

Know Your State's Abortion Laws

A Guide for Medical Professionals

LOUISIANA

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.

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 Louisiana law unless:

(1) abortion is necessary to “prevent the death” of the patient or to prevent “the serious, permanent impairment of a life-sustaining organ,” or

(2) the pregnancy is “medically futile,” meaning the fetus has a condition “incompatible with sustaining life after birth.”

Definition of Abortion & Contraception

ABORTION

Louisiana law defines abortion as “the performance of any act with the intent to terminate a clinically diagnosable pregnancy with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child.”¹ However, several procedures that may be considered “an abortion” in the medical community are *not* abortions under Louisiana abortion laws: (1) “removal of a dead unborn child” or miscarriage management; (2) “removal of an ectopic pregnancy”; (3) abortions to prevent death or “serious, permanent impairment of a life-sustaining organ;” and (4) removal of a “medically futile” pregnancy. The “Exceptions to Abortion Bans” section below contains additional information on these categories.

With respect to self-managed abortion, it is legal for providers to give medical care to a pregnant person who has initiated or recently completed a self-managed abortion provided there is no embryonic or fetal cardiac activity or the patient qualifies under one of the exceptions to Louisiana’s bans (see below). A pregnant person cannot be convicted under Louisiana’s abortion ban for self-managing their abortion because the state’s criminal abortion ban explicitly exempts pregnant people from liability.²

CONTRACEPTION

Louisiana law permits the provision or use of any contraceptives, such as intrauterine devices, or emergency contraceptives, such as Plan B. Contraceptives are defined as “any device, measure, drug, chemical, or product, including single-ingredient levonorgestrel, that has been approved by the United States Food and Drug Administration for the purpose of preventing pregnancy and is intended to be administered prior to the time when a clinically

diagnosable pregnancy can be determined.”³ Emergency contraceptive is defined as a “drug, chemical, or product, including but not limited to single-ingredient levonorgestrel or ulipristal, that has been approved by the Food and Drug Administration designed or intended to be taken after sexual intercourse but prior to the time when a clinically diagnosable pregnancy can be determined.”⁴ Louisiana law specifies that the definition of “abortion-inducing drug” does not include contraceptives or emergency contraceptives, and that the language in Louisiana’s abortion bans is not intended to apply to the sale and use of contraceptives or emergency contraceptives for the purposes of contraception.⁵

Abortion Bans

2022 Trigger Bans: Abortion—as defined above—is unlawful under Louisiana law at any gestational age.⁶ State law prohibits both providing a pregnant person with abortion medications and conducting any procedure upon a pregnant person with the intent of causing an abortion.⁷ All criminal and civil penalties are aimed at those providing or aiding in abortions, and abortion-seekers are generally excluded from liability.⁸ Two total trigger bans went into effect in 2022.

The penalties for violating Louisiana’s 2022 total abortion bans are: (1) criminal: violation of the statutes can result in imprisonment for one to ten years and a fine of \$10,000 to \$100,000;⁹ (2) professional: violation of the statutes provides a basis for professional disciplinary action,¹⁰ including but not limited to revocation of a license;¹¹ and (3) civil: violation of the statutes provides a basis for a civil malpractice action brought by the patient; for recovery by the patient for the death of the “unborn child,” whether or not the fetus was viable at the time the abortion was performed; and for state officials to obtain a writ of injunction.¹²

Louisiana institutes harsher criminal penalties for “late term abortions,” defined as an abortion performed when the gestational age of the fetus is fifteen weeks or more.¹³ Penalties for performing a “late term abortion” include imprisonment for one to fifteen years and a fine of \$20,000 to \$200,000. The professional and civil penalties remain the same.

2006 Trigger Ban: Louisiana has another total criminal abortion ban that may be in effect. This ban provides that “no person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance” or “knowingly use or employ any instrument or procedure” upon a pregnant woman with the “specific intent of causing or abetting the termination of the life of an unborn human being.”¹⁴ Violation of this ban carries criminal, professional, and civil penalties. Although this ban does not use the term “abortion” in explaining what conduct is prohibited, Louisiana has agreed that the exceptions set forth in the 2022 trigger bans, including the exception for ectopic pregnancies, apply to this ban.¹⁵

Other Bans: Louisiana has not repealed other laws related to abortion. Louisiana law retains gestational bans that prohibit care when a fetal heartbeat can be detected,¹⁶ at twenty-two weeks LMP,¹⁷ and post-viability.¹⁸ State law prohibits medication abortion,¹⁹ and abortions after twenty-two weeks LMP sought for reasons of disability.²⁰ Louisiana law continues to include requirements that pregnant people who seek abortion care must undergo a mandatory seventy-two hour waiting period; counseling; and an ultrasound;²¹ prohibitions on public funding,²² and private insurance coverage.²³ It continues to require that a young person under 18 have a parent, legal guardian,²⁴ or judge in the young person’s parish²⁵ consent to their abortion.

