

What You Need to Know: Mandatory Reporting Requirements, Law Enforcement, and Patient Confidentiality in Texas

Note: Laws around abortion are changing rapidly. This fact sheet is up-to-date as of August 1, 2022.

Who wrote this guide and why?

If/When/How: Lawyering for Reproductive Justice is a legal advocacy organization. We created this fact sheet in part because the most common cause of the criminalization of people who self-manage their own abortion care is unnecessary reports to law enforcement by medical providers. In addition, we frequently field questions from providers who are concerned about what they may need to report.

We know providers share our concern that risk to patients can be high when a report to law enforcement is triggered. In the case of reporting self-managed abortion, the consequences to patients might include jail time, losing custody of their children, a criminal record, or fines – all of which are unjust responses by an overzealous and racially biased system and frequently violate people’s rights.

Failure to report when it is necessary also carries the risk of liability, so we want providers to feel confident in their ability to discern when reporting is legally required, and what must be included.

What Is This Fact Sheet About?

Confidentiality is central to the provider-patient relationship and a core part of medical ethics. In addition, providers know that in some cases, violating patient confidentiality unnecessarily may carry professional or legal penalties. This brief fact sheet gives an overview of some of the major mandatory reporting requirements and where they may intersect with patient privacy - with a specific focus on self-managed abortion. This fact sheet does not contain legal advice, and we recommend that providers who have further questions about their reporting requirements consult an in-state attorney for more information.

Know your mandatory reporting obligations, and where they intersect with patient privacy

This fact sheet covers most mandatory reporting requirements that are in Texas laws. Your hospital, clinic, or practice may have additional reporting requirements that you should be familiar with. Providers can help patients maintain their agency and confidentiality while fulfilling their mandatory reporting obligations by:

- not reporting patients when reporting is not required
- informing patients of what the provider may have to report prior to treating the patient

Providers can also help protect their patients from unjust criminalization by ensuring that their hospital or clinic reporting policies do not conflict with state laws on medical privacy.

Major Mandatory Reporting Requirements in Texas¹

Crime: Self-managed abortion is not a crime and therefore does not have to be reported to law enforcement. Texans are required to report if they witness the commission of a felony.² It is highly unlikely that health care providers will ever witness the actual commission of a felony itself (e.g., an active shooting or stabbing), but rather its aftermath. Though Texas lawmakers have criminalized the provision of most abortions after six weeks of pregnancy, this does not apply to self-managed abortion.

Child and vulnerable adult abuse: Child and vulnerable adult abuse: A minor or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse. Though legal requirements for child and vulnerable adult abuse requirement are fraught with bias, in particular toward low-income families and families of color, all health care providers in Texas are mandatory reporters for suspected child abuse and neglect³ as well as suspected vulnerable adult abuse and neglect.⁴ Because suspicion naturally stems from our biases, health care providers should thoroughly examine any potential bias at play in their suspicion when deciding whether or not a report is required under the law. Reproductive coercion, including a parent forcing a minor or vulnerable adult to give birth or have an abortion, is also reportable as abuse under Texas law. Pregnancy itself is not typically an automatic trigger for abuse reporting, but if a provider has knowledge that the pregnancy was a result of statutory rape, they may be required to report. Even if a provider decides to make an abuse report, the fact that a minor or vulnerable adult self-managed their own abortion would not ordinarily need to be included in a report.

Statutory rape: If a provider does need to report a statutory rape, the fact that the patient attempted to end the pregnancy is not relevant to the investigation, and reporting it could violate medical privacy laws. Texas requires all health care providers to report statutory rape as child abuse.⁵ Statutory rape includes a young person under 17 having sexual contact with an adult, though it is an affirmative defense when there is an age difference of three years or less and the minor is 14 or older.⁶ In general, unless providers know the age of the patient's partner, they lack the information required to make a report. The age of a minor's sexual partner is rarely clinically significant to care provision.

Certain traumas and injuries: Self-managed abortion is not a reportable injury. Texas hospitals must report "significant trauma injuries" such as gunshot or stab wounds, to law enforcement.⁷ Reportable events include those where a patient is admitted to inpatient for more than 48 hours due to their significant trauma injuries,⁸ where a patient dies after evaluation or treatment, or where a patient is transferred into or out of a hospital.⁹ Though most people self-manage with medication, sometimes people without access to medication or other safe abortion care may utilize more physical methods, such as asking someone to punch them in the stomach in order to induce a miscarriage. Depending on the severity of the injury, Texas law may require a provider to report that injury (assault via punching). However, it is a violation of patient confidentiality to divulge the reason behind the injury – that is, the attempt to induce abortion. Domestic violence that causes miscarriage is not the same as self-managed abortion. Though domestic violence is not reportable in Texas, providers¹⁰ who treat a patient for injuries the provider has reason to believe were caused by domestic violence do have obligations to that patient.¹¹

Overdoses and drug use during pregnancy: If a provider knows that someone is overdosing in order to cause a miscarriage, that patient's intention behind the overdose is not required information to include in a report. There is no duty on the part of a health care provider to report criminalized drug use in Texas, including if that drug use occurs during pregnancy.¹² However, Texas does mandate reporting when a physician attends or treats, or is requested to attend or treat, a controlled substance overdose.¹³

Major Mandatory Reporting Requirements in Texas

Self-harm: In Texas, providers are not required to report patients at imminent risk of self-harm.

