

# Reproductive Health Care Post-*Dobbs* (and California Hospital Considerations)

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## Agenda



- ✓ *Dobbs*
- ✓ Current abortion restrictions
- ✓ EMTALA & CMS EMTALA guidance post-*Dobbs*
- ✓ Medication abortion
- ✓ Current abortion protections



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### ***Roe v. Wade (1973)***

- U.S. Supreme Court ruled that people have a fundamental “right of privacy . . . founded in the Fourteenth Amendment’s concept of personal liberty.”
- The Court weighed a pregnant person’s right to privacy against the state interests in supporting maternal health and fetal life. The Court held that the abortion decision must be left to the person carrying the pregnancy, in consultation with their doctor, during the first trimester; the state may regulate abortion in ways that are reasonably related to maternal health in the second trimester; and the state may regulate or prohibit abortion in the third trimester, except where necessary to preserve the person’s life or health.

### ***Planned Parenthood v. Casey (1992)***

- U.S. Supreme Court considered a highly restrictive Pennsylvania law that required 24-hour waiting period, spousal notification, parental consent, and other counseling and reporting requirement.
- In its decision, the Court abandoned the trimester framework and created a new legal test for allowable restrictions. Before viability — which is the point at which a fetus can survive outside the womb, somewhere between 24 and 28 weeks — the Court allowed restrictions on abortion, as long as the law does not place an “undue burden” on a person’s access to abortion.

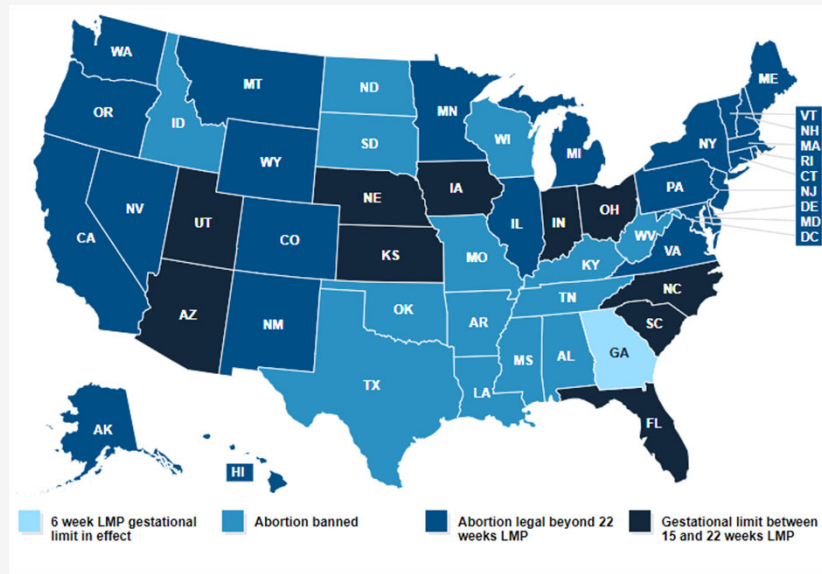
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### **No Federal Constitutional Right to Abortion**

- On June 24, 2022, the U.S. Supreme Court overruled *Roe v. Wade* and *Planned Parenthood v. Casey*, holding that there is no constitutional right to abortion
- Without a federal right to abortion access, state regulation of abortions is only limited by state constitutions
- Some states had pre-Roe abortion bans on the books that were preempted by Roe but arguably came back into effect after Dobbs (“zombie” bans e.g. Arizona), while other states had enacted bans that would take effect if and when Roe was overturned (“trigger” bans e.g. Idaho)
- Other states began enacting new restrictions when it became clear that Roe would be overturned (e.g. Indiana)
- Other states have passed laws and propositions enshrining reproductive freedom in the state constitution (e.g. California, Vermont, Michigan)

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# Current State Abortion Restrictions



## 15-22 Week Restriction - 10

- Arizona (15)
- Florida (15)
- Indiana (22)
- Iowa (22)
- Kansas (22)
- Nebraska (22)
- North Carolina (20)
- Ohio (22)
- South Carolina (22)
- Utah (18)

## 6 Week Restriction - 1

- Georgia

## Total Ban (w/ limited exceptions) -14

- Alabama
- Arkansas
- Idaho
- Kentucky
- Louisiana
- Mississippi
- Missouri
- North Dakota
- Oklahoma
- South Dakota
- Tennessee
- Texas
- West Virginia
- Wisconsin\*

(As of May 21, 2023 - This is changing frequently!)

