

Clinical Guidance to Assist in Medical Decision and/or Documentation of Abortion-Related Care Under Alabama Law

UPDATED JANUARY 20, 2023. THE LAW IS CHANGING RAPIDLY. THIS INFORMATION WILL BE REVIEWED ON A WEEKLY BASIS AND UPDATED AS NEEDED TO REFLECT ANY SIGNIFICANT CHANGES

Understanding the Guidance

1. The guidance on the slides that follow is merely guidance; all patient care decisions are made by clinicians.
2. The material on these slides is dense. The guidance has been written with intention, to provide clarity to the extent possible. Please read and consider carefully.
3. If concerns arise regarding patient safety, as a clinician, your first priority is the care of your patient. Clinicians should continue to prioritize appropriate patient care by adhering to commonly understood Medical Standards of Care, consistent with applicable law.

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When a potentially pregnant patient presents in the hospital:
STEP 1: Is the patient pregnant?



- If the patient is not pregnant or if the fetus is not alive, there is **NO** criminal or civil liability for appropriate medical care.
 - There is **NO** civil or criminal liability for miscarriage care.
 - There is **NO** civil or criminal liability for contraceptive measures, including post-sexual assault prophylaxis.

STEP 2: What type of pregnancy?

Intrauterine Pregnancy

- **Criminal liability**, at **any gestational stage**, unless (1) abortion is necessary to save the life of the mother or prevent serious risk of substantial physical impairment of a major bodily function of the mother; or (2) the fetus is dead or has a condition which will result in stillbirth or death shortly after birth.
 - A physician must determine, in “reasonable medical judgment,” that the mother “has a condition that so complicates her medical condition” that abortion is necessary “to avert her death or to avert serious risk of substantial physical impairment of a major bodily function.” It is advisable, but not required, that a second physician confirm this determination in writing within 180 days after the abortion is completed.
 - It is not abortion if done to “save the life or preserve the health of an unborn child,” “remove a dead unborn child,” or if the fetus has “a **lethal anomaly**” which will cause it to be stillborn or die shortly after birth.
 - There is no exception from criminal liability in cases of rape or incest.
- **Civil and criminal liability** for performing a partial-birth abortion which is not necessary to save the life of a mother.

Ectopic Pregnancy

- **NO** criminal or civil liability, regardless of whether the threat to the pregnant person is imminent. The law defines abortion to exclude termination of ectopic pregnancies.
- CMS has stated that under EMTALA, where the physician determines that an abortion is necessary stabilizing care for an ectopic pregnancy, it must be provided.

Heterotopic Pregnancy

- There may be criminal liability for medical care that **intentionally** aborts the intrauterine fetus, unless such care is necessary to save the life of the mother or prevent serious risk of substantial physical impairment of a major bodily function of the mother, or the fetus has a condition which will result in stillbirth or death shortly after birth. Medical care that **unintentionally** results in loss of the intrauterine fetus does not give rise to criminal liability.