ABORTION DEFENSE NETWORK

Know Your State's Abortion Laws

A Guide for Medical Professionals

ARKANSAS

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.

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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 Arkansas law unless the patient has a “medical emergency,” meaning abortion is necessary to “preserve the life” of a patient “whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.”

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Definition of Abortion & Contraception

ABORTION

Arkansas defines "abortion" as "the act of using, prescribing, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child."[1] "Unborn child" is defined to "mean[] an individual organism of the species Homo sapiens from fertilization until live birth."[2]

The following are explicitly *excluded* from Arkansas law's definition of an abortion: an act "performed with the purpose to" (1) "[s]ave the life or preserve the health of the unborn child;" (2) "remove a dead unborn child caused by spontaneous abortion;" or (3) "remove an ectopic pregnancy."[3] While undefined in this statutory section, within the abortion context, the Arkansas legislature has defined an "infant who is born *alive*" as exhibiting "any evidence of life" such as breathing, a heartbeat, umbilical cord pulsation, and/or "definite movement of voluntary muscles," all of which suggest that "dead" means that there is no cardiopulmonary activity present in the embryo or fetus.[4] This means that treatment for ectopic pregnancy (including use of methotrexate and surgical removal), which is also excluded from the statutory definition of abortion, and treatment for miscarriage, where there is no cardiac activity (including medications, D&C, D&E, labor induction), are *not* abortions under Arkansas law and thus are not prohibited by any of the abortion bans.

Miscarriage care is legal, so long as there is no cardiac activity. With respect to self-managed abortion, it is legal for providers to give medical care during or after a self-managed abortion provided there is no cardiac activity, or if the patient is experiencing a complication that would qualify as a medical emergency (see below). A pregnant person cannot be charged or convicted under the state's criminal abortion bans for self-managing their abortion because the bans, discussed below, explicitly exempt pregnant people from liability.[5]

CONTRACEPTION

Contraception is not illegal in any state in the country. Arkansas's law specifies that it does not "prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical" if the contraceptive is administered before a pregnancy is detectable "through conventional medical testing", so long as the contraceptive is "sold, used, prescribed, or administered in accordance with manufacturer instructions."[6]

Abortion Bans

Total Bans: Arkansas has two identical abortion bans currently in effect: a total ban, the "Unborn Child Protection Act," and a trigger ban, the "Arkansas Human Life Protection Act" (collectively referred to as the "total bans"). Arkansas's trigger ban took effect on June 24, 2022. Arkansas's total ban, passed in 2021, is also currently in effect, and is identical to the trigger ban. Both bans prohibit all abortions as defined above "except to save the life of a pregnant woman in a medical emergency."[7] The bans carry criminal penalties. Performing or attempting to perform an abortion is an "unclassified felony"[8] punishable by "a fine not to exceed one hundred thousand dollars ($100,000) or imprisonment not to exceed ten (10) years, or both."[9]

Other Bans and Restrictions: Under Arkansas law, there are additional gestational age bans and abortion restrictions currently in effect.[10] The gestational age bans prohibit abortions after eighteen

weeks[11] and twenty weeks,[12] except in cases of rape, incest, and medical emergency.[13,14]

Arkansas also ban both dilation and evacuation ("D&E") procedures and intact D&E procedures (sometimes called D&X procedures)[15] and requires pregnant people to undergo biased counseling[16], a 72-hour waiting period[17], and to obtain an ultrasound[18] to obtain an abortion. Young people under 18 and adults who have guardians or custodians must obtain parental[19] or judicial[20] consent to obtain an abortion. The state also prohibits the use of public funds[21] and health plans offered through the Arkansas health insurance exchange[22] to cover "elective" abortion procedures.

The use of telemedicine for distributing abortion-inducing drugs (defined below) is also prohibited.[23]

"Medical Emergency" Exception to Abortion Bans

There is an exception to Arkansas's total bans (both of which ban all abortions at any stage of fetal development) when a person performs an abortion "to save the life of a pregnant woman in a medical emergency."[24] Both bans define "medical emergency" as "a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."[25]

An abortion permitted under the total bans must be performed in a hospital or an emergency room.[26] Arkansas law only allows physicians licensed to practice medicine in Arkansas and board-certified or board-eligible in obstetrics and gynecology to perform abortions.[27]

