

Mandatory Reporting Requirements, Law Enforcement, and Patient Confidentiality in South Carolina

Note: This resource is up to date as of TK 2024.

Why use this fact sheet?

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 fact sheet provides 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.

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. We also 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 may 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, racially biased system and frequently violate people's rights. Failure to report when it is necessary also carries 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.

Providers can also help protect their patients from unjust criminalization.

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

This fact sheet covers most mandatory reporting requirements in South Carolina law. 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 if not legally 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 South Carolina¹

Crime: Self-managed abortion is not a crime for abortion seekers² in South Carolina.³

South Carolina health care providers are not required to report crimes other than (1) child abuse or neglect, (2) vulnerable adult abuse, neglect, or exploitation, and (3) certain results of crimes (such as serious injuries as described elsewhere in this fact sheet). A provider is only required to report rape/incest if they provide an abortion to a patient under the rape/incest exception to South Carolina's current 6-week abortion ban. The provider must make the report within 24 hours of providing the abortion.⁴ The provider must inform the patient about this reporting requirement prior to providing the abortion.⁵

Child and vulnerable adult abuse: A minor or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse.

Legal requirements for child and vulnerable adult abuse reporting are fraught with bias, in particular toward low-income families and families of color. However, all health care providers in South Carolina who diagnose, examine, treat, or provide counseling are mandatory reporters for suspected child abuse and neglect.⁶ Health care providers are also mandatory reporters for suspected vulnerable adult abuse, neglect, or exploitation.⁸ Because suspicion naturally stems from our biases, health care providers should thoroughly examine any potential bias at play when deciding whether or not a report is required under the law.

Have more questions? Reach out to request technical assistance.

Note that under South Carolina law, sexual abuse of a young person under 18 must be reported as child abuse if committed by or allowed to be committed by the child's "parent, guardian, or other person responsible for the child's welfare."⁹ Health care providers should inform adolescent patients about what constitutes reportable child abuse prior to talking to them about care. Even if a provider decides to make an abuse report, the fact that a young person 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 South Carolina unless it qualifies as child or vulnerable adult abuse.

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.

South Carolina requires all health care providers to report suspected child abuse, which includes committing sexual offenses against a child. In South Carolina, generally, a person who is 14 or younger cannot consent to sex with someone of any age.¹⁰ However, if a young person who is at least 14 engages in consensual sexual activity with someone who is 18 or younger, this is not criminal sexual conduct with a minor under state law.¹¹ 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, however, if a minor is younger than 14 and presents with a pregnancy or otherwise tells the provider they are having sex, that would qualify under South Carolina law as an automatic trigger for child abuse reporting. Health care providers should inform adolescent patients about what constitutes reportable sexual conduct prior to talking to them about care where possible.

Certain traumas and injuries: Self-managed abortion is not a reportable injury.

Health care providers in South Carolina must report injuries from gunshot wounds to the sheriff's department of the county where treatment is given or requested. No report is necessary if law enforcement is present during treatment.¹² However, allowing law enforcement into a patient's room is often a patient privacy violation, and any patient consent to police presence while suffering from a gunshot wound is likely not true informed consent.¹³

Overdoses and substance use during pregnancy: There are limited circumstances requiring a report following substance use during pregnancy.¹⁴

Health care providers in South Carolina are not required to report overdoses, but they must report the administration of an opioid antidote to the Bureau of Drug Control in the event of an overdose.¹⁵

Health care providers are not required to report why someone took the medications.¹⁶ State law also requires a provider to make a child abuse report when 1) a parent or infant tests positive for the presence of a controlled substance¹⁷ that is not for medical treatment or 2) an infant is diagnosed with fetal alcohol syndrome.¹⁸

Self-harm: South Carolina does not require health care providers to report threats of self-harm.

Under South Carolina law, there is a duty to warn a third party when a patient makes a specific threat against a specific victim(s).¹⁹ The duty to warn may be discharged by doing “one or more” of the following, “depending upon the nature of that case:”²⁰ (a) to warn the intended victim or others likely to apprise the victim of the danger, (b) to notify the police, or (c) to take whatever other steps are reasonably necessary under the circumstances.²¹ Revealing an intention to self-manage an abortion is not a threat of violent behavior or serious harm, and in this context, a fetus is not a “third party” or separate person under South Carolina law. If a patient indicates they may engage in an unsafe method of self-managed abortion, there are clinical interventions that support patient safety without a report.²²

Abortion: It is never necessary to report a patient’s intention to self-manage an abortion.

