ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

SOUTH CAROLINA

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 have 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.

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Key Takeaways

Contraception, including emergency contraception, is legal.

Medical care for ectopic or molar pregnancies, medical emergencies, miscarriage, pregnancies where the fetus has a fatal anomaly, 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 in South Carolina once cardiac activity is detected, unless the pregnant person is experiencing a medical emergency or fatal fetal anomaly, and in cases of rape or incest reported to law enforcement during the first trimester of pregnancy.

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Definition of Abortion & Contraception

The word "abortion" has a specific legal meaning under South Carolina law: "...the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child."[1] This definition encompasses both medication and procedural abortion.[2]

The following are *excluded* from South Carolina law's definition of abortion: (1) removing "a dead unborn child;" and (2) the use of birth control, including IUDs and emergency contraception.[3] While undefined, it is generally understood that in the context of South Carolina's definition of abortion, "dead" means that there is no cardiac activity present in the embryo or fetus.[4] This means that treatment for miscarriage where there is no cardiac activity (including prescribing medications or providing a procedure, including D&C, D&E, and labor induction) is *not* an abortion under South Carolina law and thus is not prohibited.

With respect to self-managed abortion, it is legal for providers to give medical care (1) during or after a self-managed abortion provided there is no cardiac activity, (2) if the patient is experiencing a complication that would qualify as a medical emergency,[5] or (3) to prevent "death" or a "substantial and irreversible impairment of a major bodily function" (see below).[6] There is no explicit crime of "self-managed abortion" in South Carolina law, and no civil law prohibiting a person from self-managing an abortion. In fact, the state's criminal abortion ban explicitly exempts pregnant people from liability, and prior laws criminalizing self-managed abortion in South Carolina were repealed.[7]

Contraception, including emergency contraception, is legal in every state. South Carolina law explicitly states that it is not a violation of its abortion ban to "use, sell, or administer a contraceptive measure, drug, chemical, or device" provided it is "used sold, prescribed, or administered in accordance with the manufacturer's instructions and is not used, sold, prescribed or administered to cause or induce an abortion."[8] "Contraceptive" is defined as "a drug, device, or chemical that prevents ovulation, conception, or the implantation of a fertilized ovum in a woman's uterine wall after conception[,]" meaning that IUDs and emergency contraception are explicitly excluded from South Carolina's abortion restrictions and remain legal.[9]

Abortion Ban

South Carolina has an abortion ban with penalties that are criminal (prison time) and civil (loss of medical license and monetary fines). These penalties do not apply to the patient: South Carolina's ban on self-managed abortion was repealed, and the current six-week ban specifically exempts the pregnant person from any liability for an abortion.[10]

Six-Week Ban: This law took effect on August 23, 2023, and prohibits abortions when an embryo or fetus has detectable cardiac activity;[11] with exceptions for rape and incest in the first trimester if reported to law enforcement;[12] for fatal fetal anomalies at any gestational duration;[13] for medical emergencies at any gestational duration;[14] and to "prevent the death of the pregnant woman or the serious risk of a substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions."[15] The ban is typically known as a "six-week ban" because cardiac activity is detectable as early as six weeks LMP.[16]

Violations of this ban are currently punishable as a

felony, with penalties of ten thousand dollars, two or fewer years in prison, or both.[17]

A physician or other "professionally licensed person who intentionally, knowingly, or recklessly" performs an abortion in violation of this ban "commits an act of unprofessional conduct" that can result in the revocation of the person's license to practice medicine, in addition to potential costs, fines, and other disciplinary actions by the licensing board.[18] Additionally, the State Board of Medical Examiners has broad authority to discipline a physician for a felony conviction, including revoking a medical license; this would allow professional discipline even if a physician does not act intentionally, knowingly, or recklessly.[19]

The pregnant woman "upon whom an abortion has been performed, induced, or coerced in violation of this article" can also bring a case seeking actual and punitive damages.[20] Additionally, the ban is punishable through a private cause of action that purports to allow "(1) the woman upon whom the abortion was performed or induced in violation of this article; (2) the parent or guardian of the pregnant woman if she had not attained the age of eighteen years at the time of the abortion or died as a result of the abortion; (3) a solicitor or prosecuting attorney with proper jurisdiction; or (4) the Attorney General" to bring a civil lawsuit against a provider for injunctive relief within three years of the date of the abortion.[21]

Five physicians are challenging this ban in federal court for violating their rights to religious freedom and freedom from unduly vague laws under the U.S. Constitution.[22]

Exceptions to Abortion Ban

Abortion is legal in South Carolina prior to the detection of cardiac activity,[23] as well as to prevent death or a serious physical health risk; in the event of a medical emergency at any gestational duration;[24] in the event of a fatal fetal anomaly at any gestational duration;[25] or in the event of rape or incest in the first trimester provided the rape or incest is reported to law enforcement.[26] Treatment for ectopic pregnancy (including use of methotrexate and surgical removal) and treatment for miscarriage where there is no cardiac activity (including medications, D&C, D&E, labor induction) are *not* abortions under South Carolina law and thus are not prohibited by any of the abortion bans.

