ABORTION DEFENSE NETWORK

WEST VIRGINIA

Know Your State's Abortion Laws

A Guide for Medical Professionals

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 2025

Key Takeaways

Providing contraception, including emergency contraception, is legal.

Providing medical care for a missed miscarriage, an incomplete miscarriage, or a molar pregnancy is legal.

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

Abortion is prohibited under West Virginia law unless:

(1) the fetus has a “lethal anomaly which renders it incompatible with life outside of the uterus;” or

(2) the pregnancy is ectopic; or

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

(4) up to 8 weeks (most adults) or 14 weeks (minors & certain vulnerable adults) if the pregnancy is the result of sexual assault or incest.

Last updated December 2025

Definition of Abortion & Contraception

ABORTION

West Virgina law defines abortion as "the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to cause the death and expulsion or removal of an embryo or a fetus."[1]

The legal meaning of abortion in West Virginia explicitly excludes "miscarriage," defined as "the unintended or spontaneous loss of an embryo or a fetus before the 20th week of pregnancy;" nor does it include "intrauterine fetal demise" or "stillbirth," defined to mean the unintended or spontaneous loss of a fetus after the 19th week of pregnancy." [2]

West Virginia's abortion ban does not define what constitutes the "loss" of an embryo or fetus in this statutory section. West Virginia law elsewhere defines "fetal death" to mean "death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. . . such death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles."[3] As a result, treating a missed miscarriage, an incomplete miscarriage, or a molar pregnancy is not considered providing an abortion under West Virginia law and is not prohibited.[4]

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 fetal cardiac activity or the patient needs care that would fall within one of the exceptions to West Virginia's abortion ban. There is not an explicit crime of self-managed abortion in West Virginia law, and no civil law prohibiting a person from self-managing an abortion.

CONTRACEPTION

Contraception is not illegal in any state in the country. West Virginia law defines "contraceptive" to mean "the prevention of pregnancy by interfering with the process of ovulation, fertilization, or implantation."[5] West Virginia's abortion ban specifies that it does not "prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines, or drugs for a patient who is not known to be pregnant" when provided "solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy."[6]

West Virginia law does not specifically define "emergency contraception." Prior to a "known" pregnancy, emergency contraceptives are not prohibited under West Virginia's abortion ban.[7] West Virginia Medicaid requires a prescription for over-the-counter emergency contraception if Medicaid is to be the payer.[8]

Abortion Ban

Total Ban: In the aftermath of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* overturning *Roe v. Wade*, the West Virginia Legislature enacted a total abortion ban, which it began enforcing on September 13, 2022.[9] The total ban prohibits performing or attempting to perform an abortion at any gestational age, with limited exceptions (explained in greater detail below).[10]

It is not a violation of West Virginia's total ban if a licensed physician provides medical treatment to a pregnant person "that results in the accidental or unintentional injury or death of an embryo or a

fetus."[11]

Providing an abortion with the intent to violate the total ban is subject to civil penalties in the form of loss of medical license.[12] If a medical professional's license is revoked pursuant to the ban and "knowingly and willfully performs, induces, or attempts to perform or induce a subsequent abortion," it is a felony offense subject to up to 10 years imprisonment.[13] It is also a felony for any other "person" to induce or attempt to induce an abortion.[14] The law explicitly provides that people who obtain abortions for themselves will not face criminal charges under West Virginia's total ban.[15]

An abortion clinic and a local abortion provider challenged the ban in a West Virginia federal district court, but voluntarily dismissed the lawsuit in April 2023.[16]

The West Virginia Legislature enacted a new provision to the ban in 2023, which established that if the state's total ban was ever determined to be unconstitutional, numerous of the state's dormant abortion restrictions would all take effect.[17]

Other Bans and Restrictions: West Virginia law also prohibits intact dilation and evacuation ("intact D&E") procedures (sometimes called D&X procedures)[18] and the provision of medication abortion by telemedicine.[19] West Virginia's other abortion restrictions include a physician-only requirement[20] and hospital-only requirement.[21] Additionally, a medical professional generally cannot perform an abortion on an unemancipated person under the age of 18 without notifying a parent, legal guardian, or custodian.[22]

The state prohibits public funding for abortions, including reimbursement to providers from West Virginia Medicaid, unless they are performed under an exception to the ban (discussed in more detail below).[23]

Exceptions to Ban

Miscarriage Management: As stated above, West Virginia law excludes miscarriages and stillbirths in its legal definition of "abortion," and thus providing medical treatment in these circumstances is not prohibited under West Virginia's abortion ban.

