Oklahoma Know Your Rights Guide for Clinicians

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Oklahoma Abortion Care at a Glance

Q. My Pregnant Patient is dying, can I save them?

A. Yes, if the abortion is necessary to preserve the life of the mother. See Section III(b).

Q. So unless someone is dying, all other abortion services are now banned?

A. Not exactly, but the nuanced exception requires that it "preserve the life of the mother." See Section III(a).

Q. Do I listen to the abortion ban or EMTALA whenever there is an emergency?

A. As of the writing of this guide, EMTALA is still the controlling law, and when "stabilization" requires abortion, you must follow EMTALA's requirements. See Section V.

Q. How does the government know if the abortion was legal/to preserve life?

A. Chart and note every detail to show that your decision was the standard of care. See Section IV.

Q. What if the police show up to investigate a patient's abortion?

A. As of the writing of this guide, HIPAA still controls and protects patient info unless law enforcement seeks these records with a judicial or administrative order. See Section VI. Introduction

Introduction

The U.S. Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization* has complicated and inhibited reproductive healthcare.[1] In *Dobbs'* wake, Oklahoma law severely restricts the abortion services providers and clinical staff may provide, and how they can communicate regarding such services to patients. This guide aims to help clinicians understand how they can continue to provide vital reproductive healthcare to their patients without violating the law.

I. How to Use This Guide

This guide is intended to serve all Oklahoma healthcare providers as an aid in understanding the legal framework governing reproductive healthcare in Oklahoma and does not constitute legal advice. Please consult with an attorney for serious concerns within this rapidly changing legal landscape. All cases, laws, orders, and sources discussed throughout this guide are current with the legal framework surrounding abortion access in Oklahoma as of October 31, 2025.

II. What Reproductive Laws Exist in Oklahoma Right Now?

Overview

- Providing abortion care is banned in Oklahoma with one narrow exception: to preserve the life of the pregnant person.[2] This ban includes both medication and procedural abortions.

- Physicians must take all reasonable measures to preserve the life of the fetus, as long as doing so does not create significant danger to the pregnant woman's life or health.[3]

- Out of state travel for abortion care remains legal.

[1] 597 U.S. 215 (2022).
[2] *Okla. Call for Reprod. Just. v. Drummond*, 526 P.3d 1123, 1132.
[3] 63 O.S. § 1-734(b)(c).

Overview (Cont.)

- Oklahoma will not prosecute pregnant women for accessing telehealth abortion services in an access state nor for self-managing an abortion.[4][5]

- Contraception remains legal in Oklahoma and all other states.[6]

What is Oklahoma's Abortion Ban?

Oklahoma effectively has one abortion ban, a pre-*Roe* ban—21 O.S. § 861. In Oklahoma, it is a felony for any person to administer, prescribe, advise, or procure "any medicine, drug, or substance or [use] or [employ] any instrument" with the intention of causing a miscarriage,[7] unless that treatment is "necessary to preserve" the life of the woman.[8] Any violation of this law can result in imprisonment for at least two years and up to five years.[9] Originally enacted prior to statehood in 1890, this law became dormant following the Supreme Court's Roe decision in 1973. This ban was resurrected when *Dobbs* overturned *Roe*.[10] This ban includes both medication abortion and procedural abortion, whether in person or via in-state telehealth.[11]

This ban penalizes the provision of abortion services–targeting the providers–as opposed to the patient seeking or obtaining an abortion. The Oklahoma Attorney General issued an official opinion that no Oklahoma statute permits prosecuting a person for obtaining an abortion. The opinion cited the need for corroborating testimony when prosecuting practitioners of abortion as one reason for not prosecuting the patient.[13]

