



Sample Abortion Provision of Care Policy*

Georgia

Given that clinicians must practice and make medical decisions in real time and in grey areas, it is essential that hospitals and health care systems are clear about what their clinicians may do and when, and support and defend their clinicians if their decisions are attacked under restrictive state laws related to abortion care. **This policy provides an overview of Georgia's abortion-related legal requirements** and establishes protocol-based guidance to support clinicians providing care. Hospitals should provide legal protections and defense resources for clinicians and support staff who operate in accordance with hospital policies.

The adoption and implementation of this policy may vary based on hospital-specific factors. In addition to this policy, the American College of Obstetricians and Gynecologists (ACOG) and Lawyers for Good Government (L4GG) are also providing clinical and legal implementation support, including but not limited to navigating local environments, providing sample conditions where doctors should feel comfortable moving forward in emergency situations (not exhaustive), and gaining buy-in from staff. Please reach out to ACOG (nverma@acog.org) and L4GG (amorrisson@lawyersforgoodgovernment.org) to discuss setting up an implementation support call or with questions.

The American College of Obstetricians and Gynecologists (ACOG) vehemently opposes legislative interference in the practice of medicine, including bans on abortion care. This document is meant to elucidate for hospital and hospital systems potential paths for agile, comprehensive approaches for clinicians to be able to provide pregnant patients with medical emergencies or who meet other exceptions to restrictive laws with the care they need as quickly as possible. This document should not be interpreted as endorsement of the legislative interference that has limited the ability of clinicians to use their authority and expertise to provide care. We also oppose institutional policies that build on this document to ultimately restrict access to care; this document should not be used in a restrictive way, but rather as a foundation for hospitals and hospital systems to be able to save patients' lives and health within the confines of the law.

SCOPE

All health care professionals involved in provision of abortions (as defined below) at any [insert health care system] facility.

PURPOSE

To offer guidance to providers regarding abortion care under current Georgia law as effective on July 20, 2022.

*This information contained in this document is intended as a practical resource to aid organizations and clinicians when providing obstetric and gynecologic care and for information purposes only. The use of this information is voluntary, and providers should be familiar with and comply with all applicable laws and regulations, including those related to abortion. This information is not intended to be used as a substitute for legal counsel or your independent judgment, is not medical or legal advice, and should not be considered as inclusive of all proper treatments or methods of care or as a statement of the standard of care. The information contained in the sample policy is presented "as is" without any warranties, express or implied. ACOG Foundation; the American College of Obstetricians and Gynecologists; and its officers,

directors, members, employees, and agents will not be liable for any loss or damages, including direct, special, indirect, or consequential damages, incurred in connection with the provision of care or the information presented herein.

POLICY STATEMENT

Any providers involved in providing abortion care at any *[insert health care system]* facility must do so in accordance with Georgia law and *[insert health care system]* policies. *[insert healthcare system]* is required to comply with all applicable laws and regulations regarding abortion services but providers are expected to provide care available to the full extent permitted under the law. *[Insert health care system]* will support, with legal defense resources if necessary, clinicians who abide by this directive using reasonable medical judgment and the staff who assist them. In general, abortions may be performed legally in Georgia if either (1) there is no fetal cardiac activity detected or (2) there is fetal cardiac activity detected but at least one of the three exceptions (i.e., medical emergency, medical futility, or rape/incest) applies. Certain procedures, such as the removal of ectopic pregnancies and removal of fetal tissue without fetal cardiac activity due to spontaneous abortions (e.g., miscarriages, stillbirths), are excluded from the definition of abortion under Georgia law.

