ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

IOWA

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.

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Key Takeaways

Providing contraception, including emergency contraception, is legal.

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

Providing information about how to obtain a legal abortion in another state is legal.

Abortion is prohibited under Iowa law unless:

(1) no fetal heartbeat is detected using a transabdominal pelvic ultrasound; or

(2) a "fetal heartbeat exception" (which includes rape, incest, incomplete miscarriage, and fetal abnormalities incompatible with life) exists; or

(3) in the physician's reasonable medical judgment, a medical emergency exists; or

(4) in the physician's reasonable medical judgment, an abortion in a multiples pregnancy after 20 weeks post fertilization is necessary to preserve the life of one of the fetuses.

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Definition of Abortion & Contraception

ABORTION

The legal definition of abortion in Iowa is "the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus."[1] A physician in Iowa cannot lawfully perform an abortion on a pregnant person when it has been determined that there is a detectable heartbeat, unless "in the physician's reasonable medical judgment, a medical emergency or fetal heartbeat exception exists."[2] Additionally, in pregnancies of more than one fetus, abortions are permitted after 20 weeks post-fertilization, if, in the physician's reasonable medical judgment, an abortion is necessary to preserve the life of one of the fetuses.[3]

The term "dead fetus," while undefined, is generally understood to mean an embryo or fetus that lacks cardiac activity. As a result, treating a missed miscarriage, an incomplete miscarriage, a molar pregnancy, or an ectopic pregnancy is not considered providing an abortion under Iowa law as long as there is no fetal cardiac activity detected.

With respect to self-managed abortion, it is legal for providers to give medical care, including to complete an abortion, to a pregnant person who has initiated or recently completed a self-managed abortion provided there is no fetal cardiac activity, or the patient needs care that would fall within one of the exceptions to Iowa's abortion ban.

CONTRACEPTION

Contraception is not illegal in any state in the country. Iowa law does not contain specific provisions outlining the provision and use of any contraceptives, including intrauterine devices and birth control implants.

Abortion Bans

Abortion restrictions: Iowa restricts abortion after a detectable fetal heartbeat,[4] except when provided under certain exceptions.[5] Abortion is also prohibited at twenty weeks post-fertilization, and in the third trimester, "unless in the physician's reasonable medical judgment the pregnant woman has a condition which the physician deems a medical emergency… or the abortion is necessary to preserve the life of an unborn child."[6] Providing an abortion in violation of these restrictions subjects a physician to license discipline pursuant to Iowa Code Section 148.6.[7] The Board of Medicine has adopted rules to administer the new law.[8] Nothing within the abortion ban statute can be construed to impose civil or criminal liability on a person upon whom an abortion is performed.[9]

Other Bans and Restrictions: Iowa's other abortion requirements include: a physician-only requirement;[10] pre-abortion disclosure requirement, consent and certification requirements;[11] mandatory ultrasound and bias counseling requirement;[12] and a mandatory 24-hour delay.[13] Additionally, a physician cannot perform an abortion on an unemancipated person under the age of 18 without notification of a parent, legal guardian, or custodian, or unless the young person is able to obtain a waiver of the requirement from any court in the state.[14]

Exceptions to Abortion Bans

There are a few exceptions to Iowa's restriction on abortion after detectable fetal cardiac activity, including narrow exceptions for rape and/or incest, incomplete miscarriage, fetal abnormality incompatible with life, or where in the physician's reasonable medical judgment, a "medical emergency" exists.[15]

"Fetal Heartbeat Exception": Iowa further defines its "fetal heartbeat exception" to include very narrow and specific exceptions in the event of rape or incest.

In the event of rape, a physician may perform an abortion after a detectable fetal heartbeat where the rape has been reported within 45 days to a law enforcement agency or to a public or private health agency, which includes a family physician.[16] In the event of incest, a physician may also perform an abortion after a detectable fetal heartbeat where the incest has been reported within 145 days of the incident to a law enforcement agency, or to a public or private health agency, which includes a family physician.[17] The "fetal heartbeat exception" also includes any spontaneous abortion or miscarriage where all of the products of conception have not been expelled.[18] Finally, an abortion may be performed after detection of fetal heartbeat if an attending physician certifies that the fetus has a fetal abnormality that in the physician's reasonable medical judgment is incompatible with life.[19]

"Medical Emergency": Iowa defines "reasonable medical judgment" as a medical judgment "made by a reasonably prudent physician who is knowledgeable about the case and treatment possibilities with respect to the medical conditions involved."[20] A "medical emergency" means "a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy… or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a bodily function of the pregnant woman."[21] Under Iowa law, a "medical emergency" does not include "psychological conditions, emotional conditions, familial conditions, or the woman's age."[22]

Other Legal Requirements: Iowa requires certain consents and certifications before an abortion.[23] Physicians must obtain written consent from the pregnant person certifying that twenty-four hours prior to performing the abortion: (1) the pregnant person has undergone an ultrasound imaging that displays the approximate fetal age; (2) the pregnant person was given the opportunity to view the ultrasound image; (3) the pregnant person was given the option to hear a description of the fetus; and (4) the pregnant person was provided information regarding options relative to a pregnancy and risk factors related to an abortion.[24] However, these are not required when, in the judgment of the physician, there is a medical emergency.[25] Therefore, these consents and certifications are not required for lawful abortions performed after fetal cardiac activity has been detected in medical emergencies.