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[4] Gentner Drummond, Op. Att'y Gen. (Nov. 21, 2023).
[5] *Id.*
[6] *See* 63 O.S. § 1-730(B).
[7] While the text of 21 O.S. § 861 says "miscarriage", the statute only prohibits intentional attempts, and the Oklahoma courts have recognized that the statute is directed at abortion. *See, e.g.*, *Jobe v. State*, 509 P.2d 481, 481 (Okla. Crim. App. 1973) (labeling § 861 the "Oklahoma Anti-Abortion Statute"). Routine miscarriage treatment with no fetal heartbeat is unaffected. However, managing a miscarriage if there is a heartbeat could run afoul of the ban. This issue has not been settled by legislation or any judicial decisions.
[8] *Id.*; 21 O.S. § 20N(B).
[9] 21 O.S. § 861.
[10] S.B. 1555, 58th Leg., 2nd Reg. Sess. (Okla. 2022), *amending* 2021 Okla. Sess. Law Serv. Ch. 308. John M. O'Connor, Op. Att'y. Gen. (Jun. 24, 2022); *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 329 (2022).
[11] *Id.*; 63 O.S. § 1-729.1.
[12] 2023 OK AG 12, at 10. Previously, 21 O.S. § 862 made it a misdemeanor for an individual to obtain an abortion. However, this statute has now been repealed.
[13] *Id.*

Can We Save the Life of the Mother?

The Oklahoma Supreme Court has concluded that Oklahoma's Constitution protects "an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life."[14] This protection applies to any point during pregnancy.[15] As a result of this ruling and a companion case, the Oklahoma Supreme Court invalidated three abortion bans, although § 861 remained standing because of the language creating an exception to preserve the life of the mother.

Abortion care is legal when a "woman's physician" determines "to a reasonable degree of medical certainty or probability" that continuing the pregnancy will pose grave harm to the woman, either because of the pregnancy itself or because of a "medical condition the woman is . . . currently suffering from or likely to suffer from during the pregnancy."[16] Importantly, "[a]bsolute certainty is not required, however, mere possibility or speculation is insufficient."[17] Thus, Oklahoma physicians have discretion to terminate a pregnancy when it is medically necessary to preserve the life of a pregnant person, even before their condition becomes complicated, but reasonable medical judgment is required to satisfy the one exception to abortion service. Note that medical determinations will be subject to the standard of care applicable on a case-by-case basis.

Governor Stitt has attempted to further curtail the availability of abortion care. A January 2026 Executive Order, amending an earlier July 2025 Executive Order, requires that all providers receiving SoonerCare funds attest that they will follow all Oklahoma laws regarding abortion.[18] An FAQ document accompanying the attestation statement promulgated by the Oklahoma Health Care Authority (OHCA) reiterates that abortions necessary to preserve the lift of the mother remain lawful.[19] Providers must complete the attestation statement by 5 p.m. on May 15, 2026, in order to remain eligible to participate in SoonerCare.

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[14] *Okla. Call for Reprod. Justice, 526 P.3d at 1130.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Amended Exec. Order 2025-16 (Jan. 15. 2026) Previously, this Executive Order directed the Oklahoma Health Care Authority to withhold Medicaid funding from "any individual or entity directly affiliated with a physician, medical practice, or other organization providing abortion services or facilitating the procurement of abortion services." The amended order replaces all broad references to abortion with language referencing "abortion services not permitted under Oklahoma law."
[19] *Amended Executive Order 2025-16 Attestation FAQs, Oklahoma Health Care Authority.*

III. What Are Oklahoma Lawyers Saying?

Based upon anonymous interviews conducted during the creation of this guide, medical malpractice attorneys in Oklahoma have advised hospital systems and clinicians to clearly chart any bases for abortion care (the exact location of the embryo in relation to the uterus, etc.) and to have a second clinician review and sign off as well. Additionally, how providers respond to patient questions may be of significance due to uncertainty surrounding what constitutes "advising" a patient with regard to abortion services. Neither statutes nor cases have ever defined the word "advise" in Oklahoma. The ambiguous language of the reinstated century-old abortion ban is tactically vague and has a palpable chilling effect that makes healthcare providers hesitate to speak freely to patients.

