

# Ectopic Pregnancies and State Abortion Laws

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October 31, 2022 | 2022-R-0250

## Issue

Describe whether state prohibitions on abortion care services apply to ectopic pregnancies.

## Summary

An ectopic pregnancy is a rare condition that occurs when a fertilized egg implants outside of the uterus, typically in the fallopian tube, causing the fetus to be unable to develop or survive. If untreated, it can cause severe and life-threatening symptoms for the mother.

Because ectopic pregnancy is treated in a similar manner to elective abortion care, some providers and patients have expressed confusion as to whether state abortion bans apply to ectopic pregnancies. However, of the 14 states that currently ban access to abortion services, all apply only to the termination of unwanted pregnancies and include some type of exemption for medical emergencies or medical necessity. Five of these states (Alabama, Arkansas, Georgia, Louisiana, and Texas) expressly exclude ectopic pregnancies from the statutory definition of “abortion.” (Nine of these states that have bans are currently stayed pending litigation.)

## Ectopic Pregnancy

When an ectopic pregnancy occurs, a fertilized egg implants outside of the uterus, typically in the fallopian tube, causing the fetus to be unable to develop or survive. If untreated, it can cause severe and life-threatening symptoms, such as internal bleeding, for the mother. These pregnancies are treated either with medication (e.g., methotrexate) or a surgical procedure.

After the Supreme Court’s [reversal](#) of *Roe v. Wade* (*Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 597 U.S.(2022)), which eliminated the constitutional right to abortion care services, several states enacted laws restricting or banning access to these services (for more information on these laws, see OLR Report [2022-R-0227](#)). While these laws apply only to the termination of unwanted pregnancies, media outlets have [reported](#) confusion among providers and patients as to whether these laws directly impact ectopic pregnancies.

In July, the federal Department of Health and Human Services (HHS) issued [guidance](#) to retail pharmacies receiving federal funding warning that they risk violating federal civil rights law if they refuse to fulfill reproductive health-related prescriptions (e.g., abortion medication and birth control). The guidance notes that it would constitute discrimination based on sex or disability (e.g., from current or past pregnancy or related medical conditions).

HHS issued additional [guidance](#) to health care providers, clarifying that (1) women have the right to emergency care under the Emergency Medical Treatment and Active Labor Act (EMTALA), including emergency life- or health-saving abortion care services and (2) EMTALA preempts state abortion bans when needed for emergency care.

## State Laws

At least 12 states ban abortion outright and two states (Georgia and Ohio) have bans after approximately six weeks of pregnancy. All of these states’ laws apply to the termination of unwanted pregnancies and include some exemption for medical emergencies or medical necessity. Five states (Alabama, Arkansas, Georgia, Louisiana, and Texas) explicitly exclude ectopic pregnancies from their statutory definition of “abortion.” Table 1 below provides a brief description of each state’s exemptions.

The table excludes exemptions from the following states whose laws banning abortion are currently stayed pending litigation: Arizona, Indiana, Iowa, Montana, North Dakota, South Carolina, Utah, West Virginia, and Wyoming.

**Table 1: Medical Exemptions from State Abortion Bans**

State	Medical Exemptions from Abortion Ban
Alabama  Ala.Code <a href="#">§ 26-23H-1 et seq.</a>	Abortion determined by a state-licensed physician to be necessary to prevent a serious health risk to the unborn child’s mother. The determination must be confirmed by a second state-licensed physician within 180 days after the procedure, except in the case of a medical emergency (i.e., a condition which, in reasonable medical judgement, requires termination of a pregnancy for the mother to avoid a serious health risk).  Definition of “abortion” excludes ectopic pregnancy.