Louisiana law also generally prohibits both dilation and evacuation (“D&E”) procedures²⁶ and intact

D&E procedures (sometimes called D&X procedures), though such procedures may be used if they are “necessary to prevent [a] serious health risk” to the patient.²⁷ The statute defines “serious health risk” as a determination that, “in reasonable medical judgment[,] the mother has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.”²⁸ The definition of “serious health risk” is thus slightly different from the similar exception to Louisiana’s abortion bans, detailed below.²⁹ However, because the D&E ban refers to “dismemberment abortions,” incorporating the definition of the term “abortion” as used in the 2022 trigger bans, a procedure that does *not* fall into the definition of “abortion” under Louisiana law is not governed by the D&E ban. Therefore, in addition to instances of “serious medical risk” described above, a provider may lawfully use D&E procedures if relying on one of the exceptions to Louisiana’s abortion bans, discussed below.

Exceptions to Abortion Bans

As stated above, Louisiana law excludes the following categories of pregnancy termination from the legal definition of “abortion,” meaning they are not criminalized by Louisiana’s abortion bans: miscarriage management; termination of ectopic pregnancies; abortions to prevent death or “serious, permanent impairment of a life-sustaining organ;” and abortions of “medically futile” pregnancies. Louisiana does not have exceptions for rape or incest, and the state legislature rejected proposed legislation to create these exceptions.³⁰

Miscarriage Management: Louisiana law generally allows for miscarriage care with certain limitations. Louisiana law defines “miscarriage” or “stillbirth” as the “spontaneous or accidental death

of an unborn child, whether the death occurred in the womb or in the process of birth.”³¹ The law notes that the “death” of a fetus is indicated by lack of signs of breathing or “any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.”³²

The removal of a miscarriage is not an abortion, as long as there has been a diagnosis—certified in writing and via ultrasound—that the pregnancy has ended or is in the “unavoidable and untreatable process of ending.”³³ In the circumstances where the requirements for “miscarriage” are met and certified, uterine contents can be removed or delivered using medication, D&C, D&E or labor induction procedures.³⁴

After a miscarriage, an LDH-licensed health facility must notify a patient of their right to manage the disposition of fetal remains, but, if the patient makes no such request, there are no specific fetal tissue disposal requirements beyond generally applicable state law (discussed below).³⁵

Ectopic Pregnancies: Louisiana law excludes the following actions from the definition of abortion: the “removal of an ectopic pregnancy,” “use of methotrexate to treat an ectopic pregnancy,” “[a] medical procedure performed with the intention to save the life or preserve the health of an unborn child,” and “performance of a medical procedure necessary in good faith medical judgment or reasonable medical judgment to prevent the death or substantial risk of death to the pregnant woman due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.”³⁶ As a result, treatment of an ectopic pregnancy is lawful under the trigger bans.

Necessary to Prevent Death or Permanent Impairment: Louisiana law excludes from the definition of abortion procedures that are

“necessary . . . to prevent the death or substantial risk of death to the pregnant woman due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of the pregnant woman.”³⁷ This exception does not require that the risk of death or permanent impairment of a life-sustaining organ be imminent. It does, however, require that the threat to the pregnant person’s health be permanent. “Life-sustaining organ” is not defined.

