

Section 1: Short Title

This bill shall be known as “Ensuring Emergency Pregnancy Care” Act

Section 2: Legislative Findings

WHEREAS, at least one-third of pregnancies involve emergency room visits.¹

WHEREAS, up to 15% of pregnancies include potentially-life threatening conditions.²

WHEREAS, there are several medical emergencies where ending a pregnancy may be necessary to save a pregnant person's life or prevent serious harm to their health, including the loss of future fertility.

BE IT RESOLVED, that this legislation seeks to protect pregnant people in emergency situations who are in need of abortion care.

Section 3: Definitions

- (A) "Active labor" means a pregnant patient is experiencing symptoms of labor, including, but not limited to, contractions, pain, bleeding, cervical dilation, or shortened cervical length, unless the examining obstetrician certifies that, after a reasonable time of observation, the patient is in false labor.
- (B) "Emergency department" means an emergency department of a hospital licensed pursuant to [RELEVANT STATE STATUTE]; a freestanding emergency department, as defined in [RELEVANT STATE STATUTE]; a labor and delivery unit of a general hospital; a maternity hospital; a hospital or healthcare facility, or area of a hospital or healthcare facility, that holds itself out to the public as providing emergency care; or a hospital or healthcare facility at which at least one-third of outpatient visits during the prior calendar year were for emergency medical care.
- (C) "Emergency medical condition" means a medical condition with symptoms of an illness or injury that may progress in severity or result in complications with a high probability for morbidity or mortality if treatment does not begin quickly.
- (D) "Emergency medical condition" includes, but is not limited to, active labor; a threatened ectopic pregnancy or miscarriage; a complication resulting from pregnancy or pregnancy loss; risks to future fertility; a preterm premature rupture of membranes; a placental abnormality; and emergent hypertensive disorders, such as preeclampsia. This list is not exhaustive and is not intended to limit provider discretion, but instead provide some guidance on “emergency medical conditions” and resulting “emergency medical treatments” as determined by the standard of care.

¹ [Ann Emerg Med. 2017 Dec;70\(6\):835-839. doi: 10.1016/j.annemergmed.2017.06.020. Epub 2017 Aug 12.](#)

² [Am J Emerg Med. 2023 Aug;70:90-95. doi: 10.1016/j.ajem.2023.05.011. Epub 2023 May 22.](#)

- (E) "Emergency medical condition" includes a scenario in which there is inadequate time to safely transfer the patient to another emergency department or in which the transfer might pose a threat to the safety of the patient.
- (F) "Emergency medical services" means:
 - (a) a medical screening examination that is appropriate to the patient's presenting signs and symptoms to determine if an emergency medical condition exists;
 - (b) for a pregnant patient, a medical screening examination conducted by an on-call obstetrician that is appropriate to the patient's presenting signs and symptoms to determine if an emergency medical condition exists; and
 - (c) when an emergency medical condition exists, the medical treatment and care necessary to stabilize the patient as determined by the examining healthcare provider.
- (G) "Emergency medical services" includes, if it is determined that the emergency medical condition that exists is a pregnancy complication, all reproductive health care services related to the pregnancy complication, including, but not limited to, miscarriage management and abortion, including the treatment of an ectopic pregnancy, that are (i) necessary to stabilize the patient and (ii) within the scope of the facility's license where the physician or health care provider is providing such services, provided such services are within the scope of practice of such physician or health care provider."
- (H) "Stabilize" means to provide medical treatment that may be necessary to ensure, within reasonable medical probability, that no material deterioration of the patient's condition is likely to result from or occur during the transfer or discharge of the patient. In addition, the obligation under state law to provide emergency stabilizing treatment does not automatically terminate when a patient is admitted to the facility.

Section 4: Emergency Care Nondiscrimination Standards

Section **[CITE STATE EMERGENCY CARE STATUTE]** is amended to include:

- (A) An emergency department shall provide emergency medical services to a person who presents to the emergency department.
- (B) For each person who presents to an emergency department for treatment, the emergency department shall input into a central log whether the person refused treatment or was denied treatment, or whether the person was admitted and treated, stabilized and transferred, or discharged.
- (C) An emergency department shall not deny or discriminate in providing emergency medical services to a patient because of the patient's sex, including pregnancy and pregnancy outcomes, disability, race, creed, color, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry, ability to pay for medical care; or insurance status.
- (D) An emergency department shall not inquire about a patient's ability to pay for emergency medical services until after the services have been rendered.

