Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

EMTALA Emergency Abortion Care Litigation: Overview and Initial Observations (Part I of II)

November 1, 2022

After the Supreme Court decided *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* in holding that the U.S. Constitution does not confer a right to an abortion, restrictions on abortion access went into effect or were enacted in many states. These restrictions vary in degree from state to state. As part of the Biden Administration's response to these state restrictions, the Department of Health and Human Services (HHS) issued a July 2022 guidance document (HHS Guidance) regarding the enforcement of the Emergency Medical Treatment and Active Labor Act (EMTALA). EMTALA is a federal law that applies to every hospital that has an emergency department and participates in Medicare. The HHS Guidance states that under EMTALA's requirements, if a physician believes that a pregnant patient presenting at an emergency department is experiencing an emergency medical condition, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment. The HHS Guidance further provides that EMTALA preempts—or displaces—state abortion restrictions to the extent they conflict with EMTALA.

The State of Texas sued to block enforcement of the Guidance while HHS sued the State of Idaho to block enforcement of Idaho's abortion ban to the extent it conflicts with EMTALA. In late August 2022, the district court in each case granted the respective plaintiffs' motion for preliminary injunction, temporarily suspending the HHS Guidance in Texas and portions of applicable state law in Idaho.

This two-part Legal Sidebar series provides an overview of the litigation and some initial observations. Part I takes a closer look at the relevant federal and state laws and the HHS Guidance. Part II summarizes the district court orders and makes some initial observations regarding those decisions and the parties' litigating positions.

Background

The preemption doctrine, grounded in the Constitution's Supremacy Clause, provides that federal law supersedes conflicting state laws. Federal law can preempt state law either *expressly* (i.e., through a

Congressional Research Service
https://crsreports.congress.gov
LSB10850

statutory provision that explicitly specifies the scope of state laws that are displaced) or *impliedly*, including when it is "impossible for a private party to comply with both state and federal requirements," or if implementation of state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

EMTALA

EMTALA generally requires Medicare-participating hospitals with emergency departments to (1) provide an appropriate medical screening examination to an individual requesting examination or treatment to determine whether an emergency medical condition exists; and (2) if such a condition exists, to provide necessary treatment to stabilize the individual before any transfer can take place. EMTALA defines an "emergency medical condition," in relevant part, as

> a medical condition manifesting 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 (i) 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, or (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

Participating hospitals and their physicians responsible for examining, treating, or transferring patients that negligently violate EMTALA's requirements are subject to civil monetary penalties. Responsible physicians that engage in repeated or gross violations may also be excluded from participation in federal health care programs. EMTALA includes an express preemption provision (42 U.S.C. § 1395dd(f)) that states: "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section."

Relevant State Laws

The Texas state legislature enacted the Human Life Protection Act in 2021. The law, similar to other state "trigger laws" that were set to go into effect in the event the Supreme Court overturned *Roe*, took effect on August 25, 2022. It generally makes performance of abortion a felony unless a licensed physician, in the exercise of reasonable medical judgment, determines (1) that the pregnant female "has a life-threatening physical condition . . . arising from a pregnancy that places [her] at risk of death or poses a serious risk of substantial impairment of a major bodily function" unless the abortion is performed; and (2) the treatment that "provides the best opportunity for the unborn child to survive . . . would create a greater risk of the pregnant female's death or a serious risk of substantial impairment of a major bodily function of the pregnant female." The law generally defines abortion to mean the use of any means "with the intent to cause the death of an unborn child of a woman known to be pregnant." The term, however, specifically excludes from the definition certain circumstances, including the use of contraceptives and acts to "remove an ectopic pregnancy."

In Idaho, the state legislature, in 2020, similarly passed a trigger law that took effect on August 25, 2022. Idaho Code § 18-622 generally makes performance of an abortion a felony, subject to two affirmative defenses that physicians may invoke upon prosecution. First, an accused physician may avoid conviction by proving, by a preponderance of evidence, that the abortion, in the physician's good faith medical judgment (1) "was necessary to prevent the death of the pregnant woman" and (2) was performed in a manner that "provided the best opportunity for the unborn child to survive, unless, in his good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman." Second, an accused physician may assert an affirmative defense based on a reported case of rape or incest. An abortion is generally defined as the use of any means to intentionally terminate a "clinically diagnosable pregnancy." While the use of certain contraceptives is excluded from the definition of abortion, there is no express exclusion related to ectopic pregnancy.

HHS's EMTALA Guidance

The July 2022 HHS Guidance reiterates that hospitals must provide appropriate medical screening examinations to those who come to their emergency departments and request examination or treatment. In cases where the examining physician determines that an emergency medical condition exists, the hospital must also provide necessary stabilizing treatment, irrespective of any conflicting state laws. The HHS Guidance states that under these requirements, if a physician believes that a pregnant patient presenting at an emergency department is experiencing a condition that is likely or certain to become emergent, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment. Examples of relevant conditions may include "ectopic pregnancy, complications of pregnancy loss, or emergency hypertensive disorders, such as preeclampsia with severe features."

The HHS Guidance further provides that a state-level abortion restriction that "does not include an exception for the life of the pregnant person—or draws the exception more narrowly than EMTALA's emergency condition definition"—is preempted by EMTALA. As to enforcement, the Guidance notes that HHS may, among other enforcement tools, impose a civil monetary penalty on a hospital or physician pursuant to 42 C.F.R. § 1003.500 for refusing to provide necessary stabilizing care or an appropriate transfer of that individual if the hospital does not have the capacity to stabilize the emergency condition. The Guidance further notes that EMTALA's whistleblower provision (42 U.S.C. § 1395dd(i)) prevents retaliation by a hospital against any employee who refuses to transfer a patient with an emergency medical condition, "such as a patient with an emergent ectopic pregnancy, or a patient with an incomplete medical abortion."

Following the Guidance's issuance, litigation ensued in Texas and Idaho. For discussion of the litigation, see Part II of the Sidebar.

Author Information

Wen W. Shen
Legislative Attorney

Disclaimer