

Clinical Guidance to Assist in Medical Decision and/or Documentation of Abortion-Related Care Under Kansas 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: Is the pregnancy ectopic?



Ectopic Pregnancy

- Likely **NO** criminal or civil liability.
 - No penalty for an abortion prior to 22 weeks gestational age if physician determines and reports age as described below. After 22 weeks, abortion permitted if necessary to prevent death or substantial and irreversible physical impairment of a major bodily function.
 - Kansas's Attorney General has issued an opinion stating that "the best interpretation [of Kansas law] is that the termination of an ectopic pregnancy does not constitute an abortion ..."

STEP 3: What is the gestational age?

LESS THAN 22 WEEKS

- **NO** civil or criminal liability if physician
 - Determines gestational age according to accepted obstetrical and neonatal practice and standards, including making such inquiries of the patient and performing such medical examinations and tests as a reasonably prudent physician would deem necessary,
 - Documents the bases for the determination in the patient's medical records, and
 - Reports such determinations and their medical bases to the hospital.
 - Absent a medical emergency, additional notice and informed consent requirements apply.

22 OR MORE WEEKS

- **Criminal liability** unless the physician has a documented referral from another physician not legally or financially affiliated with the physician, and both physicians provide a written determination, based upon a medical judgment consistent with the standard of care that:
 - The abortion is necessary to preserve the life of the patient; or
 - Continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the patient.
- Unless prevented by a medical emergency, a copy of the written referral and of the abortion-performing physician's determination must be provided to the patient at least 30 minutes prior to the abortion and time stamped when delivered to the patient.
- Documentation must specify determination's medical basis, including "the specific medical diagnosis for the determination that an abortion is necessary," and identify the referring physician. Documentation must be reported to the hospital and retained for 10 years.
- Partial birth abortion banned except to save the life of the mother.
- CMS has stated that EMTALA requires treatment of a condition that—if left unattended—risks "serious" "impairment" of a bodily "function" or "serious dysfunction of any bodily organ or part."
- Absent a medical emergency, additional notice and informed consent requirements apply.