ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

IDAHO

Since *Roe v. Wade* was overturned in June 2022, medical providers across the country have struggled to understand their state's abortion laws, which contain undefined terms and non-medical language.

Fear and confusion throughout the medical community has led some hospitals to adopt policies that are overly strict or burdensome, causing patients to be denied care in emergencies. While the law remains in flux and some questions have no clear answers, this document aims to provide clarification, where possible, of what conduct is still permitted in your state. Know what your state's law does and does not require, so you can advocate for yourself and your patients.

Last updated December 2024

Key Takeaways

Providing contraception, including emergency contraception, is legal.

Providing medical care for ectopic pregnancies, molar pregnancies, and pregnancies with no cardiac activity is legal.

Speech about abortion is legal. Providing information about how to obtain a legal abortion in another state is currently legal but is the subject of ongoing litigation.

Abortion is prohibited under Idaho law unless:

(1) abortion is “necessary to prevent the death” of the patient (litigation seeking clarification of the exception is ongoing), or

(2) during the first trimester, the pregnancy is the result of rape or incest and is reported to law enforcement.

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Definition of Abortion & Contraception

ABORTION

Idaho law defines abortion broadly as "the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman."[1]

The following are explicitly *excluded* from Idaho law's definition of abortion: (1) removing an ectopic or molar pregnancy; (2) removing "a dead unborn child;" (3) treating "a woman who is no longer pregnant;" and (4) the use of birth control, including IUDs.[2] While undefined, it is generally understood that in the context of Idaho's definition of abortion, "dead" means that there is no cardiac activity present in the embryo or fetus.[3] This means that treatment for ectopic or molar pregnancy (including use of methotrexate and surgical removal) and treatment for miscarriage where there is no cardiac activity (including medications, D&C, D&E, labor induction) are *not* abortions under Idaho law and thus are not prohibited by any of the abortion bans.

With respect to self-managed abortion, it is legal for providers to give medical care during or after a self-managed abortion provided there is no cardiac activity, or if the patient is experiencing a complication that would qualify as a medical emergency (see below). There is no specific crime of "self-managed abortion" in Idaho law. In fact, the state's criminal abortion ban explicitly exempts pregnant people from liability, and existing laws criminalizing self-managed abortion in Idaho were ruled unconstitutional by a federal court.[4]

CONTRACEPTION

Contraception is not illegal in any state in the country. Idaho's legal definition of abortion explicitly states that it does not include "[t]he use of an intrauterine device or birth control pill to prohibit or prevent ovulations, fertilization, or the implantation of a fertilized ovum within the uterus."[5]

Abortion Bans

Idaho has abortion bans with penalties that are criminal (prison time) and civil (loss of medical license and monetary fines). Idaho also has a pre-*Roe* law criminalizing advertising medicine that can facilitate a miscarriage or abortion, or medicine that can prevent conception (birth control).[6] There is no public record of this ban's enforcement. Idaho's specific ban on self-managed abortion was declared unconstitutional in 2013,[7] and the current total ban specifically exempts the pregnant person from any liability for abortion.[8]

Total Ban: Idaho's strictest abortion ban prohibits nearly all abortions from the time a pregnancy is clinically diagnosable. It took effect on August 25, 2022, and was amended in 2023. This ban states that "every person who performs or attempts to perform an abortion[...] commits the crime of criminal abortion."[9] There are narrow exceptions (1) during the first trimester in cases of rape or incest reported to law enforcement, and (2) during any trimester if the physician determines, in their good faith medical judgment and based on the facts known to them at the time, that the abortion was "necessary to prevent the death" of the pregnant person.[10] A physician's belief that the pregnant person will self-harm without abortion care is not covered by this exception.[11] The penalties for violating this ban are (1) criminal: a person can be charged with a felony punishable by two to five years in prison, and (2) professional: "[t]he professional license of any health care professional who performs or attempts to perform an abortion or who assists in performing or attempting to perform an abortion in violation of this [law] shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense."[12]