Medical Emergency: South Carolina provides an explicit exception to its abortion ban when "an abortion is performed or induced on a pregnant woman due to a medical emergency…."[27] Medical emergency is defined as "in reasonable medical judgment, a condition exists that has complicated the pregnant woman's medical condition and necessitates an abortion to prevent death or serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions."[28] The statute provides two standards doctors should use to evaluate whether a medical emergency exists: "reasonable medical judgment" and "standard medical practice."[29] "Reasonable medical judgment" is defined as "a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved."[30] However, in the exception statute itself, it says that the determination of a medical emergency is to be made "according to standard medical practice," which is not further defined in law.[31]

When providing care under the medical emergency exception, providers must "make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman's unborn child, to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of

the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practices."[32]

The medical emergency exception has an implied exception to the fetal ultrasound requirement in the six-week ban,[33] so an ultrasound before a medically emergent abortion is not required. Other abortion requirements are also waived in the case of a medical emergency, including: consent from the patient or their spouse/guardian (if the patient cannot legally give consent);[34] disclosure of a minor's consent requirements;[35] biased counseling/ultrasound viewing requirements and their accompanying record-keeping requirements;[36] and a 24-hour waiting period.[37]

Death or Substantial and Irreversible Risk to Physical Health: South Carolina provides an explicit exception to its abortion ban when, in a physician's "reasonable medical judgment" a medical procedure is performed "to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions."[38] Treatment of the following conditions is "presumed" to be included under this exception to South Carolina's abortion ban: "…molar pregnancy, partial molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe physical maternal trauma, uterine rupture…[and] miscarriage[.]"[39] This list is not an exhaustive list of all the reasons an abortion may qualify under this exception, and providers have discretion, in their reasonable medical judgment or according to standard medical practice, to determine if another condition not included in the list of presumed conditions qualifies.[40] However, if the "unborn child is alive in utero," then "the physician must make all reasonable efforts to deliver and save the life of an unborn child during the process of separating the unborn child from the pregnant woman, to the extent that it does not adversely affect the life or physical health of the pregnant woman, and in a manner that is consistent with reasonable medical practice."[41] The performing physician is also required to include a written declaration in the patients file that states "that the medical procedure was necessary, the woman's medical condition necessitating the procedure, the physician's rationale for his conclusion that the procedure was necessary, and that all reasonable efforts were made to save the unborn child in the event that it was living prior to the procedure."[42]

Fatal Fetal Anomaly: An abortion in cases of a "fatal fetal anomaly" at any gestational age is permitted under South Carolina's abortion ban.[43] The law defines a "fatal fetal anomaly" as a condition that a physician determines, based on their "reasonable medical judgment," is a "profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth."[44] Performing an abortion in violation of this section of the law is punishable as a felony which, upon conviction, will result in a fine of up to ten thousand dollars, no more than two years imprisonment, or both.[45]

Rape or Incest in the First Trimester: Abortion in cases of rape or incest during the first trimester of pregnancy — where the "probable gestational age… is not more than twelve weeks" — is permitted provided the medical provider reports the rape or incest to the sheriff in the county where the abortion was performed.[46] South Carolina interprets "first trimester of pregnancy" to mean twelve weeks from conception, which is defined as "the fertilization of an ovum by a sperm."[47] The report of rape or incest may be made "orally or otherwise" within 24 hours of "performing or inducing" the abortion, and must include the name and contact information of the pregnant person.[48] Violation of this section is a felony which, if convicted, could result in a ten

thousand dollar fine, two years in prison, or both.[49]

Note that unlike medical emergencies, South Carolina law still imposes general abortion requirements in cases of a fatal fetal anomaly or in cases of rape or incest, including: consent from the patient or their spouse/guardian (if the patient cannot legally give consent);[50] disclosure of consent requirements for minors;[51] biased counseling/ultrasound viewing requirements and their accompanying record-keeping requirements;[52] and a 24-hour waiting period.[53]