When performing an abortion under this exception, a physician does not need to comply with the informed consent and 72-hour delay requirements;³⁸ physicians need not perform an ultrasound to determine if the fetus is viable;³⁹ and a physician does not need the otherwise-required consent from a parent or legal guardian if the patient is under 18.⁴⁰

“Medically Futile” Pregnancies: Louisiana law does not consider the “removal of an unborn child who is deemed to be medically futile” to be an abortion.⁴¹ “Medically futile” means that “the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.” The Louisiana Department of Health has promulgated a rule within the Louisiana Administrative Code that establishes an “exclusive” list of conditions deemed “medically futile.”⁴² The list includes 26 conditions, including but not limited to anencephaly, craniorachischisis, trisomy 13, 16, 28, and 22, as well as a “catch-all” provision to accommodate certain conditions not listed. To use the “catch-all” provision, an assessment of medical futility must be certified by two physicians and recorded in the patient’s medical record.⁴³ The full list of conditions can be found [at this link](#) and is also reproduced in the references at the end of this document.⁴⁴

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 screening⁴⁵ and stabilizing medical treatment to individuals experiencing an emergency medical condition,⁴⁶ including people in labor or with emergency pregnancy complications.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 only be transferred to a different hospital once they are stable or if certain conditions are met such as the medical benefits of transfer outweigh the increased risks to the person experiencing the medical emergency.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 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.”⁵¹ The stabilizing treatment required by EMTALA can include abortion care in certain circumstances.

HHS reaffirmed these requirements in guidance issued after *Roe v. Wade* was overturned. That guidance emphasizes that stabilizing treatment required by EMTALA could include abortion care if the examining physician or other qualified medical personnel determines that such treatment is required to stabilize a patient experiencing an emergency medical condition, including a condition that is

“likely or certain to become emergent without stabilizing treatment.”⁵² The guidance made clear those conditions might include, but are not limited to: “ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features.”⁵³ The guidance reiterates that if EMTALA requires the provision of abortion care, then EMTALA expressly preempts any state law prohibiting or restricting access to abortion.⁵⁴ Indeed, HHS has 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”).⁵⁵

Notwithstanding EMTALA’s clear requirements with respect to emergency abortion, there is ongoing litigation relating to attempts by state officials in Idaho and Texas to restrict hospitals from complying with their federal legal obligations. In 2022, a federal district court in Idaho issued a preliminary injunction ensuring that Idaho’s abortion ban could not be enforced to prohibit health-saving emergency abortions required under EMTALA. While that injunction was temporarily stayed by the U.S. Supreme Court, that stay was lifted in June 2024 and the preliminary injunction restored while the case continues in the lower courts.⁵⁶ In July 2024, following that order, HHS issued a statement reiterating that EMTALA requires hospitals to provide emergency abortion care when it is necessary stabilizing treatment.⁵⁷ Meanwhile, HHS has asked the U.S. Supreme Court to review a Fifth Circuit decision that affirmed a lower court decision temporarily blocking federal enforcement of HHS’ guidance in Texas. HHS has petitioned the Supreme Court to reverse the preliminary injunction.⁵⁸ The government’s petition will be considered by the Supreme Court in the next term.

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.⁵⁹

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.⁶⁰

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.⁶¹

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.⁶² 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.⁶³

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.⁶⁴ 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.

The only abortion-specific documentation and reporting requirements are:

Abortion Reporting: All abortions shall be reported to the vital records registry within fifteen days by the person in charge of the institution where the abortion was performed. If the abortion was performed outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report.⁶⁵

Miscarriage Management Documentation: When a physician performs a procedure to treat a miscarriage, the doctor must certify in writing in the patient's medical record, along with the results of an ultrasound test, that the pregnancy had ended or was in the "unavoidable and untreatable process of ending."⁶⁶

Medical Futility Documentation & Reporting: When a physician terminates a pregnancy deemed "medically futile," the diagnosis of medical futility must be a judgment certified by two physicians and recorded in the patient's medical record.⁶⁷ After the procedure, which must take place in a licensed ambulatory surgical center or hospital, the physician must submit an "individual abortion report" that includes appropriate evidence of the certified diagnosis.⁶⁸ The requirements for an individual abortion include information such as the type of abortion procedure, reason for the abortion, and complications by type.⁶⁹ All abortion reports should be submitted to the Louisiana Department of Health within thirty days after the date of the procedure.⁷⁰

Complication Reporting: Complications from abortion may also need to be reported in a complication report if a physician provides post-abortion care.⁷¹ This reporting requirement does not apply to any non-physician providers who treat abortion complications. Complication reports require the date of the abortion, the name and address of the facility where the abortion was performed, the nature of the abortion complication, and the name and address of the facility where the post-abortion care was provided.⁷² All complication reports should be submitted to the Louisiana Department of Health within thirty days after the date of the completion of post-abortion care.⁷³ “Complication” is not defined.

