

# 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.

KANSAS

# Key Takeaways

Providing contraception, including emergency contraception, is legal.

Providing medical care for ectopic pregnancies and pregnancies with no cardiac activity is legal.

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

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

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

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

## State Constitutional Protection for Abortion

In 2019, the Kansas Supreme Court held that the state constitution protects the right to personal autonomy, and that this right allows each person to make their own decision regarding whether to continue a pregnancy.<sup>1</sup> Based on this ruling, under the Kansas Constitution, abortion restrictions are reviewed by courts under the highest level of scrutiny.<sup>2</sup>

## Definition of Abortion & Contraception

### ABORTION

Kansas law defines abortion as “the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.”<sup>3</sup>

The term “dead unborn child” is undefined for purposes of the exclusion for removing a “dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child.” It is generally understood, however, that the term “dead” means that there is no cardiac activity present.<sup>4</sup> Looking at the definition of abortion and this exception together, this means that:

- If there is no fetal cardiac activity and the fetus has not died of unnatural causes, accidental trauma, or a criminal assault on the pregnant

person or fetus, the provider can provide miscarriage care, including medications, D&C, intact D&E, and labor induction, and does not need to comply with Kansas’s abortion restrictions. Kansas law does not contain specific legal requirements for miscarriage care.

- If there is fetal cardiac activity and the patient is less than 22 weeks LMP (after which point abortion is prohibited in Kansas), the provider can provide an abortion, complying with all applicable abortion restrictions.
- If there is fetal cardiac activity and the patient is over 22 weeks LMP, one of the exceptions to the 22-week LMP abortion ban must apply for the provider to provide abortion care (explained below).

Kansas’s definition of abortion does not explicitly exclude the removal of ectopic pregnancies.<sup>5</sup> However, a 2022 Kansas Attorney General opinion found that “the best conclusion under the Kansas statutes generally addressing abortion is that the termination of an ectopic pregnancy does not constitute an abortion.”<sup>6</sup> The opinion also stated that “even if the termination of an ectopic pregnancy were considered an abortion, Kansas laws governing abortion consistently make exceptions for abortions that are necessary to preserve the life of the mother,” noting that ectopic pregnancies are a threat to the pregnant person’s life. Kansas Attorney General opinions are advisory, meaning enforcement authorities are not bound to follow them. Additionally, in 2023, the Kansas legislature passed a bill that changed the definition of abortion to specifically exclude the removal of ectopic pregnancies.<sup>7</sup> The bill that includes this definition is currently enjoined, meaning this definition is not in effect while the litigation proceeds, but gives an indication that the legislature does not consider ectopic pregnancies to be abortions.<sup>8</sup>

With respect to self-managed abortion, Kansas does not have a criminal prohibition on self-managed abortion, and Kansas's abortion bans specifically exempt the pregnant person from prosecution for conspiracy to violate the bans.<sup>9</sup>

## CONTRACEPTION

Contraception is not illegal in any state, including Kansas, which explicitly permits the use of contraception, and bars the state from prohibiting the use of contraception.<sup>10</sup>

## Abortion Bans

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

**22 week ban:** Kansas bans abortion after 22 weeks gestation, defined as the time elapsed since the first day of the person's last menstrual period (more commonly referred to as "LMP").<sup>11</sup> The penalties for violating the 22 week ban are: (1) criminal: a person misdemeanor for a first conviction, and a "severity level 10, person felony" for subsequent convictions; (2) civil: the patient, father of the fetus if married to the patient at the time of the abortion, and parents or guardian of the patient if under 18, may bring a civil action and seek damages; and (3) professional: violating the ban is considered unprofessional conduct by the Kansas Board of Healing Arts.<sup>12</sup> The pregnant person is specifically excluded from criminal prosecution "for conspiracy to violate" the ban.<sup>13</sup>

**Viability ban:** Kansas has a separate law that bans abortion after viability.<sup>14</sup> Viability is defined as "that

