ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

KENTUCKY

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 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 Kentucky law unless the patient has a “medical emergency,” meaning abortion is necessary to “prevent the death” of the patient or to prevent “the serious, permanent impairment of a life-sustaining organ.”

Kentucky voters rejected a constitutional amendment that would have prohibited constitutional protection for abortion, meaning that litigation can be brought to challenge the constitutionality of Kentucky’s abortion bans. Because the Kentucky Supreme Court ruled that a case must be brought by patients, the ACLU is currently looking for pregnant patients to participate.

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Definition of Abortion & Contraception

ABORTION

Kentucky law defines abortion as "the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death."[1] In general, ectopic pregnancies are excluded from the abortion bans: The Six Week Ban explicitly only applies to intrauterine pregnancies.[2] Furthermore, Kentucky Attorney General Daniel Cameron stated in an advisory opinion that "[a]s a general matter, removal of an ectopic pregnancy is not an abortion."[3]

Miscarriage care is legal, so long as there is no cardiac activity. With respect to self-managed abortion, it is legal for providers to give medical care to a pregnant person who has initiated or recently completed a self-managed abortion provided there is no embryonic or fetal cardiac activity or the patient qualifies under the medical emergency exception to Kentucky's bans (see below). A pregnant person cannot be convicted under Kentucky's abortion ban for self-managing their abortion because the state's criminal abortion ban explicitly exempts pregnant people from liability.[4]

CONTRACEPTION

Contraception is not illegal in any state in the country. Kentucky defines contraceptives as "a drug, device, or chemical that prevents conception."[5]

Abortion Bans

Kentucky voters in 2022 rejected a constitutional amendment that would have prohibited constitutional protection for abortion, meaning that litigation can be brought to challenge the constitutionality of Kentucky's abortion bans.[6] The Kentucky Supreme Court has held that patients, rather than health care providers, must bring the case. The ACLU is currently looking for patients to participate in a lawsuit. Any interested pregnant patients can reach the ACLU at 617-297-7012.

Total Ban/Trigger Ban: Kentucky's most restrictive abortion ban is a total ban (also sometimes referred to as a "trigger ban"). The so-called "trigger ban," which bans abortion throughout pregnancy, became operative following the overturning of *Roe v. Wade*.[7] The ban states that "No person may knowingly: 1. Administer to, prescribe for, procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being, or 2. Use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being."[8] The statute explicitly does not outlaw contraceptive use before pregnancy.[9] Providing an abortion that violates Kentucky's total ban is a class D felony[10] punishable with not less than one and no more than five years in prison.[11] The pregnant person cannot be charged under this statute.[12]

6-Week Ban: Kentucky also has a ban that prohibits abortion after cardiac activity is detectable. Because cardiac activity is detectable starting around 6 weeks LMP, this is sometimes referred to as a 6-week abortion ban. The ban requires a provider to "determine whether there is a detectable fetal heartbeat" and then prohibits the provision of an abortion "with the specific intent of causing or abetting the termination of the" pregnancy where a "fetal heartbeat has been detected."[13] Violation of the ban is a class D felony,[14] chargeable with not less than one and no more than five years in prison.[15] Abortion patients can themselves bring a civil action for violation of the ban.[16] The pregnant person cannot be charged under this ban.[17]

Other Bans and Restrictions: Several other abortion bans are also currently in effect, including a

ban on telehealth abortions,[18] a reason ban (prohibiting "sex-, race-, color-, national origin-, or disability-based abortion"),[19] a 15-week ban,[20] a ban on dilation and evacuation ("D&E") abortions,[21] and a ban on post-viability abortions.[22] Kentucky law retains additional abortion restrictions and requirements, including informed consent requirements,[23] parental consent for young people under 18,[24] physician-only requirements,[25] a prohibition on abortions in publicly owned health care facilities,[26] and requirements that "born-alive infants" be provided certain medical care.[27]