Six-Week Ban: This law took effect on August 13, 2022 and prohibits abortions when an embryo or fetus has detectable cardiac activity, with exceptions for rape and incest if reported to law enforcement[13] and for medical emergencies. Violations of this ban are currently punishable only through a private cause of action that purports to allow "[a]ny female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child" to bring a civil lawsuit against a provider for "statutory damages in an amount not less than twenty thousand dollars ($20,000) from the medical professionals who knowingly or recklessly attempted, performed, or induced an abortion in violation of this chapter; and…[c]osts and attorney's fees."[14] While this ban also provides for criminal felony penalties and suspension or revocation of professional licensure, those penalties will only become enforceable if the total ban is repealed or enjoined.[15]

Exceptions to Abortion Bans

Prevent Death or Medical Emergency: Idaho's total ban has a medical exception for abortions performed during any trimester if the physician determines, in their good faith medical judgment and based on the facts known to them at the time, that the abortion was "necessary to prevent the death" of the pregnant person.[16] A physician's belief that the pregnant person will self-harm without abortion care is not covered by this exception.[17]

Idaho's six-week ban, as well as its consent law for young people under 18 also has an exception for "medical emergencies" where the term is defined as "a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."[18] A lawsuit seeking to clarify the scope of the medical exceptions is ongoing.[19] If a physician has determined that this exception applies, the physician does not need to comply with Idaho's other abortion restrictions that also do not apply in medical emergencies. Specifically: the physician does not need to comply with Idaho's informed consent counseling and 24-hour waiting period;[20] for young people under 18, a physician does not need to notify their parent if the young person certifies that the pregnancy resulted from rape or incest,[21] or if a medical emergency exists "and the attending physician records the symptoms and diagnosis upon which such judgment was made in the minor's medical record."[22]

The medical emergency exception in Idaho's six-week ban is broader than the medical emergency exception in Idaho's total ban. A lawsuit seeking clarification if the scope of this exception is ongoing in state court.[23]

Rape and Incest: Idaho's total ban has an exception for first-trimester pregnancies resulting from rape or incest. For this exception to apply, the pregnant person must report the assault to law enforcement and provide a copy of that report to the physician performing the abortion.[24] For this exception to apply to young people under 18 or people of any age under guardianship, the young person, parent, or guardian must make a report to "a law enforcement agency or child protective services" and provide a copy of that report to the physician performing the abortion.[25]

EMTALA

A federal law called the Emergency Medical Treatment & Labor Act ("EMTALA") requires emergency abortion care in some cases. EMTALA requires Medicare-participating hospitals with emergency departments (which includes most

hospitals), to perform a medical screening to determine whether an emergency medical condition exists of any individual who comes to the emergency department and requests an examination or treatment.[26] Stabilizing medical treatment must be provided to individuals experiencing an emergency medical condition,[27] including people in labor or with emergency pregnancy complications.[28] Under the EMTALA statute, "to stabilize" means to provide medical treatment "as may be necessary" to ensure, "within reasonable medical probability, that no material deterioration of the condition is likely."[29] A person experiencing an emergency medical condition can only be transferred to a different hospital once they are stable or if certain conditions are met such as the medical benefits of transfer outweigh the increased risks to the person experiencing the medical emergency.[30] Even where a hospital is permitted to transfer such a person without first stabilizing them, the hospital still must provide "the medical treatment within its capacity which minimizes the risks to the individual's health."[31] EMTALA defines "emergency medical condition" to include "acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part."[32] The stabilizing treatment required by EMTALA can include abortion care in certain circumstances.

The U.S. Department of Health and Human Services ("HHS") reaffirmed these requirements in guidance issued after *Roe v. Wade* was overturned. That guidance emphasizes that stabilizing treatment required by EMTALA could include abortion care if the examining physician or other qualified medical personnel determines that such treatment is required to stabilize a patient experiencing an emergency medical condition, including a condition that is "likely or certain to become emergent without stabilizing treatment."[33] The guidance made clear those conditions might include, but are not limited to: "ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features."[34] The guidance reiterates that if EMTALA requires the provision of abortion care, then EMTALA expressly preempts any state law prohibiting or restricting access to abortion.[35] Indeed, HHS has recently cited hospitals in Kansas, Missouri and Florida for violating EMTALA by failing to provide abortion care to a patient with PPROM.[36]

