

Nebraska Department of Health and Human Services

Health Alert Network

Advisory

October 28, 2024

Preborn Child Protection Act Clarification

The Department of Health and Human Services has received several inquiries, from physicians and health care providers, expressing concern regarding recent radio and television ads that included incorrect and misleading information regarding the Preborn Child Protection Act.

Any time misleading information causes confusion among health care professionals, it could cause harm to the health and well-being of their patients. This HAN is being distributed in hopes of avoiding such situations.

Summary: On May 22, 2023, [the Preborn Child Protection Act](#) was signed into law. The law prohibits the performance or inducement of an abortion if (1) the physician does not first determine the gestational age of the preborn child and record the method used to determine the gestational age, as well as the date, time, and results of such determination in the woman's medical record, and (2) if the probable gestational age of the preborn child is 12 or more weeks. The Preborn Child Protection Act does NOT prohibit an abortion if it was performed or induced due to a medical emergency; or if the pregnancy resulted from First Degree Sexual Assault, First Degree Sexual Assault of a Child, or Incest (as defined in Neb. Rev. Stat. § 28-319, § 28-319.01, and § 28-703).

The Preborn Child Protection Act does not prohibit:

- Removal of an ectopic pregnancy (Neb. Rev. Stat. § 71-6914(1)(b)(i)).
- Removal of the remains of a preborn child who has already died, i.e. miscarriage or stillborn (Neb. Rev. Stat. § 71-6914(1)(b)(ii)).
- An act done with the intention to save the life or preserve the health of the preborn child (Neb. Rev. Stat. § 71-6914(1)(b)(iii)).
- The accidental or unintentional termination of the life of a preborn child (Neb. Rev. Stat. § 71-6914(1)(b)(iv)).
- During the practice of in vitro fertilization or another assisted reproductive technology, the termination or loss of life of a preborn child who is not being carried inside a woman's body (Neb. Rev. Stat. § 71-6914(1)(b)(v)).

Rape or Incest

The Preborn Child Protection Act states it shall not be a violation for a physician to perform or induce an abortion in the case of a pregnancy resulting from sexual assault or incest. (Neb. Rev. Stat. § 71-6915(3))

Medical Emergencies

An abortion may be performed if a medical emergency exists. Medical emergencies are any condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the termination of her pregnancy to avert her death or for which a delay in terminating her pregnancy will

create a serious risk of substantial and irreversible physical impairment of a major bodily function (Neb. Rev. Stat. § 71-6914(3)(a)). Reasonable medical judgments are medical judgments that could be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved (Neb. Rev. Stat. § 71-6914(6)).

The act does not require a medical emergency to be immediate. Physicians understand that it is difficult to predict with certainty whether a situation will cause a patient to become seriously ill or die, but physicians do know what situations could lead to serious outcomes.

Physicians should exercise their best clinical judgment, and the law allows intervention consistent with prevailing standards of care. The law is deferential to a physician's judgment in these circumstances.

This law has been in place for nearly two years and no disciplinary action has taken place for violations of the Preborn Child Protection Act. Doctors use their medical judgment on a regular and routine basis for all medical issues that arise.

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