ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

KANSAS

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 and pregnancies with no cardiac activity is legal.

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

Abortion is legal in Kansas up to 22 weeks LMP, except that abortion based on the sex of the fetus is prohibited at all gestations.

Abortion is prohibited under Kansas law after 22 weeks LMP unless necessary to “preserve the life” of the patient or because “continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function.”

Kansas’s state constitution protects the right to abortion, and Kansas courts review the constitutionality of state abortion restrictions under the highest legal standard.

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State Constitutional Protection for Abortion

In 2019, the Kansas Supreme Court held that the state constitution protects the right to personal autonomy, and that this right allows each person to make their own decision regarding whether to continue a pregnancy.[1] The court reaffirmed this ruling on July 5, 2024.[2] Based on this, abortion restrictions are reviewed by Kansas courts under the highest level of scrutiny.[3]

Definition of Abortion & Contraception

ABORTION

Kansas law defines abortion as "the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy."[4]

The term "dead unborn child" is undefined for purposes of the exclusion for removing a "dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child." It is generally understood, however, that the term "dead" means that there is no cardiac activity present.[5] Looking at the definition of abortion and this exception together, this means that:

- If there is no fetal cardiac activity and the fetus has not died of unnatural causes, accidental trauma, or a criminal assault on the pregnant person or fetus, the provider can provide miscarriage care, including medications, D&C, intact D&E, and labor induction, and does not need to comply with Kansas's abortion restrictions. Kansas law does not contain specific legal requirements for miscarriage care.
- If there is fetal cardiac activity and the patient is less than 22 weeks LMP (after which point abortion is prohibited in Kansas), the provider can provide an abortion, complying with all applicable abortion restrictions.
- If there is fetal cardiac activity and the patient is over 22 weeks LMP, one of the exceptions to the 22 week abortion ban must apply to provide abortion care (explained below).

Kansas's definition of abortion does not explicitly exclude the removal of ectopic pregnancies.[6] However, a 2022 Kansas Attorney General opinion found that "the best conclusion under the Kansas statutes generally addressing abortion is that the termination of an ectopic pregnancy does not constitute an abortion."[7] The opinion also states that "even if the termination of an ectopic pregnancy were considered an abortion, Kansas laws governing abortion consistently make exceptions for abortions that are necessary to preserve the life of the mother," noting that ectopic pregnancies are a threat to the pregnant person's life. Note that Kansas Attorney General opinions are advisory, meaning enforcement authorities are not bound to follow them. Additionally, in 2023, Kansas enacted a law that changed the definition of abortion to specifically exclude the removal of ectopic pregnancies.[8] This law is currently enjoined, meaning this definition is not in effect while the litigation proceeds, but it gives an indication that the legislature does not consider ectopic pregnancies to be abortions.[9]

With respect to self-managed abortion, Kansas does not have a criminal prohibition on self-managed abortion, and Kansas's abortion bans specifically

exempt the pregnant person from prosecution for conspiracy to violate the bans.[10]

CONTRACEPTION

Contraception is not illegal in Kansas (or any state). Kansas explicitly permits the use of contraception and bars the state from prohibiting its use.[11]

Abortion Bans

Kansas has two bans that restrict abortion after a certain gestational age: (1) a 22 week ban and (2) a viability ban. Both have exceptions if the pregnant person's life is at risk or continuing the pregnancy would cause "a substantial and irreversible physical impairment of a major bodily function" of the pregnant person (collectively, "the life and health exceptions"). Thes exceptions are discussed in the next section.

22 week ban: Kansas bans abortion after 22 weeks gestation, defined as the time elapsed since the first day of the person's last menstrual period (more commonly referred to as "LMP").[12] The penalties for violating the 22 week ban are: (1) criminal: a "class A person misdemeanor" for a first conviction, and a "severity level 10, person felony" for subsequent convictions; (2) civil: the patient, father of the fetus if married to the patient at the time of the abortion, and parents or guardian of the patient if under 18, may bring a civil action and seek damages; and (3) professional: violating the ban is considered unprofessional conduct by the Kansas Board of Healing Arts.[13] The pregnant person is specifically excluded from criminal prosecution "for conspiracy to violate" the ban.[14]

Viability ban: Kansas has a separate ban on abortion after viability.[15] Viability is defined as "that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures."[16] The penalties are the same as those for the 22 week ban.[17] As with the 22 week ban, the pregnant person is excluded from criminal prosecution "for conspiracy to violate" the ban.[18]

Other bans: Kansas has two other abortion bans that are not based on gestational age:[19]

- A ban on providing abortion if the reason is based on the sex of the fetus. This applies at any gestational age.[20]
- A ban on intact D&E (sometimes called D&X) procedures. Kansas law refers to intact D&E as "partial-birth abortion."[21]

Exceptions to Abortion Bans

Kansas's gestational age bans have exceptions for certain medical conditions of the patient, but no exceptions for rape, incest, or fetal diagnoses.

