ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

TEXAS

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 October 2025

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 Texas law unless the patient has a “medical emergency,” meaning the patient has a “life-threatening physical condition” that places the patient “at risk of death” or that poses a “serious risk of substantial impairment of a major bodily function.” Imminence of the threat is not required.

The Texas Supreme Court has said that diagnosis of PPROM, without waiting for signs of infection, is an example of a condition that meets this definition.

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Definition of Abortion & Contraception

ABORTION

Texas law defines abortion to include only certain induced abortions, specifically: "'Abortion' means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant."[1]

The following are explicitly *excluded* from Texas law's definition of abortion: (1) removing "an ectopic pregnancy," defined as "the implantation of a fertilized egg or embryo" either "outside of the uterus" or "in an abnormal location in the uterus, or in a scarred portion of the uterus, causing the pregnancy to be non-viable"[2]; and (2) removing "a dead, unborn child whose death was caused by spontaneous abortion."[3] While undefined, it is generally understood that in the context of Texas's definition of abortion, "dead" means that there is no cardiac activity present in the embryo or fetus.[4] This means that treatment for ectopic pregnancy (including use of methotrexate and surgical removal) and treatment for miscarriage where there is no cardiac activity (including medications, D&C, D&E, labor induction) are *not* abortions under Texas law and are thus permitted in Texas.

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 during or after a self-managed abortion provided there is no cardiac activity, or if the patient is experiencing a complication that would qualify as a medical emergency (see below). There is not an explicit crime of self-managed abortion in Texas law, and no civil law prohibiting a person from self-managing an abortion. In fact, Texas's criminal abortion bans explicitly exempt pregnant people from liability.[5]

CONTRACEPTION

Contraception is not illegal in any state in the country. Texas's legal definition of abortion explicitly states that it "does not include birth control devices or oral contraceptives."[6]

Abortion Bans

Texas has four different abortion bans with penalties that are either criminal (prison time) and/or civil (loss of medical license and/or fines). A new law passed by the Texas Legislature in June 2025 states that a civil action under the ban is "a health care liability claim."[7]

Trigger Ban: Texas's most restrictive abortion ban is the so-called "trigger ban" which took effect on August 25, 2022. This ban states that "[a] person may not knowingly perform, induce, or attempt an abortion," where abortion is defined using Texas's above definition.[8] The penalties for violating the ban are: (1) criminal: a person can be charged with a first or second degree felony, which is punishable by imprisonment for life, or between 5-99 years for first degree offenses, or between 2 and 20 years for second degree offenses;[9] (2) professional: the Texas Medical Board "shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation" of the trigger ban;[10] and (3) civil: the Attorney General "shall file an action to recover a civil penalty" of "not less than $100,000 for each violation" of the trigger ban and may also recover attorney's fees and costs.[11]

Senate Bill 8: This law took effect in September 2021 and prohibits abortions when an embryo or fetus has detectable cardiac activity, which is typically around 6 weeks LMP.[12] Violations of S.B. 8 are not punishable as crimes. Rather, alleged violations are enforced by a civil bounty-hunting enforcement scheme that purports to allow anyone to bring a civil

lawsuit against a provider for "statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed" and "injunctive relief sufficient to prevent the defendant from violating" S.B. 8 in the future.[13] To date, despite pervasive fear in the medical community, there have not been any successful cases for violations of S.B. 8. In fact, only three cases have even been filed–all against a single physician's public admission he had performed an abortion in violation of S.B. 8 in September 2021–and those cases have not led to liability for the provider..[14] Two of the lawsuits were dropped or not prosecuted. The third was dismissed by a trial court and that opinion was affirmed on appeal.[15]

A new law was passed by the Texas Legislature in June 2025 that states that the following activities are *not* considered aiding and abetting under S.B. 8:

- "providing services by a physician or health care provider to a treating physician, or communication between a physician or health care provider and a treating physician, for the purposes of arriving at a reasonable medical judgment as required by an exception to an otherwise prohibited abortion;"
- "communicating between a physician or health care provider and a patient, or providing services by a physician or health care provider to a patient, for the purpose of arriving at reasonable medical judgment as required by an exception to an otherwise prohibited abortion;"
- "communicating between an attorney and a physician or health care provider related to an exception to an otherwise prohibited abortion;"
- "communicating between a treating physician and any other person or providing services to a treating physician or patient relating to performing, inducing, or attempting an abortion for which the treating physician has determined that, in reasonable medical judgment, an exception to an otherwise prohibited abortion is applicable; and"
- "providing products to a patient or treating physician relating to performing, inducing, or attempting an abortion for which the treating physician has determined that, in reasonable medical judgment, an exception to an otherwise prohibited abortion is applicable."[16]