Abortion: It is never necessary to report a patient's intention to self-manage an abortion. Texas requires abortion reporting for vital statistics purposes,¹⁴ including specific requirements around reporting abortion complications,¹⁵ emergency abortion reporting,¹⁶ and minor patients.¹⁷ Generally, providers are only required to report abortions that they themselves perform,¹⁸ though nearly all providers must report abortion complications they treat.¹⁹ In most cases, this would exclude miscarriage management, self-managed abortion, or where a patient presents post-fetal demise. The intention to self-manage - or the patient's past, current or intended self-managed abortion - is not information a physician is required to provide under state law.

Fetal death: Under the current definition of "fetal death", providers are not clearly required to report any induced termination of pregnancy, including self-managed abortion.²⁰ An attending physician, physician assistant, or advanced practice registered nurse must medically certify fetal deaths where a fetus weighs more than 350 grams or, if the weight is unknown, is 20 weeks or more gestational age.²¹ Those in charge of disposition or removal of a body should file the fetal death certificate.²² If a reportable fetal death occurs without medical attendance, providers must notify the medical examiner or coroner.²³ The medical examiner or coroner will then decide whether or not to investigate the fetal death, and regardless of investigation will fill out the cause of death information on the fetal death certificate. Providers with questions on this issue should consult with an attorney.

Cited Resources

1. This fact sheet focuses on mandatory reporting requirements that involve law enforcement or an analogous health authority. It does not include mandatory reporting requirements concerning communicable diseases, childhood blood lead levels, or reporting specific to Title IX requirements in colleges. The fact sheet intends to cover reporting requirements for physicians, nurses, physician assistants, midwives, social workers, mental health professionals, and emergency medical technicians. If you know of a mandatory reporting requirement for these professionals in Texas involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. Tex. Penal Code § 38.171.
3. Tex. Fam. Code § 261.001.
4. Tex. Hum. Res. Code § 48.051.
5. Tex. Fam. Code § 261.001, defining abuse as including "indecency with a child" under Tex. Penal Code § 21.11.
6. Id.
7. 25 Tex. Admin. Code § 103.4.
8. A trauma injury includes all significant injuries or wounds caused by external force, such as "violence, burns, poisonings, submersions, traumatic brain injuries, traumatic spinal cord injuries, and suffocations." 25 Tex. Admin. Code § 103.2. Because this requirement only applies to hospitals as institutions rather than providers as individuals, see 25 Tex. Admin. Code § 103.4, providers working in hospitals may need to consult hospital policy as it relates to this requirement. If hospital reporting policy requires providers to report more patient information than is required under state law, providers may choose to report according only to state requirements, though this may put them at risk for penalty by the hospital.
9. Id.
10. Note that this only applies to providers who are treating a patient for injuries, which would exclude social workers and mental health providers.
11. Domestic violence that causes miscarriage is not the same as self-managed abortion. Though domestic violence is not reportable in Texas, providers who treat a patient for injuries the provider has reason to believe were caused by domestic violence do have obligations to that patient. Namely, providers are required to provide that person with information regarding the closest shelter, and to document in the patient's file that the provider believes the patient's injuries were caused by family violence, why the provider believes this, and a confirmation that the patient was given information on the nearest shelter. The provider must also give the patient written notice that domestic violence is a crime, and information on how to report. Tex. Fam. Code § 91.003. Because the code is incredibly detailed on what written information must be provided, hospitals and clinics likely already have a prepared form providers may use for this purpose.
12. 2005 Op. Tex. Att'y Gen. GA-0291.
13. Tex. Health & Safety Code § 161.042.
14. Each time a physician performs an abortion at an abortion facility or ambulatory surgical center they must fill out the induced termination of pregnancy report, which the physician or facility must send to the Texas Health and Human Services Commission on a monthly basis. Tex. Health & Safety Code § 245.011; 25 Tex. Admin. Code § 139.4.

Cited Resources (continued)

15. If there are abortion complications, including incomplete abortion, the majority of providers and institutions must report each complication to the Center for Health Analytics at the Texas Health and Human Services Commission on a special form, regardless of if the provider themselves performed the abortion. 25 Tex. Admin. Code § 139.5(3)(A)-(B); Tex. Health & Safety Code 171.006(a). They must also report “serious adverse events” from medication abortion. Tex. Health & Safety Code § 171.063-64.
16. 25 Tex. Admin. Code § 139.5(2)(D).
17. Tex. Fam. Code § 33.002.
18. The Texas code does not currently contemplate abortion reporting requirements for abortions performed by others. Tex. Health & Safety Code § 245.011 (physicians who perform at abortion facilities are required to report monthly); 25 Tex. Admin. Code § 139.4 (listing out reporting requirements for “physicians who perform one or more abortions during the preceding calendar month.” However, note that this section of code is specific to abortion facilities). Note that an “abortion facility” initially includes any facility where abortions are performed, but then exempts hospitals, physician offices unless more than 50 abortions per year happen there, ambulatory surgical centers (though these are still subject to abortion reporting requirements, while hospitals are not), and facilities that are not “used substantially for the purpose of performing abortions,” meaning they perform fewer than 10 abortions per month or fewer than 100 per year, and do not hold themselves out as an abortion provider/apply for an abortion facility license. Tex. Health & Safety Code § 245.004.
19. 25 Tex. Admin. Code § 139.5(3)(A)-(B); Tex. Health & Safety Code 171.006(a); Tex. Health & Safety Code § 171.063-64.
20. The Texas definition of fetal death does not exclude induced terminations of pregnancy, nor does it include them. 25 Tex. Admin. Code § 181.1. Similarly, the Texas definition of abortion only contemplates abortions performed by physicians. Tex. Health & Safety Code § 245.002
21. 25 Tex. Admin. Code § 181.7; Tex. Health & Safety Code § 193.005(a).
22. 25 Tex. Admin. Code § 181.14(b).
23. Tex. Health & Safety Code § 193.005(d).