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

**Other bans:** Kansas has three other abortion bans that are not based on gestational age:

- A ban against providing abortion if the reason for the abortion is based on the sex of the fetus. This applies at any gestational age.<sup>18</sup>
- A ban on dilation and evacuation ("D&E") (referred to in the law as "dismemberment") procedures.<sup>19</sup> This ban is enjoined, but the state has appealed the injunction to the Kansas Supreme Court.<sup>20</sup> The court held oral argument on March 27, 2023 and has not yet issued a ruling.
- A ban on intact D&E (sometimes called D&X) procedures. Kansas law refers to intact D&E as "partial-birth abortion."<sup>21</sup>

## Exceptions to Abortion Bans

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

**Life and Health:** Both the 22 week and viability bans allow abortion if: (1) the abortion is "necessary to preserve the life" of the patient or (2) continuing the pregnancy "will cause a substantial and irreversible physical impairment of a major bodily function" of the patient.<sup>22</sup> The definition of bodily function includes physical functions only; it specifically excludes mental and emotional

functions.<sup>23</sup> Before a physician provides an abortion based on the life and health exceptions, they must obtain a documented referral from another physician with whom they are not legally or financially affiliated.<sup>24</sup>

Both bans require that, for all abortions, the physician determine the gestational age of the fetus.<sup>25</sup> If the gestational age is 22 weeks or more, the physician must determine whether the fetus is viable.<sup>26</sup> Both the physician referral and gestational age determination requirements require certain documentation, which is discussed in the “Documentation and Reporting” section of this document.

Note that unless the patient is experiencing what the law defines as a “medical emergency” (see below), physicians providing abortion care under the life and health exceptions must still comply with Kansas’s other abortion restrictions. While not the focus of this document, these include: counseling requirements specific to young people,<sup>27</sup> obtaining either parental consent or a judicial bypass for a young person under 18 prior to their abortion,<sup>28</sup> and limitations on public funding for and private insurance coverage of abortion.<sup>29</sup> Kansas also has a 24 hour waiting period and mandatory counseling requirements for all patients, but these are preliminarily enjoined.<sup>30</sup>

**Medical Emergency Exception to Certain Requirements:** Some, but not all, abortions that qualify for the life and health exception above will also be considered a “medical emergency.” While providers still need to obtain a documented referral from another physician with whom they are not legally or financially affiliated for abortions at 22 weeks LMP or later,<sup>31</sup> if a pregnant person is experiencing a “medical emergency” at any gestational age, the provider does not need to comply with certain requirements prior to the abortion. Kansas law defines a medical emergency as

“a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function.”<sup>32</sup> Unlike the life and health exceptions to the abortion bans set out above, the medical emergency exception only applies when an “immediate” abortion is necessary.

Although not listed in the law itself, the State of Kansas has agreed—in a joint stipulation in the course of litigation—that the term “medical emergency” includes but is not limited to: preeclampsia with gestational age under 22 weeks; premature rupture of membranes with chorioamnionitis; ectopic pregnancy; placental abruption (Class 2 or 3); and inevitable abortion.<sup>33</sup> The term “medical emergency” is defined in a few places in the Kansas abortion statutes; although the joint stipulation only explicitly applies to one of those definitions,<sup>34</sup> the other definitions are identical.<sup>35</sup>

In a medical emergency, providers do not need to comply with: the requirement that they provide patients over 22 weeks LMP with a copy of the written referral and the physician’s determination that a life or health exception applies at least 30 minutes before the abortion;<sup>36</sup> the requirement that they determine gestational age and, when applicable, whether the fetus is viable;<sup>37</sup> counseling requirements specific to young people;<sup>38</sup> parental consent and judicial bypass requirements;<sup>39</sup> and the 24 hour waiting period and counseling requirements (currently enjoined for all abortions).<sup>40</sup>

If the physician is providing an abortion based on a medical emergency, they must inform the person of the medical indications supporting their judgment, before the abortion if possible.<sup>41</sup>