West Virginia also provides several explicit exceptions to its abortion ban, including allowing abortions for medically nonviable pregnancies, ectopic pregnancies, and in medical emergencies. West Virginia also has a limited exception for terminating pregnancies which are the result of sexual assault or incest, with differing restrictions and requirements for minor and adult pregnant patients.[24]

NONVIABLE PREGNANCIES & MEDICAL EMERGENCIES

West Virginia's abortion ban provides that an abortion may be attempted or performed when "in the reasonable medical judgment of a licensed medical professional: (1) The embryo or fetus is nonviable; (2) The pregnancy is ectopic; or (3) A medical emergency exists."[25] West Virginia defines "reasonable medical judgment" as a medical judgment "that would be made by a licensed medical professional who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved."[26]

Nonviable Embryo or Fetus: West Virginia law defines "nonviable" to mean "an embryo or a fetus has a lethal anomaly which renders it incompatible with life outside of the uterus."[27]

Ectopic Pregnancy: West Virginia law defines "ectopic" to mean "a fertilized egg which is developing outside the uterus, or a fertilized egg is developing within parts of the uterus where it cannot be viable, including a cervical, cornual, or cesarean section scar implantations."[28]

"Medical Emergency": West Virginia law defines a "medical emergency" to mean " a condition or circumstance that so complicates the medical condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or serious risk of substantial life-threatening physical impairment of a major bodily function."[29] Under this law, a "medical emergency" does not include "psychological or emotional conditions."

West Virginia law specifically provides that the medical emergency exception does not apply if the provider's determination that the pregnant person is at serious risk is based on "a claim or diagnosis that the patient intends or may engage in conduct which results in the patient's death or in substantial and irreversible physical impairment of a major bodily function."[30] Thus, the provider may not lawfully provide an abortion under this exception if the pregnant person's physical health is at serious risk from suicide or self-harm.

While not affecting the legality of performing such an abortion, West Virginia Medicaid defines a medical emergency more narrowly for insurance reimbursement purposes and requires "that an independent physician concurs with the physician's clinical judgment."[31]

Additional Requirements for Young People: When an abortion is performed under one of these three exceptions on an unemancipated minor, the provider or their agent must provide notice within 48 hours to the young person's parent, guardian, or custodian.[32] West Virginia law does not provide an explicit path for a young person to object to this notification.[33]

SEXUAL ASSAULT OR INCEST

West Virginia law also provides a limited exception to the state's total ban to terminate a pregnancy that is "the result of sexual assault . . . or incest."[34] There is a different gestational limit and additional requirements for abortion provided to young people.

8-Week Limit for Most Adults: A provider can lawfully treat an adult patient with an abortion within the first 8 weeks of a pregnancy resulting from sexual assault or incest, provided that the patient reported the sexual assault or incest to an appropriate law enforcement agency "at least 48 hours prior to the abortion" and provided this report to the abortion provider.[35]

14-Week Limit for Minors & Certain Adults: For a patient who is a minor or "an incompetent or incapacitated adult," the gestational limit for an abortion under the sexual assault or incest exception is increased to the "first 14 weeks of pregnancy."[36] Young people and incapacitated adults must either wait 48 hours after making a report to law enforcement as described for adults above, *or* they can obtain an abortion without having filed a report with law enforcement if at least 48 hours prior to the abortion they "obtained medical treatment for the sexual assault or incest or any injury related to the sexual assault or incest from a licensed medical professional or in a hospital," provided that the initial treating hospital or professional cannot perform or provide the abortion.[37]

Additionally, an abortion cannot be provided to an unemancipated minor until 48 hours after notice is provided to or waived in writing by the parent, guardian, or custodian of the young person, unless the young person petitions for and obtains a waiver from the circuit court of the county in which the young person resides.[38]

Other Legal Requirements: West Virginia's exceptions to the total abortion ban do not include explicit exceptions to the state's other restrictions considered above, including the intact D&E ban.[39] Currently, providers do not need to obtain informed consent on any specific form or provide biased counseling prior to performing an abortion under

one of the exceptions.[40] Additional certifications may be required, however, for insurance billing purposes.[41]

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.[42] 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."[43] 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."[44]