"Medical Emergency" Exception to Abortion Bans

Both the trigger ban and the 6-week ban, as well as the 15-week ban and post-viability ban, have either exceptions[28] or affirmatives defenses[29] for preventing death or serious injury to the pregnant person. The total ban has an *exception* which states it is not a violation of the ban for a licensed physician to provide a medical procedure "necessary in [their] reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman."[30] Though not an explicit exception within the law, Kentucky Attorney General Daniel Cameron has stated in an advisory opinion, that "[a]s a general matter, removal of an ectopic pregnancy is not an abortion" under the trigger ban.[31]

Similarly, the 6-week ban also contains an exception, laying out that the ban "shall not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman."[32] The ban also only applies to intrauterine pregnancies.[33]

The 15-week ban contains an *affirmative defense*[34] for if "the physician determined, in the physician's reasonable medical judgment, based on the facts known to the physician at that time, that either of the following applied: (a) The probable gestational age of the unborn child was less than fifteen (15) weeks; or (b) The abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman."[35] The statute explicitly states that mental health repercussions do not qualify as "substantial and irreversible impairment of a major bodily function" under the ban.[36] Except "when a medical emergency exists that prevents compliance" with one of the statute's requirements, the law contains additional requirements for providing abortion under the affirmative defenses, such as getting the opinion of a second medical provider[37] and having a second provider in the room during the procedure.[38]

The post-viability ban provides that no abortion may be provided after the fetus "may reasonably be expected to have reached viability, except when necessary to preserve the life or health of the woman."[39] When an abortion is performed under the exception, "the person performing the abortion shall take all reasonable steps in keeping with reasonable medical practices to preserve the life and health of the child."[40]

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.[41] Stabilizing medical treatment must be

provided to individuals experiencing an emergency medical condition,[42] including people in labor or with emergency pregnancy complications.[43] 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."[44] 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.[45] 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."[46] 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."[47] 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."[48] 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."[49] 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.[50] 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.[51]

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.[52] 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.,[53] But, in June 2024, the Supreme Court lifted that stay and restored the preliminary injunction.[54] 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.[55] 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.[56] However, in October 2024, the Supreme Court declined to review the Fifth Circuit's decision,[57] 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.[58]

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.[59]

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.[60]

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.[61] 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.[62]

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.[63] The only abortion-specific documentation and reporting requirements are:

Documentation: Abortions performed under the medical exceptions above must be documented as follows. The 6-week ban requires that physicians providing abortions under an exception must provide in writing that the abortion falls under the exception and "[s]pecify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman."[64]

The 15-week ban requires both the abortion provider and the second physician to certify in writing that an abortion performed over 15 weeks falls under one of the two affirmative defenses (i.e., that it is "necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function" or that "in the physician's reasonable medical judgment the unborn child's probable gestational age is less than fifteen (15) weeks").[65] The physician must also certify "the available method or techniques considered and the reasons for choosing the method or technique employed."[66]

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.

Abortion Reporting: Kentucky law provides that "[e]ach abortion . . . regardless of the length of gestation, shall be reported to the Vital Statistics Branch by the person in charge of the institution within three (3) days after the end of the month in which the abortion occurred."[67] The report must include the patient's demographic information and medical history, as well as information about the abortion procedure.[68]

Complication Reporting: Complications or adverse effects from abortion[69] "that the attending physician, hospital staff, or facility staff has reason to believe is a primary or secondary result of an abortion" must be reported within thirty days of discharge or death of the patient.[70]

Fetal Death Reporting: Kentucky health care providers and institutions must report any fetal death that occurs after 20 weeks' gestational age or where the fetus weighs 350 grams or more.[71] The fetal death should be reported on a combination birth-death certificate.[72] Kentucky law defines "fetal death" as "death prior to the complete expulsion or extraction from [the pregnant person] of a product of human conception, irrespective of the duration of pregnancy,"[73] and explicitly excludes abortion.

