the first half of this year: policies that help protect abortion rights and access, and policies that combat racial disparities in maternal health.

PROACTIVE LEGISLATION ON REPRODUCTIVE HEALTH, RIGHTS, AND JUSTICE, 2021

DATA CURRENT AS OF JUNE 1, 2021

1,014

TOTAL BILLS

49

STATES & WASHINGTON, D.C.

BILLS INTRODUCED **BILLS MOVED** **BILLS ENACTED**

Color code denotes furthest bills moved

ABORTION

136 BILLS | 26 STATES

105
BILLS

20
BILLS

11
BILLS

ENSURING ETHICAL CARE

62 BILLS | 21 STATES

42
BILLS

16
BILLS

4
BILLS

CONTRACEPTION

144 BILLS | 34 STATES

100
BILLS

38
BILLS

6
BILLS

SUPPORTING PARENTS

178 BILLS | 41* STATES

124
BILLS

46
BILLS

8
BILLS

MENSTRUAL EQUITY

372 BILLS | 44* STATES

280
BILLS

75
BILLS

17
BILLS

PREGNANCY CARE**

477 BILLS | 46* STATES

320
BILLS

119
BILLS

37
BILLS

SEXUALITY EDUCATION

56 BILLS | 19 STATES

43
BILLS

11
BILLS

2
BILLS

1,014 | 325 | 85

*This number includes Washington D.C.

**1 bill was vetoed

SAFEGUARDING ABORTION RIGHTS AND EXPANDING ABORTION ACCESS

SO FAR IN 2021, THE ABILITY TO ACCESS ABORTION feels more precarious than at any time in the last half century. In 2020, the Supreme Court affirmed in *June Medical Services, LLC v. Russo* that the right to choose an abortion is protected by the U.S. Constitution. However, that case was decided by a narrow and uncertain majority, and it was followed shortly by the tragic passing of Justice Ruth Bader Ginsburg – a critical vote for abortion rights on the Supreme Court. Since then, the newly constituted conservative Supreme Court has agreed to hear yet another case that puts the right to access abortion in jeopardy.

Justice Amy Coney Barrett's nomination to the Court – the Trump-Pence administration's third – further galvanized anti-abortion activists and resulted in a sweeping wave of new anti-abortion laws this year. Although abortion remains legal in all 50 states, Arizona, Arkansas, Idaho, Montana, Oklahoma, South Carolina, South Dakota, and Texas have all enacted some form of an abortion ban. These states and others have also enacted restrictions that make abortion care harder to access.

Yet all is not lost: reproductive health, rights, and justice advocates, and our allies in government, have continued to build on our momentum, working to protect and even advance people's ability to access affordable and stigma-free abortion care. Advocates at the federal level, led by All* Above All, held President Biden to his campaign promise of submitting his budget proposal to Congress without including the Hyde Amendment, which for decades has denied insurance coverage of abortion for people eligible for Medicaid and other government-sponsored health insurance. And at the state level, as of June 1, 2021, several states have already passed legislation that will help their residents access abortion care:

- **Colorado's** constitution prohibits Medicaid coverage of abortions; even exceptions to that general rule include medically unnecessary restrictions, such as a requirement that these abortions be provided only by physicians and in a particular type of facility. This year, Colorado repealed those restrictions, although the constitutional coverage limitation remains.
- **Connecticut** prohibited crisis pregnancy centers from engaging in deceptive advertising that seeks to mislead people seeking abortions and empowered the Attorney General's office to pursue remedies if the law is violated.
- **Hawaii** expanded access to abortion care by authorizing qualified advance practice registered nurses to perform first trimester abortions.
- **New Mexico** repealed a 1969 law that criminalized abortion, which had been dormant since *Roe v. Wade*, ensuring that it cannot be used to threaten New Mexico providers and their patients if *Roe v. Wade* is further weakened or overturned.
- **Virginia** continued its recent efforts to expand access to abortion care, repealing a state law that prohibited inclusion of abortion coverage in private health insurance plans. Virginia also reaffirmed its commitment to including abortion as part of comprehensive reproductive health care, commissioning a review of the health services that are provided to incarcerated pregnant people, including abortion.
- **Washington State** already mandates that most insurance plans that provide maternity coverage must also cover abortion; this year, the state extended that requirement to student health plans.

