

# Clinical Guidance to Assist in Medical Decision and/or Documentation of Abortion-Related Care Under Georgia 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, 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** for abortions performed upon a fetus with a **detectable human heartbeat**, unless in the physician's reasonable medical judgment:
  - A medical emergency exists, meaning any condition which so complicates the medical condition of a patient as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial or irreversible impairment of a major bodily function of the patient or death of the fetus (excluding mental and emotional conditions); **Or**
  - The pregnancy is medically futile, meaning that the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth; **Or**
  - The post-fertilization age of the unborn child is 20 weeks or less, and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest.
- Georgia law is silent as to what specific testing is required to determine if a fetus has a **detectable human heartbeat**; however, Georgia law defines "detectable human heartbeat" as embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

### Ectopic Pregnancy

- Georgia law explicitly carves out removal of an ectopic pregnancy from the definition of abortion.
- 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 an intrauterine fetus with a detectable human heartbeat, except in the case of a "medical emergency." Medical care that **unintentionally** results in loss of the intrauterine fetus does not give rise to criminal liability.