Notwithstanding EMTALA's clear requirements with respect to emergency abortion, there is ongoing litigation relating to attempts by state officials in Idaho and Texas to restrict hospitals from complying with their federal legal obligations. In 2022, a federal district court in Idaho issued a preliminary injunction ensuring that Idaho's abortion ban could not be enforced to prohibit health-saving emergency abortions required under EMTALA.[37] The U.S. Supreme Court temporarily stayed that injunction, allowing Idaho to enforce its abortion ban even in cases where abortion care is required under EMTALA.[38] But, in June 2024, the Supreme Court lifted that stay and restored the preliminary injunction.[39] In other words, Idaho may not currently enforce its abortion ban to prohibit health-saving abortions required under EMTALA. In July 2024, following that order, HHS issued a statement reiterating that EMTALA requires hospitals to provide emergency abortion care when it is necessary stabilizing treatment.[40] Meanwhile, HHS had asked the U.S. Supreme Court to review a Fifth Circuit decision that affirmed a lower court decision temporarily blocking federal enforcement of HHS' guidance in Texas and as to other plaintiffs in that case. HHS petitioned the Supreme Court to reverse the preliminary injunction.[41] However, in October 2024, the Supreme Court declined to review

the Fifth Circuit's decision,[42] meaning the guidance is still blocked in Texas.

Other Federal Laws & Professional Guidelines

In addition to EMTALA, hospitals and/or medical providers are required to abide by the following:

Conditions of Participation in Medicare and Medicaid (COP): The federal COP regulations require hospitals that participate in Medicare and Medicaid to inform patients of their rights in advance of furnishing or discontinuing care which include: the right to be informed of their health status, be involved in care planning and treatment, and participate in the development of their plan of care.[43]

Protection Against Discrimination in Employment: The federal law known as the Church Amendments prohibits hospitals that receive certain federal funds from discriminating against health care providers who participate or are willing to participate in abortion care or sterilization procedures.[44]

Medical Malpractice: While this document does not detail state-specific medical malpractice law, medical providers should be aware that they risk liability under state medical malpractice law for failing to provide pregnant patients with the standard of care.[45]

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.[46] The federal law known as the Coats-Snowe Amendment both protects medical professionals in learning to provide abortion, and limits the government's ability to penalize programs or institutions that fail to comply with ACGME requirements.[47]

Documentation & Reporting

Generally, state law does not require documentation of irrelevant or non-medical information in patient charts. Nor does it explicitly require reporting to law enforcement patients who receive abortions out of state or self-manage their own abortion.[48] Some hospitals may impose additional documentation requirements for abortions performed as medical emergencies, including attestations by multiple physicians and/or approvals by an ethical review board. While intended to insulate the hospital from liability, these are not legal requirements.

The only abortion-specific documentation and reporting requirements are:

Abortion Reporting: Idaho law requires that when a physician performs an abortion that is a "medical emergency," the physician must deliver a signed report within 30 days of the abortion to the director of the department of health and welfare "denoting the medical emergency that excused compliance" with the informed consent requirements.[49] Quoting the language of EMTALA when documenting a patient case—e.g. "the patient's condition places them at risk of death or poses a serious risk of substantial impairment of a major bodily function"—may be helpful.

Complication Reporting: Complications from abortion must also be reported to the state within 90 days from the last date of treatment, and specifically providers must report if they give treatment for anything that, "in the practitioner's reasonable medical judgment, constitutes an abnormal or deviant process or event arising from the performance or completion of an abortion."[50] Though this definition grants discretion to the provider, Idaho law also lists out a series of possible complications.[51] These are only reportable if they "constitute[] an abnormal or deviant process or

event arising from the performance or completion of an abortion."[52]

Fetal Death Reporting: Abortions are not reportable as fetal deaths or stillbirths.[53] Idaho requires reporting of stillbirths, defined as fetal deaths of 20 or more weeks gestation or where the fetus weighs 350 grams or more.[54] An institution's representative must report any stillbirth that occurs in the institution to the local registrar within five days of delivery.[55] If a stillbirth occurs outside of an institution, the person acting as mortician should complete the stillbirth certificate.[56] In both cases, medical data should be obtained from the birth attendant and they or their representative must sign the certificate.[57] In all cases where the birth attendant during a stillbirth is not a physician, physician assistant, or nurse, the coroner must investigate and ultimately sign the stillbirth certificate.[58] The coroner must also investigate when the stillbirth "occurred as a result of other than natural causes", or when the birth attendant or their representative are unable to sign the certificate.[59]