The statute defining abortion explicitly directs providers to fill out abortion report forms in instances of medical futility. Thus, complications following a termination performed in an instance of medical futility must likely also be reported. However, other abortion care—including treatment for ectopic pregnancies and miscarriages or performing an abortion to preserve the life of the pregnant person—do not contain this explicit requirement to fill out an abortion report form. Because they are outside the statutory definition of abortion, they may not require complication reporting.

The complication reporting law requires all physicians that treat a patient for post-abortion care to submit a complication report, irrespective of how the patient accessed the abortion or who provided it. The statute may also require physicians to report when they provide “post-abortion care” after self-managed abortion (SMA). However, the reporting statute does not require physicians to disclose patients’ names, and reports are made only to the Department of Health, not any law enforcement agency. No complication report should need to identify an abortion as being self-managed.

“Severe Adverse Event” Reporting: If a pregnancy is terminated using abortion medications and the physician knows that the patient experienced a “serious adverse event,” as defined by the MedWatch Reporting System, during or after the use of the drug, the physician must report the event to the FDA through the MedWatch Reporting System within three days of learning about the event.⁷⁴

Fetal Death Reporting: Louisiana law requires the reporting of each “spontaneous fetal death of twenty complete weeks gestation or more, calculated from the date [the] last normal menstrual period began to the date of delivery, or a weight of three hundred fifty grams or more.”⁷⁵ The report must be made to the vital records registry “or as otherwise directed by the state registrar” within five days of delivery.⁷⁶ If the dead fetus is delivered “in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the spontaneous fetal death (stillbirth) certificate.”⁷⁷ Additionally, a medical certificate must be completed, signed, and provided to a funeral director, if applicable, within 24 hours after the death by the physician in charge of the fetus’s care.⁷⁸

Other Mandatory Reporting: All other general mandatory reporting to the Department of Children’s Services, local law enforcement, etc., also applies for abortion patients.⁷⁹ This includes reporting of sexual abuse of young people, child abuse, and vulnerable adult abuse.

Electronic Medical Records: Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions.⁸⁰ 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.⁸¹

The federal government has taken steps to address this concern by issuing a new HIPAA rule, effective June 25, 2024.⁸² The rule prohibits the use or disclosure of protected health information (PHI) if sought to conduct a criminal, civil, or administrative investigation into or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive healthcare, or identifying any person for these purposes.⁸³ A provider who receives a request for disclosure of PHI potentially related to reproductive care must obtain a signed attestation from the requestor that the request is not for a prohibited purpose.⁸⁴ The attestation is required when the request is for: law enforcement purposes, disclosures to coroners and medical examiners, judicial and administrative proceedings, and health oversight activities.⁸⁵ If the abortion care—self-managed or otherwise—was provided by someone else, a provider is allowed to assume the care was provided lawfully unless 1) the patient tells them otherwise or 2) the attestation provides evidence of unlawfully provided care.⁸⁶

The new rule only applies to healthcare providers who are subject to HIPAA. Separate from HIPAA, interoperability rules may apply when a healthcare provider uses EMRs.⁸⁷ Because of this, we encourage you to discuss alternative EMR settings and information blocking exceptions with your institution’s compliance officers, counsel, and/or technology officers, who may be able to offer customized solutions.⁸⁸

Counseling & Referral

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

abortion advertising has been permanently enjoined and is not in effect.⁸⁹

There is a Louisiana-specific note of caution, however, as to a statute that prohibits anyone employed by the state of Louisiana or by any public or private social service agency that receives any form of governmental assistance from requiring or recommending that any woman have an abortion.⁹⁰ The prohibition on recommending an abortion does not apply to a licensed doctor acting to save or preserve the life of the pregnant person.⁹¹

Medication Abortion

Definition and Application: Louisiana law defines “abortion-inducing drug” to include “any drug or chemical, or any combination of drugs or chemicals, or any other substance when used with the intent to cause an abortion, including but not limited to RU-486, the Mifeprex regimen, misoprostol (Cytotec), or methotrexate.”⁹²

Prohibitions: Louisiana has two statutes targeting the provision of abortion medications by mail:

- **Criminal abortion by means of abortion-inducing drug:** A criminal abortion by means of abortion medications is committed “when a person knowingly causes an abortion to occur by means of delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug” when the person administering the drug is not a physician licensed in the state of Louisiana. (Note: the administration of abortion-inducing drugs by physicians licensed in the state of Louisiana is still largely illegal, it is just not criminalized by *this* statute).⁹³ The penalties for violating this statute include imprisonment from one to five years and/or a fine of \$5,000 to \$50,000. The penalties increase if the criminal abortion by abortion-inducing drug results in death or serious bodily injury of the pregnant person and increase again if the injured pregnant

person is under eighteen.