Previous scholarly thought on the meaning of "advise" as used in § 861 indicates two general definitions. On one hand, "advise" means to inform.[20] On the other hand, it has been understood as recommending or encouraging a course of action.[21] Currently, it is unclear precisely how Oklahoma legislatures view the meaning of "advise" within the context of § 861. However, there is a strong legal argument that it means to encourage [22] Therefore, providers will need to be careful not to communicate with patients in a manner that could be misconstrued as encouraging abortion.

For these reasons, it will be crucial for providers to chart their conversations with patients in as much detail as possible. If the questions asked by patients, including physician responses, are documented in the medical record, the conversations will be less likely to be retrospectively misinterpreted as it relates to the abortion ban. Of note, if providers are unsure of a patient's intent behind a question as it relates to potential illegal abortion activity, providers should simply state their current understanding of the controlling abortion ban.

As of the writing of this guide, there have been no lawsuits limiting a healthcare provider's free speech (1st Amendment) rights by the abortion ban. Clinicians can state that an abortion is an option, even if it cannot be obtained in Oklahoma. Clinicians can inform patients that abortion care remains legal in other states and that patients have the right to travel to obtain an abortion. Providers should not provide specific referral information to other providers and venues where abortion services are legal, such as Kansas, as that would likely amount to advising.

[20] *Oklahoma Bar Association Standards of Professionalism, Rule 2.2.*
[21] *Advise, Black's Law Dictionary (6th ed. 1990); State v. Webb, 772 A.2d 690, 814. (Conn. Ct. App. 2001).*
[22] Advise, Black's Law Dictionary (6th ed. 1990).

IV. Does Complying with EMTALA Conflict with the Abortion Ban?

As of the writing of this guide, EMTALA remains the controlling law in Oklahoma. There has been no federal law, Supreme Court opinion, or amendments to EMTALA that would restrict abortion-related services if necessary to stabilize a patient. However, the future of EMTALA versus state abortion bans is unclear. Recent court opinions out of Idaho and Texas that went before the Supreme Court have had a chilling effect upon providers nationwide with regard to how and if abortion-related stabilization under EMTALA can co-exist with state abortion restrictions.

What Does EMTALA Require Again?

As you may recall, the Emergency Medical Treatment & Labor Act (EMTALA) requires hospitals and physicians to "stabilize" patients experiencing "emergency medical conditions" prior to making the decision to admit or transfer them.[23] EMTALA is intended to prevent "patient dumping" by providers based on a patient's potential inability to pay.[24]

EMTALA is only triggered once a provider determines that an "emergency medical condition" exists. An "emergency medical condition" is defined under the Act as any medical condition which manifests "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—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, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part."[25] Note that pregnant women already experiencing contractions may not rise to an emergency medical condition when the screening process determines that there is adequate time to transfer the patient before delivery without risking the life of the patient and/or baby.[26]

[23] *EMTALA, 42 U.S.C. § 1395dd(a)(Note that EMTALA imposes duties on both physicians and hospitals that receive Medicare or Medicaid and operate an emergency department, yet the protections of EMTALA pertain to all patients that present, regardless of their eligibility for Medicare or Medicaid.)*

[24] Note, EMTALA only provides a cause of action for patients to sue hospitals, not providers (however, this distinction is not practically substantial, as, therefore, providers are still subject to malpractice actions even where EMTALA violations do not apply). *See* EMTALA, 42 U.S.C. § 1395dd(d)(2)(also note that (d)(3) articulates the ability for medical facilities to bring suit against other medical facilities when they have sustained financial loss due to the other facility's failure to follow EMTALA.)

[25] EMTALA, 42 U.S.C. § 1395dd(e)(1)(A)(emphasis added).

[26] *See* EMTALA, 42 U.S.C. § 1395dd(e)(1)(B)(i-ii).