Pre-Roe Ban: Statements by some Texas politicians[17] have created confusion regarding the law that was struck down by *Roe v. Wade* and whether it has now sprung back into effect. Enacted in 1925, the pre-*Roe* ban stated: "If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years."[18] After it was struck down in 1973, the pre-*Roe* ban was removed from the Texas code, replaced by a complex set of laws allowing abortion, and a federal appeals court held that it had been impliedly repealed. On June 24, 2022, however, the text of the pre-*Roe* ban was placed on the Texas Legislature's website for the first time, though with a note that the relevant statutes were "held to have been impliedly repealed."[19] Litigation is ongoing, but in February 2023, a federal court agreed that the pre-*Roe* ban was "impliedly repealed" and it is therefore not in effect.[20]

House Bill 7: Texas's newest abortion ban will go into effect December 4, 2025 and states that "a person may not" (1) "manufacture or distribute an abortion-inducing drugs in this state," or (2) "mail, transport, deliver, prescribe, or provide an abortion-inducing drug in any manner to or from any person or location in this state."[21] This prohibition,

however, explicitly does *not* apply to hospitals, state-operated health care providers, physician groups, Internet providers, search engines, cloud service providers, or uses of abortion inducing drugs consistent with the medical emergency exception to the other bans. Similar to S.B. 8, alleged violations of H.B. 7 are enforced by a civil bounty-hunting enforcement scheme that purports to allow anyone to bring a civil lawsuit for damages that include $100,000 and injunctive relief.[22] As a practical matter, H.B. 7 is largely duplicative of Texas's existing bans, with the exception that it purports to expand liability to include manufacturers of abortion-inducing drugs.

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.[23] 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."[24] 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."[25]

EMTALA requires stabilizing medical treatment be provided to any individual experiencing an emergency medical condition,[26] including people in labor or with emergency pregnancy complications,[27] unless the individual refuses to consent to such treatment.[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 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.[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]

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.[32]

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."[33] 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."[34] 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." [35] 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.[36]

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.[37] 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]."[38] 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.[39] 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.[40] Following the change of presidential administrations, the United States dismissed that case entirely. [41]

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.[42] As a result, the Fifth Circuit's decision is final.[43,44]

"Medical Emergency" Exception to Abortion Bans

There is an exception to all of Texas's abortion bans for a "medical emergency," where that term does *not* require that an emergency be imminent or that the threat to the patient's health be irreversible. Texas does not have exceptions for rape or incest.

Language of Exception: Texas law states that a "medical emergency" "is an exception" to its abortion bans. "Medical emergency" is defined as a situation where "a licensed physician" "in the exercise of reasonable medical judgment" determines that "the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced."[45] "Reasonable medical judgment" is defined as "a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical condition involved."[46]

The Texas Medical Board has adopted the definition of "major bodily function" from the Texas Labor Code, which defines the term to include, but not be limited to "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."[47] The only health condition that is explicitly excluded from the exception is a risk

to health that arises from self-harm (e.g. suicide).[48]

A new law was passed by the Texas Legislature in June 2025 that added the following statutory clarifications to this definition:

- "[I]f a pregnant woman has a life-threatening physical condition . . . a physician may address a risk . . . before the pregnant female suffers any effects of the risk."
- The medical emergency exception does *not* require that the risk "be imminent," that the patient "first suffer physical impairment," or that "the physical condition has caused damage" to the patient "before the physician can act."
- "'[L]ife threatening' means capable of causing death or potentially fatal. A life-threatening physical condition is not necessarily one actively injuring the patient."[49]
- The law "does not require a physician to delay, alter, or withhold medical treatment provided to a pregnant female if doing so would create a greater risk of: (1) the pregnant female 's death; or (2) substantial impairment of a major bodily function of the pregnant female."[50]

The June 2025 law also standardized the definition of "medical emergency," so it applies consistently to the trigger ban, S.B. 8, and the pre-*Roe* ban. The new law also repealed a provision of the code that created a limited justification and affirmative defense to liability for ectopic pregnancy and PPROM.[51] The new language of the law, however, makes clear that ectopic pregnancy and PPROM are intended to be exceptions that fall within the definition of "medical emergency."