## EMTALA

A federal law called the Emergency Medical Treatment & Labor Act (EMTALA) requires emergency abortion care in some cases. EMTALA requires Medicare-participating hospitals with emergency departments (which is most hospitals), to provide medical screening<sup>42</sup> and stabilizing medical treatment to patients experiencing a medical emergency condition,<sup>43</sup> including patients in labor or with emergency pregnancy complications.<sup>44</sup> Under the EMTALA statute, “to stabilize” means to provide medical treatment necessary to ensure, “within reasonable medical probability, that no material deterioration of the condition is likely.”<sup>45</sup> Patients can be transferred to a different hospital once they are stable or if certain conditions are met such as the medical benefits of transfer outweigh the increased risks to the patient. Where a hospital transfers a patient without first stabilizing them, the hospital still must provide “the medical treatment within its capacity which minimizes the risks to the individual’s health . . . .”<sup>46</sup> EMTALA defines medical emergency 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.”<sup>47</sup> For pregnant patients, the U.S. Department of Health and Human Services (“HHS”) guidance says that EMTALA includes, but is not limited to: “ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features.”<sup>48</sup>

HHS issued guidance after *Roe v. Wade* was overturned emphasizing that stabilizing treatment required by EMTALA could include abortion care if the examining physician or other qualified medical personnel determines that such treatment is required

to stabilize a patient experiencing an emergency medical condition, including a condition that is “likely or certain to become emergent without stabilizing treatment.”<sup>49</sup> The guidance reiterates that if EMTALA requires the provision of abortion care, then EMTALA trumps any state law prohibiting or restricting access to abortion.

Litigation is ongoing about the scope of EMTALA with respect to abortion. A federal district court in Idaho has held that EMTALA trumps the narrower state law that only permits abortion if the patient’s life is in danger, but the U.S. Supreme Court has blocked that decision while it considers the case, and a decision is expected in June 2024.<sup>50</sup> Meanwhile, a federal appeals court has affirmed a lower court decision that temporarily blocked federal enforcement of HHS’ guidance in Texas, but the practical effect of that ruling in Texas is unclear, as the medical emergency exception to Texas’s abortion bans purports to cover the same kind of patients as those contemplated by the EMTALA guidance.<sup>51</sup> Furthermore, HHS recently cited hospitals in Kansas, Missouri and Florida for violating EMTALA by failing to provide abortion care to a patient with preterm premature rupture of membranes (“PPROM”).<sup>52</sup>

## 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.<sup>53</sup>

### **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.<sup>54</sup>

**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.<sup>55</sup>

**Resident Training:** The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.<sup>56</sup> 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.<sup>57</sup>

## **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.<sup>58</sup>

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

**Documentation:** As mentioned above, when a physician performs an abortion in Kansas after 22 weeks under the life or health exceptions, the physician must obtain a referral from another physician with whom they are not legally or financially affiliated.<sup>59</sup> Both physicians must provide a written determination that one of the exceptions applies, which must be “based upon a medical judgment arrived at using and exercising that degree

of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved.”<sup>60</sup> The written determination must include: (1) if the fetus was determined to be nonviable; (2) if the abortion is necessary to preserve the person’s life or if continuing the pregnancy would cause a substantial and irreversible impairment of a major bodily function; and (3) the medical basis for the nonviability and health-risk determinations.<sup>61</sup> A time-stamped copy of the referral and the written determinations must be given to the pregnant person at least 30 minutes before the abortion.<sup>62</sup>

In addition to the documentation that providers must keep in all abortion patients’ records,<sup>63</sup> the records of patients over 22 weeks must contain copies of: the medical basis and reasons for the abortion, the required referral from the referring physician, and the abortion report and the “late term affidavit” of the physician who performed the abortion mentioned above.<sup>64</sup> The referring physician must also retain copies of their own “late term affidavits.”<sup>65</sup>

All of these medical records must be retained for at least 10 years.<sup>66</sup> For hospital and ambulatory surgery centers, the records of young people under 18 must be kept either 10 years or one year after the patient reaches 18, whichever is longer.<sup>67</sup>

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:** Kansas requires medical care facilities, including hospitals, to annually submit a written report to the Kansas Department of Health and Environment (KDHE) for each abortion.<sup>68</sup>

In addition to the information required to be included in all reports, reports for abortions after 22 weeks must include: whether continuing the pregnancy would cause the patient’s death or a substantial and irreversible impairment of a major bodily function; whether the fetus was viable; “a detailed, case-specific description that includes the medical diagnosis and medical basis” for those determinations; and “a medical determination that includes all applicable medical diagnosis codes from the ICD-9-CM.”<sup>69</sup>

Additionally, for abortions after 22 weeks, both the referring physician and physician providing the abortion must submit separate “late term affidavits” on forms provided by KDHE, which must be signed and notarized. The affidavits must include: the physician’s name, patient’s identification number from the patient’s medical record; a statement that the referring physician and physician providing the abortion have no legal or financial affiliation; and the date the affidavit was signed and notarized.<sup>70</sup> The affidavits must be submitted to KDHE within 15 business days of the abortion.