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# Current State Abortion Restrictions (cont.)

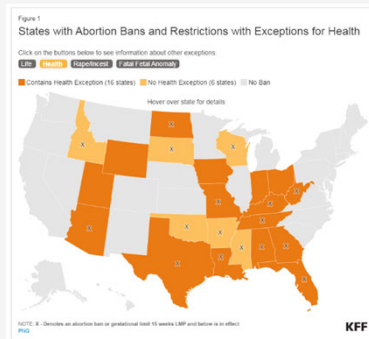
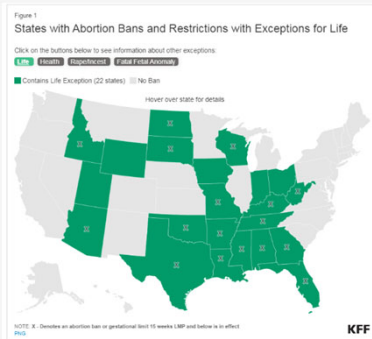


Table 1  
Language in health exceptions to abortion bans

State(s)	Health Exception
Arizona, Florida, Ohio, Wyoming, Indiana	When there is a serious risk of substantial and irreversible impairment of a major bodily function.
Kentucky (total ban and 6-week ban), Louisiana	To prevent serious, permanent impairment of a life-sustaining organ.
Georgia	To prevent substantial and irreversible physical impairment of a major bodily function.
Utah	When there is serious physical risk of substantial impairment of a major bodily function.
Texas	When there is a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that poses a serious risk of substantial impairment of a major bodily function.

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EMTALA requires Medicare-participating hospitals with *dedicated emergency departments* to:

- **Screen** – Provide a medical screening examination (MSE) to an individual who has come to a dedicated emergency department, seeking or in need of evaluation/treatment or, in certain circumstances has come to other parts of the hospital campus.
- **Stabilize** – If an emergency medical condition (EMC) exists, provide stabilizing treatment within the hospital’s capability and capacity
- **Transfer** – If a hospital cannot stabilize the EMC, arrange for an appropriate transfer of the individual to another facility for stabilizing treatment



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**“Emergency Medical Condition”** means

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in--

- (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
- (ii) serious impairment to bodily functions, or
- (iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant woman who is having contractions--

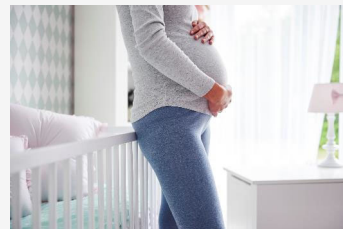
- (i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or
- (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(42 U.S.C. § 1395dd)

**“To stabilize”** means

With respect to an emergency medical condition, to provide such treatment of the condition as may be necessary to assure, with reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual or

With respect to a pregnant woman who is having contractions, to deliver the baby (including the placenta)

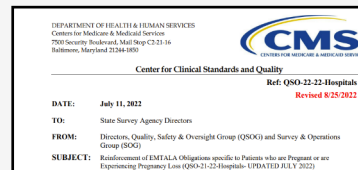


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## HHS EMTALA Guidance Post-Dobbs



- Following *Dobbs*, HHS issued guidance to “remind hospitals of their existing obligation to comply with EMTALA,” including when abortion is the stabilizing treatment necessary to stabilize an individual’s Emergency Medical Condition (EMC).
- “A physician’s professional and legal duty to provide stabilizing medical treatment to a patient who presents . . . To the emergency department and is found to have an emergency medical condition preempts any directly conflicting state law or mandate that might otherwise prohibit such treatment.”
- HHS indicates that it is a conflict when a state law prohibits abortion and does not include an exception for the life of the pregnant person or when state law draws an exception more narrowly than EMTALA’s definition of EMC.



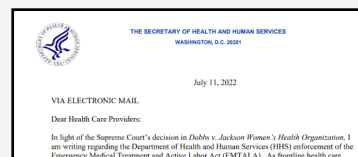
FOR IMMEDIATE RELEASE  
May 1, 2023

Contact: HHS Press Off.  
202-696-624  
media@hhs.gov

### HHS Secretary Xavier Becerra Statement on EMTALA Enforcement

Secretary Becerra sends letter to hospital and provider associations across the country reinforcing EMTALA obligation under federal law.

Secretary Becerra to hospitals: “You are obligated to offer necessary stabilizing care to your patients, and we will not hesitate to enforce your obligations under the law.”