Interpretation of Exception: The new June 2025 law also requires the State Bar of Texas to create and disseminate a continuing legal education program for lawyers and the Texas Medical Board to create and disseminate a continuing medical education program for medical professionals (required for licensure or re-licensure as an obstetric care provider) about Texas's abortion bans by January 1, 2026.[52]

In addition to the new language added by the Texas Legislature, both the Texas Medical Board and the Supreme Court of Texas have stated that the exception does not require a life-threatening health risk to be immediate or irreversible.

Regulations from the Texas Medical Board state that "[i]mminence of the threat to life or impairment of a major bodily function is not required."[53] Accordingly, physicians should be able to legally provide abortions to patients with emergent health conditions that create risks of infection, hemorrhage, seizure, etc. that could lead to loss of fertility, damage to other organs, or death, even if the patient does not yet have signs of infection or other emergency health risks.

Similarly, the Texas Supreme Court issued decisions on the meaning of the exception in two cases brought by Texas OB/GYNs and women delayed or denied abortions despite obstetrical complications.[54] The new June 2025 law states that Texas law should be construed as consistent with the opinions in these two cases.[55] While the Texas Supreme Court declined to provide the practical guidance sought by the plaintiffs, the Court's opinions in those cases contain some additional detail about the exception's requirements:

In *Zurawski v. Texas*, the Texas Supreme Court describes the exception as requiring a physician to perform a two-part inquiry. First, "[d]oes the patient have a physical condition aggravated by, caused by, or arising from her pregnancy that could lead to her death?" Second, "[i]f so, does the condition pose a risk of death or serious risk of substantial

impairment of a major bodily function unless an abortion is performed?"

As to the first step, the Court emphasized that the condition need only be "capable" of causing death or be "potentially" fatal. The condition does not need to be "actively injuring the patient"; the condition need only have "the potential to kill the patient." "The law does not require the life-threatening physical condition to have already caused damage before a physician can act to preserve the mother's life or major bodily function."

Once a patient is diagnosed with a physical condition that is capable of leading to the patient's death, the second step applies. For the second step, in a concurring, non-binding opinion, two Justices further explained that either of the specified risks is enough: an abortion can be provided if it will mitigate *either* a risk of death *or* a "serious risk of substantial impairment of one of her major bodily functions posed by a condition that satisfies the first step."[56]

The Texas Supreme Court in *Zurawski* also clarified that diagnosis of PPROM is "a risk that satisfies the law's inquiry," so physicians can provide abortions to PPROM patients upon diagnosis, without waiting for signs of infection.

As to patients with fatal fetal diagnoses, the Court stated that Texas law allows an abortion if the patient also has "a life-threatening physical condition and that an abortion is indicated to avert her death or serious physical impairment." Accordingly, Kate Cox—a woman diagnosed with a fatal fetal condition (full Trisomy 18), who had two prior Cesarean surgeries and an elevated risk for gestational hypertension and diabetes, and had visited the emergency room four times with severe cramping and diarrhea and leaking of fluid (without diagnosis of PPROM or another complication)—did not qualify for the exception.

The Texas Supreme Court made several additional statements in *Zurawski v. Texas* and *In re Texas* (Kate Cox's case) that medical professionals may find instructive:

> *"The law does not require that a woman's death be imminent or that she first suffer physical impairment."*
>
> *"The law entrusts physicians with the profound weight of the recommendation to end the life of a child to preserve the life of the mother, a decision made in light of the specific circumstances of the mother and the pregnancy."*
>
> *"The exception does not hold a doctor to medical certainty, nor does it cover only adverse results that will happen immediately absent an abortion, nor does it ask the doctor to wait until the mother is within an inch of death or her bodily impairment is fully manifest or practically irreversible."*

The Texas Supreme Court further explained that not every doctor need reach the same conclusions regarding a patient's health condition for their judgment to be "reasonable." It is enough that a doctor is within a zone of reasonable medical judgment such that at least some doctors would agree the doctor's judgment was reasonable. The Court stated:

> *"Reasonable medical judgment…does not mean that every doctor would reach the same conclusion."*
>
> *"The exception does not mandate that a doctor in a true emergency await consultation with other doctors who may not be available."*
>
> *"The burden is on the state to prove that no reasonable physician would have concluded that the mother had a life-threatening physical condition that placed her at risk of death or of substantial impairment of a major bodily function unless the abortion was performed."*