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.

Health care providers who identify and diagnose a spontaneous termination of pregnancy or who induce a termination of pregnancy are also required to file a Statistical Report of Termination of Pregnancy form for each termination with the Iowa Department of Health and Human Services.[49] Abortion providers are additionally required to document and obtain written certification from the pregnant person all of the requirements outlined in Iowa Code § 146A.1 and § 146E.2(3).

Other Mandatory Reporting: All other general mandatory reporting also applies for abortion patients.[50] This includes reporting of sexual abuse of young people, child abuse, and vulnerable adult abuse. Providers must report suspected child abuse or neglect to the Iowa Department of Health and Human Services or law enforcement within 24 hours when they reasonably believe a child or a dependent adult has suffered abuse.[51]

Electronic Medical Records: Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions.[52] 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.[53]

The federal government has taken steps to address this concern by issuing a new HIPAA rule, effective June 25, 2024.[54] 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.[55] 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.[56] 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.[57] 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.[58]

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.[59] 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.[60]

Disposition of Fetal Tissue Remains

Iowa law requires individuals, hospitals, and ambulatory surgical centers to comply with requirements related to the disposition of fetal remains. Specifically, a hospital or ambulatory surgical center that has possession of embryonic or fetal remains is responsible for disposition, which must be done through "burial, interment, entombment, cremation, or incineration."[61] The law further restricts any person in the state from knowingly acquiring, providing, receiving, otherwise transferring, or using a fetal body part for any purpose, with exceptions for diagnostic or remedial tests, spontaneous abortions donated for medical research, pathological studies of body tissue, or actions taken in furtherance of the final disposition of the fetal remains.[62]

Violation of Iowa's fetal tissue remains statute results in a class "C" felony.[63]

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] IOWA CODE § 146E.1(1).
[2] IOWA CODE § 146E.2(2)(a); *Planned Parenthood of the Heartland, Inc v. Reynolds*, 05771 EQCE089066 (D. Polk Jul. 22, 2024). There were two 6-week bans challenged in Iowa. The courts enjoined the ban from 2018 (IOWA CODE §§ 146C.1, 146C.2) (2018), and that injunction remains operative. The ban from 2023 (IOWA CODE § 146E.2) is the ban that is currently in effect.
[3] IOWA CODE § 146B.2(2)(a)(2).

[4] IOWA CODE § 146E.2(1). Fetal heartbeat is defined as "cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac."
[5] *Id.*
[6] IOWA CODE § 146E.2(2)(b). Before the fetal heartbeat abortion ban, Iowa had a ban on all abortions after 20-week LMP with very narrow exceptions. The exceptions to the current fetal heartbeat ban and the exceptions to the previous 20-week ban appear to be the same: in the event of fetal heartbeat, an abortion may only be performed in the case of a medical emergency, or to save the life of an unborn child.
[7] IOWA CODE § 146A.1(3).
[8] IOWA CODE § 146E.2(5); IOWA ADMIN. R. 653—13.17
[9] IOWA CODE § 146E.2(4).
[10] IOWA CODE § 707.7(3). ("Any person who terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, who is not a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the provisions of chapter 148, commits a class "C" felony.").
[11] IOWA CODE § 146A.1(1).
[12] *Id.*
[13] *Id.*
[14] IOWA CODE § 135L.3.
[15] IOWA CODE § 146E.2(1)-(3).
[16] IOWA CODE § 146E.1(3)(a).
[17] IOWA CODE § 146E.1(3)(b).
[18] IOWA CODE § 146E.1(3)(c).
[19] IOWA CODE § 146E.1(3)(d).
[20] IOWA CODE § 146E.1(6).
[21] IOWA CODE § 146A.1(6)(a).
[22] *Id.*
[23] IOWA CODE § 146A.1(1).
[24] IOWA CODE § 146A.1(1).
[25] IOWA CODE § 146A.1(2).
[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] IOWA CODE § 147.136A.
[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] IOWA CODE § 146B.2(3); IOWA ADMIN. CODE r. 641-100.5(144). A state guide to completing Iowa's Certificate of Fetal Death can be found at https://hhs.iowa.gov/media/3156/download?inline=.
[50] 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.
[51] IOWA CODE §§ 232.69, 235B.3; Mandatory Reporters (Published on August 22, 2024).
[52] 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).
[53] 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.
[54] 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.
[55] 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).
[56] 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.
[57] 42 U.S.C. §§ 164.509(a), 512(d)-(g)(1).
[58] 42 U.S.C. § 164.502(a)(5)(iii).
[59] 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.
[60] 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.
[61] IOWA CODE § 146.D.1(1).
[62] *Id.*
[63] *Id.*