- **Ban on sale and delivery:** Louisiana law states that “no abortion-inducing drug may be sold, prescribed, dispensed, distributed, or delivered” in Louisiana.⁹⁴ It further states that delivery of abortion-inducing drugs “to a person in Louisiana by mail-order, courier, or as a result of a sale made via the internet” is “strictly prohibited.”⁹⁵ A violation of the prohibition on sales and delivery may result in a fine of up to \$1000, up to six months’ imprisonment, or both.

Both statutes allow for prescribing and dispensing potential abortion medications for lawful medical reasons not intended to cause an abortion.⁹⁶ In these cases, the prescriber must write a “diagnosis code” on the prescription that clearly indicates that the prescription is not intended to cause an abortion.⁹⁷ Any act by a pharmacist or pharmacy related to filling such a prescription—as confirmed by the diagnosis code written on the prescription by the prescriber—is not subject to liability.⁹⁸

Neither statute applies to acts or omissions by a pregnant person regarding her own embryo or fetus, including possessing for her own consumption or consuming an abortion-inducing drug.⁹⁹

There are only a few cases where abortion medications can be legally administered for the purpose of terminating a pregnancy (e.g., in instances of medical futility, to prevent the death of a pregnant woman, or the use of methotrexate to treat an ectopic pregnancy). These are each outside of the statutory definition of abortion and so the statutory restrictions in place that require medication abortion be administered in the presence of the physician who prescribed the drug may no longer apply.¹⁰⁰

Controlled Substances: Beginning in October 2024, Louisiana will classify Mifepristone and Misoprostol as Schedule IV drugs under Louisiana’s

Controlled Dangerous Substances Act.¹⁰¹ Schedule IV drugs are illegal to knowingly or intentionally possess unless they are obtained with a “valid prescription or order from a practitioner . . . acting within their scope of practice.”¹⁰² Violations carry a prison term of one to five years and may carry a fine of up to five thousand dollars.¹⁰³ It is not, however, a violation of the law for a patient to possess misoprostol or mifepristone for their own consumption.¹⁰⁴ It is also unlawful to produce, manufacture, distribute or dispense or possess with intent to produce, manufacture, distribute, or dispense, a controlled dangerous substance classified in Schedule IV, except as provided by law.¹⁰⁵ Louisiana law allows prescriptions for Schedule IV drugs to be made by a written, oral, or electronic prescription order for those who hold a valid license that authorizes them to prescribe controlled dangerous substances.¹⁰⁶ But if a prescription is provided in electronic form, it must be done in conformance with the federal rules established by the United States Drug Enforcement Administration.¹⁰⁷ Prescriptions must also be tracked in the prescription monitoring program set by the State.¹⁰⁸

Disposition of Fetal Tissue Remains

Louisiana law requires that all embryonic and fetal tissue remains resulting from an induced abortion are disposed of by interment or cremation.¹⁰⁹ This does not apply to medication abortions when the patient passes pregnancy tissue outside the medical facility.¹¹⁰ Additionally, as the only legal terminations under the Louisiana ban—instances of medical futility, to preserve the life of the pregnant person, to treat ectopic pregnancies, and to treat miscarriages—are outside of the statutory definition of abortion, the statutory restrictions requiring interment or cremation may not apply.¹¹¹

Louisiana has a total prohibition on buying, selling,

and otherwise transferring fetal tissue remains resulting from an induced abortion.¹¹² After an induced abortion, no person may “remove” any “tissue” for any purpose, including research. However, as mentioned above, this restriction may not apply in instances outside of the statutory definition of “abortion.”¹¹³

Neither of the above provisions apply to fetal and embryonic tissue remains resulting from natural miscarriage or stillbirth,¹¹⁴ though patients may arrange for the final disposition of miscarriage remains if they so choose.¹¹⁵ Neither provision puts any requirements on patients.