A non-binding concurrence in *Zurawski* from one Justice further states that "one other physician's opinion that the performing doctor used 'reasonable medical judgment' is sufficient corroboration to support the performing doctor's action."[57]

It is also noteworthy that the legislative sponsor of S.B. 8 and the new June 2025 law wrote a letter to the Texas Medical Board stating that conditions involving risk of infection and/or bleeding are included under the exception—specifically citing PPROM, ectopic pregnancy, preeclampsia, hemorrhaging, strain on the patient's heart, and peripartum cardiomyopathy as non-exhaustive examples.[58]

Legal Requirements in Emergencies: If a physician has determined that the medical emergency exception applies, the physician does not need to comply with Texas's other abortion restrictions that also do not apply in medical emergencies. Specifically: the physician does not need to comply with Texas's informed consent counseling and 24-hour waiting period;[59] for young people under 18, a physician does not need to notify their parent if "there is insufficient time" to provide notice;[60] and the physician does not need to comply with the ban on D&E abortions, meaning the physician can perform a D&E without first confirming fetal demise.[61]

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.[62]

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.[63]

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.[64]

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.[65] 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.[66]

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

Documentation: Texas law requires that when a physician performs an abortion under the "medical emergency" exception, the physician must "execute a written document" and comply with the following steps: (1) "certify[y] the abortion is necessary due to a medical emergency;" (2) "specif[y] the medical condition the abortion is asserted to address;" (3)

"provide[] the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition;" (4) "place the document . . . in the pregnant woman's medical record;" (5) and "maintain a copy of the document . . . in the physician's practice records."[68] Quoting the language of the statute when documenting a patient case—e.g. "the patient's condition places them at risk of death or poses a serious risk of substantial impairment of a major bodily function"—may be helpful.

The Texas Medical Board issued regulations in June 2024 that created additional documentation requirements for abortions performed under the exception that are similar but not identical to those above. Physicians must follow both sets of documentation requirements. Under the regulations, within 7 days of performing an abortion, the physician must document in the patient's chart the following: (1) that the abortion is performed in response to a medical emergency that either places the patient at risk of death *or* a serious risk of substantial impairment of a major bodily function; (2) the major bodily function(s) at risk; (3) what placed the patient in danger; (4) how the danger was determined; (5) if applicable, that the abortion was performed in a manner that provides the best opportunity for the embryo/fetus to survive unless that manner would create a greater risk of the patient's death or serious risk of substantial impairment of a major bodily function; and (6) if applicable, that abortion was necessary to treat an ectopic pregnancy at any location or PPROM.[69]

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: Texas law also requires that the physician report abortions performed as medical emergencies on a monthly basis to the state through the Induced Termination of Pregnancy (ITOP) reporting system.[70]

Complication Reporting: Complications from abortion must also be reported to the state, and Senate Bill 4, which took effect in December of 2021, expanded the list of reportable complications and reporters. Physicians have expressed concern with the breadth of conditions that must be reported, but the state has not provided any guidance or clarification.[71] Now, both physicians (within 3 business days after the complication is diagnosed or treated) and hospitals (within 30 calendar days after the complication is diagnosed or treated) must report to the state any of the following complications or adverse events from the abortion, to the extent they are known at the time: shock; uterine perforation; cervical laceration; hemorrhage; aspiration or allergic response; infection; sepsis; death of the patient; incomplete abortion; damage to the uterus; an infant born alive after the abortion; blood clots resulting in pulmonary embolism or deep vein thrombosis; failure to actually terminate the pregnancy; pelvic inflammatory disease; endometritis; missed ectopic pregnancy; cardiac arrest; respiratory arrest; renal failure; metabolic disorder; embolism; coma; placenta previa in subsequent pregnancies; preterm delivery in subsequent pregnancies; fluid accumulation in the abdomen; hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products; adverse reactions to anesthesia or other drugs; or any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System.[72] Note that "incomplete abortion" is now explicitly a reportable complication.