**Fetal Death Reporting:** Kansas law requires a stillbirth certificate to be filed with the state registrar for each stillbirth that occurs in the state. These must be filed within three days after the stillbirth and prior to removal of the body from the state.<sup>71</sup> The definition of “stillbirth” applies to fetuses that are 20 weeks LMP or greater, and specifically excludes abortion.<sup>72</sup> The certificate must be filed prior to disposal.<sup>73</sup> Kansas regulations also require that each person in charge of a clinic or hospital report to KDHE, on or before the fifth day of each month, a list of stillbirths that occurred in the institution in the previous calendar month, on a form provided by

KDHE.<sup>74</sup>

**Other Mandatory Reporting:** All other general mandatory reporting to the Kansas Department for Children and Families, local law enforcement, etc., also applies to abortion patients.<sup>75</sup> This includes child and vulnerable adult physical, sexual, or emotional abuse or neglect.<sup>76</sup> Note that if a physician makes a mandatory report for child abuse, they must note this on the abortion reporting form that they submit to KDHE for that patient.<sup>77</sup>

**Electronic Medical Records:** Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions.<sup>78</sup> While EMRs have settings that allow patients to choose how and when their records are shared, hospital systems often instead use their EMR’s default settings that widely share patient records. Though often done for continuity of care purposes, these settings may put abortion providers and patients (or patients obtaining other sensitive care) at risk, and many patients do not know their records are shared in this way.<sup>79</sup> We encourage you to discuss alternative settings with your institution’s compliance officers, counsel, and/or technology officers, who may be able to offer customized solutions.<sup>80</sup>

## Counseling & Referral

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

Kansas law states that “no person shall be required to perform, refer for, or participate in medical procedures or in the prescription or administration of any device or drug which result in the termination of a pregnancy or an effect of which the person reasonably believes may result in the termination of a pregnancy,”<sup>81</sup> and medical care facilities are not

required to permit the performance of, referral for, or participation in” the same.<sup>82</sup>

## Medication Abortion

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, Kansas does not have any of these laws currently in effect.

There are two requirements related to medication abortion that are currently enjoined. First, in 2023, Kansas passed a law that would require abortion providers to post signage in their facilities and provide patients with written and oral information, at least 24 hours before the abortion, about the alleged possibility of being able to reverse the effects of mifepristone.<sup>83</sup> This requirement is being challenged, and the requirements are preliminarily enjoined while the litigation proceeds.<sup>84</sup> Second, Kansas has a law that abortion-inducing drugs must be administered “by or in the same room and in the physical presence of” the physician, except in a

medical emergency or “in the case of an abortion performed in a hospital through inducing labor.”<sup>85</sup> This requirement is enjoined, but the case is on appeal before the Kansas Supreme Court.<sup>86</sup>

## Disposition of Fetal Tissue Remains

In general, fetal tissue can be treated and disposed of in the same way as other medical waste in Kansas. However, if an abortion patient is under 14 at the time of the procedure, providers must preserve the fetal tissue and submit it to the Kansas Bureau of Investigation (KBI) using a kit provided by KBI.<sup>87</sup>

Kansas law also requires all medical care facilities to adopt written policies and inform patients regarding their options for disposition or taking of fetal remains in the event of a fetal death.<sup>88</sup>

Lastly, Kansas law does not allow any person or facility to “solicit, offer, knowingly acquire or accept or transfer any fetal tissue [from an abortion or stillbirth] for consideration.”<sup>89</sup>

## Need legal advice?

This document should not be construed as legal advice. If you need individualized legal advice, please contact the [Abortion Defense Network](#), where you will be matched with a pro bono attorney.