EMTALA requires stabilizing medical treatment be provided to any individual experiencing an emergency medical condition,[45] including people in labor or with emergency pregnancy complications,[46] unless the individual refuses to consent to such treatment.[47] 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."[48] 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.[49] 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."[50]

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.[51]

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."[52] 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."[53] 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."[54] 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.[55]

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.[56] 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]."[57] 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.[58] 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.[59] Following the change of presidential administrations, the United States dismissed that case entirely. [60]

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.[61] As a result, the Fifth Circuit's decision is final.[62,63]

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.[64]

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.[65]

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.[66]

Resident Training: The Accreditation Council for Graduate Medical Education ("ACGME") requires that accredited programs provide access to training in the provision of abortion.[67] 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.[68]

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.[69]

Abortion Reporting: "Any abortion performed or induced in [West Virginia]" under the nonviability, medical emergency, and sexual assault or incest exceptions must be reported on a state-prepared form.[70] Medical treatment of a miscarriage, ectopic pregnancy, or stillbirth does not need to be reported.[71]

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.

Fetal Death Reporting: West Virginia law requires a fetal death report to be filed within five days for "[e]ach fetal death of three hundred fifty grams or more," or if the weight is unknown, of a fetus at least 20 weeks gestational age, that were not the result of an "induced termination of pregnancy."[72] Thus, a provider does not need to complete a fetal death report for a miscarriage unless the fetus weighs 350 grams or more.

Other Mandatory Reporting: All other general mandatory reporting also applies to abortion providers.[73] This includes reporting of child abuse, including sexual abuse of young people, and vulnerable adult abuse.[74] Any adult must report suspected child abuse or neglect to the West Virginia Department of Health and Human Services within 24 hours.[75]

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.[76] 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.[77, 78]

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.[79] 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.[80]

Counseling & Referral

Speech about abortion is legal in West Virginia. Medical professionals in West Virginia can thus (1) provide accurate options counseling, including about abortion; (2) refer patients to medical providers in states where abortion is legal; and (3) refer patients to medical providers in West Virginia for abortion care that is lawful in West Virginia pursuant to the abortion ban's exceptions.

Medication Abortion

Almost all of the requirements discussed in this document apply to both procedural and medication abortion. While some states have additional laws that apply specifically to medication abortion, West Virginia only has a telehealth restriction currently in effect.[81] West Virginia law prohibits "prescribing or dispensing an abortifacient" via telehealth.[82] It defines an "abortifacient" as "any chemical or drug

prescribed or dispensed with the intent of causing an abortion."[83]

If an abortion is permissible under the total ban's exceptions, abortion medications may be prescribed or dispensed by a medical professional, provided such medications are not prescribed or dispensed via telehealth.[84]

Disposition of Fetal Tissue Remains

West Virginia law requires the person or institution assuming responsibility for disposition of a dead fetus, "irrespective of the duration of pregnancy," to obtain written authorization from one parent prior to final disposition.[85] Thus, while a fetal death report may not be required for a miscarriage depending on the weight or age of the fetus, authorization prior to disposition is required for all miscarriages. An institution also must maintain certain records whenever it releases or disposes of fetal tissue remains.[86]

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).

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References

[1] W. VA. CODE § 16-2R-2. "Pregnancy" means "the period of gestation after which a fertilized egg has implanted in the wall of a uterus." *Id.*

[2] W. VA. CODE § 16-2R-4; *id.* § 16-2R-2.

[3] W. VA. CODE § 16-5-1(7).

[4] *See also* W. VA. CODE § 16-2R-4.

[5] *Id.* § 16-2R-2.

[6] *Id.* §16-2R-4(b); *see also id.* § 16-58-6 (requiring pharmacists who dispense self-administrated hormonal contraceptives to follow certain guidelines); *id.* § 33-16E-4 (parity in health insurance plans for FDA-approved "contraceptive drug or prescription contraceptive device" required).

[7] *See id.* § 16-2R-4(b).

[8] Bureau for Med. Servs., Provider Manual: Reproductive Health Services, 519.15.3.