Fetal Death Reporting: Texas law requires a "fetal death certificate" for all stillbirths/fetal deaths to be

filed with the local registrar within 10 days of death.[73] A "stillbirth" or "fetal death" for which a death certificate is required by Texas law is defined as "any fetus weighing 350 grams or more, or if the weight is unknown, a fetus aged 20 weeks or more as calculated from the start date of the last normal menstrual period to the date of delivery."[74]

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.[75] This includes reporting of sexual abuse of young people, child abuse, and vulnerable adult abuse.[76]

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.[77] 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.[78, 79]

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.[80] 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.[81]

Counseling & Referral

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

There is a Texas specific note of caution, however, as a provision of the pre-*Roe* ban prohibits "furnish[ing] the means for procuring an abortion."[82] No one has suggested, however, that options counseling or referrals by medical professionals would qualify as "furnishing the means." A federal court recently concluded that the pre-*Roe* ban likely does not prohibit helping patients get out of state abortion care and, in any event, the pre-*Roe* ban has been impliedly repealed.[83] Specifically, after *Roe v. Wade* was overturned, various abortion funds and other practical support organizations in Texas stopped providing direct funding and logistical support for patients traveling out of state for abortion due to concern that their work was "furnishing the means." The funds filed a lawsuit, a federal judge determined that the pre-*Roe* ban did not reach such conduct, and Texas abortion funds have since resumed their services.

Medication Abortion

Texas has additional rules that apply specifically to "abortion-inducing drugs." As discussed above, H.B. 7 imposes penalties on the manufactures of abortion-inducing drugs to the extent any are used to cause abortions within Texas's borders.

Now that abortion is largely prohibited in Texas, the rest of Texas's rules about medication abortion only apply to abortions performed in "medical emergencies." Texas law defines "abortion-inducing drug" to include "the Mifeprex regimen, misoprostol (Cytotec), and methotrexate" when used to perform an abortion, using the definition of abortion described above.[84] That means that when these

drugs are used for medical care other than the legal definition of abortion, the rules do not apply. In other words, when these drugs are used to treat patients with ectopic pregnancies, or for miscarriage care where no cardiac activity is present, or for cervical dilation, the rules for abortion-inducing drugs do not apply.

The following rules apply to the use of abortion-inducing drugs for patients needing abortions in medical emergencies where cardiac activity is present. A physician must provide the drug(s) to the patient and also do the following: examine the patient in person; determine and document if the pregnancy is intrauterine or ectopic; determine and document the patient's blood type and offer Rh immunoglobin if the patient is Rh negative; provide a copy of the Mifeprex label; schedule a follow-up visit not later than 14 days after the drug is administered where the physician must confirm pregnancy termination and assess any continued blood loss; and make reasonable efforts to ensure the patient returns for the follow-up visit. Further, the physician may not provide abortion-inducing drugs if the gestational age of the patient's pregnancy is more than 49 days.[85] Following the enactment of Senate Bill 4 in 2021, these requirements are subject to both civil and criminal penalties.[86]

Disposition of Fetal Tissue Remains

Texas's requirements regarding disposition of embryonic and fetal tissue remains is the only law that applies to both miscarriage procedures where there is no cardiac activity and abortion procedures. As of July 2022 (when a court order blocking the law was lifted), all embryonic and fetal tissue remains removed from a patient's body by a medical professional must be disposed either by interment/burial or scattering of ashes (following cremation or incineration).[87] This requirement does not apply to vitro fertilization, medication abortion, or any process where the patient passes the pregnancy tissue outside of a medical facility, nor does it put any requirements on patients. Medical facilities are responsible for enforcing the law and violations are subject to civil penalties.[88]