Other Mandatory Reporting: All other general mandatory reporting to the Department of Family and Protective Services, local law enforcement, etc., also applies for abortion patients.[74] This includes reporting of sexual abuse of young people under 18, child abuse, and vulnerable adult abuse.[75]

Electronic Medical Records: Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions.[76] 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.[77]

The federal government has taken steps to address this concern by issuing a new HIPAA rule, effective June 25, 2024.[78] 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.[79] 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.[80] 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.[81] 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.[82]

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.[83] 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.[84]

Counseling & Referral

Speech about abortion is legal in Kentucky. Medical professionals in Kentucky can thus (1) provide accurate options counseling, including about abortion; and (2) refer patients to medical providers in states where abortion is legal. However, "[p]ublic agency funds shall not be directly or indirectly used, granted, paid, or distributed to any entity, organization, or individual that performs, induces, refers for, or counsels in favor of abortions" except to comply with requirements of certain federal programs like Medicaid.[85]

Medication Abortion

Kentucky has an "Abortion-Inducing Drug Certification Program" which establishes certification requirements for manufacturers and distributors of abortion-inducing drugs, pharmacies that dispense abortion-including drugs, and licensed abortion facilities.[86] The certification program requires recognition that "abortion-inducing drugs may only be provided to patients by qualified physicians who are registered as nonsurgical abortion providers and that abortion-inducing drugs shall not intentionally, knowingly, or recklessly be provided directly to a patient outside of the parameters of Kentucky's Abortion-Inducing Drug Certification Program."[87] The Attorney General has the right to demand from the Governor of another state "the surrender of any person found in the other state who is charged in Kentucky with the crime of violating [Kentucky's Abortion-Inducing Drug Certification laws]."[88]

A qualified physician providing an abortion-inducing drug must examine the patient in person to verify that a pregnancy exists, "[i]nform the patient that the remains of the unborn child may be visible in the process of completing the abortion;" and document the pregnancy in the patient's medical chart.[89] The physician "shall schedule a follow-up visit for the patient for approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess any degree of bleeding."[90] Abortion-inducing drugs may not be provided in schools, and the law is not intended "to make lawful an abortion that is otherwise unlawful."[91]

Disposition of Fetal Tissue Remains

Kentucky law requires that twenty-four hours before an abortion or twenty-four hours after a miscarriage, "the healthcare facility or abortion clinic shall disclose to the parent or parents of the fetus, both orally and in writing, the parents' right to determine if they will take responsibility for the final disposition of the fetal remains or relinquish the responsibility for final disposition to the healthcare facility or abortion clinic."[92] The facility must document the results of the decision and the status of the fetal remains.[93]