Other Mandatory Reporting: All other general mandatory reporting to the Department of Health and Welfare, local law enforcement, etc., also applies for abortion patients.[60] This includes reporting of sexual abuse of young people, child abuse, and vulnerable adult abuse.[61]

Electronic Medical Records: Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions.[62] While EMRs have settings that allow patients to choose how and when their records are shared, hospital systems often instead use their EMR's default settings that widely share patient records. Though often done for continuity of care purposes, these settings may put abortion providers and patients (or patients obtaining other sensitive care) at risk, and many patients do not know their records are shared in this way.[63]

The federal government has taken steps to address this concern by issuing a new HIPAA rule, effective June 25, 2024.[64] The rule prohibits the use or disclosure of protected health information (PHI) if sought to conduct a criminal, civil, or administrative investigation into or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive healthcare, or identifying any person for these purposes.[65] A provider who receives a request for disclosure of PHI potentially related to reproductive care must obtain a signed attestation from the requestor that the request is not for a prohibited purpose.[66] The attestation is required when the request is for: law enforcement purposes, disclosures to coroners and medical examiners, judicial and administrative proceedings, and health oversight activities.[67] If the abortion care – self-managed or otherwise – was provided by someone else, a provider is allowed to assume the care was provided lawfully unless 1) the patient tells them otherwise or 2) the attestation provides evidence of unlawfully provided care.[68]

The new rule only applies to healthcare providers who are subject to HIPAA. Separate from HIPAA, interoperability rules may apply when a healthcare provider uses EMRs.[69] Because of this, we encourage you to discuss alternative EMR settings and information blocking exceptions with your institution's compliance officers, counsel, and/or technology officers, who may be able to offer customized solutions.[70]

Counseling & Referral

Speech about abortion is legal in Idaho. Idaho does have certain statutes and governmental legal positions that would severely restrict speech in specific instances or by specific actors that are each being challenged in the courts.[71]

Referring Patients for Abortions Out of State: In March 2023, the Attorney General of Idaho, Raúl

Labrador, issued a legal opinion stating that Idaho's abortion ban prohibits health care providers from referring their patients for an abortion in another state.[72] Providers sued, and a federal court issued a preliminary injunction blocking the Attorney General from enforcing the ban in this manner against those who refer out of state while litigation continues.[73] The Ninth Circuit upheld the preliminary injunction on December 4, 2024,[74] and it protects health care providers so they can continue to offer comprehensive counseling and assistance to their patients regarding accessing abortion care that is legal in other states without fear of being sanctioned by the Attorney General.

Assisting Young People: On May 5th, 2023, Idaho's ban on abortion support (for young people under 18) took effect, but it is partially enjoined while it is being litigated.[75] This ban prohibits adults who, "with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor," help the young person to obtain an abortion procedure or medication "by recruiting, harboring, or transporting the pregnant minor within this state."[76] The terms "recruiting, harboring, and transporting" are undefined. Violation is punishable by imprisonment in the state prison for 2-5 years.[77] The ban on abortion support is currently the subject of a lawsuit that asserts that the statute is vague and violates First Amendment rights along with rights to travel.[78] On November 8, 2023, a federal court preliminarily enjoined the Attorney General from enforcing this ban while litigation proceeds.[79] On appeal, the Ninth Circuit instructed the trial court to narrow the injunction to only stop the Attorney General from enforcing the "recruiting" ban while litigation proceeds.[80] The appellate court suggested that giving money for an abortion or abortion travel, information, options counseling, encouragement, or legal advice to a young person under 18 that helps them access a *legal* abortion is all recruiting and therefore the attorney general cannot prosecute people for those activities while the lawsuit proceeds.[81]

Publicly Funded Institutions: In 2021, Idaho passed the No Public Funds for Abortion Act, banning the use of public funds to "promote [abortion]", "counsel in favor of abortion[,]" or "refer for abortion[.]"[82] The law's lack of clarity on what these terms mean could be interpreted to prevent the free discussion of abortion in public universities and institutions. This law also prohibits health centers at publicly funded universities from referring for abortion or counseling "in favor of" abortion except where the abortion is necessary "when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself[.]"[83] The law also prohibits publicly-funded school-based health clinics from providing emergency contraception except in the case of rape.[84] Intentional violations of the law are punishable as a misdemeanor or felony, including fines and jail time dependent upon the amount of "misused" funds. [85] Intentional violations also incur other penalties, such as termination for cause. This law is currently the subject of a lawsuit brought on behalf of two teachers' unions and six individual professors. They are challenging the law on the basis that it violates their First Amendment right to academic speech, and is unconstitutionally vague under the Due Process Clause. In September 2023, Idaho's Attorney General issued an opinion stating that the statute does not apply to public university professors' academic speech.[86] The law is currently in effect while the case proceeds.

