

Gender-Inclusive Language and Abortion Protections

AMANDA ELYSE, JDM, MS & SARAH J. KEATON, JD, MBA
Department of Health Services Administration and Policy, College of Public Health, Temple University

Correspondence: aelyse@seattleu.edu (Amanda Elyse)

In the wake of the overturning of *Roe v. Wade*, attention has turned to state-level protections for abortion rights. As state legislatures consider maintaining, revising, and creating laws to protect the right to choose to have an abortion, gender-inclusive language must be part of the consideration in order to offer protection to everyone who may become pregnant. When people are not covered by laws that protect abortion access, a pregnancy can lead to death from an unsafe abortion or pregnancy complications, negative and potentially long-lasting physical and mental health conditions, delays in obtaining healthcare due to having to travel, and the deprivation of one's ability to make choices about their life.

Gender-inclusive language is that which does not discriminate against a particular sex or gender identity; it is a powerful tool that can be used to promote equality and end gender bias (UN, n.d.). Reducing biases, stigmas, and disparities are of paramount importance in the healthcare profession, with its maxim of 'do no harm'; moreover, research suggests that inclusive healthcare improves outcomes (Chukwumerije, 2022). It follows, then, that our laws should reflect not only best, but most equitable, practices.

For example, in Maryland, "the State may not interfere with the decision of a *woman* to terminate a pregnancy before the fetus is viable" (Md. Health Gen. Code Ann. § 20-209, emphasis added). The language "woman" does not offer fully inclusive protection since people of gender identities such as transgender men, nonbinary, and agender may also become

pregnant, and thus need a clearly codified right to choose whether to access an abortion.

Until recently, Washington had the same issue as Maryland, with using the language of "every woman" in its reproductive privacy statute. But in the 2022 legislative session, its State Legislature changed the language to "every pregnant individual" has the right to choose to have an abortion (Wash. Rev. Code § 9.02.100). The Legislature noted that this change was to make the law gender-inclusive: "...[I]t is critical that we recognize that transgender, nonbinary, and gender expansive people also get pregnant and require abortion care. Washington's law should reflect the most inclusive understanding of who needs abortions and be updated with gender neutral language" (Wash. Rev. Code § 9.02.100, Legislative Affirmation 2022 c 65 § 1).

Twelve jurisdictions offer gender-inclusive language specifically in the context of explicitly protecting abortion access: California, Colorado, Connecticut, the District of Columbia, Illinois, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington (PSP, 2022). For example, Vermont's code extends abortion rights to "every individual who becomes pregnant" (Vt. Stat. tit. 18 § 9493), New Jersey's code refers to "every individual present in the state" (N.J. Stat. § 10:7-2), and Oregon's code refers to a "consenting individual" (ORS § 659.880). These states should be applauded for their leadership, especially when antichoice policymaking is not reflective of the general population's beliefs, much less healthcare needs (Kitchener et al., 2022). The need for gender-inclusiveness is one

piece of a much larger post-*Roe* quagmire in which abortion access is increasingly difficult, if not impossible, in some states, particularly those which also have the least supportive healthcare and economic support systems for parents and children (Treisman, 2022). The legislative bodies of Maryland and many other states that do not yet have gender-inclusive abortion protection laws should look to the aforementioned states for examples of language to use in order to ensure that every person who may become pregnant has a clear legal right to choose to access an abortion.

Gender-inclusive abortion protection laws not only give every person who may become pregnant the ability to make choices about their circumstances, but also broadly

signal the values of the state. State legislators hold powerful positions, as the language in the laws they write impacts how our bodies are viewed, treated, and cared for, whether in doctor's offices, workplaces, or homes. We feel the impacts of laws in spaces far beyond legislative sessions or courthouses. And so legislators must use their power to make extraordinarily clear that laws regarding the right to have an abortion will not exclude people who are not of a particular gender identity. Rather, laws should signal that every person who may become pregnant deserves to have the right to choose because their life and health matter.

References

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