Life and Health: Both the 22 week and viability bans allow abortion if: (1) the abortion is "necessary to preserve the life" of the patient or (2) continuing the pregnancy "will cause a substantial and irreversible physical impairment of a major bodily function" of the patient.[22] The definition of bodily function includes physical functions only; it specifically excludes mental and emotional functions.[23] Before a physician provides an abortion based on these exceptions, they must obtain a documented referral from another physician with whom they are not legally or financially affiliated.[24]

Both bans require that, for all abortions, the physician determine the gestational age of the fetus.[25] If the gestational age is 22 weeks LMP or more, the physician must determine if the fetus is viable.[26] Both the physician referral and gestational age determination requirements require certain

documentation, discussed in the "Documentation and Reporting" section of this document.

Unless the patient is experiencing what the law defines as a "medical emergency" (see below), physicians providing abortion care under the life and health exceptions must still comply with Kansas's other abortion restrictions. These include: counseling requirements specific to young people,[27] obtaining parental consent or a judicial bypass for young people under 18 prior to their abortion,[28] and limitations on public funding for and private insurance coverage of abortion.[29] Kansas also has a 24 hour waiting period and mandatory counseling for all patients, and requirements that providers collect demographic and other information from patients and collect and report on the patients' reasons for seeking abortion, but these are preliminarily enjoined or not being enforced.[30]

Medical Emergency Exception to Certain Requirements: Some, but not all, abortions that qualify for the life and health exceptions will also be considered a "medical emergency." While providers still need to obtain a documented referral from another physician with whom they are not legally or financially affiliated for abortions at 22 weeks LMP or later,[31] if a pregnant person is experiencing a "medical emergency" at any gestational age, the provider does not need to comply with certain other requirements prior to the abortion. Unlike the life and health exceptions, the medical emergency exception only applies when an "immediate" abortion is necessary. Kansas law defines a medical emergency as "a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function."[32]

Although not listed in the law itself, the State of Kansas has agreed—in a joint stipulation in the course of litigation—that the term "medical emergency" includes but is not limited to: preeclampsia with gestational age under 22 weeks LMP; premature rupture of membranes with chorioamnionitis; ectopic pregnancy; placental abruption (Class 2 or 3); and inevitable abortion.[33]

In a medical emergency, providers do not need to comply with the following requirements: at least 30 minutes before the abortion, providing patients over 22 weeks LMP with a copy of the written referral and the physician's determination that a life or health exception applies;[34] determining gestational age and, when applicable, whether the fetus is viable;[35] required counseling specific to young people;[36] obtaining parental consent or a judicial bypass for young people;[37] collecting demographic and other information from patients and collecting and reporting on the patients' reasons for seeking abortion (both currently not being enforced as to all abortions);[38] the 24 hour waiting period and counseling requirements (currently enjoined for all abortions).[39]

If the physician is providing an abortion based on a medical emergency, they must inform the person of the medical indications supporting their judgment, before the abortion if possible.[40]

EMTALA

A federal law called the Emergency Medical Treatment & Labor Act ("EMTALA") requires the provision of abortion care when necessary to stabilize an emergency medical condition. Specifically, EMTALA requires hospitals with emergency departments that participate in Medicare (i.e., most hospitals) to perform a medical screening exam for any individual who comes to the emergency department and requests evaluation or treatment, in order to determine whether the

individual has an emergency medical condition.[41] 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."[42] Additionally, "with respect to a pregnant woman who is having contractions," an "emergency medical condition" is further defined to include when "there is inadequate time to effect a safe transfer to another hospital before delivery" or when "transfer may pose a threat to the health or safety of the woman or the unborn child."[43]

EMTALA requires stabilizing medical treatment be provided to any individual experiencing an emergency medical condition,[44] including people in labor or with emergency pregnancy complications,[45] unless the individual refuses to consent to such treatment.[46] 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."[47] A person experiencing an emergency medical condition can be transferred to a different hospital only once they are stable or if certain other conditions are met, such as the medical benefits of transfer outweighing the increased risks to the person experiencing the emergency medical condition.[48] 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."[49]

Where abortion, including the premature delivery of a non-viable fetus, is the medical treatment necessary to, within a reasonable probability, ensure no material deterioration of an individual's condition, EMTALA requires a covered hospital provide such care or, if the aforementioned criteria are met, an appropriate transfer. The U.S. Department of Health and Human Services ("HHS") has reaffirmed these requirements numerous times.[50]

