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ISSUE BRIEF

Pregnancy Exclusion Laws Deny Pregnant People End-of-Life Decision-Making

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Introduction

Everyone has the fundamental right to decide what medical treatment they will accept or refuse. This right includes the ability to make their decisions known in advance (through *advance directives*, *living wills*, or *durable power of attorney*) to provide direction to health care providers in the event that they cannot speak for themselves. But in some states, **pregnancy exclusion laws** deny pregnant people this right. Pregnancy exclusions invalidate or severely restrict a pregnant individual's advance directive, often compelling unwanted medical interventions with the stated aim of protecting potential fetal life. This brief outlines the scope of these laws and the threat they pose to the equality, autonomy, and dignity of pregnant people as well as the ethical and legal confusion they create for health care providers. It concludes with policy recommendations aimed at safeguarding patient self-determination and ensuring consistent, ethical healthcare delivery nationwide.

The Problem: Undermining Autonomy and Creating Legal Chaos

Advance medical directives, such as living wills and durable powers of attorney for healthcare, are foundational legal instruments designed to uphold an individual's right to self-determination in end-of-life medical decisions. They allow individuals to articulate their preferences for medical treatment or designate a healthcare agent if they become incapacitated. However, pregnancy exclusion laws directly undermine a person's fundamental rights by rendering these directives unenforceable or severely limited solely *because they are pregnant*.

Definition:

Pregnancy exclusion laws are state statutory provisions that limit the validity of advance medical directives for pregnant patients, often compelling unwanted medical interventions in the perceived interest of potential fetal life.

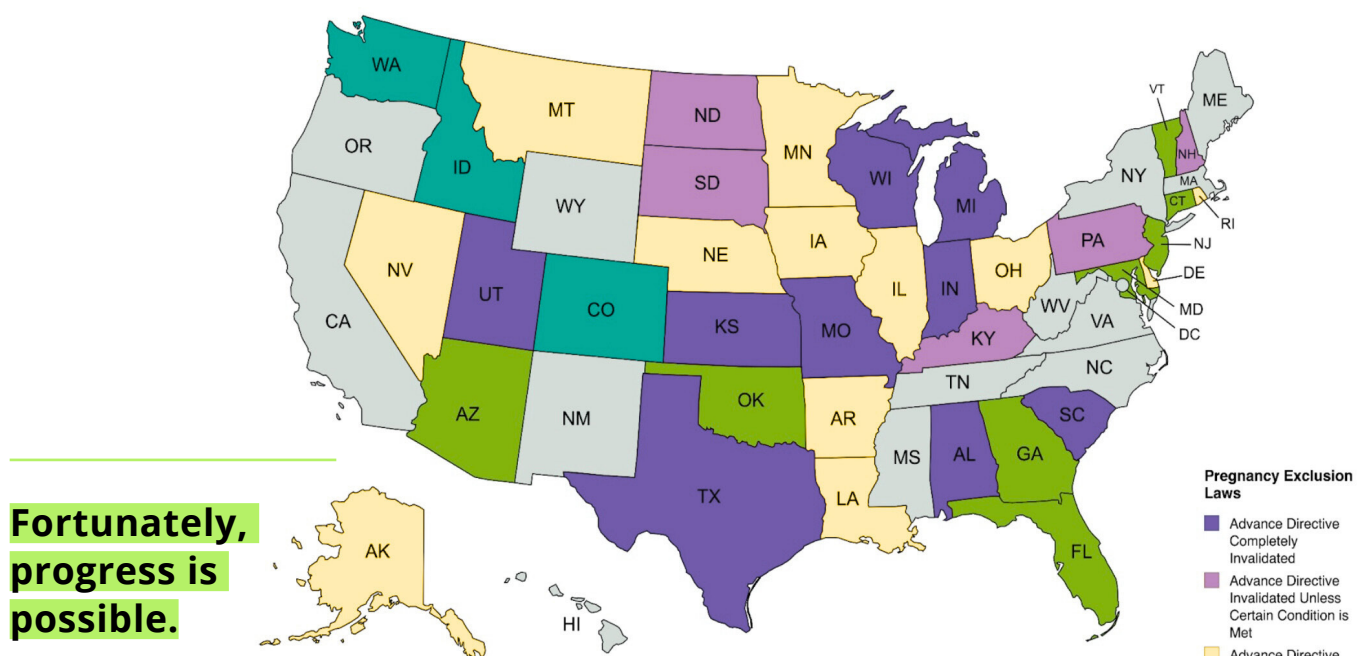
The consequences of these laws are stark. They deny people the ability to express what treatment they want, who can make decisions on their behalf, and can even force pregnant individuals to undergo life-sustaining treatments they explicitly refused, transforming deeply personal medical decisions into state-mandated interventions. In 2013, a woman in Texas named Marlise Muñoz died early in the second trimester of her pregnancy, and her body was kept on life support for weeks while her family experienced grief and trauma due to a state pregnancy exclusion law. In 2025, a Georgia woman named Adriana Smith experienced brain death in the first trimester of her pregnancy, and, as of this writing, her body is being kept on life support to continue her pregnancy, with her family expressing frustration that they did not have an opportunity to weigh in.