ADDRESSING RACIAL DISPARITIES IN MATERNAL HEALTH

The tragic and brutal reality is that the United States has the highest maternal mortality rate of any industrialized nation, and the maternal death ratio for Black women is more than twice the ratio for white women.¹ This situation is compounded because Black people have also been disproportionately impacted by the COVID-19 pandemic, dying at nearly twice the rate of white people.² In 2021, many states have taken steps to combat these devastating disparities.

For decades, one of the primary policy approaches to addressing maternal mortality has been to establish maternal health and mortality commissions and task forces to research and propose solutions to improve maternal health outcomes. In 2021, many states considered ways for these types of commissions to directly address racial and ethnic disparities in care. **Arizona, Indiana, Kentucky, Nevada, New Mexico, North Dakota,** and **Virginia** all passed legislation along these lines. Legislative chambers in **California, Delaware, Illinois, Michigan, Rhode Island,** and **South Carolina** also passed resolutions aiming to increase awareness of maternal health issues, many of which explicitly mention racial disparities in care.

Some states have also broadened insurance coverage for care and providers who can advance maternal health. This progress reflects the recognition that cost is a barrier to care for many people – in most instances, people of color – and that coverage should be available for culturally competent, community-based care. Increased access to and insurance coverage of midwives and doulas has been shown to improve health outcomes; additionally, increased access reduces the impact of systemic racism by providing an avenue for more individually crafted and culturally appropriate care.³ Even defining doulas in statute and creating credentialing or certification systems for them can help as preliminary steps towards greater access and coverage. So far in 2021, **Arizona** created a doula certification process, **Maine** required insurance coverage for certified midwife services, **Tennessee** passed a resolution recognizing the importance of doulas in reducing racial disparities in maternal and infant health care, and **Virginia** built out a certification process for licensed midwives. Additionally, three other legislatures have passed bills that are awaiting their governors' signatures: **Connecticut** defined doulas in statute and commissioned a study to determine whether the Department of Public Health should establish a state certification process, **Florida** passed a bill creating a telehealth maternity care program, and **Louisiana** required any health coverage plan that provides maternity services to cover midwife services and established a doula registry board.

Finally, experts agree that expanding postpartum coverage is an important part of alleviating the maternal mortality crisis,⁴ and multiple states have taken steps to do so in 2021. **Maryland, Washington,** and **West Virginia** all passed bills that increase the availability of insurance coverage up to one year postpartum, a similar **Illinois** bill is awaiting the governor's signature, and a **Texas** bill that provides coverage for six months postpartum is awaiting the governor's signature.

1 Eugene Declercq & Laurie Zephyrin, *Maternal Mortality in the United States: A Primer*, The Commonwealth Fund (December 2020), https://www.commonwealthfund.org/sites/default/files/2020-12/Declercq_maternal_mortality_primer_db.pdf.

2 *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, Centers for Disease Control and Prevention (May 26, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

3 See, e.g., Amy Chen et al., *Building a Successful Program for Medi-Cal Coverage for Doula Care*, National Health Law Program (May 21, 2020), <https://healthlaw.org/resource/doulareport/>.

4 See, e.g., *Policy Priorities: Extend Postpartum Medicaid Coverage*, The American College of Obstetricians and Gynecologists (last viewed June 8, 2021), <https://www.acog.org/advocacy/policy-priorities/extend-postpartum-medicaid-coverage>.