Most recently, on June 13, 2025, HHS Secretary Robert F. Kennedy distributed a letter to health care providers reiterating that, notwithstanding the recent rescission of earlier guidance on the subject, "EMTALA continues to ensure pregnant women facing medical emergencies have access to stabilizing care."[51] The letter specifically states that EMTALA "applies equally to expectant mothers facing obstetric emergencies, including ectopic pregnancies, miscarriages, premature ruptures of membranes, trophoblastic tumors, and other similar conditions."[52] And, during a June 24, 2025, subcommittee hearing in the U.S. House of Representatives, Secretary Kennedy was asked explicitly about whether he agreed that in some circumstances abortion is the necessary stabilizing care that EMTALA requires hospitals to provide, to which he responded, "Yes, and that is what President Trump believes."[53] Further, as recently as May 2025, HHS announced that it had cited at least one hospital in Texas for violating EMTALA by failing to properly screen a patient with an ectopic pregnancy, an emergency medical condition that threatened the patient's life and future fertility.[54]

Notwithstanding EMTALA's clear requirements with respect to emergency abortion, state officials in Idaho and Texas have attempted to restrict hospitals from complying with their federal legal obligations, resulting in litigation, but with only varying degrees of success.

In January 2025, Idaho's largest hospital system, St. Luke's Health System, filed a lawsuit seeking to prevent the state of Idaho from enforcing its abortion ban, which creates criminal penalties for the provision of certain emergency abortions required

under EMTALA.[55] St. Luke's was successful in obtaining a preliminary injunction that prevents the state of Idaho from enforcing its abortion ban "against St. Luke's or any of its medical providers as applied to medical care required by [EMTALA]."[56] Litigation in that case is ongoing. St. Luke's case is related to one brought in 2022 by the Biden Administration, *United States v. Idaho*, in which the federal government sued Idaho challenging its abortion ban to the extent that it conflicted with EMTALA.[57] That case made it all the way to the U.S. Supreme Court, where the appeal was ultimately dismissed as prematurely granted in June 2024.[58] Following the change of presidential administrations, the United States dismissed that case entirely. [59]

And, in October 2024, the U.S. Supreme Court refused to review a Fifth Circuit decision that affirmed a lower court decision blocking federal enforcement of EMTALA in certain circumstances in Texas and as to other organizational plaintiffs in that case.[60] As a result, the Fifth Circuit's decision is final.[61,62]

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 participating in Medicare and Medicaid to inform patients of their rights before 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.[63]

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.[64]

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.[65]

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.[66] 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.[67]

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.[68]

The reporting and documentation requirements applicable to the 22 week and viability bans are:

Documentation: As mentioned above, when a physician performs an abortion in Kansas after 22 weeks LMP under the life or health exceptions, the physician must obtain a referral from another physician with whom they are not legally or financially affiliated.[69] Both physicians must provide a written determination that one of the exceptions applies, which must be "based upon a medical judgment arrived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician,

knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved."[70] The written determination must include: (1) if the fetus was determined to be nonviable; (2) if the abortion is necessary to preserve the person's life or if continuing the pregnancy would cause a substantial and irreversible impairment of a major bodily function; and (3) the medical basis for the nonviability and health-risk determinations.[71] A time-stamped copy of the referral and the written determinations must be given to the pregnant person at least 30 minutes before the abortion.[72]

Kansas requires providers to document certain information and maintain copies of certain reports and forms in all abortion patients' records.[73] The records of patients over 22 weeks LMP must additionally contain copies of: the medical basis and reasons for the abortion, the required referral from the referring physician, and the abortion report and the "late term affidavit" of the physician who performed the abortion (discussed more below).[74] The referring physician must also retain copies of their own "late term affidavits."[75]

These medical records must be retained for at least 10 years.[76] For hospital and ambulatory surgery centers, the records of young people under 18 must be kept either 10 years or one year after the patient reaches 18, whichever is longer.[77]

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 hospitals from liability, these are not legal requirements.