**Table 1 (continued)**

State	Medical Exemptions from Abortion Ban
<p>Arkansas</p> <p>Ark. Code Ann. <a href="#">§ 5-61-301 et seq.</a></p>	<p>Abortion except to save the life of a pregnant woman in a medical emergency. Defines “medical emergency” as a condition where abortion is necessary to preserve the mother’s life due to a physical illness or injury, including a life-endangering condition caused by or arising from pregnancy itself.</p> <p>Definition of “abortion” excludes (1) ectopic pregnancy and (2) removing a dead unborn child caused by spontaneous abortion.</p>
<p>Georgia</p> <p>Ga. Code Ann. <a href="#">§ 16-12-140 et seq.</a></p>	<p>After a fetal heartbeat is detected (i.e., at six weeks), abortion (1) in cases of rape or incest or (2) when a physician determines there is a medical emergency, which is a condition where abortion is necessary to prevent the mother’s death or the substantial and irreversible physical impairment of a major bodily function.</p> <p>Definition of “abortion” excludes (1) ectopic pregnancy and (2) removing a dead unborn child caused by spontaneous abortion.</p>
<p>Idaho</p> <p>Idaho Code <a href="#">§§ 18-622</a></p>	<p>Abortion performed by a physician (1) in cases of rape or incest or (2) when a physician determines it is necessary to prevent the mother’s death. The physician must use his or her good faith judgement and make reasonable medical efforts to preserve the life of the mother and the unborn child.</p> <p>In August, a U.S. district court issued a preliminary injunction prohibiting the state from enforcing this law to the extent it conflicts with EMTALA (the law otherwise is in effect) (<i>U.S. v. Idaho</i>, --- F.Supp.3d ----, 2022 WL 3692618 (D. Idaho Aug. 24, 2022)).</p>
<p>Kentucky</p> <p>Ky. Rev. Stat. <a href="#">§ 311.772</a></p>	<p>Abortion that a physician determines is necessary to prevent the (1) mother’s death or substantial risk of death due to a physical condition or (2) serious, permanent impairment of a life-sustaining organ. The physician must make reasonable medical efforts to preserve the life of the mother and the unborn child consistent with reasonable medical practice.</p>
<p>Louisiana</p> <p>La. Rev. Stat. <a href="#">§ 40:1061 et seq.</a></p>	<p>Abortion that a physician determines and certifies is necessary to prevent the (1) mother’s death or substantial risk of death due to a physical condition or (2) serious, permanent impairment of a life-sustaining organ. The physician must make reasonable medical efforts to preserve the life of the mother and the unborn child consistent with reasonable medical practice.</p> <p>Definition of “abortion” excludes (1) ectopic pregnancy and (2) removing a dead unborn child.</p>
<p>Mississippi</p> <p>Miss. Code <a href="#">§§ 41-41-31 &amp; 41-41-45</a></p>	<p>Abortion that is necessary to preserve the mother’s life or when the pregnancy was caused by rape.</p> <p>Definition of “abortion” excludes the removal of a dead fetus.</p>
<p>Missouri</p> <p>Mo. Rev. Stat. <a href="#">§§ 188.015 &amp; 188.017</a></p>	<p>Abortion in a medical emergency, which is a condition where an abortion is necessary to prevent the mother’s death or serious risk of substantial and irreversible physical impairment of a major bodily function.</p> <p>Definition of “abortion” excludes the removal of a dead unborn child.</p>

**Table 1 (continued)**

State	Medical Exemptions from Abortion Ban
Ohio  Ohio Rev. Code <a href="#">§§ 2919.11 &amp; 2919.195</a>	After a fetal heartbeat is detected (i.e., at six weeks), abortion that (1) a physician determines is necessary to prevent the mother’s death or the substantial and irreversible physical impairment of a major bodily function and (2) performed by a physician.  Definition of “abortion” excludes the removal of a dead fetus or embryo.
Oklahoma  Okla. Stat. tit. <a href="#">§ 21-861</a>	Abortion that is necessary to preserve the mother’s life.
South Dakota  S.D. Codified Laws <a href="#">§ 22-17-5.1</a>	Abortion that is necessary to protect the mother’s life.
Tennessee  Tenn. Code Ann. <a href="#">§ 39-15-213</a>	Abortion that is (1) necessary to prevent the mother’s death or serious risk of substantial and irreversible physical impairment of a major bodily function and (2) performed by a physician.  Definition of “abortion” excludes the removal of a dead fetus.
Texas  Tx. Health & Safety Code <a href="#">§ 170A.001 et seq.</a>	(1) A provider determines the mother has a life-threatening physical condition aggravated by, caused by, or arising from pregnancy that poses a risk of death or serious risk of substantial impairment of a major bodily function and (2) the abortion is performed by a physician.  Definition of “abortion” excludes removing (1) an ectopic pregnancy or (2) a dead unborn child.
Wisconsin  Wis. Stat. <a href="#">§ 940.04</a>	Abortion that is (1) necessary, or advised by two other physicians as necessary, to save the mother’s life; (2) performed by a physician; and (3) performed in a licensed maternity hospital, unless an emergency prevents it.

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