if when how
Lawyering for Reproductive Justice

WHAT YOU NEED TO KNOW | FOR PROVIDERS

Patient Confidentiality and Self-Managed Abortion: A Guide to Protecting Your Patients and Yourself

Note: This fact sheet is up to date as September 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.

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

Providers can help patients maintain their agency and confidentiality while fulfilling their mandatory reporting obligations by ensuring that patients are aware of what the provider may have to report prior to seeing the patient. Providers can also help protect their patients from unjust criminalization by ensuring that additional hospital reporting requirements do not conflict with state laws on medical privacy.

Providers can also help protect their patients from unjust criminalization.

While requirements differ from state to state, some of the most common situations providers must report include:

Child and vulnerable adult abuse:

Though legal standards for reporting differ—and are fraught with bias—health care providers are mandatory reporters for suspected child abuse and neglect in every state, and vulnerable adult abuse in most states. Reproductive coercion, including a parent forcing an adolescent or vulnerable adult to give birth or have an abortion, may be reportable as abuse. 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 need to report. **A minor or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse.**

Statutory rape:

Some states require health care providers to report statutory rape. States vary widely as to what constitutes statutory rape but 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 young person's sexual partner is rarely clinically significant to care provision. **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.**

Certain traumas and injuries:

Many states require providers to report violent injuries, such as gunshot or stab wounds, to law enforcement. **Self-managed abortion is not a reportable injury.** Though most people self-manage with medication, sometimes people without access to safe abortion care may utilize more physical methods, such as asking someone to punch them in the stomach repeatedly, or throwing themselves down the stairs, in order to induce a miscarriage. It is possible that in some states a provider may need to report the injury (assault via punching) or the action (falling down the stairs). However, it would be 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; that is abuse or reproductive coercion and would be reportable in some states.

Have more questions? Reach out to request technical assistance.

Abortion:

Most states have some system in place to allow for or require abortion reporting for vital statistics purposes. In the vast majority of cases, providers must only report abortions that they themselves perform. This would exclude miscarriage management or self-managed abortion. If a patient presents with an incomplete abortion or miscarriage, in most cases a provider would report the care they provide as either an abortion or, if required, as miscarriage management. **However, it is not necessary to report a patient's intention to self-manage an abortion.**

Self-harm:

In some states, mental health providers are required to report or take other steps to address patients at imminent risk of self-harm. Some are also required to warn others the patient has threatened to harm. **A patient planning to self-manage their own abortion care is not ordinarily at risk of self-harm** unless they state explicitly that they plan to cause the abortion via self-injury, such as throwing themselves down the stairs. Mental health providers can use their skills and judgment to determine if there are other efforts, such as medication management or clinic referrals, that might address the issue without abdicating their mandatory reporting duties where necessary.

Overdoses and drug use during pregnancy:

Some states mandate reporting in the event of a drug overdose. **If someone is overdosing in order to cause a miscarriage, their intention behind the overdose is not required information to include in a report.** A minority of states require providers to report pregnant people who use drugs to child protective authorities; however, this requirement is not implicated where a person has ended or is seeking to end a pregnancy.

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.[1] 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.[2] 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.[3]

Citations

1. 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).
2. 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).
3. *Texas v. U.S. Dept. of Health & Human Servs*., et al, Case. No. 5:24-cv-00204-H (N.D. Tex. Sept. 4, 2024).