Abortion Reporting: Kansas requires medical care facilities, including hospitals, to annually submit a written report to the Kansas Department of Health and Environment (KDHE) for each abortion.[78]

In addition to the information required to be included in all reports, reports for abortions after 22 weeks LMP must include: whether continuing the pregnancy would cause the patient's death or a substantial and irreversible impairment of a major bodily function; whether the fetus was viable; "a detailed, case-specific description that includes the medical diagnosis and medical basis" for those determinations; and "a medical determination that includes all applicable medical diagnosis codes from the ICD-9-CM."[79]

Additionally, for abortions after 22 weeks LMP, both the referring physician and physician providing the abortion must submit signed and notarized "late term affidavits" on forms provided by KDHE.[80] The affidavits must be submitted to KDHE within 15 business days of the abortion.[81]

Fetal Death Reporting: Kansas requires a stillbirth certificate to be filed with the state registrar for each stillbirth occurring in the state within three days after the stillbirth and prior to removal of the body from the state.[82] The definition of "stillbirth" applies to fetuses that are 20 weeks LMP or greater, and specifically excludes abortion.[83] The certificate must be filed prior to disposal.[84]

Other Mandatory Reporting: All general mandatory reporting to the Kansas Department for Children and Families, local law enforcement, etc., applies to abortion patients.[85] This includes child and vulnerable adult physical, sexual, or emotional abuse or neglect.[86] Note that if an abortion provider makes a mandatory report for child abuse, they must specify this on the abortion reporting form that they submit to KDHE for that patient.[87]

Electronic Medical Records: Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions. Hospital and other healthcare systems often use their EMR's default settings that

widely share patient records.[88] Though these settings are often helpful for continuity of care, they 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.[89, 90]

EMRs have settings that can limit sharing of certain records and/or allow patients to choose how and when their records are shared, but because these are not the default settings, healthcare systems often must take steps to implement them.[91] For example, one EMR, Epic, has a filter that each Epic healthcare system can choose to turn on that exclusively blocks abortion care information from patients' externally-shared medical records, while allowing each patient's other medical records to be transmitted in full, in line with their authorization. We encourage you to discuss with your institution's general counsel and/or compliance or technology officers counsel alternative settings such as this that can protect abortion patient information while also complying with any other legal requirements.[92]

Counseling & Referral

Speech about abortion is legal in Kansas and every other state. Medical professionals in Kansas can thus (1) provide accurate options counseling, including about abortion; and (2) refer patients to medical providers in states where abortion is legal.

Kansas law states that "no person shall be required to perform, refer for, or participate in medical procedures or in the prescription or administration of any device or drug which result in the termination of a pregnancy or an effect of which the person reasonably believes may result in the termination of a pregnancy,"[93] and medical care facilities are not required to permit the performance of, referral for, or participation in" the same.[94]

Medication Abortion

All of the requirements discussed in this document apply to both procedural and medication abortion.[95] While some states have additional laws that apply specifically to medication abortion, none are currently in effect in Kansas.

There is one requirement related to medication abortion that are currently preliminarily enjoined. In 2023, Kansas passed a law that would require abortion providers to post signage in their facilities and provide patients with written and oral information, at least 24 hours before the abortion, about the alleged possibility reversing the effects of mifepristone.[96] These requirements are preliminarily enjoined while litigation over them proceeds.[97]

Disposition of Fetal Tissue Remains

In general, fetal tissue can be treated and disposed of in the same way as other medical waste in Kansas. However, if an abortion patient is under 14 at the time of the procedure, providers must preserve the fetal tissue and submit it to the Kansas Bureau of Investigation (KBI) using a kit provided by KBI.[98]

Kansas law also requires all medical care facilities to adopt written policies and inform patients regarding their options for disposition or taking of fetal remains in the event of a fetal death.[99]

Lastly, Kansas law does not allow any person or facility to "solicit, offer, knowingly acquire or accept or transfer any fetal tissue [from an abortion or stillbirth] for consideration."[100]

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), National Women's Law Center (NWLC), and Resources for Abortion Delivery (RAD).

ACLU

CENTER for REPRODUCTIVE RIGHTS

THE LAWYERING PROJECT

NATIONAL WOMEN'S LAW CENTER
Justice for Her. Justice for All.