DEFINITIONS

An abortion is defined by Georgia law to mean “the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with the knowledge that termination will, with reasonable likelihood, cause the death of an [embryo or fetus].”¹

An abortion, as defined by Georgia law, **does not include any of the following:**

- (1) The use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to increase the probability of a live birth;²
- (2) The use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to preserve the life or health of the embryo or fetus after live birth;³
- (3) The use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to remove a dead embryo or fetus which died as the result of a spontaneous abortion;⁴
- (4) The use or prescription of contraceptives;⁵ and
- (5) The removal of an ectopic pregnancy.⁶

A “detectable human heartbeat,” is defined by Georgia law as “embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.”⁷ For purposes of this policy and to be consistent with standard medical terminology, “detectable human heartbeat” will be referred to as “fetal cardiac activity.”

If there is fetal cardiac activity, abortions may only be performed if they fall within at least one of the following exceptions:

- (1) “A physician determines, in reasonable medical judgment, that a medical emergency exists”⁸; (2) “A physician determines, in reasonable medical judgment, that the pregnancy is medically futile”⁹; or (3) “The probable gestational age of the [embryo or fetus] is 20 weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest.”¹⁰

¹ O.C.G.A. § 16-12-141(a)(1). ² O.C.G.A. § 31-9A-2(1). ³ O.C.G.A. § 31-9A-2(1). ⁴ O.C.G.A. § 16-12-141(a)(1)(A) and O.C.G.A. § 31-9A-2(1). ⁵ O.C.G.A. § 31-9A-2(1). ⁶ O.C.G.A. § 16-12-141(a)(1)(B). ⁷ O.C.G.A. § 16-12-141(a)(2). ⁸ O.C.G.A. § 16-12-141(b)(1). ⁹ O.C.G.A. § 16-12-141(b)(3). ¹⁰ O.C.G.A. § 16-12-141(b)(2).

A “medical emergency” is defined by Georgia law as “a condition in which an abortion is necessary in order to prevent the death of the pregnant [patient] or the substantial and irreversible physical impairment of a major bodily

*function of the pregnant [patient].*¹¹ Please note that there is no express requirement in Georgia's abortion statute that the "medical emergency" be an immediate one rather than emergent.

When considering whether a medical emergency exists for purposes of eligibility for an abortion, Georgia law does not permit the consideration of the mental or emotional conditions of the pregnant patient or that the pregnant patient may purposefully engage in conduct with the intent to commit suicide or result in self-injury.¹²

Georgia law defines "probable gestational age" ("PGA") as the "postfertilization age" of the embryo or fetus "as dated from the time of fertilization of the human ovum."¹³ This **is not the same as the medical term "estimated gestational age"** ("EGA") which is calculated from the first day of the last menstrual period of the pregnant patient. Because fertilization occurs approximately two weeks after the first day of the last menstrual period of the pregnant patient, the legal phrase "PGA" is equivalent to EGA **minus two weeks**. For example: a PGA of 20 weeks equals an EGA of 22 weeks. All references in patient medical records to gestational age of an embryo or fetus have historically been and will continue to be **EGA**. Therefore, all references to gestational age in this policy will be understood to mean EGA.

Georgia law defines "an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before ending the life of the fetus and completing the delivery" as a "partial birth abortion."¹⁴ The term "partial birth abortion" is not a clinical term but a legal term, and such partial birth abortions are illegal in Georgia.¹⁵

PROCEDURE

PART ONE – DETERMINING PATIENT ELIGIBILITY FOR PROCEDURE

1. STABILIZE PATIENT

If an abortion is required to save the life of the patient or prevent the substantial and irreversible physical impairment of a major bodily function of the pregnant [patient], providers will stabilize the patient and provide medical care, including abortion, as necessary in this medical emergency. Providers are expected to comply with EMTALA at all times it is applicable.