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

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

THE LAWYERING PROJECT

RAD RESOURCES FOR ABORTION DELIVERY

References

[1] Tex. Health & Safety Code § 245.002(1).
[2] Tex. Health & Safety Code § 245.002(4-a). The law also states that "reasonable medical judgment in providing medical treatment" to a patient includes removing "an ectopic pregnancy" and "a dead, unborn child whose death was caused by spontaneous abortion." Tex. Health & Safety Code § 170A.0022.
[3] Tex. Health & Safety Code § 245.002(1).
[4] *See* Tex. Health & Safety Code §§ 171.201, 171.202, 171.203 (citing importance of a "fetal heartbeat" or "cardiac activity" to "unborn life").
[5] Tex. Health & Safety Code § 170A.003; Tex. Health & Safety Code § 171.048(d).
[6] Tex. Health & Safety Code §§ 245.002(1); 245.002(4-a); 170A.0022(1).
[7] Tex. Civ. Prac. & Remedies § 74.551.
[8] Tex. Health & Safety Code §§ 170A.001(a), 170A.002(a).
[9] Tex. Penal Code §§ 12.32, 12.33.
[10] Tex. Health & Safety Code § 170A.007.
[11] Tex. Health & Safety Code § 170A.005.
[12] Tex. Health & Safety Code §§ 171.201 171.203, 171.204.
[13] Tex. Health & Safety Code §§ 171.207, 171.208, 171.210, 171.211. "Damages" refers to financial penalties, while "injunction" refers to a court order prohibiting certain conduct.
[14] Alan Braid, Opinion: Why I Violated Texas's Extreme Abortion Ban, Washington Post (Sept. 18, 2021).
[15] Order, *Gomez v. Braid*, Civil Cause No. 2022CI08302 (Bexar Cty. Dist. Ct. Dec. 12, 2022), *aff'd*, No. 04-22-00829-CV (4th Ct. of Appeals Feb. 21, 2024).
[16] Tex. Health & Safety Code § 171.2011.
[17] Press Release, Briscoe Cain, State Representative Briscoe Cain Sends Cease-And-Desist Letters to Abortion Funds in Texas (Mar. 18, 2022).
[18] 1925 Tex. Crim. Stat. 1191.
[19] VERNON'S TEX. CIV. STATS. ch. 6-1/2 (page 181).
[20] *Fund Tex. Choice v. Paxton*, No. 1:22-CV-859-RP (W.D. Tex. Feb. 24, 2023), ECF No. 120 ("[T]he Court finds that the pre-*Roe* laws have been repealed by implication . . . ."); *but see Texas v. Becerra*, No. 5:22-CV-185-H, 2022 WL 3639525, at *2 (N.D. Tex. Aug. 23, 2022) (treating the pre-*Roe* ban as enforceable but noting that the trigger ban "reflects a more recent, more specific regulation of abortion and, normally, a more recent enactment governing the same subject supersedes prior enactments"). In amending the medical exception to the pre-*Roe* ban in 2025, the legislature declined to take a position on the enforceability of the ban, saying: "The Legislature makes the amendment set [to the pre-*Roe* ban] solely to clarify statutory text . . . without prejudice to, or resolution of, any question concerning any provision of [the pre-*Roe* ban," and the amendment "shall not be construed to: affirm or reject the validity or efficacy of any provision" or "affirm or reject that any provision . . . has been revived or remains or has become good law." S.B. 31, Section 17, 89(R) Leg. (Tex. 2025).
[21] Tex. Health & Safety Code § 171A.051(a).
[22] H.B. 7, 89(2) Leg. (Tex. 2025).
[23] EMTALA, 42 U.S.C. § 1395dd(a).
[24] EMTALA, 42 U.S.C. § 1395dd(e)(1)(A).
[25] EMTALA, 42 U.S.C. § 1395dd(e)(1)(B).
[26] EMTALA, 42 U.S.C. § 1395dd(b)(1)(A).
[27] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[28] EMTALA, 42 U.S.C. § 1395dd(b)(2).
[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] 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.

[33] Kennedy Letter.

[34] Kennedy Letter.

[35] *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.).

[36] Center for Reproductive Rights, *Complaints Against Texas Hospitals for Denying Emergency Care for Ectopic Pregnancies*, (updated May 8, 2025).

[37] *St. Luke's Health System, LTD. v. Labrador*, No. 1:25-cv-00015, ECF No. 1 (D. Idaho Jan 14, 2025).

[38] *St. Luke's Health System, LTD v. Labrador*, No. 1:25-cv-00015, ECF No. 49 at 59 (D. Idaho Mar. 20, 2025).

[39] *United States v. Idaho*, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022).

[40] *Moyle v. United States*, 144 S. Ct. 2015 (June 27, 2024) (per curiam).

[41] *Idaho v. United States*, No. 1:22-cv-00329, ECF No. 182 (D. Idaho Mar. 5, 2025).

[42] *Becerra v. Texas*, No. 23-1076 (U.S. Oct. 7, 2024) (denying certiorari).

[43] *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).

[44] 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.

[45] Tex. Health & Safety Code §§ 170A.002(b); 171.002(3); 171.205. The exception also requires that "the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create: (A) a greater risk of the pregnant female's death; or (B) a serious risk of substantial impairment of a major bodily function of the pregnant female."

[46] Tex. Health & Safety Code § 170A.001(4).