RAD RESOURCES FOR ABORTION DELIVERY

References

[1] *Hodes & Nauser, MDs, P.A. v. Schmidt*, 440 P.3d 461 (Kan. 2019).
[2] *Hodes & Nauser, MDs v. Kobach*, 551 P.3d 37 (Kan. 2024); see also *Hodes & Nauser MDs v. Stanek*, 551 P.3d 62 (Kan. 2024).
[3] *Id.* Additionally, in August 2022, Kansas voted against a ballot measure that would have taken away constitutional protection for abortion. *See* Kan. Sec'y. of State, 2022 Primary Election, Official Vote Totals (2022), Value Them Both Amendment, H.C.R. 5003.
[4] Kan. Stat. Ann. § 65-6701(a). In 2023, the Kansas legislature passed H.B. 2264, which changed this definition to: "(a)(1) Abortion means the use or prescription of any instrument, medicine, drug or any other means to terminate the pregnancy of a woman knowing that such termination will, with reasonable likelihood, result in the death of the unborn child. (2) Such use or prescription is not an "abortion" if done with the intent to: (A) Preserve the life or health of the unborn child; (B) increase the probability of a live birth; (C) remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or the unborn child; or (D) remove an ectopic pregnancy. (3) "Abortion" does not include the prescription, dispensing, administration, sale or use of any method of contraception." H.B. 2264, 2023 Leg. Sess., Reg. Sess. (Ka. 2023), *codified at* Kan. Stat. Ann. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6716, 65-6723, 65-6742. H.B. 2264 is preliminarily enjoined, meaning this definition is not in effect while the litigation over H.B. 2264 proceeds. *See Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023).
[5] *See* Kan. Stat. Ann. § 65-2401(b). While "fetal death" is not defined in Kansas law, the law defines "live birth" as "the complete expulsion or extraction from its mother of a human child, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached."). *See also* Kan. Stat. Ann. § 65-6710(a)(2) (requiring the Kansas Department of Health and Environment to create written materials that include a statement that "a fetal heartbeat is…a key medical indicator that an unborn child is likely to achieve the capacity for live birth.").
[6] Kan. Stat. Ann. § 65-6701(a).
[7] Kan. Atty. Gen. Op. No. 2022-7 (July 22, 2022).
[8] H.B. 2264, 2023 Leg. Sess., Reg. Sess. (Ka. 2023), *codified at* Kan. Stat. Ann. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6716, 65-6723, 65-6742.
[9] *See Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023).
[10] Kan. Stat. Ann. §§ 65-6703(e), 65-6724(e).
[11] Kan. Stat. Ann. § 65-6702 ("The use of any drug or device that inhibits or prevents ovulation, fertilization or implantation

of an embryo and disposition of the product of *in vitro* fertilization prior to implantation" are lawful, and the state may not prohibit the use of any such drug or device."). H.B. 2264, which passed in 2023, amends the definition of abortion, and the new definition explicitly states that it does not include the "prescription, dispensing, administration, sale or use of any method of contraception." However, H.B. 2264 is preliminarily enjoined, meaning that this definition is not in effect while litigation proceeds. *See Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023).

[12] Kan. Stat. Ann. § 65-6722 *et seq.*

[13] Kan. Stat. Ann. §§ 65-2837(b)(5), 65-6724(g), (i), (j). While professional penalties are not specifically listed in the ban itself, the Kansas Board of Healing Arts considers "performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion" to be unprofessional conduct.

[14] Kan. Stat. Ann. § 65-6724(e).

[15] Kan. Stat. Ann. § 65-6703.

[16] Kan. Stat. Ann. §§ 65-6701(m), 65-6703(a).

[17] Kan. Stat. Ann. §§ 65-2837(b)(31), 65-6703(g), (i), (k).

[18] Kan. Stat. Ann. § 65-6703(e).

[19] In addition to the two bans described in the main text, Kansas also has a permanently enjoined ban on dilation and evacuation procedures ("D&E") (referred to in the ban as "dismemberment"), meaning the ban is not in effect. Kan. Stat. Ann. § 65-6741 *et seq*. This ban was permanently enjoined by a Kansas trial court and the Kansas Supreme Court affirmed this ruling on July 5, 2024. *Hodes & Nauser, MDs v. Kobach*, 551 P.3d 37 (Kan. 2024).

[20] Kan. Stat. Ann. § 65-6726.

[21] Kan. Stat. Ann. § 65-6721. The law provides exceptions if the provider receives a referral from another physician and the intact D&E is "necessary to save the life of a mother 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 itself."

[22] Kan. Stat. Ann. §§ 65-6703(a), 65-6724(a).

[23] Kan. Stat. Ann. § 65-6701(b). The law also states that the exceptions do not apply if the basis is a claim or diagnosis that the pregnant person will engage in conduct that would result in their death or in substantial and irreversible physical impairment of a major bodily function. Kan. Stat. Ann. §§ 65-6703(a), 65-6724(a).

[24] Kan. Stat. Ann. §§ 65-6703(a), 65-6724(a).

[25] Kan. Stat. Ann. §§ 65-6703(c)(1), 65-6724(c)(1).

[26] Kan. Stat. Ann. § 65-6703(c)(2). Viability must be determined "by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances." *Id.*

[27] Kan. Stat. Ann. § 65-6704.

[28] Kan. Stat. Ann. § 65-6705.

[29] Kan. Stat. Ann. §§ 40-2,190, 65-6733.