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## EMTALA versus State Abortion Restriction Exceptions



### EMTALA

The absence of immediate medical attention could reasonably be expected to result in--

- (i) placing the **health** of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) **in serious jeopardy**,
- (ii) **serious impairment to bodily functions**, or
- (iii) **serious dysfunction of any bodily organ or part**

### Missouri Rev. Stat. § 188.07

Medical emergency is a condition that so complicates the condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a **serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman**

### Idaho Code § 18-622

It shall be an affirmative defense to prosecution [if] the physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was **necessary to prevent the death of the pregnant women**.

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# California Abortion Restrictions



## Gestational Restriction (California Health & Safety Code § 123468)

The performance of an abortion is unauthorized if the fetus was viable and in the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.



## California Conscience Law (California Health & Safety Code § 123420)

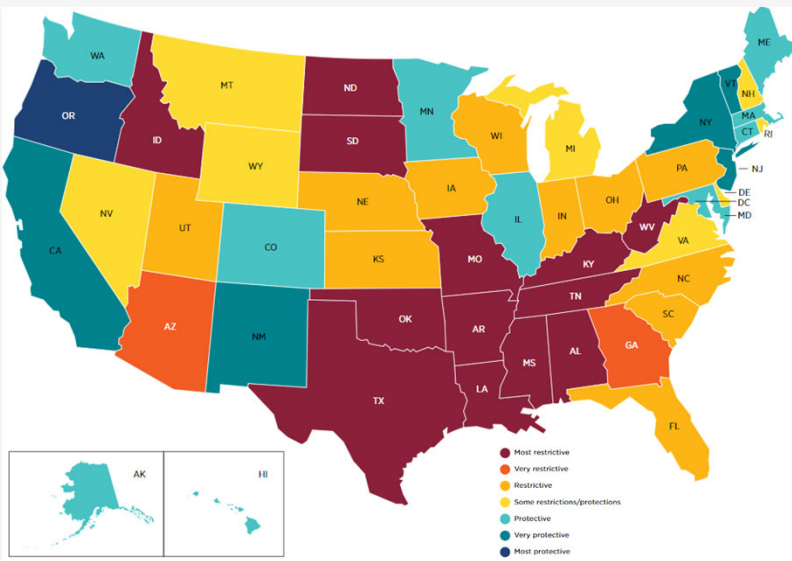
No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if the employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion

**“This section shall not apply to medical emergency situations”**

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# Current State Abortion Protections



Constitution protects abortion rights

- California
- Vermont

Abortion not restricted based on gestational age

- New Mexico
- Oregon
- Colorado
- New Jersey
- Vermont
- Alaska

Shield law

- New Mexico
- Washington
- California
- Colorado
- Minnesota
- Illinois
- New Jersey
- New York
- Connecticut
- Massachusetts
- Maine

(This is changing frequently)

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# California Abortion Protections



Prohibits state courts from enforcing out-of-state civil judgments related to abortion care. (A.B. 1666, 2022 Leg. Reg. Sess. (Ca. 2022))



Prohibits police from arresting people aiding abortions in California and from cooperating with law enforcement in other states regarding abortions that are legal in California. (A.B. 1242, 2022 Leg., Reg. Sess. (Ca. 2022))



Prohibits a person from being subject to criminal or civil liability related to pregnancy outcomes, including miscarriages, stillbirths and abortions. (A.B. 2223, 2022 Leg., Reg. Sess. (Ca. 2022))



Creates the California Abortion Practical Support Fund that would provide assistance to people seeking to obtain an abortion in California and appropriated 20M for the fund. (A.B. 179, 2022 Leg., Reg. Sess. (Ca. 2022))