[9] H.B. 302, 2022 Third Extraordinary Session (effective Sept. 13, 2022). Following *Dobbs*, but prior to the enactment of the state's total ban, West Virginia officials claimed the state's 1849 pre-*Roe* criminal abortion ban—West Virginia Code §

61-2-8—was in effect. ("On June 29, 2022, Defendant [Attorney General] Morrisey then issued a memorandum addressing "the consequences" of Dobbs "for West Virginia law," in which he wrote that the Criminal Abortion Ban "would … benefit from the Legislature's further attention," including because "courts might find that earlier enactments were impliedly repealed," and "strongly advised" the Legislature "to amend the laws in our State to provide for clear prohibitions on abortion that are consistent with Dobbs.") *Women's Health Ctr. of West Virginia v. Miller*, No. 22-C-556, at 24 (W. Va. Cir. Ct. Jul. 20, 2022). However, providers challenged the ban, and a state court granted a preliminary injunction, preventing enforcement of the pre-*Roe* ban. *Id.* The total ban enacted in 2022 explicitly repealed the 1800s criminal abortion ban.

[10] H.B. 302, 2022 West Virginia Laws 3rd Ex. Sess. Ch. 1 (enacted Sept. 13, 2022). "'Attempt to perform or induce an abortion' means an act or the omission of an act that, under the circumstances as the person so acting or omitting to act believes them to be, constitutes a substantial step in a course of conduct intended to culminate in an abortion." W. VA. CODE § 16-2R-2.

[11] W. VA. CODE § 16-2R-4(a)(4).

[12] W. VA. CODE § 16-2R-7.

[13] W. VA. CODE § 61-2-8(b). Additionally, for purposes of several enumerated crimes under West Virginia criminal code, the pregnant person and fetus are considered "separate and distinct victims." *Id.* § 61-2-30(c). However, the law has explicit exceptions for "[a]cts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law," as well as "[a]cts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing or fertility treatment." *Id.* § 61-2-30(d).

[14] It is a felony offense subject to three to ten years imprisonment for "[a]ny person other than a licensed medical professional," to "knowingly and willfully perform, induce, or attempt to perform or induce an abortion, as defined in §16-2R-2 of this code." W. VA. CODE § 61-2-8(a).

[15] W. VA. CODE § 61-2-8(c).

[16] *See* Complaint, *Women's Health Center of West Virginia v. Sheth*, No. 2:23-cv-00079 (D. Ct. W. Va. Feb. 1, 2023). The physicians who previously worked at the clinic were not able to resume providing abortion care in West Virginia, and the plaintiffs voluntarily dismissed the case. *See* ACLU, *Women's Health Center of West Virginia v. Sheth*, https://www.aclu.org/cases/womens-health-center-of-west-virginia-v-sheth (last accessed Dec. 9, 2025).

[17] W. VA. CODE § 16-2R-9 (identifying the following provisions of West Virginia law which would become effective: § 16-2F-1 *et seq.* (parental notification); § 16-2I-1 *et seq.* (biased counseling, informed consent, ultrasound requirement), § 16-2M-1 *et seq.* (20-week gestational age ban), § 16-2O-1 (D&C and D&E prohibition), §16-2P-1 ("born alive" requirements), § 16-2Q-1 (abortions sought because of a disability diagnosis), and § 33-42-8 (intact D&E prohibition)).

[18] W. VA. CODE § 16-2R-3(e); W. VA. CODE § 16-2R-2 ("'Partial-birth abortion' means an abortion performed on a live fetus after partial vaginal delivery."). W. VA. CODE § 16-2R-8 also contains "born alive" protections requiring abortion providers to "[e]xercise the same degree of reasonable medical judgment to preserve the life and health of the child in the same manner as the licensed medical professional would render to any child alive at birth of the same gestational age" and provide an appropriate transfer if a "child is born alive" following an attempted abortion. "Born alive" is defined to mean "the complete expulsion or extraction of the fetus, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion." *Id.* § 16-2R-2.

[19] W. VA. CODE § 30-1-26(b)(9); W. VA. CODE § 30-3-13a(g)(5); W. VA. CODE § 30-14-12d(g)(5); W. VA. CODE R. § 11-15-8.4 (physician and physician assistant prescribing limitations).

[20] W. VA. CODE § 16-2R-3(g); *see also* § 61-2-8(a) ("Any person other than a licensed medical professional . . . who knowingly and willfully performs, induces, or attempts to perform or induce an abortion . . . is guilty of a felony" and can receive a maximum 10-year sentence).

[21] W. VA. CODE § 16-2R-3(d), (g).

[22] W. VA. CODE § 16-2R-5.

[23] W. VA. CODE § 9-2-11; Bureau for Med. Servs., Provider Manual: Women's Health Services, 519.19.4 (Sept. 13, 2022).