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.[54] 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."[55] 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."[56]

EMTALA requires stabilizing medical treatment be provided to any individual experiencing an emergency medical condition,[57] including people in labor or with emergency pregnancy complications,[58] unless the individual refuses to consent to such treatment.[59] 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."[60] 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.[61] 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."[62]

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.[63]

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."[64] 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."[65] 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." [66] 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.[67]

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.[68] 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]."[69] 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.[70] 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.[71] Following the change of presidential administrations, the United States dismissed that case entirely. [72]

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.[73] As a result, the Fifth Circuit's decision is final.[74] [75]

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.[76]

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.[77]

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.[78]

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.[79] 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.[80]

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

Abortion Reporting: South Carolina law requires the "performing physician" to report any abortion performed within seven days to the State Registrar, Department of Public Health.[82] The report cannot contain patient or physician names, but must "indicate from whom consent was obtained, circumstances waiving consent…" and the exception relied upon to perform or induce the abortion, if one was invoked.[83]

Complication Reporting: South Carolina does not require a specific report for an abortion complication, but most abortions performed after fetal cardiac activity is detected have some sort of documentation requirement (see below).

Other Mandatory Reporting: All other general mandatory reporting to the Department of Social Services, local law enforcement, etc., also applies for abortion patients.[84] This includes reporting of sexual abuse of young people under 18, child abuse, and vulnerable adult abuse.[85]

Fetal Death Reporting: Abortions are not reportable as fetal deaths in South Carolina.[86] Providers must report fetal deaths within five calendar days of delivery only after a stillbirth when the fetus is 350 grams or more, or if the weight is unknown, at or after 20 weeks gestation.[87] When a fetus is delivered in an institution, on the way there, or brought to an institution after delivery outside of the institution,[88] the person in charge of the institution (or their designated representative) must submit the report.[89] The coroner must investigate the cause[90] of any fetal death that occurs outside of an institution when the fetus is not taken to an institution immediately after the delivery "or when inquiry is required by state law."[91] Additional information related to fetal deaths may be requested by the Department.[92]

In addition, delivering hospitals must offer and provide to fill out a "Certificate of Birth Resulting in Stillbirth" for "mothers whose delivery resulted in a fetal death of twenty completed weeks of gestation or more or a weight of three hundred fifty grams or more," and this is to be filed within five days of delivery to the county registrar.[93]

Fatal Fetal Anomaly Documentation: When performing an abortion due to a fatal fetal anomaly, the performing provider must "make written notations in the pregnant woman's medical records of: (a) the presence of a fatal fetal anomaly; (b) the nature of the fatal fetal anomaly; (c) the medical rationale for making the determination that with or without the provision of life-preserving treatment life after birth would be unsustainable."[94] Violations are felonies punishable by up to $10,000, imprisonment up to two years, or both.[95] These notations in the medical record must be kept for at least seven years.[96] If an entity that owns the pregnant person's medical records fails to keep a record of the notations for at least seven years, they must be fined "up to fifty thousand dollars."[97]

Medical Emergency Documentation: Providers who perform an abortion under the medical emergency exception must note the following in the medical record: "(a) the physician's belief that a medical emergency necessitating the abortion existed; (b) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44-41-630 [the six-week ban]; and (c) the

medical rationale to support the physician's or person's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death and a medical emergency necessitating the abortion existed."[98] Though this last portion of the law appears to require an assertion that the abortion was necessary to prevent death, the definition of medical emergency under this law is clear that other medical emergencies are allowable under this section.[99]

When invoking a medical emergency exception, medical records must be maintained by the "physician owner" for at least seven years, and the "physician owner" must maintain a copy of the "notations" denoting the medical emergency in their own records for at least seven years.[100] Violation of any record-keeping requirements could result in a felony conviction with fines of up to ten thousand dollars, two years imprisonment, or both.[101] Violation of this section by an entity could result in a fine of up to fifty thousand dollars.[102] 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 hospitals from liability, these are not legal requirements.