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] KY. REV. STAT. ANN. § 311.720(1) (2017).
[2] KY. REV. STAT. ANN. § 311.7703.
[3] Daniel Cameron, *Second Attorney General Advisory Opinion: The Effect and Scope of the Human Life Protection Act* (Oct. 26, 2022), https://www.ag.ky.gov/Advisories/22.10.26%20Second%20Advisory%20on%20Human%20Life%20Protection%20Act.pdf.
[4] KY. REV. STAT. ANN. § 311.772(5).
[5] KY. REV. STAT. ANN. § 311.7701 (2019). This definition expressly applies to the 6-week ban (KRS 311.7701 to .7711). The total ban does not define the term "contraceptives."
[6] In November of 2024, a lawsuit was filed on behalf of an individual seeking an abortion challenging Kentucky's total and six-week abortion bans under Kentucky's Constitution. *See* Compl., *Poe v. Friedlander*, No. 24-CI-008072 (Jefferson Cir. Ct. filed Nov. 11, 2024). Litigation is ongoing, and the court has not yet issued a decision.
[7] *See EMW Women's Surgical Ctr., P.S.C. v. Cameron,* No. 2022-CA-0906-I (Ky. Ct. App., Aug. 1, 2022); *see also* Daniel Cameron, *Attorney General Advisory: The Effect and Scope of the Human Life Protection Act in Light of Dobbs v. Jackson Women's Health Organization* (June 24, 2022), https://www.ag.ky.gov/Press%20Release%20Attachments/Human%20Life%20Protection%20Act%20Advisory.pdf.
[8] KY. REV. STAT. ANN. § 311.772(3) (2019). The term "unborn human being" is defined as "an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth. KY. REV. STAT. ANN. § 311.772(1)(c) (2018).
[9] KY. REV. STAT. ANN. § 311.772(6) (2019).
[10] KY. REV. STAT. ANN. § 311.722(3)(b) (2021).
[11] KY. REV. STAT. ANN. § 532.060(2)(d) (2011).
[12] KY. REV. STAT. ANN. § 311.772(5) (2019).
[13] KY. REV. STAT. ANN. §311.7706(1) (2019); KY. REV. STAT. ANN. § 311.7704 (2019) (explaining determination of fetal heartbeat).
[14] KY. REV. STAT. ANN. § 311.990(22) (2023).
[15] KY. REV. STAT. ANN. §532.060(2)(d) (2011).
[16] KY. REV. STAT. ANN. § 311.7709 (2019).
[17] KY. REV. STAT. ANN. § 311.7706(4) (2019).
[18] KY. REV. STAT. ANN. § 311.728 (2019).
[19] KY. REV. STAT. ANN. § 311.731 (2019).

[20] KY. REV. STAT. ANN. § 311.782(1) (2022).
[21] KY. REV. STAT. ANN. § 311.787.
[22] KY. REV. STAT. ANN. § 311.780.
[23] KY. REV. STAT. ANN. § 311.724 (2016).
[24] KY. REV. STAT. ANN. § 311.732 (2022).
[25] KY. REV. STAT. ANN. § 311.750 (1974).
[26] KY. REV. STAT. ANN. § 311.800 (1980).
[27] KY. REV. STAT. ANN. § 311.823 (1980). This statute concerns infants "born alive" after an attempted abortion. Explicitly *excluded* from the definition of abortion in cases of a "born-alive infant" are cases in which the abortion was done with intent to: "(a) Save the life or preserve the health of the unborn child; (b) Remove a dead unborn child caused by spontaneous abortion; or (c) Remove an ectopic pregnancy." KY. REV. STAT. ANN. § 311.821 (1980).
[28] An "exception" means that conduct is not prohibited by the statute.
[29] An "affirmative defense" is a defense that a defendant to a lawsuit can introduce into evidence and, if proven, defeats liability or conviction. So while it can help a defendant be acquitted, it does not stop an individual from being sued or arrested in the first place.
[30] KY. REV. STAT. ANN. § 311.772(4) (2019).
[31] Daniel Cameron, *Second Attorney General Advisory Opinion: The Effect and Scope of the Human Life Protection Act* (Oct. 26, 2022), https://www.ag.ky.gov/Advisories/22.10.26%20Second%20Advisory%20on%20Human%20Life%20Protection%20Act.pdf.
[32] KY. REV. STAT. ANN. § 311.7706(2)(a) (2019).
[33] KY. REV. STAT. ANN. § 311.7703 (2019).
[34] In contrast to an exception, which should prevent a person from being sued or criminally charged in the first place, an affirmative defense is a defense that a defendant, who has either already been charged with a crime or sued civilly, can introduce into evidence that, if proven, defeats liability or conviction. It is important to note that an affirmative defense does not mean that a physician will not be sued or arrested in the first place. Rather, this affirmative defense may help a physician defendant be acquitted of charges under the abortion ban.
[35] KY. REV. STAT. ANN. § 311.782(2) (2022).
[36] KY. REV. STAT. ANN. § 311.782(2) (2022).
[37] KY. REV. STAT. ANN. § 311.782(3)(b)(2) (2022).
[38] KY. REV. STAT. ANN. § 311.782(3)(b)(6) (2022).
[39] KY. REV. STAT. ANN. § 311.780 (1974).
[40] KY. REV. STAT. ANN. § 311.780 (1974).
[41] EMTALA, 42 U.S.C. § 1395dd(a).
[42] EMTALA, 42 U.S.C. § 1395dd(b)(1)(A).
[43] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[44] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).
[45] 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).
[46] EMTALA, 42 U.S.C. § 1395dd(c)(1)(B)–(c)(2)(A).
[47] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[48] Ctrs. for Medicare & Medicaid Servs., *Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss* (updated July 2022).
[49] *Id.*
[50] *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.").
[51] 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).