2. DETERMINE IF FETAL CARDIAC ACTIVITY IS PRESENT IN UTERO

If the patient is stable and is seeking and/or may need an abortion, the provider must first determine whether there is fetal cardiac activity using ultrasound or other appropriate modality.¹⁶

¹¹ O.C.G.A. § 16-12-141(a)(3). ¹² "No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function." *Id.* ¹³

O.C.G.A. § 31-9B-1(5). ¹⁴ O.C.G.A. § 16-12-144(a). ¹⁵ O.C.G.A. § 16-12-144(b). "Any person who knowingly performs a partial birth abortion and thereby ends the life of a human fetus shall, upon conviction, be punished by a fine not to exceed \$5,000.00, imprisonment for not more than five years, or both. This prohibition does not apply to a partial birth abortion that is necessary to save the life of the [pregnant patient] because [the patient's] life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering condition caused by or arising from the pregnancy itself, provided that no other medical procedure will suffice to save the [patient's] life." ¹⁶ Georgia law does not specify a certain modality/device for detecting fetal cardiac activity. Providers should apply their reasonable judgment to select an appropriate method to detect fetal cardiac activity.

A. No Fetal Cardiac Activity Due to EGA = PATIENT ELIGIBLE

Abortions are permitted to be performed in Georgia if there is no fetal cardiac activity detected. Go to

Step 4 (Discuss Eligibility with Patient).

B. No Fetal Cardiac Activity Due to IUFD = PATIENT ELIGIBLE

Removal of an intrauterine fetal demise (IUFD) is not defined as an “abortion” under Georgia law, and thus is not prohibited. Go to **Step 4 (Discuss Eligibility with Patient)**.

C. Fetal Cardiac Activity but Ectopic Pregnancy = PATIENT ELIGIBLE

Termination or removal of an ectopic pregnancy (a non-viable pregnancy in which the embryo is implanted somewhere other than the uterus; This can include but is not limited to tubal ectopic, interstitial ectopic, cesarean scar ectopic, cervical ectopic, and abdominal ectopic pregnancy) is not defined as an “abortion” under Georgia law, and thus is not prohibited. Go to Step 4 (Discuss Eligibility with Patient).

D. Fetal Cardiac Activity with Uterine Pregnancy = ADDITIONAL PATIENT ASSESSMENT FOR EXCEPTIONS

If a patient has a uterine pregnancy and fetal cardiac activity is detected, additional analysis is needed to further determine patient eligibility. Go to **Step 3**.

3. DETERMINE IF PATIENT MEETS CRITERIA FOR AN EXCEPTION

While decisions about care are entrusted to the reasonable judgment and expertise of the treating physician together with their patient, hospital systems can consider providing consulting or other support to clinicians as they navigate exceptions. If such an option exists at your institution, it will be helpful to include a physician with family planning expertise and a maternal–fetal medicine specialist on the team. Smaller or community hospitals may find it helpful to collaborate with other institutions or academic centers in their area. In all cases, hospitals should provide guidance that permits treatment to the full extent of applicable state law and support and defend their clinicians when they provide that care to patients. Below, this protocol includes a general approach to navigating exceptions. Some hospital systems may choose to include a **non-inclusive, non exhaustive example list** of conditions that are expected to qualify for care under Georgia's law. It is not appropriate and indeed, dangerous, to use a list of conditions, including a non-inclusive or non-exhaustive list, in legislation or legal rules or regulations. The law cannot encompass the full range of complex and nuanced conditions that occur in pregnancy and do not possess the needed flexibility to address obstetrical complications. In contrast, hospital protocols may be adjusted and applied with flexibility to account for the variability inherent in the actual practice of medicine. It is also critical that protocols provide as much authority as possible to individual clinicians and that they be agile and efficient in determining patient eligibility in the event of a medical emergency that is not reflected in the example list. ACOG and L4GG's implementation support team can assist hospitals in thinking through these additional resources if deemed helpful in a particular clinical setting.

A. MEDICAL EMERGENCY

Providers should assess each patient to determine if, in their reasonable medical judgment, the patient's condition meets the Georgia statutory definition of a “medical emergency.” A “medical emergency,” as stated above, is defined by Georgia law as “a condition in which an abortion is necessary in order *to prevent the death of the pregnant [patient] or the substantial and irreversible physical impairment of a major bodily function of the pregnant [patient].*”¹⁷ Please note that there is no express requirement in Georgia's abortion statute that the

¹⁷ O.C.G.A. § 16-12-141(a)(3).

