

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

- **First trimester: NO** criminal liability for intentionally terminating a living fetus *if*
  - A physician performs the termination for reasons based upon the professional, medical judgment of the physician; **and**
  - The woman has filed a consent with the physician (though if the abortion is necessary to save her life, consent is not necessary) or her parent, legal guardian, or custodian has filed the consent (if the woman is an unemancipated minor less than eighteen years old).
- **After the first trimester until the earlier of viability and twenty weeks post fertilization: NO** criminal liability for intentionally terminating a living fetus *if*
  - The conditions above for a first trimester termination are satisfied; **and**
  - The termination is performed in a hospital or ambulatory surgical center.
- **After the earlier of viability and twenty weeks postfertilization: NO** criminal liability for intentionally terminating a living fetus *if*
  - All the conditions specified above for a termination before this period are satisfied;
  - **Before the abortion**, the physician certifies in writing to the hospital that the termination is **necessary to prevent a substantial permanent impairment of the life or physical health of the woman** and setting forth the facts and reasons supporting that certification; **and**
  - The termination is performed both in a hospital with premature birth intensive care units (unless compliance with this requirement would result in an increased risk to the health of the mother) **and** in the presence of a second physician.
- **Criminal liability**, notwithstanding any of the above, for dispensing, prescribing, or administering—to a woman pregnant with a living fetus—an **abortion-inducing drug** after **eight** weeks postfertilization.
  - The physician must examine the woman in person, dispense the drug in person, and have the woman consume the drug in person.
  - The physician must provide the woman with a copy of the manufacturer's instructions and require her to sign the manufacturer's agreement.
  - The physician shall provide, orally and in writing, the following statement: "Some evidence suggests that the effects of Mifepristone may be avoided, ceased, or reversed if the second pill, Misoprostol, has not been taken. Immediately contact the following for more information at [insert applicable abortion inducing drug reversal Internet web site and corresponding hotline number]."
- **Criminal liability**, notwithstanding any of the above, for performing a **partial birth abortion**, unless the physician believes it is necessary to save the mother's life and no other medical procedure is sufficient to save the mother's life.

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## STEP 2: What type of pregnancy? *(Continued)*

### Ectopic Pregnancy

- The rules above, governing intrauterine pregnancies, govern ectopic pregnancies, too—unless the ectopic fetus is **dead**. There is no civil or criminal liability for intentionally or unintentionally removing a dead ectopic fetus.
- CMS has stated that under federal law, where the physician determines that an abortion is necessary stabilizing care for an ectopic pregnancy, that care must be provided.

### Heterotopic Pregnancy

- As discussed above, there may be criminal liability for intentionally terminating a living intrauterine and/or ectopic fetus through surgical means or abortion-inducing drugs.
- There is no criminal liability for intentionally or unintentionally terminating a **dead** intrauterine or **ectopic** fetus.

## STEP 3: Reporting Requirements

- Within **thirty days** of the termination of a living intrauterine or ectopic fetus, the physician who performs a surgical abortion or prescribes, administers, or dispenses an abortion-inducing drug must submit the abortion report provided by the Indiana State Department.
  - If the abortion is for a female who is **less than sixteen**, however, the physician must transmit the form to the Indiana Departments of Health and Child Services within **three days** of the abortion.