[30] Kan. Stat. Ann. § 65-6708 *et seq*., *Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023). This lawsuit also challenges H.B. 2264, which creates additional requirements related to medication abortion reversal and H.B. 2749, which requires providers to report to the state patients' reasons for seeking abortion and certain demographic information. The court has preliminarily enjoined H.B. 2264. The State has agreed not to enforce H.B. 2749 pending final judgment in the case. *Stipulation* in *Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023) (on file with the Abortion Defense Network).

[31] Kan. Stat. Ann. §§ 65-6703(a), 65-6724(a).

[32] Kan. Stat. Ann. § 65-6701(g). The definition also states, "No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function."

[33] *Joint Stipulation* in *Hodes & Nauser, MDs, P.A. v. Schmidt*, 2013-CV-705 (Kan. D. Ct. Jun. 21, 2013) (on file with the Abortion Defense Network). The term "medical emergency" is defined in a few places in the Kansas abortion statutes. While the joint stipulation only explicitly applies to one of the definitions, Kan. Stat. Ann. § 65-6701(g), the other definitions are identical. *See* Kan. Stat. Ann. §§ 65-6723 (applies to 22 week ban), 65-6742 (applies to intact D&E ban).

[34] Kan. Stat. Ann. §§ 65-6703(b), 65-6724(b).

[35] Kan. Stat. Ann. §§ 65-6703(c)(1), 65-6724(c)(1).

[36] Kan. Stat. Ann. §§ 65-6704(f). A physician who does not provide the required counseling due to a medical emergency must state in the young person's medical record the medical indications upon which the physician's judgment was based.
[37] Kan. Stat. Ann. § 65-6705(a), (j)(1). A physician who does not obtain the required consent based on a medical emergency must state in the young person's medical record the medical indications on which the physician's judgment was based. The medical basis for the determination, and the methods used to make that determination, must also be included in the report that must be submitted to the Kansas Department of Health and Environment for every abortion. Kan. Admin. Regs. § 28-56-6.
[38] Kan. Stat. Ann. § 65-445. On July 1, 2024, the plaintiffs in *Hodes & Nauser, MDs, P.A. v. Kobach* added a legal challenge to H.B. 2749, which would amend this law to add additional reporting requirements. The State has agreed not to enforce the new requirements during the litigation of them. *Stipulation* in *Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023) (on file with the Abortion Defense Network).
[39] Kan. Stat. Ann. § 65-6709. Hodes & Nauser, MDs, P.A. v. Kobach, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023) (preliminarily enjoining this requirement).
[40] Kan. Stat. Ann. § 65-6711.
[41] EMTALA, 42 U.S.C. § 1395dd(a).
[42] EMTALA, 42 U.S.C. § 1395dd(e)(1)(A).
[43] EMTALA, 42 U.S.C. § 1395dd(e)(1)(B).
[44] EMTALA, 42 U.S.C. § 1395dd(b)(1)(A).
[45] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[46] EMTALA, 42 U.S.C. § 1395dd(b)(2).
[47] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).
[48] 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).
[49] EMTALA, 42 U.S.C. § 1395dd(c)(1)(B)–(c)(2)(A).
[50] For example, in 2022, the Biden Administration issued guidance reiterating past administrative statements that the treatment required by EMTALA includes abortion care when such care is necessary to stabilize a pregnant person's emergency medical condition. Ctrs. for Medicare & Medicaid Servs., *Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss* (updated July 2022) ("2022 EMTALA Guidance"). While this guidance has since been rescinded, the requirements of EMTALA as outlined in it and other prior HHS statements have not changed. Indeed, in the Trump Administration's June 3, 2025 statement rescinding the 2022 guidance, the Administration stated that "CMS will continue to enforce EMTALA . . . including for identified emergency medical conditions that place the health of a pregnant woman or unborn child in serious jeopardy." Ctrs. for Medicare & Medicaid Servs., *CMS Statement on Emergency Medical Treatment and Labor Act (EMTALA)* (June 3, 2025); *see also* Letter from Robert F. Kennedy Jr., Sec'y, U.S. Dep't of Health & Hum. Servs., to Healthcare Providers (June 13, 2025) ("Kennedy Letter"), available at https://essentialhospitals.org/wp-content/uploads/2025/06/6.13.25-EMTALA-letter-final.pdf.pdf.
[51] Kennedy Letter.
[52] Kennedy Letter.
[53] *Hearing on the Fiscal Year 2026 Dep't of Health and Hum. Servs. Budget Before the H. Comm. on Energy & Com., Subcomm. on Health,* 119th Cong. (2025) (statement of Robert F. Kennedy Jr., Sec'y of Health & Hum. Serv.).
[54] Center for Reproductive Rights, *Complaints Against Texas Hospitals for Denying Emergency Care for Ectopic Pregnancies* (updated May 8, 2025).
[55] *St. Luke's Health System, LTD. v. Labrador*, No. 1:25-cv-00015, ECF No. 1 (D. Idaho Jan 14, 2025).
[56] *St. Luke's Health System, LTD v. Labrador*, No. 1:25-cv-00015, ECF No. 49 at 59 (D. Idaho Mar. 20, 2025).
[57] *United States v. Idaho*, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022).
[58] *Moyle v. United States*, 144 S. Ct. 2015 (June 27, 2024) (per curiam).
[59] *Idaho v. United States*, No. 1:22-cv-00329, ECF No. 182 (D. Idaho Mar. 5, 2025).
[60] *Becerra v. Texas*, No. 23-1076 (U.S. Oct. 7, 2024) (denying certiorari).
[61] *Texas v. Becerra*, 89 F.4th 529, 546 (5th Cir. 2024) (affirming permanent injunction barring HHS from enforcing the 2022 EMTALA Guidance's "interpretation that Texas abortion laws are preempted by EMTALA" and "it's interpretation of EMTALA—both as to when an abortion is required and EMTALA's effect on state laws governing abortion—within the State of Texas or against [plaintiff organizations'] members."); *see also* Ctrs. for Medicare & Medicaid Servs., *Emergency*