Medication Abortion

Idaho has additional rules that apply specifically to "chemical abortions."[87] Practically speaking, now that abortion is largely prohibited in Idaho, these rules only apply to abortions performed in "medical

emergencies." Idaho law defines "chemical abortions" to include "the exclusive use of an abortifacient or a combination of abortifacients to effect an abortion." An "abortifacient" is defined as "mifepristone, misoprostol and/or other chemical or drug dispensed with the intent of causing an abortion." Note that ectopic pregnancies are explicitly excluded from this definition. That means that when these drugs are used for medical care other than the legal definition of abortion, the rules do not apply. In other words, when these drugs are used to treat patients with ectopic pregnancies or for miscarriage care where no cardiac activity is present, or for cervical dilation, the rules for abortion-inducing drugs do not apply.

The following rules apply to the use of abortifacients for patients needing abortions in medical emergencies where cardiac activity is present. A physician must be able to accurately assess the duration of the pregnancy and the location of the pregnancy (to determine it is not ectopic), and they must be able to provide "surgical intervention in cases of incomplete abortion or severe bleeding," and have admitting privileges at a local hospital or have a documented care emergency care plan in writing with another physician(s) who has agreed to provide that care.[88] The physician also must inform the patient "that she may need access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary, as a result of or in connection with the abortion procedure on a twenty-four (24) hour basis," and if not a "local hospital emergency room[,]" the physician must "provide the patient with the name, address and telephone number of such facility in writing[.]"[89] Though there is no exception for this provision, other informed consent provisions do not apply since this case contemplates a medical emergency. If an abortifacient is utilized, the physician has to "make reasonable efforts to ensure the patient returns for a follow-up visit so that a physician can confirm that the pregnancy has been terminated and assess the patient's medical condition."[90] Violation of this statute is not a criminal act, but may be subject to civil penalties, including damages and an injunction against the provider "from performing further abortions" in violation of the law.[91]

Disposition of Fetal Tissue Remains

Idaho does not specifically regulate the disposition of embryonic and fetal tissue remains prior to 20 weeks gestational duration, thus, legal requirements around disposition of medical waste generally should apply. However, when pregnancy loss or abortion occurs, "the individual in charge of the institution where the bodily remains of the deceased unborn infant were expelled or extracted, or the individuals' designee, shall notify the mother or the mother's authorized representative that the mother has a right to direct the receipt and disposition of her deceased unborn infant's bodily remains."[92] The institution is allowed to release remains to the pregnant person upon request "for final disposition in accordance with applicable law."[93] Idaho bans the use, sale, or donation of fetal tissue from abortion, as well as embryonic stem cell research.[94]

Need legal advice?

This document should not be construed as legal advice. If you need individualized legal advice, please contact the Abortion Defense Network, where you will be matched with a pro bono attorney.

The Abortion Defense Network is managed by the Lawyering Project in partnership with the American Civil Liberties Union, Center for Reproductive Rights (CRR), If/When/How: Lawyering for Reproductive Justice, National Women's Law Center (NWLC), and Resources for Abortion Delivery (RAD).