Death or Substantial and Irreversible Risk to Physical Health Documentation: In cases where a physician is invoking the exception to prevent death or substantial and irreversible physical injury, the "physician who performs the medical procedure…shall declare, in a written document maintained with the woman's medical records, that the medical procedure was necessary, the woman's medical condition necessitating the procedure, the physician's rationale for his conclusion that the procedure was necessary, and that all reasonable efforts were made to save the unborn child in the event it was living prior to the procedure."[103] This declaration is to be placed in the woman's medical records within thirty days after the procedure.[104]

Other Documentation: The following require additional documentation: consent from the patient or their spouse/guardian (if the patient cannot legally give consent);[105] disclosure of a minor's consent requirements;[106] biased counseling/ultrasound viewing requirements and their accompanying record-keeping requirements;[107] and a 24-hour waiting period.[108]

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.[109] 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.[110, 111]

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.[112] 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.[113]

Counseling & Referral

Speech about abortion is legal in South Carolina. South Carolina providers can thus: 1) provide

accurate options counseling, including about abortion; and 2) refer patients to medical providers in states where abortion is legal.

South Carolina law states that "No physician, nurse, technician, medical student, or other employee of a hospital, clinic or physician shall be required to recommend, perform or assist in the performance of an abortion if he advises the hospital, clinic, or employing physician in writing that he objects to performing, assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor."[114] Private and nongovernmental hospitals may also refuse to admit a patient for the purpose of performing a non-emergent abortion, as well as refuse to allow non-emergent abortions to be performed in their facility.[115]

Medication Abortion

South Carolina has a ban on the provision of telemedicine abortion.[116] This ban does not impose penalties on the person seeking the care. South Carolina law does not contain any other requirements specific to medication abortion.

Disposition of Fetal Tissue Remains

South Carolina regulations control the "disposition and transportation of human remains," which includes a "dead … fetus."[117] While "dead fetus" is undefined, "fetal death" is defined as "death prior to the complete expulsion or extraction from its birth mother or gestational carrier of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy."[118] It is unclear whether all fetal deaths are to be handled in accordance with the regulations, or if compliance with the disposition rules are only required when a fetal death report is required (which occurs if the fetus weighs 350 grams or more, or, if the weight is unknown, after 20 weeks gestational duration).[119]

South Carolina bans the donation of fetal tissue from abortion to any political subdivision of the state.[120]

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).

References

[1] S.C. Code Ann. § 44-41-10(a).
[2] *Id.*
[3] *Id.* as read with § 44-41-640(E) ("It is not a violation of Section 44-41-630 to use, sell, or administer a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed or administered in accordance with manufacturer's instructions and is not used, sold, prescribed or administered to cause or induce an abortion.") and § 44-41-610(4) ("'Contraceptive' means a drug, device, or chemical that prevents ovulation, conception, or the implantation of a fertilized ovum in a woman's uterine wall after conception.").
[4] *See* S.C. Code Regs. § 60-19(100)(O) (defining "fetal death" as "...death prior to the complete expulsion or extraction from its birth mother or gestational carrier of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy. The death is 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. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps").
[5] S.C. Code Ann. § 44-41-640(A).
[6] S.C. Code Ann. § 44-41-640(C)(1).
[7] S.C. Code Ann. § 44-41-670 ("A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of this article or for attempting to commit, or conspiring to commit a violation of any of the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article."); *see also* S.C. Code Ann. § 44-41-80 ("...shall not apply to any woman upon whom an abortion has been attempted or performed…she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her").
[8] S.C. Code Ann. § 44-41-640(E).
[9] S.C. Code. Ann. § 44-41-610(4).
[10] S.C. Code Ann. § 44-41-670 ("A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of this article or for attempting to commit, or conspiring to commit a violation of any of the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article."); *see also* S.C. Code Ann. § 44-41-80 ("...shall not apply to any woman upon whom an abortion has been attempted or performed…she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her.").
[11] S.C. Code Ann. § 44-41-630(B) (upheld as constitutional by *Planned Parenthood S. Atl. v. State*, 440 S.C. 465 (2023)).
[12] S.C. Code Ann. § 44-41-650(A)-(B).
[13] S.C. Code Ann. § 44-41-660.
[14] S.C. Code Ann. § 44-41-640(B)(1).
[15] S.C. Code Ann. § 44-41-640(C)(1).
[16] *Planned Parenthood S. Atl. v. South Carolina*, 445 S.C. 600, 916 S.E.2d 299 (2025) (upholding the definition of "fetal heartbeat" in the Fetal Heartbeat and Protection from Abortion Act).
[17] S.C. Code Ann. § 44-41-650(C); § 44-41-630(B); § 44-41-660(C).
[18] S.C. Code Ann. § 44-41-690.
[19] S.C. Code Ann. § 40-47-110(A)-(B).
[20] S.C. Code Ann. § 44-41-680(B).
[21] S.C. Code Ann. § 44-41-680(C).
[22] First Amended Complaint, *Bingham v. Wilson*, No. 2:25-cv-00163-RMG (D.S.C. Jan. 15, 2025).
[23] S.C. Code Ann. § 44-41-630(B).
[24] S.C. Code Ann. § 44-41-640.
[25] S.C. Code Ann. § 44-41-660.
[26] S.C. Code Ann. § 44-41-650(A)-(B).
[27] S.C. Code Ann. § 44-41-640(A).
[28] S.C. Code Ann. §44-41-610(13)
[29] Pending litigation may clarify these standards and which is controlling. *See Bingham v. Wilson*, No. 2:25-cv-00163-RMG

