

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

Note: Laws around abortion are changing rapidly. This fact sheet is up-to-date as of August 26, 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 is meant to give 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 Nebraska 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
- carefully considering what information is necessary to document in a medical chart

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 Nebraska¹

Remember: Self-managed abortion is not a crime. Nebraska health care providers are not required to report crimes other than abuse and neglect of children and vulnerable adults, or certain results of crimes, such as serious injuries as described elsewhere in this fact sheet. Coerced abortion is² a crime, but Nebraska does not require providers to report reproductive coercion unless it occurs in the context of child abuse, injury, or other reportable conduct.

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 are fraught with bias, in particular toward low-income families and families of color, all health care providers in Nebraska are mandatory reporters for suspected child abuse and neglect.³ Health care providers are also mandatory reporters for suspected vulnerable adult abuse and neglect.⁴ Health care providers are mandated reporters whether they are on the clock or off.⁵ 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. 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. Providers are not required to report domestic violence or sexual assault in Nebraska unless the victim is a minor or vulnerable adult,⁶ or if the injury inflicted is a “serious bodily injury” or was inflicted by a deadly weapon, as described elsewhere in this fact sheet.

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. Nebraska requires all health care providers to report statutory rape as child abuse.⁷ Statutory rape includes a young person aged 14 or younger having sexual contact with anyone who is 19 or older, as well as a young person aged 15 or younger having sexual penetration with anyone who is 19 or older.⁸ 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 ordinarily a reportable injury. Nebraska hospitals must report brain and head injuries, as well as “serious bodily injury”⁹ or an injury resulting from a deadly weapon,¹⁰ but only when the injury appears to be related to the commission of a criminal offense, such as assault or attempted murder.¹¹ For example, self-injury, regardless of the intention behind it, is not a criminal offense and thus would not be reportable even if a deadly weapon is used or serious bodily injury results. Note: If the pregnant person asked someone else to harm them in order to end the pregnancy, a resulting injury may be reportable if it causes serious bodily injury or is inflicted with a deadly weapon; however, providers do not need to describe the reason for the conduct or otherwise provide information that could go beyond injury reporting. Self-managed abortion is not a crime.

Certain traumas and injuries resulting from sexual assault: Self-managed abortion is not a reportable injury. Health care providers are required to ask a victim of sexual assault who is 18¹² years of age or older to provide written consent to report a physical injury related to sexual assault, but if the victim does not want to provide written consent, health care providers are not required to report unless the injury inflicted is a “serious bodily injury” or was inflicted by a deadly weapon, as described previously in this fact sheet.

Major Mandatory Reporting Requirements in Nebraska

Overdoses and drug use during pregnancy: Health care providers are not required to report overdoses or drug use during pregnancy. Moreover, substance use during pregnancy is not child abuse under Nebraska law.

Self harm: Nebraska law requires mental health care providers and behavior analysts to report when patients are an imminent danger to themselves or others.¹³ Revealing an intention to self-manage an abortion is not a threat of self harm, unless the patient reveals a physical threat to themselves. However, mental health providers may be able to mitigate this risk without reporting by employing other clinical interventions that successfully eliminate this threat.

Abortion: It is never necessary to report a patient's intention to self-manage an abortion.¹⁴ Nebraska requires abortion information reporting,¹⁵ including abortion complications and stated reason for the abortion.¹⁶ Generally, physicians are only required to report abortions that they themselves perform or attempt to perform.¹⁷ The intention to self-manage – or the event of self-managing – is not information a physician is required to provide under state law. Medically attending to an incomplete or spontaneous abortion where fetal demise has occurred does not require an abortion report.¹⁸ An abortion report is only necessary when the patient presents with a viable pregnancy and the health care provider performs an abortion.