The Abortion Defense Network is managed by the [Lawyering Project](#) in partnership with the [American Civil Liberties Union](#), [Center for Reproductive Rights \(CRR\)](#), [If/When/How: Lawyering for Reproductive Justice](#), [National Women’s Law Center \(NWLC\)](#), and [Resources for Abortion Delivery \(RAD\)](#).

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## References

<sup>1</sup> [Hodes & Nausser, MDs, P.A. v. Schmidt](#), 440 P.3d 461 (Kan. 2019).

<sup>2</sup> *Id.* In August 2022, Kansas voted against a ballot measure that would have taken away constitutional protection for abortion. See [Kan. Sec’y. of State, 2022 Primary Election, Official Vote Totals \(2022\)](#), [Value Them Both Amendment, H.C.R. 5003](#).

<sup>3</sup> [Kan. Stat. Ann. § 65-6701\(a\)](#). In 2023, the Kansas legislature passed [H.B. 2264](#), which changed this definition to: “(a)(1) Abortion means the use or prescription of any instrument, medicine, drug or any other means to terminate the pregnancy of a woman knowing that such termination will, with reasonable likelihood, result in the death of the unborn child; (2) Such use or prescription is not an “abortion” if done with the intent to: (A) Preserve the life or health of the unborn child; (B) increase the probability of a live birth; (C) remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or the unborn child; or (D) remove an ectopic pregnancy. (3) “Abortion” does not include the prescription, dispensing, administration, sale or use of any method of contraception.” [H.B. 2264](#), 2023 Leg. Sess., Reg. Sess. (Ka. 2023), *codified at* Kan. Stat. Ann. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6716, 65-6723, 65-6742. H.B. 2264 is preliminarily enjoined, meaning this definition is not in effect while the litigation over H.B. 2264 proceeds. See [Hodes & Nausser, MDs, P.A. v. Kobach, No. 23-CV-03140 \(Kan. D. Ct. Oct. 30, 2023\)](#).

<sup>4</sup> See [Kan. Stat. Ann. § 65-2401\(b\)](#). While “fetal death” is not defined in Kansas law, the law defines “live birth” as “the complete expulsion or extraction from its mother of a human child, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.” See also, Kan. Stat. Ann. § 65-6710(a)(2) (requiring the Kansas Department of Health and Environment to create written materials that include a statement that “a fetal heartbeat is...a key medical indicator that an unborn child is likely to achieve the capacity for live birth.”).

<sup>5</sup> [Kan. Stat. Ann. § 65-6701\(a\)](#).

<sup>6</sup> [Kan. Atty. Gen. Op. No. 2022-7](#) (July 22, 2022).

<sup>7</sup> [H.B. 2264](#), 2023 Leg. Sess., Reg. Sess. (Ka. 2023), *codified at* Kan. Stat. Ann. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6716, 65-6723, 65-6742.

<sup>8</sup> See [Hodes & Nausser, MDs, P.A. v. Kobach, No. 23-CV-03140 \(Kan. D. Ct. Oct. 30, 2023\)](#).

<sup>9</sup> [Kan. Stat. Ann. §§ 65-6703\(e\), 65-6724\(e\)](#).

<sup>10</sup> [Kan. Stat. Ann. § 65-6702](#) (“The use of any drug or device that inhibits or prevents ovulation, fertilization or implantation of an embryo and disposition of the product of *in vitro* fertilization prior to implantation” are lawful, and the state may not prohibit the use of any such drug or device.”). [H.B. 2264](#), which passed in 2023, amends the definition of abortion, and the new definition explicitly states that it does not include the “prescription, dispensing, administration, sale or use of any method of contraception.” However, H.B. 2264 is preliminarily enjoined, meaning that this definition is not in effect while litigation proceeds. See [Hodes & Nausser, MDs, P.A. v. Kobach, No. 23-CV-03140 \(Kan. D. Ct. Oct. 30, 2023\)](#).

<sup>11</sup> [Kan. Stat. Ann. § 65-6722 et seq.](#)

<sup>12</sup> [Kan. Stat. Ann. §§ 65-2837\(b\)\(5\), 65-6724\(g\), \(i\), \(j\)](#). While professional penalties are not specifically listed in the ban itself, the Kansas Board of Healing Arts considers “performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion” to be unprofessional conduct.

