



The Commonwealth of Massachusetts
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Memorandum

TO: Massachusetts Hospital Chief Executive Officers
FROM: Robert Goldstein, MD, PhD, Commissioner
Massachusetts Department of Public Health
DATE: June 24, 2024
RE: Guidance Regarding Obligation of Hospitals to Treat Individuals with a
Pregnancy Related Emergency Medical Condition

On June 24, 2024, Governor Healey issued Executive Order No. 633 wherein she directed the Commissioner of Public Health to issue this guidance reaffirming and clarifying the requirements under state law for hospitals to provide emergency medical treatment, including emergency abortion services to patients.

The Massachusetts Department of Public Health (DPH) continues to prioritize reproductive freedom and access to reproductive health care services, including emergency medical treatment and active labor services, for patients in Massachusetts.

The following guidance outlines the requirements under applicable federal and state law for hospitals to provide emergency medical treatment which includes emergency abortion services to patients consistent with Governor Healey's Executive Order.

Emergency Abortion Services

Emergency medical conditions requiring treatment may include pregnancy-related conditions in which preserving the life of a pregnant person or preventing the risk of serious harm to their health may require pregnancy termination. There are a wide range of medical conditions that might require emergency abortion care to prevent risk of infection, sepsis, hemorrhage, loss of fertility, decompensation in clinical condition, disabling or chronic medical condition as a result of pregnancy complications, or death. They include, but are not limited to ectopic pregnancy, preeclampsia with severe features, or complications of pregnancy loss.¹ There are also a wide range of medical conditions that might require stabilizing treatment, including but not limited to, medical and/or surgical interventions (e.g., methotrexate therapy, dilation and curettage (D&C),

¹ The American College of Obstetricians and Gynecologists stated "it is impossible to create an inclusive list of conditions that qualify as 'medical emergencies'", however, DPH has provided several in response to requests for greater clarity. <https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions>

removal of one or both fallopian tubes, anti-hypertensive therapy, etc.). Health care providers are expected to make and act upon appropriate clinical judgments in each unique patient situation.

Massachusetts Protections Related to Abortion Access

The Massachusetts Declaration of Rights protects a person's right to have an abortion and affords "a greater degree of protection . . . than does the Federal Constitution".² Massachusetts state law also protects the right to an abortion. Specifically, [M.G.L. c. 112, § 12L](#) protects a person's right to choose from any state governmental interference. [M.G.L. c. 112, § 12M](#) affirms the right of physicians, physician assistants, nurse practitioners, and nurse midwives to perform abortions before twenty-four weeks of pregnancy. Additionally, [M.G.L. c. 112, § 12N](#) allows physicians to perform abortions after 24 weeks of pregnancy for specified medical reasons.

In 2022, statutory protections were enacted shielding health care providers and pharmacists from professional licensure consequences and out-of-state legal actions when those persons provide or assist in the provision of reproductive health care services or gender-affirming health care services in the Commonwealth. Patients are also shielded from out-of-state legal actions when they seek the provision of reproductive health care services or gender-affirming health care services. [Chapter 127 of the Acts of 2022, An Act Expanding Protections for Reproductive and Gender-Affirming Care](#).

Emergency Departments

Hospitals must comply with the Emergency Medical Treatment and Labor Act (EMTALA) statute codified at §1867 of the Social Security Act, (the Act), the accompanying regulations in [42 C.F.R. §489.24](#) and the related requirements at [42 C.F.R. 489.20](#)(l), (m), (q), and (r). EMTALA requires hospitals with Emergency Departments (EDs) to provide a medical screening examination to any individual who comes to the ED and requests such an examination. It also prohibits hospitals with EDs from refusing to examine or treat individuals with an emergency medical condition.

The Centers for Medicare and Medicaid Services (CMS) released a memorandum regarding the EMTALA obligations specific to patients who are pregnant or are experiencing pregnancy loss. If a provider believes that a pregnant patient presenting at an ED is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the provider must provide the patient the option of that treatment (See [CMS QSO-22-22](#)).

Additionally, Massachusetts law explicitly prohibits acute hospitals from refusing admission and treatment to any patient based on method of payment and further affirms the right to "...prompt life saving treatment in an emergency without discrimination on account of economic status or source of payment..."³

² [Moe v. Sec. of Admin. & Fin.](#), 382 Mass. 629, 645-48, 51 (Mass. 1981).

³ M.G.L. c. 111 § 51D; M.G.L. c. 111 § 70E.

As a condition of licensure in Massachusetts, all hospitals must comply with all applicable state and federal statutes and regulations pertaining to health care facilities, including EMTALA. *See* [105 CMR 130.108](#). Violation of any relevant state or federal statute or regulation pertaining to operation of a hospital, including a violation of EMTALA, could result in the Department refusing to renew or revoking a license. *See* [105 CMR 130.130](#).

Failure of a hospital to provide abortion care when required to preserve the life of a pregnant person or prevent risk of serious harm to their health is a violation of EMTALA and the related state statutes and regulations outlined above. This noncompliance constitutes a regulatory violation which could result in revocation of a hospital's license to operate in the Commonwealth.

Licensed Health Care Providers

Health care providers licensed by the Department's Boards of Registration, including nurses, pharmacists, and physician assistants and physicians licensed by the Board of Registration in Medicine, have a professional obligation to ensure treatment of emergency medical conditions, consistent with federal and state law, including when necessary to save the life of a pregnant person or prevent serious harm to their health. A health care provider's failure to ensure treatment of an emergency medical condition may violate recognized standards of practice and may be grounds for discipline of the individual's license to practice. *See* [244 CMR 7.00](#); [247 CMR 10.00](#); [243 CMR 1.00](#).