References

[1] Idaho Code § 18-604(1).
[2] *Id.*
[3] *See* Idaho Code § 39-241(8) (defining "fetal death" as "death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles."
[4] Idaho Code § 18-606 (invalidated by *McCormack v. Hiedeman*, 900 F. Supp. 2d 1128 (D. Idaho 2013)).
[5] Idaho Code § 18-604(1)(a).
[6] Idaho Code § 18-603.
[7] Idaho Code §§ 18-605, 606 (invalidated by *McCormack v. Hiedeman*, 900 F. Supp. 2d 1128 (D. Idaho 2013), aff'd sub nom. *McCormack v. Herzog*, 788 F.3d 1017 (9th Cir. 2015)).
[8] Idaho Code § 18-622(5).
[9] Idaho Code § 18-622(1).
[10] Idaho Code § 18-622(2)(a)(i).
[11] Idaho Code § 18-622(2)(a)(i).
[12] *Id.*
[13] Idaho Code § 18-8804.
[14] Idaho Code § 18-8807(1).
[15] Idaho Code §18-8805.
[16] Idaho Code § 18-622(2)(a)(i). The definition of a medical emergency under Idaho's total ban is currently in litigation - see *Adkins v. Idaho*, Case No. CV01-23-14744 (Ada Cnty. Dist. Ct. 2023), and the section below on EMTALA, for more information. A related case, *Moyle v. United States*, No. 23-726, slip op. (U.S. June 27, 2024) (per curiam), has been remanded to a lower court to determine whether EMTALA requires abortion care that Idaho's ban would prohibit.
[17] Idaho Code § 18-622(2)(a)(i).
[18] Idaho Code § 18-604(9).
[19] *Adkins v. Idaho*, Case No. CV01-23-14744 (Ada Cnty. Dist. Ct. 2023). A related case, *Moyle v. United States*, No. 23-726, slip op. (U.S. June 27, 2024) (per curiam), has been remanded to a lower court to determine whether EMTALA requires abortion care that Idaho's ban would prohibit.
[20] Idaho Code § 18-609.
[21] Idaho Code § 18-609(A)(7)(a).
[22] *Id.*
[23] The definition of a medical emergency under Idaho's total ban is currently the subject of litigation. *Adkins v. Idaho*, Case No. CV01-23-14744 (Ada Cnty. Dist. Ct. 2023). A related case, *Moyle v. United States*, No. 23-726, slip op. (U.S. June 27, 2024) (per curiam), has been remanded to a lower court to determine whether EMTALA requires abortion care that Idaho's ban would prohibit.
[24] Idaho Code § 18-622(b)(i).
[25] Idaho Code § 18-622(b)(ii).
[26] EMTALA, 42 U.S.C. § 1395dd(a).
[27] EMTALA, 42 U.S.C. § 1395dd(b)(1)(A).