<sup>13</sup> [Kan. Stat. Ann. § 65-6724\(e\)](#).

<sup>14</sup> [Kan. Stat. Ann. § 65-6703](#).

<sup>15</sup> [Kan. Stat. Ann. §§ 65-6701\(m\), 65-6703\(a\)](#).

<sup>16</sup> [Kan. Stat. Ann. §§ 65-2837\(b\)\(31\), 65-6703\(g\), \(i\), \(k\)](#).

<sup>17</sup> [Kan. Stat. Ann. § 65-6703\(e\)](#).

<sup>18</sup> [Kan. Stat. Ann. § 65-6726](#).

<sup>19</sup> [Kan. Stat. Ann. § 65-6741 et seq.](#) The ban provides exceptions if the D&E is (1) necessary to preserve the pregnant person’s life or (2) “a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function” of the pregnant person. [Kan. Stat. Ann. § 65-6743](#).

<sup>20</sup> [Hodes & Nausser, MDs, P.A. v. Schmidt](#), 440 P.3d 461 (Kan. 2019); [Hodes & Nausser, MDs, P.A. v. Schmidt](#), 2015-CV-490 (Kan. D. Ct. Apr. 7, 2021).

<sup>21</sup> [Kan. Stat. Ann. § 65-6721](#). The law provides exceptions if the provider receives a referral from another physician and the intact D&E is “necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.”

<sup>22</sup> [Kan. Stat. Ann. §§ 65-6703\(a\), 65-6724\(a\)](#).

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

<sup>24</sup> [Kan. Stat. Ann. §§ 65-6703\(a\), 65-6724\(a\)](#).

<sup>25</sup> [Kan. Stat. Ann. §§ 65-6703\(c\)\(1\), 65-6724\(c\)\(1\)](#).

<sup>26</sup> [Kan. Stat. Ann. § 65-6703\(c\)\(2\)](#) (viability must be determined “by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances.”).

<sup>27</sup> [Kan. Stat. Ann. § 65-6704](#).

<sup>28</sup> [Kan. Stat. Ann. § 65-6705](#).

<sup>29</sup> [Kan. Stat. Ann. §§ 40-2,190, 65-6733](#).

<sup>30</sup> [Kan. Stat. Ann. § 65-6708 et seq., \*Hodes & Nausser, MDs, P.A. v. Kobach\*, No. 23-CV-03140 \(Kan. D. Ct. Oct. 30, 2023\)](#). This lawsuit also challenges H.B. 2264, which creates additional requirements related to medication abortion reversal. The court has preliminarily enjoined H.B. 2264.

<sup>31</sup> [Kan. Stat. Ann. §§ 65-6703\(a\), 65-6724\(a\)](#).

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

<sup>33</sup> *Joint Stipulation in Hodes & Nausser, MDs, P.A. v. Schmidt*, 2013-CV-705 (Kan. D. Ct. Jun. 21, 2013) (on file with the Abortion Defense Network).

<sup>34</sup> [Kan. Stat. Ann. § 65-6701\(e\)](#).

<sup>35</sup> [Kan. Stat. Ann. §§ 65-6723](#) (applies to the 22 week ban), [65-6742](#) (applies to the intact D&E ban).

<sup>36</sup> [Kan. Stat. Ann. §§ 65-6703\(b\), 65-6724\(b\)](#).

<sup>37</sup> [Kan. Stat. Ann. §§ 65-6703\(c\)\(1\), 65-6724\(c\)\(1\)](#).

<sup>38</sup> [Kan. Stat. Ann. §§ 65-6704\(f\)](#). A physician who does not provide the required counseling due to a medical emergency must state in the young person’s medical record the medical indications upon which the physician’s judgment was based.

<sup>39</sup> [Kan. Stat. Ann. § 65-6705\(a\), \(j\)\(1\)](#). A physician who does not obtain the required consent based on a medical emergency must state in the young person’s medical record the medical indications on which the physician’s judgment was based. The medical basis for the determination, and the methods used to make that determination, must also be included in the report that must be submitted to the Kansas Department of Health and Environment for every abortion. [Kan. Admin. Regs. § 28-56-6](#).