When Does EMTALA Control Patient Care?

- Patient presents to ER/ED and must receive "routine screening,":
  - If there is no emergency medical condition, EMTALA requirements end.
  - If there is an emergency medical condition, patient must either be "stabilized" in the emergency room or appropriately transferred.
- Once a patient is stabilized, transferred, and/or admitted to the hospital, EMTALA no longer controls the patient's care.

The "screening examination" to determine if an emergency medical condition exists must simply be "within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department."[27]

For the purposes of EMTALA, "stabilize" does not mean cure, but rather "provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to [patients in labor] to deliver (including the placenta)."[28] In providing stabilizing treatment, providers must adhere to the standard of care, even when the standard of care merits abortion services, which has since become the basis of multiple lawsuits nationwide that seek clarity for whether EMTALA trumps abortion bans.[29]

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[27] EMTALA, 42 U.S.C. § 1395dd(a)(of note, the screening process itself does not have a required level of standard of care under EMTALA. Rather, courts will typically look at whether or not the hospital provided its routine or uniform screening. See Baber v. Hosp. Corp. of Am., 977 F.2d 872, 881 (4th Cir. 1992) ("Although evidence challenging the adequacy of a screening examination may be sufficient to withstand summary judgment in a medical malpractice action, it is not sufficient to establish an EMTALA violation under § 1395dd(a). The critical element of an EMTALA cause of action is not the adequacy of the screening examination but whether the screening examination that was performed deviated from the hospital's evaluation procedures that would have been performed on any patient in a similar condition." Although EMTALA does not impose an adequacy of screening requirement, any screening performed by a physician sufficiently establishes the patient relationship, thus all subsequent duties that adhere to the standard of care still apply.)

[28] EMTALA, 42 U.S.C. § 1395dd(e)(3)(A).

[29] *See United States v. Idaho*, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022); *see also State of Texas v. Becerra*, 89 F.4th 529 (5th Cir. 2024).

When Does EMTALA Control Patient Care? (Cont.)

Note that if a patient has an emergency medical condition and has not been stabilized or admitted, providers may not "transfer" the patient unless the patient or the person legally responsible has been fully informed of the requirements of EMTALA, as well as the risk inherent to transfer, provides consent in writing, and a provider certifies in writing that the "medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer.[30]

Violations of EMTALA may result in civil monetary penalties against hospitals and providers per the findings of the HHS Office of the Inspector General (HHS-OIG).[31] Note that only hospitals can be sued by private individuals for failing to comply with EMTALA. EMTALA does not provide a cause of action against physicians, yet physicians remain subject to fines imposed by the HHS-OIG if they violate EMTALA.

Remember, even if EMTALA is not triggered due to a determination that no emergency medical condition exists, providers are still subject to malpractice liability for any actions that fall below the standard of care since the screening equates to a direct or indirect interaction that establishes a patient-provider relationship duty.[32]

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[30] EMTALA, 42 U.S.C. § 1395dd(c)(1)(A)(i-ii)(note that subsection (iii) allows for qualified medical personnel to certify when a physician is not physically present, so long as the physician had made the determination previously that the benefits outweighed the harm. Additionally, (c)(2)(A-B) states that in order for a transfer to be "appropriate", the transferring facility must have "medical treatment within its capacity" to minimize risks, and the receiving facility must have accepted, have available space, and have qualified personnel.) Additionally, medical malpractice attorneys in Oklahoma advise providers that there is a distinction between transferring a patient as it pertains to EMTALA versus merely transporting a patient to another facility within the same organization.

[31] 42 CFR § 1003.500; EMTALA, 42 U.S.C. § 1395dd(d)(1).

[32] See Okla. Admin. Code § 435:10-7-12.

Are Other States Following EMTALA?