Under South Carolina law, a physician who performs an abortion must report²³ that abortion to the State Registrar at the Department of Health and Environmental Control within seven days after the abortion is performed.²⁴ For pregnancies in which the probable post-fertilization age is 20 or more weeks, providers are required to report to the State Registrar whether the reason for abortion was a medical emergency or fetal anomaly.²⁵ The intent to self-manage – or the event of self-managing – is not information a physician is required to provide under state law. Under South Carolina’s current abortion ban, patients can get an abortion between 6-12 weeks probable gestational age under a rape/incest exception.²⁶ Providers are required to report rape/incest to the police, within 24 hours of providing an abortion under this exception. The law also requires providers to inform patients about this reporting requirement **prior** to performing the abortion and to document that the notification was made in the patient’s medical record after the abortion was provided.²⁷

Fetal death: Under the current definition of “fetal death,” providers do not have to report abortions.²⁸

Providers must report fetal deaths within five calendar days of delivery only after a stillbirth when the fetus is 350 grams or more, or if the weight is unknown, at or after 20 weeks of pregnancy.²⁹

When a fetus is delivered in an institution, on the way there, or brought to an institution after delivery outside of the institution³⁰, the person in charge of the institution (or their designated representative) must submit the report.³¹ When a fetus is delivered outside an institution, the physician in attendance at or immediately after delivery should be the one to submit the report.³² The coroner must investigate the cause³³ of any fetal death that occurs without medical attendance at or immediately after the delivery “or when inquiry is required by state law.”³⁴ Additional information related to fetal deaths may be requested by the State Registrar.³⁵

In 2024, the federal government released an update to HIPAA. The new HIPAA rule clarifies that health care providers are barred from giving information about a patient's lawfully provided reproductive health care to police, coroners, medical examiners, health oversight authorities, and judicial or administrative authorities unless the request for information is accompanied by a proper written attestation. The attestation must say that the person or entity seeking the information will not use it to open a criminal or civil investigation into any person, or to try to identify any person for merely seeking, providing, obtaining, or facilitating reproductive health care.³⁶ Self-managed abortion is not unlawful for abortion seekers in South Carolina, and so health care providers and systems cannot disclose information about self-managed abortion a pregnant person did themselves. Additionally, if abortion care – self-managed or otherwise – was provided by someone else, a provider is allowed to assume the care was provided lawfully unless 1) the patient tells them otherwise or 2) the attestation provides evidence of unlawfully provided care.³⁷ Providers must comply with this rule beginning December 23, 2024. Though Texas challenged this rule in September of 2024, providers should follow current guidance unless the outcome of the case impacts enforcement.³⁸

Citations

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 South Carolina involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. People who have an abortion are specifically exempt from criminal prosecution under the state's 6-week abortion ban. S.C. Code Ann. § 44-41-670.

Citations

3. S.C. Code Ann. § 44-41-80 criminalizes the provision of abortions that are not permitted under South Carolina abortion law. This would apply to abortions after 6 weeks that do not fall into one of the six-week ban's exceptions. Though the abortion seeker is explicitly exempt from criminalization under the law, a South Carolina prosecutor brought criminal charges against someone who allegedly self-managed an abortion on at least one occasion in the past five years. This case resulted in a dismissal without explanation. Although prosecution for self-managed abortion is not supported by South Carolina law, South Carolina—like other states—may seek to prosecute self-managed abortion even where laws do not explicitly apply.
4. S.C. Code Ann. § 44-41-650 (B).
5. *Id.*
6. The obligation to report applies to health care providers who, in their “professional capacity, have received information that gives [them] reason to believe that a child may have been abused or neglected...” S.C. Code Ann. § 63-7-310(A) (emphasis added); see also S.C. Code Ann. § 63-7-20 (defining “abused or neglected child”). Health care providers must report suspected child abuse and neglect regardless of the identity of the suspected abuser. S.C. Code Ann. § 63-7-310(B).
7. South Carolina defines “vulnerable adult” as “a person eighteen years of age or older who has a physical or mental condition which substantially impairs [them] from adequately providing for [their] own care or protection. This includes a person who...” cannot care for or protect themselves due to age-related conditions, such as “...organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.” S.C. Code Ann. § 45-35-10.
8. S.C. Code Ann. § 43-35-10.
9. S.C. Code Ann. § 63-7-20(6)(a)(ii).
10. S.C. Code Ann. § 16-3-655.
11. *Id.* at (B)(2) and (C).
12. S.C. Code Ann. § 16-3-1072.
13. Working Group on Policing and Patient Rights, Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy (2021), <https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf> (last visited June 27, 2024).
14. Read more in If/When/How's Resource on prenatal and infant drug testing: [Prenatal Drug Exposure: CAPTA Reporting Requirements for Medical Professionals](#) (Feb. 2024).
15. S.C. Code Ann. § 44-130-80.
16. *Id.* at (A)(1) and (A)(2).