<sup>40</sup> [Kan. Stat. Ann. § 65-6709](#).

<sup>41</sup> [Kan. Stat. Ann. § 65-6711](#).

<sup>42</sup> [EMTALA, 42 USC § 1395dd\(c\)\(1\)\(A\)](#).

<sup>43</sup> [EMTALA, 42 USC § 1395dd\(b\)\(1\)\(A\)](#).

<sup>44</sup> [EMTALA, 42 USC § 1395dd\(e\)\(1\)](#).

<sup>45</sup> [EMTALA, 42 U.S.C. § 1395dd\(e\)\(3\)\(A\)](#).

<sup>46</sup> [EMTALA, 42 USC § 1395dd\(c\)\(1\)\(B\)-\(c\)\(2\)\(A\)](#).

<sup>47</sup> [EMTALA, 42 U.S.C. § 1395dd\(e\)\(1\)](#).

<sup>48</sup> [CMS, Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss \(updated July 2022\)](#).

<sup>49</sup> [CMS, Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss \(updated July 2022\)](#).

<sup>50</sup> *State of Idaho v. United States*, No. 23-726 (U.S. Jan. 5, 2024).

<sup>51</sup> *Texas v. Becerra*, No. 23-10246, 2024 WL 20069 (5th Cir. Jan. 2, 2024).

<sup>52</sup> [CMS, Freeman Health System—Freeman West, Statement of Deficiencies and Plan of Correction \(April 10, 2023\)](#); [CMS, University of Kansas Hospital, Statement of Deficiencies and Plan of Correction \(April 10, 2023\)](#); [HHS Secretary Xavier Becerra Statement on EMTALA Enforcement \(May 1, 2023\)](#).

<sup>53</sup> [42 C.F.R. §§ 482.13\(a\)\(1\), \(b\)\(1\), \(b\)\(2\)](#).

[existing-laws-may-protect-health-care-professionals-who-provide-or-support-abortion-from-discrimination-in-employment/](#).

<sup>55</sup> See, e.g., [Kan. Stat. Ann. § 65-4901](#) *et seq.*

<sup>56</sup> Accreditation Council for Graduate Med. Educ., *ACGME Program Requirements for Graduate Medical Education in Obstetrics and Gynecology*, ACCREDITATION COUNCIL FOR GRADUATE MED. EDUC. (Sept. 17, 2022), [https://www.acgme.org/globalassets/pfassets/programrequirements/220\\_obstetricsandgynecology\\_9-17-2022\\_tcc.pdf](https://www.acgme.org/globalassets/pfassets/programrequirements/220_obstetricsandgynecology_9-17-2022_tcc.pdf).

<sup>57</sup> 42 U.S.C. § 238n.

<sup>58</sup> 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.

<sup>59</sup> [Kan. Stat. Ann. §§ 65-6703\(a\), 65-6724\(a\)](#).

<sup>60</sup> [Kan. Stat. Ann. § 65-6724\(a\)](#).

<sup>61</sup> [Kan. Stat. Ann. §§ 65-6703\(b\), 65-6724\(b\)](#).

<sup>62</sup> [Kan. Stat. Ann. §§ 65-6703\(b\), 65-6724\(b\)](#).

<sup>63</sup> [Kan. Stat. Ann. §§ 65-6703\(c\)\(1\)-\(2\), 65-6724\(c\)\(1\), Kan. Admin. Regs. §§ 28-56-10, 100-24-1](#).

<sup>64</sup> [Kan. Admin. Regs. § 28-56-10\(a\)](#).

<sup>65</sup> [Kan. Admin. Regs. § 28-56-10\(b\)](#).

<sup>66</sup> [Kan. Stat. Ann. §§ 65-6703\(c\)\(5\), 65-6724\(c\)\(3\), Kan. Admin. Regs. §§ 28-34-9a\(d\)\(1\), 28-56-10, 100-24-2](#).

<sup>67</sup> [Kan. Admin. Regs. §§ 28-34-9a\(d\)\(1\), 28-34-57\(c\)](#).