Practitioners providing abortions pursuant to the medical emergency exception are exempted from compliance with Arkansas's other abortion restrictions. Specifically, providers do not need to comply with Arkansas's informed consent counseling and 72-hour waiting period; informational requirements about medical and social assistance for prenatal, childbirth, and neonatal care; counseling about fetal pain; counseling about abortion reversal; and more.[28] Additionally, young people under 18 need not obtain parental or judicial consent in advance of an abortion in cases of medical emergency, but if the young person does not state that they intend to seek a judicial bypass, the provider is required to notify their parents within 24 hours.[29] To the extent that the twelve-week ban referred to above is still in effect, providers are also not required to test for fetal cardiac activity in the event of a medical emergency.[30] If possible, physicians must inform patients experiencing a medical emergency "of the medical indications supporting the physician's judgment that an immediate abortion is necessary to avert her death or that a seventy-two-hour delay will cause substantial and irreversible impairment of a major bodily function."[31] The physician who performed the emergency abortion must certify "the nature of the medical emergency and the circumstances that necessitated the waiving of the informed consent requirements" and record this certification in the physician's and facility's permanent records.[32]

Arkansas's total bans also provide an affirmative defense to prosecution if "a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to an unborn child."[33] In contrast to an exception, which should prevent a person from being sued or criminally charged in the first place, an affirmative defense is a defense that a defendant, who has either already been charged with a crime or sued civilly, can introduce into evidence that, if proven, defeats liability or conviction. It is important to note that an affirmative defense does not mean that a physician will not be sued or arrested in the first place. Rather, this affirmative defense may help

a physician defendant be acquitted of charges under the abortion ban.

EMTALA

A federal law called the Emergency Medical Treatment & Labor Act (EMTALA) requires emergency abortion care in some cases. EMTALA requires Medicare-participating hospitals with emergency departments (which is most hospitals), to provide medical screening[34] and stabilizing medical treatment to individuals experiencing an emergency medical condition,[35] including people in labor or with emergency pregnancy complications.[36] 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."[37] 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.[38] 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 . . . ."[39] 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."[40] 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."[41] 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."[42] 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.[43] 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").[44]

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.[45] 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.[46] 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.[47] 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.[48]

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.[49]

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.[50]

Resident Training: The Accreditation Council for Graduate Medical Education (ACGME) requires that accredited programs provide access to training in the provision of abortion.[51] 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.[52]

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.[53] 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: Arkansas law requires that physicians, healthcare providers, and abortion facilities "report to the Department of Health the number of abortions performed to save the life of the mother."[54]

Complication Reporting: Arkansas law requires that physicians electronically report abortion complications to the Department of Health within three days of the complications' diagnosis or treatment.[55] Healthcare facilities must likewise submit a report for each complication "diagnosed or treated by the healthcare facility not later than the thirtieth day after the date on which the abortion complication was diagnosed or treated."[56] Accordingly, providers must report: shock; uterine perforation; cervical laceration; hemorrhage; aspiration or allergic response; infection; sepsis; death; incomplete abortion; damage to the uterus; and any infants "born alive after an abortion procedure."[57]

Physicians must also report any "adverse events" caused by the provision of abortion-inducing drugs within three days of its occurrence to the United States Food and Drug Administration via the MedWatch system and to the Arkansas State Medical

Board.[58] Arkansas law defines an "adverse event" as "an undesirable experience associated with the use of a medical product in a patient, including without limitation an event that causes: death; threat to life; hospitalization; disability or permanent damage; congenital anomaly or birth defect, or both; required intervention to prevent permanent impairment or damage; or other serious important medical events, including without limitation: allergic bronchospasm requiring treatment in an emergency room; serious blood dyscrasias; seizures or convulsions that do not result in hospitalization; and the development of drug dependence or drug abuse."[59]

Fetal Death Reporting: All fetal deaths where the fetus was 12 weeks' gestation(LMP) or greater "shall be reported within five (5) days after delivery to the Division of Vital Records or as otherwise directed by the State Registrar of Vital Records."[60] The definition of fetal death explicitly excludes abortion.[61] "When a 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 fetal death certificate."[62] "When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the fetal death certificate."[63] Spontaneous fetal deaths where the fetus was less than 12 weeks gestation must be reported in the same manner as abortions.[64]

Other Mandatory Reporting: All other general mandatory reporting to the Department of Family and Protective Services, local law enforcement, etc., also applies for abortion patients.[65] This includes child maltreatment and adult and long-term care facility resident maltreatment.[66]

Electronic Medical Records: Many electronic medical record systems (EMRs) allow healthcare providers to securely share patient records across healthcare institutions.[67] 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.[68]

The federal government has taken steps to address this concern by issuing a new HIPAA rule, effective June 25, 2024.[69] 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.[70] 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.[71] 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.[72] 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.[73]

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.[74] 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.[75]

Counseling & Referral

Speech about abortion is legal in Arkansas. Medical professionals in Arkansas can thus (1) provide accurate options counseling, including about abortion; and (2) refer patients to medical providers in states where abortion is legal. While medical professionals can lawfully provide counseling and referrals, practitioners should note that Arkansas does not provide public funding, including Medicaid, to providers or affiliates who provide abortion referrals or "counsel[] in favor of elective abortions."[76]