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 \(RAD\)](#).



CENTER for
REPRODUCTIVE
RIGHTS

if
when
how

THE
LAWYERING
PROJECT



RAD
RESOURCES FOR
ABORTION
DELIVERY

References

¹ LA. STAT. ANN. [§ 14:87.1](#). This definition includes termination by the following means: “Administering, prescribing, or providing any abortion-inducing drug, potion, medicine, or any other substance, device, or means to a pregnant female” and “Using an instrument or external force on a pregnant female.”

² LA. STAT. ANN. [§ 14:87.7\(D\)](#).

³ LA. STAT. ANN. [§ 14:87.1](#).

⁴ *Id.*

⁵ LA. STAT. ANN. [§ 40:1061](#).

⁶ LA. STAT. ANN. [§§ 14:87.7, 40:1061](#).

⁷ *Id.*

⁸ *See* LA. STAT. ANN. [§§ 14:87.7, 14:87.8, 40:1061](#).

⁹ LA. STAT. ANN. [§14:87.7](#).

¹⁰ LA. STAT. ANN. [§ 40:1061.29](#).

¹¹ LA. STAT. ANN. [§ 37:1285](#).

¹² LA. STAT. ANN. [§ 40:1061.29](#).

¹³ LA. STAT. ANN. [§ 14:87.8](#).

- ¹⁴ LA. STAT. ANN. [§ 1061](#).
- ¹⁵ Joint Stipulation of Voluntary Dismissal at 1, *June Med. Servs. et al. v. Landry*, No. C-720988 (La. East Baton Rouge Par. Civ. Dist. Ct. Feb. 23, 2024).
- ¹⁶ LA. STAT. ANN. [§ 40:1061.1.5](#).
- ¹⁷ LA. STAT. ANN. [§ 40:1061.1.2](#).
- ¹⁸ *Id.* [§ 40:1061.13](#).
- ¹⁹ LA. STAT. ANN. [§§ 14:87.9, 40:962.2](#).
- ²⁰ LA. STAT. ANN. [§§ 40:1061.1.2](#).
- ²¹ *Id.* [§ 40:1061.16, 40:1061.17, 40:1061.10, 40:1061.11.1](#); Pregnant people who live one hundred fifty miles or more from the nearest abortion provider are subjected to a twenty-four-hour waiting period. *See Id.* [§ 40:1061.16](#).
- ²² LA. STAT. ANN. [§ 40:1061.6](#). Rape and incest claims must be reported to law enforcement. *See id.* [§ 40:1061.18](#).
- ²³ LA. STAT. ANN. [§ 22:1014](#).
- ²⁴ LA. STAT. ANN. [§ 40:1061.14](#).
- ²⁵ *Id.* [§§ 40:1061.14\(B\), 40:1061.21\(A\)\(5\)\(c\)](#).
- ²⁶ LA. STAT. ANN. [§§ 40:1061.28, 40:1061.1.3, 14:87.11, 14:87.12](#).
- ²⁷ LA. STAT. ANN. [§ 40:1061.1.3\(C\)\(1\)](#).
- ²⁸ LA. STAT. ANN. [§ 14:87.1\(26\)](#).
- ²⁹ *See id.* [§ 14:87.1\(b\)\(v\)](#).
- ³⁰ Sara Cline, *Rape, incest exceptions to Louisiana abortion ban rejected by GOP lawmakers*, ASSOCIATED PRESS (May 10, 2023), <https://apnews.com/article/louisiana-abortion-rape-incest-ban-ed103502c56a48b96e66a3d8a7a0379c>.
- ³¹ LA. STAT. ANN. [§ 14:87.1](#).
- ³² *Id.*
- ³³ *Id.*
- ³⁴ *See id.*
- ³⁵ LA. STAT. ANN. [§ 40:1191.2](#).
- ³⁶ *Id.*
- ³⁷ <https://legis.la.gov/Legis/Law.aspx?p=y&d=78689>; LA. STAT. ANN. [§ 14:87.1](#).
- ³⁸ LA. STAT. ANN. [§ 40:1061.17](#).
- ³⁹ *Id.* [§ 40:1061.10](#).
- ⁴⁰ *Id.* [§ 40:1061.14](#).
- ⁴¹ *Id.*
- ⁴² LA. ADMIN. CODE tit. 48, pt. 1, § 401 (2023), <https://www.doa.la.gov/media/15odwaqn/48v01.pdf>.
- ⁴³ *Id.*; *see also* Ava Sasani & Emily Cochrane, *I'm Carrying This Baby Just to Bury It: The Struggle to Decode Abortion Laws*, NEW YORK TIMES (Aug. 19, 2022), <https://www.nytimes.com/2022/08/19/us/politics/louisiana-abortion-law.html>.
- ⁴⁴ The full list of conditions that are considered “medically futile” is as follows: “achondrogenesis; acrania; anencephaly; arcadia; body stalk anomaly; campomelic dysplasia; craniorachischisis; dysencephalia splanchnocystica (Meckel-Gruber syndrome); ectopia cordis; exencephaly; gestational trophoblastic neoplasia; holoprosencephaly; hydrops fetalis; iniencephaly; perinatal hypophosphatasia; osteogenesis imperfecta (type 2); renal agenesis (bilateral); short rib polydactyly syndrome; sirenomelia; thanatophoric dysplasia; triploidy; trisomy 13; trisomy 16 (full); trisomy 18; trisomy 22; and a profound and irremediable congenital or chromosomal anomaly existing in the unborn child that is incompatible with sustaining life after birth in reasonable medical judgment as certified by two physicians that are licensed to practice in the state of Louisiana.” LA. ADMIN. CODE tit. 48, pt. 1, § 401 (2023), <https://www.doa.la.gov/media/15odwaqn/48v01.pdf>.
- ⁴⁵ EMTALA, 42 USC [§ 1395dd\(c\)\(1\)\(A\)](#).
- ⁴⁶ EMTALA, 42 USC [§ 1395dd\(b\)\(1\)\(A\)](#).
- ⁴⁷ EMTALA, 42 USC [§ 1395dd\(e\)\(1\)](#).
- ⁴⁸ EMTALA, 42 U.S.C. [§ 1395dd\(e\)\(3\)\(A\)](#).
- ⁴⁹ EMTALA, 42 USC [§ 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 USC [§ 1395dd\(c\)\(1\)\(B\)-\(c\)\(2\)\(A\)](#).
- ⁵¹ EMTALA, 42 U.S.C. [§ 1395dd\(e\)\(1\)](#).