The Current Landscape: A Patchwork of Restrictions

As of this writing, **34 U.S. states** have some form of restriction or specific provision regarding advance directives during pregnancy. This creates a complex and confusing legal patchwork that leads to significant uncertainty for patients, their families, and healthcare providers. The enforceability of a patient's fundamental right to direct their own medical care can vary dramatically based purely on geographic location.

These state laws generally fall into several categories:

- **Complete Invalidation:** In 9 states, an advance directive is entirely invalidated if the patient is pregnant.
- **Based on Possibility of Fetal Survival:** In 12 states life-sustaining measures cannot be withheld if medical professionals believe the fetus can be gestated to a point where it can be delivered.
- **Invalid Subject to Medical Determination:** In 5 states, treatment must be provided unless a physician determines that certain conditions exist, such as futility of continuing the pregnancy or harm to the pregnant person.
- **Patient May State Specific Wishes:** In 8 states, individuals can include explicit instructions within their advance directive regarding care during pregnancy; otherwise their advance directive may be invalid.



Washington removed its pregnancy exclusion this year, and Colorado removed theirs in 2021. Idaho's pregnancy exclusion was held unconstitutional in 2021 in *Almerico v. Denney*, litigation filed by If/When/How, Compassion and Choices, and Legal Voice. Kansas' policy is currently being challenged by If/When/How and Compassion and Choices in *Vernon v. Kobach*.

Legal and Ethical Implications

Pregnancy exclusion laws violate a number of fundamental rights, including:

- **Right to Medical Decision-Making and Bodily Integrity:** Everyone has a right to decide what health care they accept or refuse, including refusing life-sustaining treatment as affirmed in *Cruzan v. Director, Missouri Department of Health*. Pregnancy exclusion laws deny people the opportunity to express what they want, imposing a one-size-fits all approach.
- **Gender Equality:** Singling out pregnant people and stripping them of the right to make medical decisions is discriminatory, often rooted in sex-based stereotypes and subordination of people who can become pregnant.
- **Freedom of Speech:** An advance directive is a declaration of deeply held beliefs. Its invalidation is content-based discrimination, and when it must include language stating that it is invalid in the event of pregnancy, it is forced speech contrary to a person's beliefs.
- **Religious Freedom:** For individuals whose religious beliefs prohibit certain medical therapies, pregnancy exclusions can infringe upon their religious freedom by compelling actions against their convictions.
- **Right to Kinship:** Everyone has the right to decide whom to trust to make intimate decisions on their behalf. Pregnancy exclusions often invalidate designation of a proxy, taking the decision out of the hands of a trusted loved one and placing it in the hands of the state.

Ethically, these laws are problematic because they:

- **Infringe on Patient Autonomy:** They treat the pregnant individual's body as a means to an end, undermining their personhood and fundamental right to bodily integrity.
 - **Conflict with Medical Standards:** They place healthcare clinicians in an untenable position, forcing them to practice medicine against their professional recommendations and ethical codes. The American College of Obstetricians and Gynecologists (ACOG) explicitly states that pregnancy is not an ethical exemption to a capable patient's right to refuse treatment.
 - **Leave Health Care Providers Without Direction:** In many states, once a patient's advance directive is invalid, physicians are left with little or no guidance as to what they are supposed to do or how they are supposed to follow the law.
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Policy Recommendations

Advancing reproductive justice requires ensuring that pregnancy is not an excuse to deny people their fundamental rights.

1. **Repeal Pregnancy Exclusions:** The most direct and effective policy solution is the complete repeal of all pregnancy exclusion laws in all states, upholding sex equality, bodily integrity, and medical ethics.
 2. **Support Constitutional Clarity:** Policy efforts should ensure that state constitutions and statutory protections for reproductive freedom and bodily autonomy include everyone, regardless of pregnancy status or medical condition.
 3. **Promote Uniform Legislation:** States should adopt uniform advance directive legislation that explicitly protects the rights of pregnant individuals. This would reduce confusion, ensure consistent application of patient wishes nationwide, and prevent inequities based on geographic location.
 4. **Educate and Empower Individuals:** Governments and healthcare organizations should implement robust public education campaigns to inform individuals about the importance of advance directives, the challenges posed by pregnancy exclusions, and how to best document their wishes, including pregnancy-specific instructions.
 5. **Provide Clear Guidance for Healthcare Providers:** State legislatures and medical boards should issue clear, unambiguous guidance to healthcare providers on navigating their ethical duties to pregnant patients, prioritizing the dignity and autonomy of pregnant patients.
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Conclusion

Pregnant people's decisions should always be respected — from their ability to have an abortion, create a birth plan that is right for them, and have or decline life-sustaining care if they choose to. By overriding carefully considered advance medical directives, these laws infringe upon the liberty and dignity of everyone who can become pregnant, creating an environment of legal uncertainty and ethical conflict. Nobody should have to worry that they will be stripped of their right to decide what will happen to their body, or their loved ones will be put through pain and trauma, on the basis that they are pregnant. States must take action to ensure that people's control over their own bodies is protected throughout their reproductive lives.