[28] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[29] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).
[30] EMTALA, 42 U.S.C. § 1395dd(c)(2) (requiring hospital to use "qualified personnel and transportation equipment" when making a permitted transfer under EMTALA, among other requirements).
[31] EMTALA, 42 U.S.C. § 1395dd(c)(1)(B)—(c)(2)(A).
[32] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[33] Ctrs. for Medicare & Medicaid Servs., *Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss* (updated July 2022).
[34] *Id.*
[35] *Id.*; *see also* EMTALA, 42 U.S.C. § 1395dd(f) ("The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.").
[36] Ctrs. for Medicare & Medicaid Servs., *Freeman Health System—Freeman West, Statement of Deficiencies and Plan of Correction* (April 10, 2023); Ctrs. for Medicare & Medicaid Servs., *University of Kansas Hospital, Statement of Deficiencies and Plan of Correction* (April 10, 2023); Press Release, U.S. Dep't of Health and Human Servs., *HHS Secretary Xavier Becerra Statement on EMTALA Enforcement* (May 1, 2023).
[37] *United States v. Idaho*, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022).
[38] *Idaho v. United States*, 144 S. Ct. 541 (Mem) (2022).
[39] *Moyle v. United States*, 144 S. Ct. 2015 (June 27, 2024) (per curiam).
[40] Press Release, U.S. Dep't of Health and Human Servs., *Biden-Harris Administration Reaffirms Commitment to EMTALA Enforcement* (July 2, 2024).
[41] *Texas v. Becerra*, No. 23-10246, 2024 WL 20069 (5th Cir. Jan. 2, 2024), *petition for cert. filed* (U.S. Apr. 1, 2024) (No. 23-1076).
[42] *Becerra v. Texas*, No. 23-1076, 2024 WL 4426546 (U.S. Oct. 7, 2024) (denying cert).
[43] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).
[44] Know Your Rights: Existing Laws May Protect Health Care Professional Who Provide or Support Abortion from Discrimination in Employment, NAT'L WOMEN'S LAW CTR. (Feb. 9, 2023), https://nwlc.org/resource/know-your-rights-existing-laws-may-protect-health-care-professionals-who-provide-or-support-abortion-from-discrimination-in-employment/.
[45] Idaho Code § 6-1012.
[46] Accreditation Council for Graduate Med. Educ., *ACGME Program Requirements for Graduate Medical Education in Obstetrics and Gynecology*, ACCREDITATION COUNCIL FOR GRADUATE MED. EDUC. (Sept. 17, 2022), https://www.acgme.org/globalassets/pfassets/programrequirements/220_obstetricsandgynecology_9-17-2022_tcc.pdf.
[47] 42 U.S.C. § 238n.
[48] There is no reason to report a self-managed abortion to the police. Fact sheets from If/When/How with additional detail, including some state-specific fact sheets, are available here. If/When/How adds state-specific fact sheets to their website as they are finalized.
[49] Idaho Code § 18-609(7).
[50] Idaho Code § 39-9504.
[51] Including: "(a) Uterine perforation or injury to the uterus; (b) Injury or damage to any organ; (c) Cervical perforation or injury to the cervix; (d) Infection; (e) Heavy or excessive bleeding; (f) Hemorrhage; (g) Blood clots; (h) Blood transfusion; (i) Failure to actually terminate the pregnancy; (j) Incomplete abortion or retained tissue; (k) Weakness, nausea, vomiting or diarrhea that lasts more than twenty-four (24) hours; (l) Pain or cramps that do not improve with medication; (m) A fever of one hundred and four-tenths (100.4) degrees or higher for more than twenty-four (24) hours; (n) Hemolytic reaction due to the administration of ABO-incompatible blood or blood products; (o) Hypoglycemia where onset occurs while the patient is being cared for in the abortion facility; (p) Pelvic inflammatory disease; (q) Endometritis; (r) Missed ectopic pregnancy; (s) Cardiac arrest; (t) Respiratory arrest; (u) Renal failure; (v) Metabolic disorder; (w) Shock; (x) Embolism; (y) Coma; (z) Placenta previa or preterm delivery in subsequent pregnancies; (aa) Free fluid in the abdomen; (bb) Adverse or allergic reaction to anesthesia or other drugs; (cc) Subsequent development of breast cancer; (dd) Death; (ee) Any psychological or emotional condition reported by the patient, such as depression, suicidal ideation, anxiety or a sleeping disorder; or (ff) Any other adverse event as defined by the federal food and drug administration criteria provided in the medwatch reporting system." Idaho Code § 39-9503(2).
[52] *Id.*
[53] Idaho Code § 39-260(4).
[54] Idaho Code § 39-260(4).
[55] Idaho Code § 39-260(4)(a).
[56] Idaho Code § 39-260(4)(b).
[57] Idaho Code § 39-260(4)(a)-(b).
[58] Idaho Code § 39-260(4)(b).
[59] Idaho Code § 39-260(5). Situations where the coroner must investigate are explored further in the code section on death reporting, which states that coroners must investigate when "[t]he death is of a stillborn child or any child if there is a reasonable articulable suspicion to believe that the death occurred without a known medical disease to account for the stillbirth or child's death. Idaho Code § 19-4301(1)(c).
[60] Fact sheets from If/When/How with a comprehensive list of the state-specific mandatory reporting requirements that apply for all abortion procedures are available here.
[61] Idaho Code §§ 16-1605; 39-503.
[62] For example, one EMR, Epic, uses a tool called Care Everywhere to securely share information between healthcare institutions (e.g., from one hospital system to another) and allows robust sharing within a single institution (e.g., a Texas hospital treating a patient may be able to see the patient's records from an Illinois hospital that within the same system).
[63] For example, if a patient travels from a ban state to an access state for abortion care or obtains an abortion in the ban state under an exception, then later obtains any type of healthcare at a different provider that uses the same EMR, the patient's records may be automatically shared with the second

provider. If the second provider believes that the care violated the state's abortion ban, they may report it to authorities.

[64] Although effective on June 25, 2024, compliance with this rule is not required until December 23, 2024, except for the applicable requirements for revising Notice of Policy Practices (as required by 45 CFR 164.520), which must be complied with by February 16, 2026.

[65] 42 U.S.C. § 164.502(a)(5)(iii). *See also HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet*, U.S. DEP'T OF HEALTH & HUM. SERVS., https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html (content last reviewed April 22, 2024).