⁵² [CMS, Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss \(updated July 2022\)](#).

⁵³ *Id.*

⁵⁴ *Id.*; *see also* [EMTALA, 42 U.S.C. § 1395dd\(f\)](#) (“The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.”).

⁵⁵ [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 \(May 1, 2023\)](#).

⁵⁶ *Moyle v. United States*, No. 23-726, slip op. (U.S. June 27, 2024) (per curiam).

⁵⁷ Press Release, U.S. Dep’t of Health and Human Servs., Biden-Harris Administration Reaffirms Commitment to EMTALA Enforcement (July 2, 2024), <https://www.hhs.gov/about/news/2024/07/02/biden-harris-administration-reaffirms-commitment-emtala-enforcement.html>.

⁵⁸ [Texas v. Becerra](#), No. 23-10246, 2024 WL 20069 (5th Cir. Jan. 2, 2024), *petition for cert. filed* (U.S. Apr. 1, 2024) (No. 23-1076).

⁵⁹ 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).

⁶⁰ 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://nwl.org/resource/know-your-rights-existing-laws-may-protect-health-care-professionals-who-provide-or-support-abortion-from-discrimination-in-employment/>.

⁶¹ LA. STAT. ANN. § 40:1231.1 *et seq.*

⁶² 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.

⁶³ 42 U.S.C. § 238n.

⁶⁴ 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.

⁶⁵ LA. STAT. ANN. § 40:48.

⁶⁶ *Id.* § 14:87.1.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ LA. STAT. ANN. § 40:1061.21.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ LA. STAT. ANN. § 40:1061.11.

⁷⁵ LA. STAT. ANN. § 40:49(9).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*; LA. STAT. ANN. § 40:49(12).

⁷⁹ 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.

⁸⁰ 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 allows robust sharing within a single institution (e.g., a Texas hospital treating a patient may be able to see the patient’s records from an Illinois hospital within the same system).

⁸¹ 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.

⁸² Although effective on June 25, 2024, compliance with this rule is not required until December 23, 2024, except for the applicable requirements for revising Notice of Policy Practices (as required by [45 CFR 164.520](#)), which must be complied with by February 16, 2026.