Fetal death: Under the current definition of “fetal death,” providers are not required to report any induced termination of pregnancy, including self-managed abortion.¹⁹ A provider who attends a fetal death must prepare a fetal death certificate within 24 hours of the death when a fetus is older than 20 weeks gestational age.²⁰ Typically a provider's institution will file the certificate,²¹ but if the person attending the fetal death is not a physician, the death must be referred to the county attorney for certification.²²

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, etc. 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 Nebraska involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. R.R.S. Neb. § 71-6907.
3. R.R.S. Neb. § 28-711; R.R.S. Neb. § 28-717. “A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be: (a) Placed in a situation that endangers his or her life or physical or mental health; (b) Cruelly confined or cruelly punished; (c) Deprived of necessary food, clothing, shelter, or care; (d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; (e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or (f) Placed in a situation to be a trafficking victim as defined in section 28-830.” R.R.S. Neb. § 28-707.
4. R.R.S. Neb. § 28-372; R.R.S. Neb. § 28-384. “Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.” R.R.S. Neb. § 28-351.
5. R.R.S. Neb. § 28-711.
6. If the victim is 18 or older, the health care provider must ask the victim to provide written consent in order to report the sexual assault. R.R.S. Neb. § 28-902. There are no specific reporting requirements for domestic abuse.
7. R.R.S. Neb. § 28-320.01; R.R.S. Neb. § 28-319.
8. R.R.S. Neb. § 28-320.01; R.R.S. Neb. § 28-319.
9. “Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body...” R.R.S. Neb. § 28-109.

Cited Resources (continued)

10. “Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury...” R.R.S. Neb. § 28-109.
11. R.R.S. Neb. § 28-902.
12. R.R.S. Neb. § 28-902.
13. R.R.S. Neb. § 38-2137. This requires a “serious threat of physical violence” against the patient or “a reasonably identifiable victim or victims.” Id.
14. “Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy... Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance...” R.R.S. Neb. § 28-326.
15. R.R.S. Neb. § 28-3,107.
16. R.R.S. Neb. § 28-343. The form itself includes the following options for stated reason for the abortion: maternal physical health, mental health, maternal life endangered, fetal anomaly, socio-economic, sexual assault, incest, contraceptive failure, no contraception used.
17. R.R.S. Neb. § 28-3,107. The Nebraska code does not currently contemplate abortion reporting requirements for abortions performed by others.
18. The abortion reporting statute only applies to “a physician performing an abortion,” and therefore if a physician has not performed the abortion, a report is not required. R.R.S. Neb. § 28-3,107.
19. The Nebraska requirement for reporting fetal death explicitly excludes abortion: “This section shall not apply to the performance of an elective abortion.” R.R.S. Neb. § 71-20,121.
20. R.R.S. Neb. § 71-606.
21. R.R.S. Neb. § 71-606; R.R.S. Neb. § 71-20,121.
22. R.R.S. Neb. § 71-606.

If/When/How Resources

The **Repro Legal Helpline** is a secure, confidential, and free resource for legal info and advice. Our website, in English, Spanish, and simplified Chinese, answers questions about self-managed abortion, young people’s abortion access, legal rights, and the law. Call [844-868-2812](tel:844-868-2812) or go to ReproLegalHelpline.org.

*Please note: If you are a local advocate working with someone experiencing a legal emergency, please contact the Helpline.

The **Repro Legal Defense Fund** provides financial assistance to people criminalized for self-managed abortion and pregnancy loss and those who help them. We assist with the high cost of criminalization including bail and legal fees: ReproLegalDefenseFund.org.

The **Judicial Bypass Wiki** is a digital hub that provides state-by-state information and resources for young people seeking abortion care. It also provides tools for trusted allies and lawyers who support young people as they navigate the maze-like judicial bypass process in states that require parental involvement: JudicialBypassWiki.IfWhenHow.org.

We provide **trainings** specifically for health care providers about self-managed abortion and the law. These trainings can serve as a “know your rights” for health care providers serving patients who are considering self-managed abortion, or seeking treatment for one. If you might be interested in this training, please reach out and submit a request via the form at tinyurl.com/SMATechAssistance.