Citations

17. A report is NOT required for prescribed opioid use disorder treatment such as methadone or buprenorphine and a report is NOT required for prescription cannabis. S.C. Code Ann. §§ 63-7 -1660(F)(1)(a). Abortion pills are not controlled substances in South Carolina. Therefore, medical providers are not required to report the use of abortion pills that the provider did not prescribe, and doing so may harm the patient.

18. *Id.* at 1660(F)(1)(b).

19. See *Bishop v. South Carolina Dep't. of Mental Health*, 502 S.E.2d 78, 82 (S.C. 1998).

20. *Id.* at 82.

21. Unfortunately, South Carolina law is somewhat vague as to when more than one of these steps are necessary to satisfy the duty to warn. The specific language in the case creating this duty is "depending upon the nature of [the] case", which suggests that certain dangers require more than one step to discharge a duty to warn. *Id.*

22. Such clinical interventions could include informing the client about clinics where they can receive abortion care, or encouraging the client to call the [Repro Legal Helpline](#) if they are considering self-managing an abortion.

23. Under South Carolina's current abortion ban, if a patient gets an abortion after 6 weeks under the medical emergency or fetal anomaly exception, the provider does not need to report the medical emergency or anomaly but is required to document the basis for the abortion in the patient's medical record. See S.C. Code Ann. § 44-41-640 and S.C. Code Ann. § 44-41-660.

24. S.C. Code Ann. 44-41-60.

25. *Id.*; see also S.C. Code Ann. § 44-41-430(6) ("'Medical emergency' means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining post-fertilization age to avert her death or for which the delay necessary to determine post-fertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition must be considered a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function."); S.C. Code Ann. § 44-41-430(5) ("'Fetal anomaly' means that in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.").

26. S.C. Code Ann. § 44-41-650 (B).

27. *Id.*

Citations

28. South Carolina defines fetal death broadly as a death that occurs before the fetus is completely outside the body of the birthing person, regardless of the length of the pregnancy and which was not the result of an abortion. S.C. Code Ann. Regs. 61-19(100)(O) (the definition of “fetal death” explicitly excludes abortion).
29. Id. at (800)(A).
30. Id. at (800)(B)-(C). When a dead body or fetus is released or disposed of by an institution, the person in charge of the institution shall retain documentation showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. Id. at (403)(C).
31. Id. at (800)(B).
32. Id. at (800)(D).
33. If the cause of fetal death is unknown or pending investigation, the cause of fetal death shall be noted as such on the report. S.C. Code Regs. 61-19(800)(E).
34. S.C. Code Regs. 61-19(800)(D).
35. “Upon demand of the Department, any person having knowledge of the facts shall furnish such information as he or she may possess regarding any live birth, death, fetal death, induced termination of pregnancy, marriage, or divorce or annulment. Any person required to report shall provide to the State Registrar information that was required to be reported, but that was not so reported, within five calendar days of that person receiving that information. Within five calendar days of receipt of any autopsy results or other information that would provide pending or missing information or correct errors in a reported cause of death, the physician, medical examiner, or coroner required to report the death shall register a supplemental report of the cause of death to amend the record.” Id. at 404(A).
36. American Medical Association, HIPAA Privacy Rule to Support Reproductive Health Care Privacy AMA Drafted Summary of Regulatory Changes in Final Rule (April 26, 2024), <https://www.ama-assn.org/system/files/summary-regulatory-changes-final-rule-reproductive-health-information.pdf> (last visited June 27, 2024).
37. Dep’t of Health & Human Servs., HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet (April 22, 2024), <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html> (last visited July 10, 2024).
38. *Texas v. U.S. Dept. of Health & Human Servs., et al*, Case. No. 5:24-cv-00204-H (N.D. Tex. Sept. 4, 2024).