Section 5: Appropriate transfer

- (A) An emergency department shall not transfer a patient with an emergency medical condition for a nonmedical reason unless all of the following conditions are met:
- (a) the patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider at the transferring emergency department;
 - (b) The patient has been stabilized;
 - (c) a healthcare provider at the transferring emergency department has notified and obtained consent from a healthcare provider at the receiving emergency department that the patient meets the receiving emergency department's admission criteria;
 - (d) the transferring emergency department provides the appropriate personnel and equipment that a reasonable and prudent healthcare provider in the same or similar locality exercising ordinary care would use to effectuate the transfer;
 - (e) the patient's pertinent medical records and copies of the appropriate diagnostic test results that are reasonably available are transferred with the patient, including a transfer summary;
 - (f) the transfer conforms with rules established by the department of public health **[OR INSERT STATE EQUIVALENT]**; and
 - (g) the transferring emergency department contacts, or attempts to contact, and notifies the patient's preferred contact person about the proposed transfer. If the patient is not able to identify their preferred contact person, the transferring emergency department shall make a reasonable effort to ascertain the identity of the preferred contact person or the next of kin and notify them about the proposed transfer. The transferring emergency department shall document any attempts to contact a preferred contact person or next of kin in the patient's medical record.
- (B) If a patient has not been stabilized, transferring the patient to another emergency department is only permitted if:
- (a) the patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider;
 - (b) the examining healthcare provider determines the medical benefits of transferring the patient outweigh the risks, and the healthcare provider communicates the reasoning to the receiving healthcare provider and documents the reasoning in the patient's medical record; and
 - (c) the patient or the patient's representative requests a transfer and gives informed consent to the transfer against medical advice. The healthcare provider shall document the request, informed consent, and medical advice in the patient's medical record.

Section 6: Appropriate discharge

- (A) An emergency department shall not discharge a patient with an emergency medical condition unless all of the following conditions are met:

- (a) the patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider at the emergency department;
 - (b) the patient has been stabilized;
 - (c) the patient's pertinent medical records and copies of the appropriate diagnostic test results that are reasonably available are provided to the patient upon discharge, including a discharge summary;
 - (d) the discharge conforms with rules established by the department of public health **[OR INSERT STATE EQUIVALENT]**; and
 - (e) the emergency department contacts, or attempts to contact, and notifies the patient's preferred contact person about the proposed discharge. If the patient is not able to identify their preferred contact person, the discharging emergency department shall make a reasonable effort to ascertain the identity of the preferred contact person or the next of kin and notify them about the proposed discharge. The emergency department shall document any attempts to contact a preferred contact person or next of kin in the patient's medical record.
- (B) If a patient has not been stabilized, discharging the patient is only permitted if:
- (a) the patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider; and
 - (b) the patient or the patient's representative requests a discharge and gives informed consent to the discharge against medical advice. The healthcare provider shall document the request, informed consent, and medical advice in the patient's medical record.

Section 7: Nonliability

An emergency department does not violate this section if:

- (A) The patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider and the examining healthcare provider determines that no emergency medical condition exists and records the determination in the patient's medical record;
- (B) The patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider and the examining healthcare provider determines that an emergency medical condition exists and the patient is appropriately transferred or discharged pursuant to subsection (6) Appropriate transfer. or (7) Appropriate discharge. of this legislation; or
- (C) The patient is provided an appropriate medical screening examination, as described in the Section 3. Definitions of this legislation, by a healthcare provider and the examining healthcare provider, determines that an emergency medical condition exists and the patient is admitted in good faith to the emergency department for further stabilizing treatment.

Section 8: Enforcement

Section [CITE RELEVANT STATE STATUTE] is amended to read as follows:

- (A) The attorney general may bring a civil action on behalf of the state to seek injunctive relief or the imposition of a civil monetary penalty against an emergency department for negligently violating this section. The court, upon finding a violation of this section, shall impose a civil penalty in an amount not to exceed fifty thousand dollars for each violation.
- (B) A patient who suffers personal injury pursuant to this section has a private right of action against an emergency department and may institute a civil action in district court for any appropriate remedy within three years from the date of the alleged violation.
- (C) If a civil monetary penalty is imposed pursuant to [INSERT STATE ENFORCEMENT MECHANISM], the maximum civil monetary penalty amount must be reduced by any civil monetary penalty actually imposed pursuant to the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd(d) for the same violation.

Section 9: Severability.

If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 7: Effective Date

This law shall take effect on MONTH DAY YEAR