Medical Treatment & Labor Act (EMTALA), https://www.cms.gov/medicare/regulations-guidance/legislation/emergency-medical-treatment-labor-act (last modified Dec. 6, 2024).

[62] A separate challenge to the guidance was filed by the Catholic Medical Association in Tennessee, Compl., *Catholic Med. Ass'n v. Dep't of Health & Hum. Servs.*, No 3:25-cv-00048, ECF No. 1 (M.D. Tenn. Jan. 10, 2025), but the plaintiff voluntarily dismissed that action on June 3, 2025.

[63] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).

[64] Nat'l Women's Law Ctr., *Know Your Rights: Existing Laws May Protect Health Care Professional Who Provide or Support Abortion from Discrimination in Employment* (Feb. 9, 2023).

[65] *See, e.g.,* Kan. Stat. Ann. § 65-4901 *et seq.*

[66] Accreditation Council for Graduate Med. Educ., *ACGME Program Requirements for Graduate Medical Education in Obstetrics and Gynecology* (Sept. 3, 2025).

[67] 42 U.S.C. § 238n.

[68] 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.

[69] Kan. Stat. Ann. §§ 65-6703(a), 65-6724(a).

[70] Kan. Stat. Ann. § 65-6724(a).

[71] Kan. Stat. Ann. §§ 65-6703(b), 65-6724(b).

[72] Kan. Stat. Ann. §§ 65-6703(b), 65-6724(b).

[73] Kan. Stat. Ann. §§ 65-6703(c)(1)-(2), 65-6724(c)(1), Kan. Admin. Regs. §§ 28-56-10, 100-24-1.

[74] Kan. Admin. Regs. § 28-56-10(a).

[75] Kan. Admin. Regs. § 28-56-10(b).

[76] Kan. Stat. Ann. §§ 65-6703(c)(5), 65-6724(c)(3), Kan. Admin. Regs. §§ 28-34-9a(d)(1), 28-56-10, 100-24-2.

[77] Kan. Admin. Regs. §§ 28-34-9a(d)(1), 28-34-57(c).

[78] Kan. Stat. Ann. § 65-445, Kan. Admin. Regs. § 28-56-1 *et seq.* Kansas has a regulation that requires providers to report the number of counseling forms completed by patients within five business days of the end of each month. However, the Department cannot enforce the regulation, as the statute implementing it is currently enjoined. Kan. Stat. Ann. § 65-6709(e), Kan. Admin. Regs. § 28-56-7 (enjoined by *Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023)).

[79] Kan. Admin. Regs. § 28-56-3. "ICD-9-CM" means "volumes one and two, office edition, of the 2011 clinical modification of the "international classification of diseases," ninth revision, sixth edition, published by practice management information corporation, which is used to code and classify morbidity data from inpatient and outpatient records, physician offices, and most surveys from the national center for health statistics." Kan. Admin. Regs. 28-56-1(l).

[80] Kan. Admin. Regs. §§ 28-56-1, 28-56-8. The affidavits must include: the physician's name, patient's identification number from the patient's medical record; a statement that the referring physician and physician providing the abortion have no legal or financial affiliation; and the date the affidavit was signed and notarized. Kan. Admin. Regs. § 28-56-8.