[66] 42 U.S.C. § 164.509. The U.S. Department of Health & Human Services (HHS) recently released a model attestation, available here: https://www.hhs.gov/sites/default/files/model-attestation.pdf.

[67] 42 U.S.C. §§ 164.509(a), 512(d)-(g)(1).

[68] 42 U.S.C. § 164.502(a)(5)(iii).

[69] 21st Century Cures Act: Interoperability, Information Blocking and the ONC Health IT Certification Program, 85 Fed. Reg. 25642 (May 1, 2020) (amending 45 C.F.R. §§ 170, 171), 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking, 89 Fed. Reg. 54662 (July 1, 2024) (amending 42 C.F.R. §§ 171 414, 425, 495). Not all healthcare providers are currently subject to the disincentives included in the 2024 rule. However, the Centers for Medicare & Medicaid Services (CMS) may apply disincentives to certain hospitals and merit-based incentive payment system (MIPS) eligible clinicians. HHS intends to expand disincentives to other groups of health care providers in future rulemaking.

[70] In the past year, states and the federal government have taken steps to address these vulnerabilities, specifically for abortion and gender-affirming care. Maryland and California have passed bills that restrict disclosure of abortion-related records and require EMRs to develop tools to limit or prohibit such disclosure. As these laws are implemented, the landscape for how electronic abortion records are handled may change.

[71] *See* the Abortion Bans section above for more information.

[72] Letter from Raúl R. Labrador, Att'y Gen., State of Idaho, to Brent Crane, Representative, Idaho House of Representatives (Mar. 27, 2023).

[73] *Planned Parenthood Greater Northwest et al. v. Labrador et al.*, Case No. 1:23-cv-00142-BLW (July 31, 2023, D. Idaho).

[74] *Planned Parenthood Greater Northwest et al. v. Labrador et al.,* Case No. 23-35518 (9th Cir. Dec. 4, 2024).

[75] Idaho Code § 18-623; *Matsumoto v. Labrador*, No. 1:23-CV-00323-DKG, 2023 WL 7388852 (D. Idaho Nov. 8, 2023); *Matsumoto v. Labrador*, __ F.4th __, 2024 WL 4927266 (9th Cir. 2024).

[76] Idaho Code § 18-623.

[77] Idaho Code § 18-623(5).

[78] *Matsumoto v. Labrador*, 1:23-cv-00323-DKG (D. Idaho).

[79] *Matsumoto v. Labrador*, No. 1:23-CV-00323-DKG, 2023 WL 7388852 (D. Idaho Nov. 8, 2023).

[80] *Matsumoto v. Labrador*, __ F.4th __, 2024 WL 4927266 (9th Cir. 2024).

[81] *Id.* at 37.

[82] Idaho Code §§ 18-8701-18-8711.

[83] Idaho Code § 18-8705(4).

[84] Idaho Code § 18-8707(1)(d).

[85] Idaho Code § 18-8709, referencing Idaho Code § 18-5702. § 18-5702 makes it a misdemeanor punishable by a fine of up to $1,000, or imprisonment in the county jail of up to one year, or both if an employee is not charged with the receipt, safekeeping, or disbursement of public moneys misuses funds amounting to less than $300, this crime is a. Idaho Code § 18-5702(1). Where an employee *is* charged with the receipt, safekeeping, or disbursement of public moneys, the misuse of funds less than $300 constitutes a felony punishable by up to $5,000, or up to five years in the state prison, or both. Idaho Code § 18-5702(2). If the amount of misused funds is greater than $300, it is a felony punishable by a fine of up to $10,000, or up to 14 years in the state prison, or both. Idaho Code § 18-5702(3). Additionally, the employee will be terminated for cause, must make restitution of misused funds, and will be disqualified from holding a position as a public officer or public employee charged with the receipt, safekeeping, or disbursement of public funds. Idaho Code § 18-5702(5).

[86] Opinion No. 23-04 of Raul R. Labrador, Att'y Gen. State of Idaho (Sept. 15, 2023).

[87] Idaho Code § 18-617.

[88] Idaho Code § 18-617(2).

[89] *Id.*

[90] Idaho Code § 18-617(3).

[91] Idaho Code § 18-618.

[92] Idaho Code § 39-9304.

[93] *Id.*

[94] Idaho Code § 39-9306.