EMTALA explicitly states that it preempts (or trumps) state law when there is a direct conflict.[33] Yet in situations where compliance with EMTALA requires abortion care, the conflict of reproductive rights reemerges. Former president Biden's U.S. Department of Health and Human Services (HHS) attempted to provide "guidance" soon after the Dobbs decision on the very issue of what happens when stabilization requires an abortion. Although the guidance was clear and concise: EMTALA controls, on June 3, 2025, HHS explicitly rescinded its guidance on the basis that it does "not reflect the policy of [the current] Administration."[34]

The courts have also failed to provide consistent guidance on how providers should act when stabilization requirements under EMTALA require abortion services. Following Dobbs, the U.S. Department of Justice (DOJ) sued the state of Idaho and sought an order from the federal court in Idaho to not enforce the abortion ban against providers who perform abortion services to comply The courts have also failed to provide consistent guidance on how providers should act when stabilization requirements under EMTALA require abortion services. Following Dobbs, the U.S. Department of Justice (DOJ) sued the state of Idaho and sought an order from the federal court in Idaho to not enforce the abortion ban against providers who perform abortion services to comply EMTALA.[35] The U.S. prevailed and an order was issued that allowed providers to continue to comply with EMTALA. However, at the start of President Trump's second term, one hospital system in Idaho grew concerned that the order would be overturned and sued to preserve the order.[36] The DOJ, under the new administration, dismissed the prior case against the state of Idaho, thus the statewide order allowing all providers to comply with EMTALA is no longer in effect.[37] All other Idaho hospitals and providers are left to choose between providing life-saving abortion care and potential criminal liability under Idaho's abortion ban.

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[33] EMTALA, 42 U.S.C. § 1395dd(f).

[34] See generally DOBBS CITE; CMS, *CMS Statement on Emergency Medical Treatment and Labor Act (EMTALA)*, CMS.gov, (June 3, 2025) https://www.cms.gov/newsroom/press-releases/cms-statement-emergency-medical-treatment-and-labor-act-emtala (HHS issued "guidance" that "stabilization" under EMTALA could also require abortion services, however, as of June 3, 2025, HHS has explicitly rescinded its guidance on the basis that it does "not reflect the policy of this Administration.")

[35] United States v. Idaho, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022).

[36] *See St. Luke's Health System, LTD v. Labrador*, No. 1:25-cv-00015, ECF No. 33 (D. Idaho Mar. 4, 2025).

[37] *See St. Luke's Health System, LTD v. Labrador*, No. 1:25-cv-00015, ECF No. 33 (D. Idaho Mar. 4, 2025) (The sole hospital system who decided to sue the state of Idaho at the start of Trump's presidency is the only hospital system in Idaho that has been allowed to remain under the previous lawsuits order that enables compliance with EMTALA.)

Are Other States Following EMTALA? (Cont.)

The DOJ's decision to drop its lawsuit under the new administration demonstrates a political view that EMTALA conflicts with abortion bans.[38] Prior to DOJ dropping its case, a consolidated case for the Idaho order went before the Supreme Court, where the majority acknowledged that stabilization under EMTALA will inevitably require abortion services, which conflicts with state bans on their face, yet they refused to resolve or analyze the issue of preemption and statutory interpretation, effectively punting the issue by simply allowing the injunction to remain in effect (until the DOJ ultimately dropped their claim).

The Supreme Court's refusal to articulate if and how abortion bans conflict with EMTALA opened the door to opposing interpretations that only further compound confusion. The Fifth Circuit of the United States Court of Appeals found that EMTALA does not conflict with Texas's near total abortion ban, since EMTALA does not explicitly state that it requires clinicians to provide abortions.[39] This opinion overlooks practical medicine by unrealistically narrowing the interpretation of EMTALA based on technical semantics. Although EMTALA does not explicitly mandate abortion services, there are inevitably times in which necessary stabilization care requires abortion services. The Supreme Court declined to hear the Fifth Circuit decision, leaving doctors to question how they can still comply with state abortion restrictions and EMTALA when the stabilization necessary is in fact abortion.