Medication Abortion

Arkansas has additional laws governing the use of medication abortion, referred to in state law as "abortion-inducing drugs." Arkansas law defines "abortion-inducing drug" to be "a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child."[77] Included within this definition is the "off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol, Cytotec, and methotrexate."[78] However, the law does *not* include abortifacient drugs "prescribed for other medical indications such as chemotherapeutic agents or diagnostic drugs."[79]

Under Arkansas law, providers are prohibited from providing "any abortion-inducing drug via courier, delivery, or mail service."[80] To the extent that medication abortions are still available under Arkansas's abortion bans, the physician must provide the medication in person, the physician must have a signed emergency agreement with an associated physician, there must be follow up within seven to fourteen days of the abortion, and there must be physician compliance documented in the patient's medical chart.[81]

Disposition of Fetal Tissue Remains

Arkansas law requires that embryonic and fetal tissue remains be disposed of consistent with Arkansas's other laws pertaining to the disposition of fetal and human tissue generally, and to final disposition of human remains.[82] Violation of this requirement is a class A misdemeanor.[83]

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).

References

[1] Ark. Code. Ann. §§ 5-61-303(1)(A), 5-61-403(1)(A).
[2] Ark. Code. Ann. §§ 5-61-303(4), 5-61-403(4).
[3] Ark. Code Ann. §§ 5-61-303(1)(B), 5-61-403(1)(B).
[4] Ark. Code Ann. § 20-16-604(a)(3)(A)–(D).
[5] *See* Ark. Code Ann. §§ 5-61-304(c)(1) (specifying that the law's prohibition on abortion does not "[a]uthorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child"), 5-61-404(c)(1), 20-16-1306(1), 20-16-2006(a)(2).
[6] Ark. Code Ann. §§ 5-61-304(c)(2), 5-61-404(c)(2).
[7] Ark. Code Ann. § 5-61-304(a), 5-61-404(a).
[8] Ark. Code Ann. § 5-61-304(b), 5-61-404(a).
[9] *Id.*
[10] Arkansas also has a twelve-week ban, which is currently enjoined. The twelve-week abortion ban bans all abortions except in cases of rape, incest, and medical emergency. The twelve-week ban is permanently enjoined, but Arkansas has asked a federal court to vacate the injunction now that Roe has been overturned. *See Edwards v. Beck*, 8 F. Supp. 3d 1091 (E.D. Ark. 2014), *aff'd*, 786 F.3d 1113 (8th Cir. 2015), *motion to vacate judgment filed*, 4:13-cv-00224-SWW (E.D. Ark. July 1, 2022).
[11] Ark. Code Ann. § 20-16-2004.
[12] Ark. Code Ann. § 20-16-1405.
[13] Ark. Code Ann. §§ 20-16-1405(a), 20-16-2004(b).
[14] The statutory definitions of "medical emergency" in the legislation pertaining to the 18-week, 20-week, and total bans. In the 18-week ban, "medical emergency" means "any condition that on the basis of the physician's good-faith clinical judgment so complicates the medical condition of a pregnant female that: (A) The immediate abortion of her pregnancy is necessary to prevent her death; or (B) A delay will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female." Ark. Code Ann. § 20-16-2003. The 20-week ban defines "medical emergency" as "a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy: Without first determining post-fertilization age to avert the death of the pregnant woman; or (ii) For which the delay necessary to determine post-fertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions." Ark. Code. Ann. § 20-16-1402.
[15] Ark. Code Ann. §§ 20-16-1203, 20-16-1803.
[16] Ark. Code Ann. § 20-16-1703(b)(2).
[17] Ark. Code Ann. § 20-16-1703(b)(1).
[18] Ark. Code Ann. § 20-16-1703(e).
[19] Ark. Code Ann. § 20-16-804.
[20] Ark. Code Ann. § 20-16-809.
[21] Ark. Const. Amend. 68 § 1.
[22] Ark. Code Ann. § 23-79-156(c)(1).
[23] Ark. Code Ann. § 20-16-603(b)(1), 20-16-1703(b)(2).
[24] Ark. Code. Ann. §§ 5-61-304(a), 5-61-404(a).
[25] Ark. Code Ann. §§ 5-61-303(3), 5-61-403(3).
[26] Ark. Code Ann. § 20-9-302(a)(1)(A).
[27] Ark. Code Ann. § 20-16-606(a).
[28] *See* Ark. Code Ann. § 20-16-1703(b).
[29] Ark. Code Ann. § 20-16-807.
[30] Ark. Code Ann. § 20-16-1303(c)(1)(B) ("Rules adopted under this subsection shall specify that a test for a fetal heartbeat *is not required in the case of a medical emergency*.") (emphasis added).
[31] Ark. Code Ann. § 20-16-1706.
[32] Ark. Code Ann. § 20-16-1703(c)(1)–(2).
[33] Ark. Code. Ann. §§ 5-61-304(d), 5-61-404(d).
[34] EMTALA, 42 USC § 1395dd(c)(1)(A).