[24] W. VA. CODE § 16-2R-3(b)–(c).

[25] W. VA. CODE § 16-2R-3(a).

[26] W. VA. CODE §16-2R-2.
[27] W. VA. CODE §16-2R-2. In 2023, most abortions performed in West Virginia were reportedly conducted under this exception. W. Va. Dep't of Health & Hum. Servs., Induced Termination of Pregnancy (ITOP) Report Quarter 4: October-December 2023.
[28] W. VA. CODE §16-2R-2.
[29] W. VA. CODE § 16-2R-2.
[30] W. VA. CODE § 16-2R-2.
[31] W. Va. Dep't of Health & Hum. Servs., Bureau for Med. Servs., Provider Manual: Women's Health Services, 519.19.4 (providers can be reimbursed for pregnancy terminations, "[i]f, on the basis of the physician's best clinical judgment, there is a medical emergency that so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a delay will create grave peril of irreversible loss of major bodily function or an equivalent injury to the mother: Provided, that an independent physician concurs with the physician's clinical judgment.").
[32] W. VA. CODE § 16-2R-5(a).
[33] West Virginia law provides an explicit route for a young person to object to parental notification in the event the unemancipated minor is seeking an abortion under the rape and/or incest exception; the young person can seek a waiver from the circuit court in the county in which they reside. *Id.* § 16-2R-5(b)(4). No such explicit exception is provided for an abortion performed on a young person subject to the exceptions for non-viability, ectopic pregnancies, and medical emergencies.
[34] W. VA. CODE § 16-2R-3(b). These terms are defined according to state law. *See id.* § 61-8B-1 *et seq.* (sexual assault); *id.* § 61-8-12 (incest).
[35] W. VA. CODE § 16-2R-3(b).
[36] *Id.* § 16-2R-3(c).
[37] *Id.* West Virginia's abortion ban requires reports of sexual assault or incest against minors made to law enforcement under subsection (c) to be reported to the Child Abuse and Neglect Investigations Unit of the West Virginia State Police within 48 hours. *Id.* § 16-2R-3(d). A medical professional is not required under the abortion ban to make such a report; however, as addressed in the Documentation & Reporting section of this fact sheet, a medical professional may have obligations under generally applicable mandatory reporting laws. *See* W. VA. CODE § 49-2-803 ("Any medical . . . professional . . . who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services.").
[38] W. VA. CODE § 16-2R-5(b).
[39] *See* W. VA. CODE § 16-2R-3(e) ("An abortion performed pursuant to this section may not use the partial birth abortion procedure."). However, West Virginia's older (and currently ineffective) prohibition on intact D&Es included an explicit exception where such an abortion is "necessary to save the life of a mother when her life is endangered by a physical disorder, illness or injury." W. VA. CODE § 33-42-8.
[40] The "Women's Right to Know Act" is codified at W. VA. CODE § 16-2I-1 *et seq.* This Act required certain biased counseling and informed consent procedures prior to the provision of an abortion. However, this article is of no force or effect unless any provision of the total ban is determined to be unconstitutional. W. VA. CODE § 16-2I-9. Additionally, while the West Virginia Senate passed a bill in February 2024 that would amend the state's total abortion ban to require certain biased counseling and ultrasound requirements prior to the performance of a lawful abortion, the bill did not pass the West Virginia House during the 2024 legislative session. S.B. 352, 2024 Leg., Reg. Sess. (W. Va. 2024).
[41] For example, West Virginia Medicaid requires certification by the physician that an abortion was performed lawfully under an exception to the abortion ban for reimbursement. Bureau for Med. Servs., Provider Manual: Women's Health Services, 519.19.4 (Sept. 13, 2022) ("When the provisions in W.Va. Code §9-2-11 have been met, certification by the physician is required for payment. All related services, including informed consent and the Physician Certification for Pregnancy Termination Form, must be completed before termination services are provided.").
[42] EMTALA, 42 U.S.C. § 1395dd(a).
[43] EMTALA, 42 U.S.C. § 1395dd(e)(1)(A).