⁸³ [42 U.S.C. § 164.502\(a\)\(5\)\(iii\)](#). See also *HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html> (content last reviewed April 22, 2024).

⁸⁴ [42 U.S.C. § 164.509](#). The U.S. Department of Health & Human Services (HHS) recently released a model attestation, available here: <https://www.hhs.gov/sites/default/files/model-attestation.pdf>.

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

⁸⁶ [42 U.S.C. § 164.502\(a\)\(5\)\(iii\)](#).

⁸⁷ [21st Century Cures Act: Interoperability, Information Blocking and the ONC Health IT Certification Program](#), 85 Fed. Reg. 25642 (May 1, 2020) (amending 45 C.F.R. §§ 170, 171), [21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking](#), 89 Fed. Reg. 54662 (July 1, 2024) (amending 42 C.F.R. §§ 171.414, 425, 495). Not all healthcare providers are currently subject to the disincentives included in the 2024 rule. However, the Centers for Medicare & Medicaid Services (CMS) may apply disincentives to certain hospitals and merit-based incentive payment system (MIPS) eligible clinicians. The U.S. Department of Health and Human Services intends to expand disincentives to other groups of health care providers in future rulemaking.

⁸⁸ 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.

⁸⁹ See *Weeks v. Connick*, 733 F. Supp. 1036, 1039 (E.D. La. 1990).

⁹⁰ LA. STAT. ANN. [§ 40:1061.5](#).

⁹¹ *Id.*

⁹² LA. STAT. ANN. [§ 14:87.1](#).

⁹³ *Id.* [§ 14:87.9](#).

⁹⁴ LA. STAT. ANN. [§ 40:962.2](#).

⁹⁵ *Id.*

⁹⁶ *Id.*; LA. STAT. ANN. [§ 14:87.9](#).

⁹⁷ LA. STAT. ANN. [§ 40:962.2](#).

⁹⁸ *Id.*

⁹⁹ *Id.*; LA. STAT. ANN. [§ 14:87.9\(C\)\(4\)](#).

¹⁰⁰ LA. STAT. ANN. [§ 40:1061.11](#).

¹⁰¹ LA. STAT. ANN. [§ 40:964](#); LA. [S.B. 276](#) (2024); LA. [Act No. 246](#) (2024). The law specifically provides that, “[u]nless listed in another schedule, any material, compound, mixture, or preparation containing any detectable quantity of mifepristone or misoprostol” is a Schedule IV Controlled Dangerous Substance.

¹⁰² LA. STAT. ANN. [§ 40:969\(C\)](#); LA. [Act No. 246](#) (2024).

¹⁰³ LA. STAT. ANN. [§ 40:969\(C\)](#); LA. [Act No. 246](#) (2024). This sentence can be enhanced up to 10 years under certain circumstances. See La. R.S. [§ 40.981.3](#).

¹⁰⁴ LA. STAT. ANN. [§ 40:969\(C\)](#); LA. [Act No. 246](#) (2024).

¹⁰⁵ LA. STAT. ANN. [§ 40:969\(A\)\(1\)](#).

¹⁰⁶ See LA. STAT. ANN. [§ 40:978 \(B\)](#).

¹⁰⁷ *Id.* at [§ 40:978\(D\)](#).

¹⁰⁸ LA. STAT. ANN. [§ 40:973\(A\)\(2\)](#); see also LA. STAT. ANN. [§ 40:1001 et seq.](#)

¹⁰⁹ *Id.* [§ 40:1061.25](#).

¹¹⁰ *Id.*

¹¹¹ This is true even though this provision lives in Title 40 of the Louisiana code, and the definition of abortion lives in Title 14, as Title 40 explicitly states that “unless a different meaning clearly appears in the context, the terms, whether singular or plural, have the same meaning as the definitions provided in R.S. 14:87.1.” LA. STAT. ANN. [§ 40:1061.1.1](#).

¹¹² LA. STAT. ANN. [§ 14:87.3](#).

¹¹³ See LA. STAT. ANN. [§ 14:87.1\(1\)\(b\)](#).

¹¹⁴ *Id.*; LA. STAT. ANN. [§ 40:1061.25](#).

¹¹⁵ LA. STAT. ANN. [§ 40:1191.2](#).