

Clinical Guidance to Assist in Medical Decision and/or Documentation of Abortion-Related Care Under Tennessee 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, such as when the fetus is dead, 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 *all stages of gestation* for performing an abortion unless:**
 - In the physician's good faith medical judgment, the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman, and
 - The physician performs or attempts to perform the abortion in the manner which provides the best opportunity for the unborn child to survive, unless in the physician's good faith medical judgment, termination of the pregnancy in that manner would pose a greater risk of the death of the pregnant woman or substantial and irreversible impairment of a major bodily function.

Ectopic Pregnancy

- Tennessee does not prohibit an abortion performed to remove a dead ectopic pregnancy.
- In the case of a living ectopic pregnancy, the guidance above, applying to intrauterine pregnancies, also applies to ectopic pregnancies.
- CMS has stated that under federal law, 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? *(Continued)*

Heterotopic Pregnancy

- With regard to the intrauterine pregnancy, there may be criminal liability when using any means with *intent* to terminate the fetus. See section above on “Intrauterine Pregnancy.”
- With regard to the extrauterine/ectopic pregnancy, there may be criminal liability when using any means with *intent* to terminate a living ectopic fetus. See section above on “Ectopic Pregnancy.”

STEP 3: Notice Requirements

Medical Emergencies

- The physician must inform the mother prior to the abortion, if possible, of the medical indications supporting the physician's medical judgment that an abortion is necessary to prevent the mother's death or that a delay of 48 hours will create serious risk of substantial and irreversible physical impairment of a major bodily function (not including psychological or emotional impairment).

Mifepristone and Misoprostol

- If the physician provides mifepristone, she must inform the mother of the following information at least 48 hours before the abortion by misoprostol: (1) it may be possible to reverse the effects of mifepristone, but time is of the essence; and (2) information on and assistance with reversing the effects of mifepristone are available on the website of the Tennessee Department of Health.
- After the first drug is dispensed, the physician or her agent must give the mother written discharge instructions that must include the following:
 - “Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.”