[47] 22 Tex. Admin. Code § 165.7(4); Tex. Labor Code § 21.002(11-a); *see also* Americans with Disabilities Act, 42 U.S.C. § 12102(2)(B); 29 C.F.R. § 1630.2(i)(1)(ii).

[48] Tex. Health & Safety Code § 170A.002(c): "A physician may not" provide an abortion "if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by [the medical exception] arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function."

[49] Tex. Health & Safety Code § 170A.002(c-1), (c-2).

[50] Tex. Health & Safety Code § 170A.0021(c).

[51] H.B. 3058, 88(R) Leg. (Tex. 2023), *previously codified at* Tex. Civ. Prac. & Remedies Code §§ 74.551, 74.552, Tex. Occ. Code § 164.055(c), & Tex. Penal Code § 9.35, *repealed by* S.B. 31, Section 17, 89(R) Leg. (Tex. 2025). 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, like an exception. Thus, an affirmative defense is less protective of a physician than an exception.

[52] S.B. 31, Section 18, 89(R) Leg. (Tex. 2025).

[53] 22 Tex. Admin. Code § 165.8(d).

[54] *Texas v. Zurawski*, No. 23-0629 (Tex. May 31, 2024); *In re State of Texas*, No. 23-0994 (Tex. Dec. 11, 2023) (per curiam).

[55] S.B. 31, Section 15, 89(R) Leg. (Tex. 2025).
[56] *Texas v. Zurawski*, No. 23-0629 (Tex. May 31, 2024) (Busby, J., & Lehrmann, J., concurring).
[57] *Texas v. Zurawski*, No. 23-0629 (Tex. May 31, 2024) (Lehrmann, J., concurring).
[58] Letter from Bryan Hughes to Executive Director Brint Carlton (August 4, 2022).
[59] Tex. Health & Safety Code § 171.0124.
[60] Tex. Family Code §§ 33.002, 33.0022; Tex. Occ. Code § 164.052.
[61] Tex. Health & Safety Code § 171.152(a).
[62] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).
[63] 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/.
[64] Tex. Civ. Practices & Remedies Code § 74.001 *et seq.*
[65] Accreditation Council for Graduate Med. Educ., *ACGME Program Requirements for Graduate Medical Education in Obstetrics and Gynecology* (Sept. 3, 2025).
[66] 42 U.S.C. § 238n.
[67] 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.
68 Tex. Health & Safety Code §§ 171.008, 171.205.
[69] 22 Tex. Admin. Code § 165.8(b).
[70]Tex. Health & Safety Code § 245.011(c)(10), (11); 25 Tex. Admin. Code § 139.5; https://txrules.elaws.us/rule/title25_chapter139_sec.139.5; ITOP reporting form available at https://txhhs.force.com/c/itop_reporting.app?view=form&formType=iarf.
[71] Jessica Valenti, *Texas is Fabricating Abortion Data*, Abortion Every Day (May 4, 2023).
[72] Tex. Health & Safety Code 171.006; 25 Tex. Admin. Code § 139.2; 25 Tex. Admin. Code § 139.5; Texas Health & Human Services, GL 21-2006-A: Health Facility Compliance Guidance (revised Nov. 30, 2022); U.S. Food & Drug Admin., Form FDA 3500; Complication reporting form available at https://txhhs.force.com/c/itop_reporting.app?view=form&formType=acr.
[73] Tex. Health & Safety Code §§ 193.002, .003.
[74] Tex. Health & Safety Code § 674.001(2); 25 Tex. Admin. Code § 181.7(a).
[75] 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.
[76] Tex. Family Code §§ 33.008, 33.0085, 33.009.
[77] 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).
[78] 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.
[79] 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.

[80] 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.

[81] 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.

[82] 1925 Tex. Crim. Stat. 1192.

[83] *Fund Tex. Choice v. Paxton*, No. 1:22-CV-859-RP (W.D. Tex. Feb. 24, 2023), ECF No. 120.

[84] Tex. Health & Safety Code § 171.061(2).

[85] Tex. Health & Safety Code § 171.063.

[86] Tex. Health & Safety Code §§ 171.064, 171.065.

[87] Tex. Health & Safety Code §§ 697.002, 697.003, 697.004.

[88] Tex. Health & Safety Code § 697.007, 697.008; 26 Tex. Admin. Code §§ 512.3; 512.4; 512.5; 512.6; 512.7; 512.8.