When considering whether a medical emergency exists for purposes of eligibility for an abortion, Georgia law does not permit the consideration of the mental or emotional conditions of the pregnant patient or that the pregnant patient may purposefully engage in conduct with the intent to commit suicide or result in self-injury.¹⁸

i. Fetal Cardiac Activity but Medical Emergency = PATIENT ELIGIBLE

If the patient's condition, in the provider's reasonable medical judgment, meets the definition of "medical emergency," Go to **Step 4 (Discuss Eligibility with Patient)**.

*Note: A medical emergency may also be exempt from the Georgia law requiring that at least 24 hours prior to the procedure, state-mandated information be provided to the patient.

B. MEDICAL FUTILITY

Providers should assess each patient to determine if, in their reasonable medical judgment, the pregnancy meets the statutory definition of a "medically futile" pregnancy. A pregnancy is "medically futile" when "in reasonable medical judgment, [the embryo or fetus] has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth."¹⁹

ii. Fetal Cardiac Activity but Medically Futile Pregnancy = PATIENT ELIGIBLE

If the pregnancy, in the provider's reasonable medical judgment, meets the definition of one that is "medically futile," go to **Step 4 (Discuss Eligibility with Patient)**.

C. RAPE OR INCEST

Providers should assess each patient to determine if, in their reasonable medical judgment, the patient meets the statutory requirements and falls within the exception for rape or incest.

i. Provider must first determine the EGA of the embryo or fetus.

• EGA > 22.0 Weeks = PATIENT NOT ELIGIBLE

If the medical emergency or medical futility exception is not met and the EGA of the embryo or fetus is greater than 22.0 weeks (the equivalent of a "PGA" greater than 20.0 weeks), the patient is not eligible to receive an abortion under Georgia law. Go to **Step 4 (Discuss Eligibility with Patient)**.

ii. Provider must document the patient's or legal guardian's statement that the patient's pregnancy is the result of rape or incest and that an official police report has been filed alleging the offense of rape or incest. A patient or a patient representative can verbally convey to the physician that the pregnancy is the result of either rape or incest and that a police report has been filed. **No proof of documentation is required.**

¹⁸ "No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function." *Id.*

¹⁹ O.C.G.A. § 16-12-141(a)(3) and O.C.G.A. § 31-9B-1(3).

- **EGA \leq 22.0 Weeks and Officially-Reported Rape or Incest (whether or not there is fetal cardiac activity) = PATIENT ELIGIBLE**
Go to **Step 4 (Discuss Eligibility with Patient)**.

- **EGA \leq 22.0 Weeks *without* Officially-Reported Rape or Incest = PATIENT NOT ELIGIBLE.**

If the medical emergency or medical futility exception is not met **and** the EGA of the embryo or fetus is equal to or less than 22.0 weeks (the equivalent of a “PGA” equal to or less than 20.0 weeks), **but** there has not been an official report of the alleged rape or incest, the patient is not eligible to receive an abortion under Georgia law. Go to **Step 4 (Discuss Eligibility with Patient)**.

4. DISCUSS ELIGIBILITY WITH PATIENT

Following a provider’s clinical assessment of the pregnant patient, the patient should be advised whether they are eligible for an abortion or procedure under Georgia law. All patients will be treated with compassion and respect during these difficult discussions. Patients who are not eligible for abortions under Georgia law will not be judged for having sought medical care. As of the time of the approval of this policy, **there is no requirement under Georgia law that the institution report that any patient sought but did not receive an abortion due to ineligibility.**

PART TWO – PROCESS FOR ELIGIBLE PATIENTS

5. PATIENT EDUCATION AND INFORMED CONSENT

For any clinically stable patient, Georgia law requires that at least 24 hours prior to the procedure, state mandated information be provided to the patient. In addition, other legal requirements exist if the patient is a minor, which is defined by Georgia law as an individual under 18 years of age and not emancipated.

