

Clinical Guidance to Assist in Medical Decision and/or Documentation of Abortion-Related Care Under Ohio 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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NOTE: Ohio's 6-week abortion ban is temporarily not in effect pending court review.

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 at or after **20 weeks** post-fertilization, unless in the physician's reasonable medical judgment:
 - The probable post-fertilization age of the fetus is less than 20 weeks, and the physician certifies in writing the physician's medical judgment and (1) makes that determination after making inquiries of the patient and performing any medical examinations or tests a reasonably prudent physician would consider necessary to determine probable post-fertilization age or (2) relies on such a determination made by another physician; **Or**
 - The abortion is necessary to prevent the death of the patient (except for reasons related to the patient's mental health), the physician so certifies in writing, and (unless prevented by a medical emergency) a second, not-professionally-related physician confirms that determination, the physician performs the procedure the manner that provides the best opportunity for the unborn child to survive, unless in the physician's reasonable medical judgment that manner poses a greater risk to the patient, the physician certifies in writing the available method or techniques considered and the reasons for choosing the method or technique employed, and another physician is present during the procedure to attend to any child delivered as a result of the procedure; **Or**
 - The abortion is necessary to prevent a serious risk of substantial and irreversible impairment of a major bodily function of the patient (except for reasons related to the patient's mental health), the physician so certifies in writing, and (unless prevented by a medical emergency) a second, not-professionally-related physician confirms that determination, the physician performs the procedure the manner that provides the best opportunity for the unborn child to survive, unless in the physician's reasonable medical judgment that manner poses a greater risk to the patient, the physician certifies in writing the available method or techniques considered and the reasons for choosing the method or technique employed, and another physician is present during the procedure to attend to any child delivered as a result of the procedure.
- If the patient is under 18 years old, Ohio requires that a parent, guardian or judge consents to the abortion, unless an exception applies.

Ectopic Pregnancy

- Ohio law does not separately address ectopic pregnancy. There is **NO** criminal liability for termination of an ectopic pregnancy if the physician determines and documents that the fetus is less than 20-weeks post-fertilization or the procedure is necessary to prevent the patient's death or a serious risk of the substantial and irreversible impairment of a major bodily function, as discussed above.
- 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.

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STEP 2: What type of pregnancy?

Heterotopic Pregnancy

- There may be criminal liability for medical care that *purposely* aborts an intrauterine fetus if it's probable post-fertilization age is 20 weeks or more, except in the circumstances described above. Medical care that *unintentionally* results in loss of the intrauterine fetus does not give rise to criminal liability.

STEP 3: Counseling Requirement

- At least 24 hours prior to inducement of the abortion, the physician must confer with the patient as required by the state's counseling requirement.
 - This requirement does not apply in circumstances of medical emergency or medical necessity.