<sup>68</sup> [Kan. Stat. Ann. § 65-445, Kan. Admin. Regs. § 28-56-1](#) *et seq.* Kansas has a regulation that requires providers to report the number of counseling forms completed by patients within five business days of the end of each month. However, the Department cannot enforce the regulation, as the statute implementing it is currently enjoined. [Kan. Stat. Ann. § 65-6709\(e\), Kan. Admin. Regs. § 28-56-7](#).

<sup>69</sup> [Kan. Admin. Regs. § 28-56-3](#). “ICD-9-CM” means “volumes one and two, office edition, of the 2011 clinical modification of the “international classification of diseases,” ninth revision, sixth edition, published by practice management information corporation, which is used to code and classify morbidity data from inpatient and outpatient records, physician offices, and most surveys from the national center for health statistics.” [Kan. Admin. Regs. 28-56-1\(f\)](#).

<sup>70</sup> [Kan. Admin. Regs. §§ 28-56-1, 28-56-8](#).

<sup>71</sup> [Kan. Stat. Ann. § 65-2412](#).

<sup>72</sup> [Kan. Stat. Ann. § 65-2401](#) (“‘Stillbirth’ means any complete expulsion or extraction from its mother of a human child the gestational age of which is not less than 20 completed weeks, resulting in other than a live birth, as defined in this section, and which is not an induced termination of pregnancy.”)

<sup>73</sup> [Kan. Stat. Ann. § 65-2412](#).

<sup>74</sup> [Kan. Admin. Regs. § 28-17-13](#).

<sup>75</sup> 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.

<sup>76</sup> [Kan. Stat. Ann. §§ 38-2223, 39-1401](#) *et seq.*

<sup>77</sup> [Kan. Admin. Regs. § 28-56-2](#).

<sup>78</sup> For example, one EMR, Epic, uses a tool called Care Everywhere to securely share information between health care institutions (e.g., from one hospital system to another) and also allows for robust sharing internal to a single institution (e.g., a Texas hospital treating a patient may be able to see the patient’s records from an Illinois hospital that is part of the same hospital system).

<sup>79</sup> 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.

<sup>80</sup> In the past year, states and the federal government have taken steps to address these vulnerabilities, specifically for abortion and gender-affirming care. Maryland and California have passed bills that restrict disclosure of abortion-related

records and require EMRs to develop tools to limit or prohibit such disclosure. As these laws are implemented, the landscape for how electronic abortion records are handled may change.

<sup>81</sup> [Kan. Stat. Ann. § 65-443](#).

<sup>82</sup> [Kan. Stat. Ann. § 65-444](#).

<sup>83</sup> [H.B. 2264](#), 2023 Leg. Sess., Reg. Sess. (Ka. 2023), *codified at* Kan. Stat. Ann. §§ 40-2,190, 65-4a01, 65-6701, 65-6708, 65-6716, 65-6723, 65-6742.

<sup>84</sup> See [Hodes & Nausser, MDs, P.A. v. Kobach, No. 23-CV-03140 \(Kan. D. Ct. Oct. 30, 2023\)](#).

<sup>85</sup> [Kan. Stat. Ann. § 65-4a10\(b\)](#).

<sup>86</sup> [Nausser v. Norman, No. 2011-CV-1298, 2021 WL 7906942 \(Kan. Dist. Ct. Dec. 03, 2021\)](#).

<sup>87</sup> [Kan. Stat. Ann. §§ 65-67a09](#), [Kan. Admin. Regs. § 16-10-3](#). Providers must, as specified in the kit instructions: complete an evidence custody receipt form provided in the kit; collect the required amount and type of tissue; preserve, secure, and label the specimen; ship the specimen and the evidence custody receipt form to KBI; and mail a copy of the evidence custody receipt form by first-class mail to the appropriate law enforcement department.

<sup>88</sup> [Kan. Stat. Ann. § 65-67a10](#).

<sup>89</sup> [Kan. Stat. Ann. § 65-67a04](#). This restriction does not apply when the tissue is being transferred for the purpose of immediate final disposal or to a pathologist for testing. [Kan. Stat. Ann. § 65-67a03](#).