

Mandatory Reporting Requirements, Law Enforcement, and Patient Confidentiality in Massachusetts

Note: This resource is up to date as of January 2025.

Why use this fact sheet?

Confidentiality is central to the provider-patient relationship and a core part of medical ethics. In addition, 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 a leading 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 Massachusetts 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,
- Not asking patients for information that is not necessary to patient care,
- Informing patients of what the provider may have to report prior to treating the patient, and
- 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 Massachusetts ¹

Crime: Self-managed abortion is not a crime for abortion seekers.

Massachusetts health care providers are not required to report crimes other than abuse or neglect of a child or vulnerable adult, and certain results of crimes such as serious injuries as described elsewhere in this fact sheet.

Child and vulnerable adult abuse: A minor² or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse.

Legal requirements for child abuse reporting are fraught with bias, in particular toward families of color and families struggling to make ends meet. However, all health care providers in Massachusetts who have reasonable cause to suspect child abuse or neglect are subject to mandatory reporting laws.³ Because suspicion naturally stems from our biases, health care providers should thoroughly examine any potential bias at play in their suspicion when deciding whether a report is required under the law. Under Massachusetts law, the pregnancy of a young person under age 18 does not, on its own, indicate abuse. Health care providers are also mandatory reporters for suspected abuse or neglect of elders⁴ and persons with disabilities.⁵ In the case of persons with disabilities, however, providers are not required to report if a person invokes a privilege established by law or professional code and requests that a report not be made.⁶

Have more questions? Reach out to request technical assistance.

Providers are not required to report domestic violence in Massachusetts unless the victim is a minor or vulnerable adult. 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 the report. Health care providers should inform adolescent patients about what constitutes reportable conduct prior to talking to them about care where possible.

Statutory rape:⁷ If a provider needs to report a statutory rape, the fact that the patient attempted to end the pregnancy is not relevant to the investigation.

Massachusetts does not require health care providers to report statutory rape unless committed by a caregiver.⁸ However, health care providers must report when any young person under 18 is the victim of sexual exploitation⁹ or human trafficking.¹⁰

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

Massachusetts health care providers must report the following to law enforcement: bullet wounds, gunshot wounds, powder burns, or other injuries caused by the discharge of a gun;¹¹ burn injuries affecting five percent or more of the surface area of a person's body; and injuries caused by a knife or sharp pointed instrument if, in the provider's opinion, a criminal act was involved.¹² Providers who attend, treat, or examine a survivor of rape or sexual assault must make an anonymized report to the manager, superintendent, or other person in charge who then must report to the department of criminal justice information services and law enforcement.¹³ Providers must also report certain injuries connected to overdoses, explained below. If a reportable injury or condition is somehow connected to a self-managed abortion, the provider is not required to report the self-managed abortion itself or the intent behind the injury.

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 public health report.

Health care providers are required to report injuries in a person they treat or examine that resulted from opiate, illegal, or illicit drug overdoses to the Commissioner of Public Health.¹⁴ Providers are also required to report injuries related to serious adverse drug events to the Massachusetts Department of Public Health.¹⁵

Additionally, Massachusetts providers who discover a serious adverse drug event resulting from use, consumption, or interaction with any pharmaceutical or drug preparation, including abortion medication, must report to the federal Food and Drug Administration's MedWatch Program, as well as the pharmacy from which the drug was produced, compounded, or dispensed.¹⁶ Providers are not required to report the patient's intent behind the overdose.

Self-harm:

Massachusetts law requires mental health care providers to take reasonable precautions to warn or protect a potential victim or victims when someone is a danger to themselves or others.¹⁷ A fetus is not a potential victim under this statute. Revealing an intention to self-manage an abortion would not constitute a danger unless the patient reveals they intend to self-manage via serious self-harm, such as throwing themselves down the stairs. However, mental health providers may be able to mitigate this risk without reporting by employing other clinical interventions that successfully eliminate this threat.

Abortion:¹⁸ It is never necessary to report a patient's intention to self-manage an abortion.

Massachusetts requires abortion reporting for vital statistics purposes.¹⁹ Physicians, physician assistants, certified nurse practitioners, and certified nurse midwives are required to report abortions that they perform.²⁰ An abortion report is only necessary when the patient presents with a continuing pregnancy.²¹ The intention to self-manage is not information a provider 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.²²

A physician who attends a fetal death must prepare a fetal death report when a fetus weighs 350 grams or more or is 20 weeks gestational duration or more.²³ Typically, the physician's institution will file the report,²⁴ but if a reportable fetal death occurs without medical attendance, or due to violence or unnatural causes,²⁵ the medical examiner must investigate the cause and file the report.²⁶

HIPAA:

HIPAA generally prevents health care providers and entities from disclosing patient information without patient consent, and the state reporting laws discussed in this fact sheet are exceptions to that rule.²⁷ This means that when a provider is legally required to make a report, HIPAA allows them to share patient information that is specifically required or permitted by the applicable state reporting law. Providing any additional patient information beyond what is specifically required or permitted by state law would likely violate HIPAA.