[35] EMTALA, 42 USC § 1395dd(b)(1)(A).
[36] EMTALA, 42 USC § 1395dd(e)(1).
[37] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).
[38] 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).
[39] EMTALA, 42 USC § 1395dd(c)(1)(B)-(c)(2)(A).
[40] EMTALA, 42 U.S.C. § 1395dd(e)(1).
[41] CMS, Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss (updated July 2022).
[42] *Id.*
[43] *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.").
[44] 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).
[45] *Moyle v. United States*, No. 23-726, slip op. (U.S. June 27, 2024) (per curiam).
[46] 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.
[47] *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).
[48] 42 C.F.R. §§ 482.13(a)(1), (b)(1), (b)(2).
[49] 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/.
[50] *See generally* Ark. Code Ann. §§ 16-114-201–213.

[51] 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.
[52] 42 U.S.C. § 238n.
[53] 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.
[54] Ark. Code Ann. § 20-16-608.
[55] Ark. Code Ann. § 20-16-605(c)(1)(A) (abortion complication "means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a physician or at a healthcare facility" and "includes without limitation shock; uterine perforation; cervical laceration; hemorrhage; aspiration or allergic response; infection; sepsis; death; incomplete abortion; damage to the uterus; and an infant born alive after an abortion procedure").
[56] Ark. Code Ann. § 20-16-605(c)(1)(B).
[57] Ark. Code Ann. § 20-16-605(a)(1)(B). Providers are required to report these complications "without limitation," suggesting that the complications requiring reporting are included but not limited to those listed here.
[58] Ark. Code Ann. § 20-16-1505(a).
[59] Ark. Code Ann. § 20-16-1503(3).
[60] Ark. Code Ann. § 20-18-603(a)(1).
[61] "'Fetal death' means death prior to the complete expulsion or extraction from its mother of a product of human conception irrespective of the duration of pregnancy and which is not an induced termination of pregnancy." Ark. Code Ann. § 20-18-102.
[62] Ark. Code Ann. § 20-18-603(a)(1)(B).
[63] Ark. Code Ann. § 20-18-603(a)(1)(C).
[64] Ark. Code Ann. § 20-18-603(a)(2).
[65] 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.

[66] Ark. Code Ann. §§ 12-18-402 (mandatory reporting of child maltreatment), 12-12-1708 (mandatory reporting of adult and long-term facility resident maltreatment). The Adult and Long-Term Care Facility Resident Maltreatment Act requires reporting of observed and suspected incidents of abuse, exploitation, neglect, or sexual abuse of an endangered or impaired person. Ark. Code Ann. § 12-12-1708. Under the act, an endangered person is an adult, a long-term care facility resident, or an Arkansas State Hospital resident who is found to be in a situation that poses danger to themselves and demonstrates "a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition." Ark. Code Ann. § 12-12-1703(6). An impaired person is an adult or a long-term care facility resident "who as a result of mental or physical impairment is unable to protect [themselves] from abuse, sexual abuse, neglect, or exploitation." Ark. Code Ann. § 12-12-1703(10).

[67] For example, one EMR, Epic, uses a tool called Care Everywhere to securely share information between healthcare 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 that within the same system).

[68] 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.

[69] 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.

[70] 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).

[71] 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.

[72] 42 U.S.C. §§ 164.509(a), 512(d)-(g)(1).

[73] 42 U.S.C. § 164.502(a)(5)(iii).

[74] 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. HHS intends to expand disincentives to other groups of health care providers in future rulemaking.

[75] 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.

[76] Ark. Code Ann. § 20-16-1602(b)(1)–(2). Arkansas defines an "abortion referral" as "the act of recommending a pregnant woman to a doctor, clinic, or other person or entity for the purpose of obtaining or learning about obtaining an abortion." *Id.* at -1601(2).

[77] Ark. Code Ann. § 20-16-1503(2)(A).

[78] Ark. Code Ann. § 20-16-1503(2)(B).

[79] Ark. Code Ann. § 20-16-1503(2)(C).

[80] Ark. Code Ann. § 20-16-1504(b).

[81] Ark. Code Ann. § 20-16-1504(c)–(g).

[82] *See* Ark. Code Ann. §§ 20-17-802 (requiring physicians to dispose of fetal remains from an abortion in accordance with law governing the Disposition of Human Tissue, Ark. Code Ann. § 20-17-801, and the Arkansas Final Disposition Rights Act of 2009, Ark. Code Ann. § 20-17-102).

[83] Ark. Code Ann. § 20-17-802.