IV. Does Complying with EMTALA Conflict with the Abortion Ban?

The federal Health Care Portability and Accountability Act (HIPAA) prohibits disclosure of patient health information except for narrowly defined purposes or with the express written consent of the patient.[40] Notably, disclosures are allowed for healthcare treatment, payment, and operation purposes and as required by law.[41]

[38] *See Moyle v. United States*, 144 S. Ct. 2015 (June 27, 2024) (per curiam).
[39] *See State of Texas v. Becerra*, 89 F.4th 529 (5th Cir. 2024).
[40] Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936. This is a gross oversimplification of an incredibly complex statute, but this definition serves the purposes of this guide.
[41] 45 C.F.R. § 164.502 (2013).

IV. Does Complying with EMTALA Conflict with the Abortion Ban? (Cont.)

The law allows for permissive, but not mandatory, disclosure of patient health information to law enforcement when the agency seeking the disclosure produces a judicial order, subpoena, or official administrative request.[42]

For example, Oklahoma law makes it a crime to perform an abortion. Patient health records could be necessary to prove what care was provided to the patient. Law enforcement investigating this could be able to access the patient's record if they obtain a court order for its release. HIPAA allows for the release of this information, but does not require it. It is up to each entity governed by HIPAA to determine whether they want to comply. Hospital and practice-level policies can provide additional protection to patient records, and therefore clinicians.

HIPAA provides a floor for privacy protections in the regulated area, but does not prevent state laws from providing a higher standard of privacy to covered information.[43] Without providing specific rules to follow, Congress specified that nothing in HIPAA can be read to limit "any law providing for the reporting of disease or injury, child abuse, birth, death, public health surveillance, or public health investigation or intervention."[44] The legislation required the Department of Health and Human Services (HHS) to create adequate, specific privacy rules which would become law if Congress did not act on the proposed rules within thirty-six months of their proposal.[45] Congress did not act, so the proposed laws went into effect.[46]

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[42] 45 C.F.R. § 164.512 (2013). The disclosures allowed in response to law enforcement is limited to only: name and address; date of birth social security number; ABO blood type and rh factor; type of injury; date and time of treatment; date and time of death if applicable; and a description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or mustache), scars, and tattoos.

[43] *Purl v. United States Dept. of Health and Human Services*, No. 2:24-CV-228-Z, 2025 U.S. Dist. LEXIS 116234, at *5 (N.D. Tex. June 18, 2025).

[44] *Id.* (emphasis removed). It is an open question as to whether or not Oklahoma can use its pro-life "public policy" to force disclosures under these stated exemptions.

[45] *Id.* at *5-6.

[46] *Id.* at *5.

IV. Does Complying with EMTALA Conflict with the Abortion Ban? (Cont.)

In response to the Dobbs decision, and without further grant of authority from Congress, HHS updated its privacy rules in 2024 to offer greater protections for personal health information related to reproductive health care.[47] This update was specifically motivated to safeguard reproductive health information that law enforcement may request or subpoena.[48] The updated privacy rule prohibited disclosure of information about reproductive health care likely for the purpose of protecting the information of anyone providing, seeking, or inquiring about abortion care.

The Northern District of Texas issued a ruling in June 2025 declaring this update to the privacy rule.[49] As such, reproductive health care can be attained by law enforcement officials when a state statute explicitly permits its collection in furtherance of an investigation. Oklahoma does not currently have a law allowing such information collection. However, Texas does. Oklahoma has traditionally followed the lead of the Texas legislature in these matters, so similar legislation may be forthcoming.

[47] *Id.* at *6-8.
[48] *Id.* at *8.
[49] *Id.* at *84. ***We plan to discuss how and if this applies nationwide despite the EMTALA section acknowledging that Oklahoma is not bound by the 5th Cir. in the next draft***