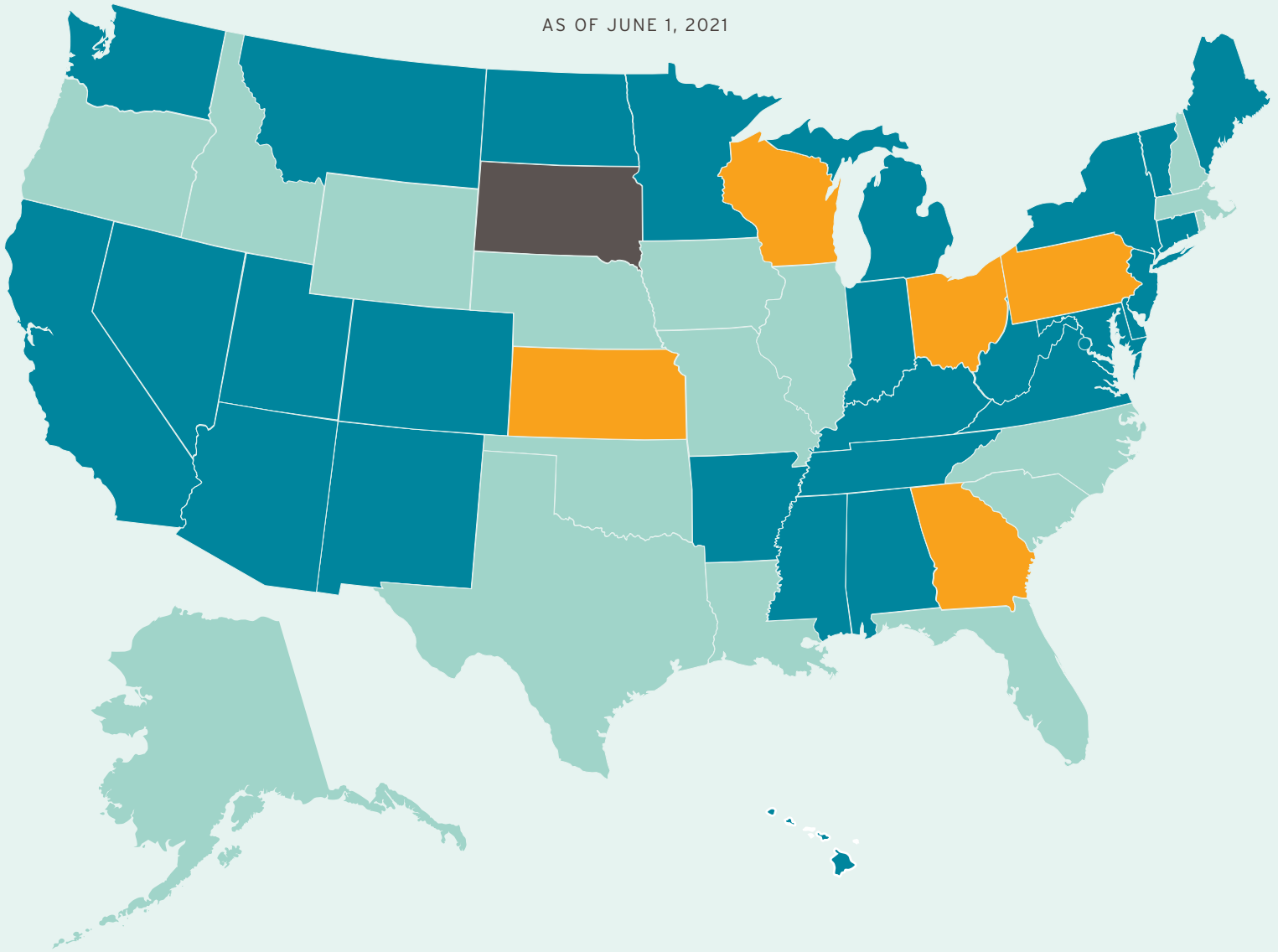
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MOVEMENT OF PROACTIVE LEGISLATION FOR REPRODUCTIVE HEALTH, RIGHTS, AND JUSTICE

AS OF JUNE 1, 2021



COLOR CODE DENOTES THE FURTHEST AT LEAST ONE BILL MOVED IN A GIVEN STATE



ENACTED/ADOPTED LEGISLATION



MOVED LEGISLATION



INTRODUCED LEGISLATION



VETOED LEGISLATION



NOT AVAILABLE