[81] Kan. Admin. Regs. § 28-56-8.

[82] Kan. Stat. Ann. § 65-2412.

[83] Kan. Stat. Ann. § 65-2401 ("'Stillbirth' means any complete expulsion or extraction from its mother of a human child the gestational age of which is not less than 20 completed weeks, resulting in other than a live birth, as defined in this section, and which is not an induced termination of pregnancy.").

[84] Kan. Stat. Ann. § 65-2412.

[85] 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.

[86] Kan. Stat. Ann. §§ 38-2223, 39-1401 *et seq.*

[87] Kan. Admin. Regs. § 28-56-2.

[88] For example, an EMR may employ a tool that securely shares information among healthcare institutions that use the same EMR (e.g., from one hospital system to another) and allows robust sharing among affiliated healthcare institutions (e.g., a Texas hospital treating a patient may be able to see the patient's records from an Illinois hospital within the same health system).

[89] 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.

[90] Some states have taken steps to address vulnerabilities in information sharing, specifically for abortion and gender-affirming care. For example, Maryland and California, among other states, have enacted laws that restrict disclosure of abortion-related records and require EMRs to develop tools to limit or prohibit such disclosure. *See, e.g.,* H.B. 812, 445th Leg., Reg. Sess. (Md. 2023), A.B. 352, 2023 Leg., Reg. Sess. (Cal. 2023).

While the federal government under the Biden administration created additional HIPAA protections related to the disclosure of reproductive health care records by issuing a HIPAA Reproductive Health Rule, in 2025, a federal district court vacated the rule nationwide and the requirements of the rule are no longer in effect (except for the notice of privacy practices provisions related to substance use disorder treatment records, which go into effect on February 16, 2026). HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32976 (2024) (modifying 45 C.F.R. §§ 160, 164), *Purl v. U.S. Dep't of Health & Hum. Servs.*, No. 2:24-cv-228-Z (N.D. Tex. Jun 18, 2025) (vacating the majority of the rule). All HIPAA protections that were in place prior to this rule remain in place.

[91] Many of these setting options are quite broad, blocking not only a subsequent provider's access to more "sensitive" information, but also to less sensitive information that is critical to continuity of care. For this reason, many patients may not want to limit access to their records.

[92] E.g., healthcare institutions must comply with interoperability rules that penalize certain information blocking (though exceptions are available). *See* 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). *See also* Health Data, Technology, and Interoperability: Protecting Care Access, 89 Fed. Reg. 102512 (Dec. 17, 2024) (adding 45 C.F.R. § 171.206 to except information blocking practices intended to reduce potential exposure to legal action based on lawful reproductive health care provision, subject to certain conditions). 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.

[93] Kan. Stat. Ann. § 65-443.

[94] Kan. Stat. Ann. § 65-444.

[95] On April 22, 2025, a lawsuit was filed seeking to overturn Kansas laws and regulations that prohibit advanced practice registered nurses (APRNs) from prescribing abortion medications. The laws and regulations restricting the prescription of abortion medications to physicians is currently still in effect. *Aria Medical v. Kansas State Board of Nursing*, No. SN-2025-CV-000298) (Kan. D. Ct. Apr. 22, 2025).

[96] H.B. 2264, 2023 Leg. Sess., Reg. Sess. (Ka. 2023), *codified at* Kan. Stat. Ann. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6716, 65-6723, 65-6742.

[97] *See Hodes & Nauser, MDs, P.A. v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023). Kansas also has a permanently enjoined requirement that abortion-inducing drugs to be administered "by or in the same room and in the physical presence of" the physician, except in a medical emergency or "in the case of an abortion performed in a hospital through inducing labor." Kan. Stat. Ann. § 65-4a10(b). The Kansas Supreme Court has permanently enjoined this requirement, and it is not in effect. *Hodes & Nauser MDs v. Stanek*, 551 P.3d 62 (Kan. 2024).

[98] Kan. Stat. Ann. §§ 65-67a09, Kan. Admin. Regs. § 16-10-3. Providers must, as specified in the kit instructions: complete an evidence custody receipt form provided in the kit; collect the required amount and type of tissue; preserve, secure, and label the specimen; ship the specimen and the evidence custody receipt form to KBI; and mail a copy of the evidence custody receipt form by first-class mail to the appropriate law enforcement department.

[99] Kan. Stat. Ann. § 65-67a10.

[100] Kan. Stat. Ann. § 65-67a04. This restriction does not apply when the tissue is being transferred for the purpose of immediate final disposal or to a pathologist for testing. Kan. Stat. Ann. § 65-67a03.