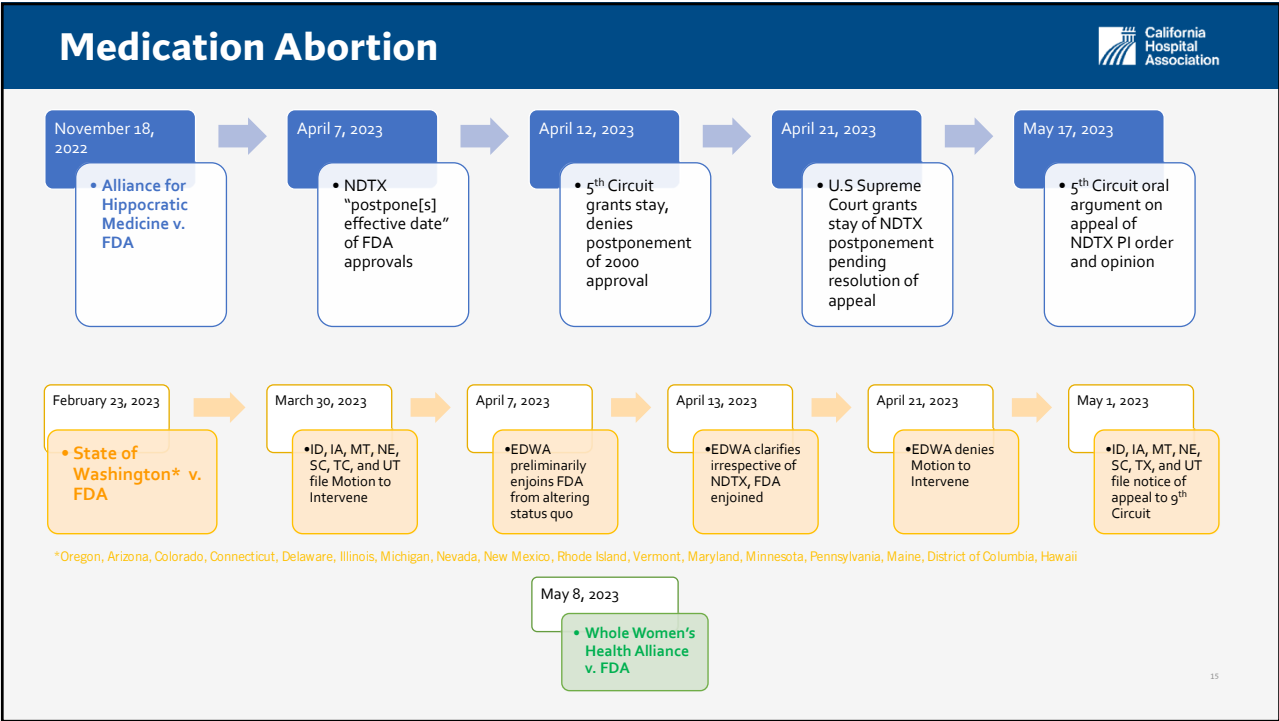


The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives.

# Medication Abortion

## FDA Action re Mifepristone

2000 Mifeprex Approval with Restrictions	<b>Dosage and Administration:</b> Three (3) 200 mg tablets, followed 48hours 400mcg oral misoprostol (1) limits use through 49 days gestation (7 weeks); (2) requires three in-person office visits, one to administer mifepristone, second to administer misoprostol, third to assess complications and ensure no fetal remains in womb; (3) requires the supervision of a qualified physician; and (4) requires the reporting of all adverse events from the drugs.
2016 Risk Evaluation and Mitigation Strategies (REMS) Changes	<b>Dosage and Administration:</b> One (1) 200 mg tablet, 24-48 hours 800mcg buccal misoprostol (1) Increases maximum gestational age to 70 days; (2) Reduces required in-person office visits to one; (3) Allows non-doctors to prescribe and administer mifepristone; and (4) Eliminates reporting of non-fatal adverse events.
2019 Generic Approval	FDA approves generic to GenBioPro, Inc.
2021 Mail-Order Non-Enforcement Decision	FDA "enforcement discretion" to allow mifepristone to be mailed during COVID-19.
2023 REMS Modification	FDA permanently removes in-person dispensing requirement and allows certified pharmacies to dispense



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# Medication Abortion in California





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**CALIFORNIA FIGHTS BACK BY:**

- Purchasing Misoprostol, through CalRx, to ensure California providers can continue to provide medication abortions without disruption. Pharmacies facing shortages can go to [Abortion.CA.GOV](http://Abortion.CA.GOV) to find out how to access the stockpile.
- Informing [Medi-Cal providers](#) about continued reimbursement for medication abortion using a Misoprostol-only treatment regimen.
- [Reminding health plans](#) of California statute that requires the coverage of all other types of abortion and abortion-related services with no cost-sharing or utilization management, including misoprostol.
- Updating [Abortion.CA.GOV](http://Abortion.CA.GOV), California's abortion resource website, to address questions regarding the Texas court decision and its potential impact on their access to medication abortion.
- Proactively working with other states through the [Reproductive Freedom Alliance](#) to protect access in advance of Friday's decision.

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## Questions?



Raise your hand to ask a question.

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## Thank you!



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