[44] EMTALA, 42 U.S.C. § 1395dd(e)(1)(B).
[45] EMTALA, 42 U.S.C. § 1395dd(b)(1)(A).
[46] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[47] EMTALA, 42 U.S.C. § 1395dd(b)(2).
[48] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).
[49] 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).
[50] EMTALA, 42 U.S.C. § 1395dd(c)(1)(B)–-(c)(2)(A).
[51] 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.
[52] Kennedy Letter.
[53] Kennedy Letter.
[54] 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.).
[55] Center for Reproductive Rights, Complaints Against Texas Hospitals for Denying Emergency Care for Ectopic Pregnancies, (updated Nov. 24, 2025).
[56] St. Luke's Health System, LTD. v. Labrador, No. 1:25-cv-00015, ECF No. 1 (D. Idaho Jan 14, 2025).
[57] St. Luke's Health System, LTD v. Labrador, No. 1:25-cv-00015, ECF No. 49 at 59 (D. Idaho Mar. 20, 2025).
[58] United States v. Idaho, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022).
[59] Moyle v. United States, 144 S. Ct. 2015 (June 27, 2024) (per curiam).
[60] Idaho v. United States, No. 1:22-cv-00329, ECF No. 182 (D. Idaho Mar. 5, 2025).
[61] Becerra v. Texas, No. 23-1076 (U.S. Oct. 7, 2024) (denying certiorari).
[62] 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).
[63] 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.
[64] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).
[65] 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/.
[66] *See* W. VA. § 55-7B-1 *et seq.*
[67] Accreditation Council for Graduate Med. Educ., *ACGME Program Requirements for Graduate Medical Education in Obstetrics*

and Gynecology (eff. Sept. 3, 2025).
[68] 42 U.S.C. § 238n.
[69] 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.
[70] W. VA. CODE § 16-2R-6; W. VA. CODE § 16-5-22; *see also* W. VA. CODE R. § 64-32-9 (Disposition of Reports of Fetal Death and Induced Termination of Pregnancy).
[71] W. VA. CODE § 16-2R-4(a); W. VA. CODE § 16-5-22(a) (requiring "[e]ach abortion, as defined in §16-2R-2," to be reported); W. VA. CODE § 16-5-22(d) ("The provisions of this section do not apply to an termination of an ectopic pregnancy.").
[72] W. VA. CODE § 16-5-21(a). "Fetal death" under West Virginia law means "death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy, such death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles." W. VA. CODE § 16-5-1(7).
[73] 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.
[74] W. VA. CODE § 49-2-803(a) ("Any medical . . . professional . . . who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services."); W. VA. CODE § 9-6-11 (reporting for suspected abused, neglect, or financial exploitation of vulnerable adults).
[75] W. VA. CODE § 49-2-803(a).
[76] 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).
[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] 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.
[79] 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.
[80] 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.

[81] Before West Virginia's 2022 total ban took effect, the state had a biased counseling requirement prior to prescribing mifepristone, and it required healthcare providers to obtain "informed consent" at least 24 hours prior to the patient taking mifepristone, including a signed form from the patient. *See* W. VA. CODE § 16-2I-2. The waiting period and counseling requirement have "no[] effect[]" while the 2022 total ban is in force but become "immediately" operational if the statute is struck down. *Id.* § 16-2R-9. Additionally, note that there are further restrictions placed on medication abortions to be eligible for reimbursement from West Virginia Medicaid. Bureau for Med. Servs., Provider Manual: Women's Health Services, 519.19.4 (Sept. 13, 2022).

[82] W. VA. CODE § 30-1-26(a)–(b); *see also* W. VA. CODE R. § 24-10-8.4; W. VA. CODE R. § 11-15-8.4.

[83] W. VA. CODE § 30-1-26(a).

[84] In January 2023, a pharmaceutical manufacturer filed a lawsuit in the federal district court for the Southern District of West Virginia alleging that West Virginia's abortion ban, which effectively bans the sale of mifepristone in the state, conflicts with the Food and Drug Administration's federal approval of the drug. *GenBioPro, Inc. v. Sorsaia et al*, No. 23-00058 (S.D.W. Va. Jan. 25, 2023). The challenge was dismissed, and the dismissal was reviewed and affirmed by the Fourth Circuit Court of Appeals. *GenBioPro, Inc. v. Raynes et al*, 144 F.4th 258 (4th Cir. 2025).

[85] W. VA. CODE § 16-5-23(b); *see also* W. VA. CODE § 16-5-30 (fetal remains disposition records must be maintained for at three years); W. VA. CODE R. § 64-32-10.1.a.

[86] W. VA. CODE § 16-5-30.