(D.S.C.).
[30] S.C. Code Ann. §44-41-610(13)
[31] S.C. Code Ann. § 44-41-640(B)(1).
[32] S.C. Code Ann. § 44-41-640(B)(3).
[33] S.C. Code Ann. § 44-41-640.
[34] S.C. Code Ann. § 44-41-30(A)-(C); *Id.* § 44-41-330(A).
[35] S.C. Code Ann. § 44-41-37; *Id.* § 44-41-330(A); *Id.* § 44-41-31.
[36] S.C. Code Ann. § 44-41-330(A), (D)-(F).
[37] S.C. Code Ann. § 44-41-330(C).
[38] S.C. Code Ann. § 44-41-640(C)(1); S.C. Code Ann. §44-41-610(13) (defining "reasonable medical judgment").
[39] S.C. Code Ann. § 44-41-640(C)(2) ("intrauterine fetal demise" is also included here in this list of acceptable emergent conditions, but this is already excluded under the definition of abortion, and thus it would not require the declaration of a risk of "death or substantial and irreversible impairment of a major bodily function" to justify the abortion).
[40] S.C. Code Ann. § 44-41-640(C)(2) ("The enumeration of the medical conditions in this item is not intended to exclude or abrogate other conditions that satisfy the [risk of death/substantial and irreversible impairment exception] or prevent other procedures that are not included in the definition of abortion.").
[41] S.C. Code Ann. § 44-41-640(C)(2).
[42] S.C. Code Ann. § 44-41-640(C)(3).
[43] S.C. Code Ann. § 44-41-660(A).
[44] S.C. Code Ann. § 44-41-610(5).
[45] S.C. Code Ann. § 44-41-660(C).
[46] S.C. Code Ann. § 44-41-650(A)-(B). *See also* S.C. Code Ann. § 44-41-30(D) (requiring incest reporting to "the local county department of social services or to a law enforcement agency in the county where the child resides or is found"; this section's requirements are satisfied by S.C. Code Ann. § 44-41-650(A)-(B)'s requirement of a report to the local county sheriff); S.C. Code Ann. § 44-41-31 (further enumerating consent requirements for young people under 18).
[47] S.C. Code Ann. §§ 44-41-10(g), (i). "Probable gestational age" is defined elsewhere as "… what, in the judgment of the attending physician based upon the attending physician's examination and the woman's medical history, is with reasonable probability the gestational age of the embryo or fetus at the time the abortion is planned to be performed." S.C. Code Ann. § 44-41-320(2).
[48] S.C. Code Ann. § 44-41-650(B).
[49] S.C. Code Ann. § 44-41-650(C).
[50] S.C. Code Ann. § 44-41-30(A)-(C); *Id.* § 44-41-330(A).
[51] S.C. Code Ann. § 44-41-37; *Id.* § 44-41-330(A); *Id.* § 44-41-31.
[52] S.C. Code Ann. § 44-41-330(A), (D)-(F).
[53] S.C. Code Ann. § 44-41-330(C).
[54] EMTALA, 42 U.S.C. § 1395dd(a).
[55] EMTALA, 42 U.S.C. § 1395dd(e)(1)(A).
[56] EMTALA, 42 U.S.C. § 1395dd(e)(1)(B).
[57] EMTALA, 42 U.S.C. § 1395dd(b)(1)(A).
[58] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[59] EMTALA, 42 U.S.C. § 1395dd(b)(2).
[60] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).
[61] 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).
[62] EMTALA, 42 U.S.C. § 1395dd(c)(1)(B)–(c)(2)(A).
[63] 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.

[64] Kennedy Letter.

[65] Kennedy Letter.

[66] *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.).

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

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

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

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

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

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

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

[74] *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).

[75] 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.

[76] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).

[77] 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/.

[78] S.C. Code Ann. ch. 32 (2024).