- A. At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician, or his or her qualified agent (which could be a patient educator, licensed assistant, licensed social worker, licensed professional counselor, physician or registered nurse) will consult with the patient, by telephone or in person, and inform the patient of the following:
 - i. The EGA of the embryo or fetus based on the patient’s last menstrual period and whether the presence of fetal cardiac activity is likely at the time the abortion would be performed.
 - ii. The particular medical risks to the patient of the abortion procedure that is indicated by the patient’s probable gestation and surrounding circumstances.
 - iii. The medical risks to the patient if the patient carries the pregnancy to term.
 - iv. That medical assistance benefits may be available to the patient for prenatal care, child birth and neonatal care.
 - v. That the father would be liable for child support under Georgia Code Section 19-7-49(a).

- vi. How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge (with such list arranged geographically and including the name, address, hours of operation, and telephone number of each listed entity).
 - vii. That the patient has the right to review State-supplied materials, on the State of Georgia website that describe the fetal development of the embryo or fetus, contain information on fetal pain and contains a list of agencies that provide alternatives to abortion.
- B. If an ultrasound has been performed, the patient will be offered the opportunity to view the ultrasound and hear the fetal cardiac activity.
 - C. The patient will be offered the opportunity to view the State-supplied materials.
 - D. The patient will be provided the opportunity to ask questions about the abortion that will be performed and all of the patient's questions should be answered to the patient's satisfaction.
 - E. Prior to the procedure, informed consent will be obtained from the patient; in addition, the patient will execute a written informed consent for the procedure.

6. MEDICAL PROCEDURE

This policy is not intended to dictate the type of medical procedure agreed upon by the patient and provider, nor is it intended to restrict the medical or clinical judgment of the provider when performing the procedure on an eligible patient.

In Georgia, only physicians licensed in Georgia may perform abortions.²⁰ Except in cases of a medical emergency or a medically futile pregnancy, the physician performing the abortion must determine the presence of fetal cardiac activity prior to performing the abortion.²¹

Under Georgia law, abortions after the first trimester can only be performed in the following facilities:

- a licensed hospital,
- a licensed ambulatory surgical center, or
- a health facility licensed as an abortion facility by the Georgia Department of Community Health.²²

Georgia law requires that in conducting an abortion, "if the [embryo or fetus] is capable of sustained life, medical aid then available shall be rendered."²³

PART THREE – DOCUMENTATION

7. OPERATIVE REPORT

For every abortion procedure performed at *[insert hospital name]*, the operative report should contain information relevant to comply with abortion reporting obligations under current Georgia law. Such information shall include confirmation of the absence or presence of fetal cardiac activity, confirmation of EGA, and the exception if applicable (e.g., medical emergency, medical futility, or rape/incest).

²⁰ O.C.G.A. § 16-12-141(e)(2). ²¹ O.C.G.A. § 31-9B-2(a). ²² O.C.G.A. § 16-12-141(e)(1). ²³ O.C.G.A. § 16-12-141(c).

Regulatory References:

This policy is consistent with the definitions and prohibitions contained in Article 5 (Abortions) of Title 16 of the Criminal Code of Georgia, sections 140 through 144²⁴ as well as those contained in Chapter 9A (Woman's Right to Know) and Chapter 9B (Physician's Obligation in Performance of Abortions) of Title 31 (Health) of the Code of Georgia.

O.C.G.A. § 16-12-140, *et seq.*; O.C.G.A. § 31-9A-1, *et seq.*; O.C.G.A. § 31-9B-1, *et seq.*; GA. COMP. R. & REGS. r. 511-1-3-.19; GA. COMP. R. & REGS. r. 511-1-3-.21; GA. COMP. R. & REGS. r. 511-1-3-.33; GA. COMP. R. & REGS. r. 511-5-7-.01; O.C.G.A. § 31-10-19

²⁴ O.C.G.A. § 16-12-140(a).