[52] *United States v. Idaho*, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022).
[53] *Idaho v. United States*, 144 S. Ct. 541 (Mem) (2022).
[54] *Moyle v. United States*, 144 S. Ct. 2015 (June 27, 2024) (per curiam).
[55] Press Release, U.S. Dep't of Health and Human Servs., *Biden-Harris Administration Reaffirms Commitment to EMTALA Enforcement* (July 2, 2024).
[56] *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).
[57] *Becerra v. Texas*, No. 23-1076, 2024 WL 4426546 (U.S. Oct. 7, 2024) (denying cert).
[58] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).
[59] 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/.
[60] KY. REV. STAT. ANN. § 304.40-260 (2010).
[61] 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.
[62] 42 U.S.C. § 238n.
[63] 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.
[64] KY. REV. STAT. ANN. § 311.7706(2)(b) (2019).
[65] KY. REV. STAT. ANN. § 311.782(3)(3)(a) (2022).
[66] The statute does not specify whether this refers to the abortion provider or the second physician. *See* KY. REV. STAT. ANN. § 311.782(3)(b)(4) (2022).
[67] KY. REV. STAT. ANN. § 213.101 (2022).
[68] KY. REV. STAT. ANN. § 213.101 (2022).
[69] A "complication" or "abortion complication" is defined as "only the following physical or psychological conditions which, in the reasonable medical judgment of a licensed healthcare professional, arise as a primary or secondary result of an induced abortion: uterine perforation, cervical laceration, infection, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events, pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, shock, amniotic fluid embolism, coma, death, free fluid in the abdomen, allergic reactions to anesthesia and abortion-inducing drugs, psychological complications as diagnosed that are listed in the current Diagnostic and Statistical Manual of Mental Disorders, and any other 'adverse event' as defined by the Food and Drug Administration criteria provided in the MedWatch Reporting System." KY. REV. STAT. ANN. § 311.7731 (2022)
[70] KY. REV. STAT. ANN. § 311.7741 (2022).
[71] KY. REV. STAT. ANN. § 213.096.
[72] *Id.*
[73] KY. REV. STAT. ANN. § 213.011.
[74] 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.
[75] KY. REV. STAT. ANN. § 620.030; KY. REV. STAT. ANN. § 209.030.
[76] 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).
[77] 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.

[78] 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.

[79] 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).

[80] 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.

[81] 42 U.S.C. §§ 164.509(a), 512(d)-(g)(1).

[82] 42 U.S.C. § 164.502(a)(5)(iii).

[83] 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.

[84] 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.

[85] KY. REV. STAT. ANN. § 311.715 (2022).

[86] KY. REV. STAT. ANN. § 216B.202 (2022).

[87] KY. REV. STAT. ANN. § 216B.202 (2022).

[88] KY. REV. STAT. ANN. § 311.7743 (2022).

[89] KY. REV. STAT. ANN. § 311.7734(2) (2022).

[90] KY. REV. STAT. ANN. § 311.7743(3) (2022).

[91] KY. REV. STAT. ANN. § 311.7737 (2022).

[92] KY. REV. STAT. ANN. § 213.098(2)(a) (2022).

[93] KY. REV. STAT. ANN. § 213.098(2)(d) (2022).