[79] Accreditation Council for Graduate Med. Educ., *ACGME Program Requirements for Graduate Medical Education in Obstetrics and Gynecology* (Sept. 3, 2025).

[80] 42 U.S.C. § 238n.

[81] 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.

[82] S.C. Code Ann. § 44-41-60.

[83] S.C. Code Ann. § 44-41-60.

[84] Fact sheets from If/When/How with a comprehensive list of the state-specific mandatory reporting requirements that apply for all abortion procedures are available here.

[85] S.C. Code Ann. § 63-7-310 et seq.; S.C. Code Ann. § 43-35-25; S.C. Code Ann. § 16-3-655. In South Carolina, generally a person who is 14 or younger cannot consent to sex with someone of any age (S.C. Code Ann. § 16-3-655). However, if a young person who is at least 14 engages in consensual sexual activity with someone who is 18 or younger, this is not criminal sexual conduct with a minor under state law (*Id.* at (B)(2), (C)).

[86] South Carolina defines fetal death broadly as a death that occurs before the fetus is completely outside the body of the birthing person, regardless of the length of the pregnancy and which was not the result of an abortion. S.C. Code Regs. 60-19(100)(O) (the definition of "fetal death" explicitly excludes abortion).

[87] *Id.* at (800)(A).

[88] *Id.* at (800)(B)-(C).; *Id.* at (403)(C) ("When a dead body or fetus is released or disposed of by an institution, the person

in charge of the institution shall retain documentation showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be documented.").

[89] *Id.* at (800)(B).

[90] S.C. Code Regs. 60-19(800)(E) ("If the cause of fetal death is unknown or pending investigation, the cause of fetal death shall be noted as such on the report.").

[91] S.C. Code Regs. 60-19(800)(D) ("When a fetal death required to be reported by this Section occurs outside of an institution and the fetus is not taken to an institution immediately after the delivery or when inquiry is required by state law, the coroner shall investigate the cause of fetal death and shall prepare and submit the fetal death report within give (5) calendar days of notification.").

[92] *Id.* at 404(A)-(B) ("Upon demand of the Department, any person having knowledge of the facts shall furnish such information as he or she may possess regarding any live birth, death, fetal death, induced termination of pregnancy, marriage, or divorce, or annulment. Any person required to report shall provide to the Department information that was required to be reported, but that was not so reported, within five (5) calendar days of that person receiving that information. Within five (5) calendar days of receipt of any autopsy results or other information that would provide pending or missing information or correct errors in a reported cause of death, the physician, medical examiner, or coroner required to report the death shall register a supplemental report of the cause of death to amend the record.").

[93] S.C. Code Ann. § 44-63-55(A).

[94] S.C. Code Ann. § 44-41-660(B)(1).

[95] S.C. Code Ann. § 44-41-660(C).

[96] S.C. Code Ann. § 44-41-660(B)(2).

[97] S.C. Code Ann. § 44-41-660(D).

[98] S.C. Code Ann. § 44-41-640(B)(2).

[99] S.C. Code Ann. §44-41-610(9) ("'Medical emergency' means in reasonable medical judgment, a condition exists that has complicated the pregnant woman's medical condition and necessitates an abortion to prevent death or serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.").

[100] S.C. Code Ann. § 44-41-640(B)(4)(a).

[101] S.C. Code Ann. § 44-41-640(B)(4)(b).

[102] S.C. Code Ann. § 44-41-640(B)(4)(c).

[103] S.C. Code Ann. § 44-41-640(C)(3).

[104] S.C. Code Ann. § 44-41-640(C)(3).

[105] S.C. Code Ann. § 44-41-30(A)-(C); *Id.* § 44-41-330(A).

[106] S.C. Code Ann. § 44-41-37; *Id.* § 44-41-330(A); *Id.* § 44-41-31.

[107] S.C. Code Ann. § 44-41-330(A), (D)-(F).

[108] S.C. Code Ann. § 44-41-330(C).

[109] 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).

[110] 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.

[111] 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 went 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.

[112] 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.

[113] 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.

[114] S.C. Code Ann. § 44-41-50(A). The law goes on to discuss lack of liability and protections from discipline for refusal.

[115] S.C. Code Ann § 44-41-40.

[116] S.C. Code Ann. § 40-47-37(C)(7)(c).

[117] S.C. Code Regs. § 60-19(900)-(904).

[118] S.C. Code Regs. § 60-19(100)(O) ("The death is 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. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.").

[119] S.C. Code Regs. § 60-19(800).

[120] S.C. Code Ann. § 44-41-90(B).