Accordingly, providers should carefully consider what patient information is necessary for making a report. For example, if a provider treats a minor patient for an injury that gives them cause to suspect physical abuse, the provider could share the records that are relevant to the suspected abuse, but they likely could not share the patient's *entire* medical record without violating HIPAA.

Providers with questions about medical privacy laws in relation to reproductive health care can request technical assistance from If/When/How: <https://ifwhenhow.org/learn/technical-assistance/>.

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. It also does not include reporting requirements specific to long-term care facilities. 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 Massachusetts involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. Minor and child are used interchangeably to refer to young people under age 18.
3. Mass. Ann. Laws ch. 119, § 51A. Child abuse is defined as "1. The non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse of a child; or 2. The victimization of a child through sexual exploitation or human trafficking, regardless of if the person is a caregiver." 110 Mass. Code Regs. 2.00, *see also* Mass. Dep't of Children & Families, *Definitions of abuse and neglect*, Mass.gov, <https://www.mass.gov/info-details/definitions-of-abuse-and-neglect> (last visited Mar. 19, 2025).

Citations

4. Mass. Ann. Laws ch. 19A, § 15.
5. 118 Mass. Code Regs. 3.03.
6. *Id.*
7. Statutory rape is the crime of having sexual intercourse with someone who is under the age of consent. In Massachusetts, young people under age 16 are legally unable to consent to sex. Mass. Ann. Laws ch. 265, § 23.
8. *See* footnote 3, *supra*.
9. Sexual exploitation includes sexual servitude, sex trafficking, and prostitution, defined in Mass. Ann. Laws ch. 265, § 50.
10. Human trafficking includes sexual servitude and forced services, defined in Mass. Ann. Laws ch. 265, §§ 50-51.
11. This includes injuries caused by the discharge of “a gun, pistol, BB gun, or other air rifle or firearm.” Mass. Ann. Laws ch. 112, § 12A.
12. *Id.*
13. Mass. Ann. Laws ch. 112, § 12A½.
14. Mass. Ann. Laws ch. 112, § 12A.
15. Mass. Ann. Laws ch. 111, § 51H.
16. *Id.*
17. Mass. Ann. Laws ch. 123, § 36B. This requires either (1) an explicit threat to kill or inflict serious bodily injury on a reasonably identified victim or victims, and the patient has the apparent intent and ability to carry out the threat, or (2) the patient has a history of physical violence known to the provider and the provider has a “reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury against a reasonably identified victim or victims.” *Id.*
18. “Abortion” means any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth. Mass. Ann. Laws ch. 112, § 12K.
19. Mass. Ann. Laws ch. 112, § 12Q.
20. *Id.*
21. Medically attending to an incomplete abortion or miscarriage where fetal demise has occurred or where the patient is already in the process of miscarrying does not require an abortion report. *See* Mass. Ann. Laws ch. 112, § 12K.

Citations

22. The definition of fetal death excludes abortion. Fetal death “means death prior to the complete expulsion or extraction from its mother of a fetus, irrespective of the duration of pregnancy, as indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.” Mass. Ann. Laws ch. 111, § 202. Notably, where a patient presents for management of an incomplete self-managed abortion from medical treatment when fetal demise has already occurred, a provider is not required to report the abortion (as the Massachusetts statute only applies to a provider that performs the abortion) or the fetal death (as the definition of fetal death excludes abortion).

23. *Id.*

24. *Id.* If a fetal death occurs outside a hospital, the physician in attendance at or immediately after delivery must file the report. *Id.*

25. “Violence or unnatural causes” is not defined. *Id.*

26. *Id.*

27. *See, e.g.,* Dep’t of Health & Hum. Servs., *My state law authorizes health care providers to report suspected child abuse to the state department of health and social services. Does the HIPAA Privacy Rule preempt this state law?* (last reviewed Dec. 28, 2022), <https://www.hhs.gov/hipaa/for-professionals/faq/406/does-hipaa-preempt-this-state-law/index.html>. “[I]f a provision of State law provided for [reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention] and was contrary to the [HIPAA] Privacy Rule, the State law would prevail.” *Id.* In other words, HIPAA protects all patient information from disclosure, except for what a state reporting law either requires or permits.