

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

Note: This resource is up to date as of December 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 that are in Virginia 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 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 Virginia¹

Crime: Self-managed abortion is not a crime for abortion seekers in Virginia.²

Virginia 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). Health care providers in Virginia are not required to report reproductive coercion unless it occurs in the context of child abuse, vulnerable adult abuse, injury, or other reportable conduct.

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

Legal requirements for child³ 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 Virginia who diagnose, examine, treat, or provide counseling are mandatory reporters for suspected child abuse and neglect.⁴ Health care providers are also mandatory reporters for suspected vulnerable adult abuse, neglect, or exploitation.⁵ 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.

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questions?
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request
technical
assistance.**

Note that under Virginia law, sexual abuse of a young person must be reported as child abuse if committed by or allowed to be committed by the child's "parents or other person responsible for [the child's] care, or an intimate partner of such parent or person."⁷ "The mere knowledge that a child between thirteen and fifteen is or was pregnant is, without more evidence, insufficient to trigger th[at] reporting responsibility."⁸ As such, health care providers should be sure that adolescents are aware of what constitutes reportable child abuse prior to engaging in a conversation about care where possible. 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.⁹ Providers are not required to report domestic violence or sexual assault in Virginia unless the victim is a young person or vulnerable adult.¹⁰

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.

Virginia requires all health care providers to report suspected child abuse, which includes rape committed by or allowed to be committed by the child's "parents or other person responsible for his care, or an intimate partner of such parent or person."¹¹ Virginia law defines sexual intercourse with a child under the age of 13 as rape.¹² In addition, Virginia criminalizes sexual intercourse with a child under the age of 15.¹³ Under Virginia's mandatory reporting statute, health care providers generally are not required to report statutory rape as child abuse,¹⁴ as Virginia's definition of child abuse encompasses statutory rape only if the child's "parents or other person responsible for his care, or an intimate partner of such parent or person, commits or allows to be committed any act of sexual exploitation or any sexual act upon [the] child."¹⁵ 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 Virginia must report injuries and circumstances to law enforcement if they believe or have reason to believe that (1) the injury was caused by specific weapons (e.g. guns and knives),¹⁶ and (2) the injury was not self-inflicted. Emergency service agencies generally do not need to report medical emergencies to law enforcement.¹⁷

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.

Health care providers in Virginia are not required to report overdoses. However, health care providers must report child abuse when they discover, within six weeks of birth, "that the child was born affected by substance abuse or experiencing withdrawal symptoms resulting from in utero drug exposure."¹⁹ Though this report is not a *per se* finding of child abuse or neglect, it may trigger an investigation by DSS.²⁰ This requirement is not implicated where a person has ended or is seeking to end a pregnancy. Thus, use of criminalized drugs or alcohol during a pregnancy that ends in abortion is not reportable as child abuse.

Self-harm:

Under Virginia law, health care providers are not required to report self-inflicted wounds.²¹ However, some counties have passed more expansive laws requiring health care providers to report self-inflicted injuries.²² Given these variances in local law, health care providers may need to consult with an attorney on their local law prior to determining whether self-inflicted injuries should be reported. Mental health providers in Virginia are not required to report self-harm behaviors, but have a duty to protect third parties from "violent behavior or serious harm" (a duty which they can discharge without reporting to law enforcement).²³ Revealing an intention to self-manage an abortion is not a threat of violent behavior or serious harm. If a patient indicates they may engage in an unsafe method of self-managed abortion,²⁴ there are clinical interventions that support patient safety without a report.

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

Abortion reporting in Virginia is subsumed under Virginia's fetal death statute. Under this statute, fetal deaths resulting from abortions must be reported.²⁵ As part of the reporting requirement, health care providers attending at or after an abortion may be required to complete a medical certification form.²⁶ Beyond the reporting requirements under the fetal death statute, health care providers do not have separate requirements to report abortion complications, serious adverse events, the provision of abortion information, or suspected human trafficking. However, for patients who are young people, health care providers are required to report suspected human trafficking as child abuse.²⁷

Fetal death: Under the current definition of “fetal death,” providers must report abortions and miscarriages occurring at any stage of pregnancy.²⁹

Virginia defines “fetal death” broadly to include both “induced termination[s] of pregnancy”³⁰ and “spontaneous fetal death[s].”³¹ For any fetal death that occurs in Virginia, a fetal death report must be filed within three days of delivery or abortion.³² Health care providers’ involvement in the reporting is typically limited to completing a medical certification.³³ Although the fetal death reporting requirements are broad, Virginia law does not specify penalties for failure to report under the fetal death statute, so health care providers likely are not at risk of penalties for not complying with the reporting requirement.³⁴ Moreover, the law does not require providers to inquire into the circumstances of a fetal death. Virginia law requires fetal death reports to contain more information for “spontaneous” fetal deaths.³⁵ A self-managed abortion should not be considered “spontaneous” because it would be an induced termination of pregnancy. A miscarriage would likely be considered “spontaneous” because it would not be an induced termination of pregnancy. The Chief Medical Examiner must investigate the cause of a fetal death that occurs without medical attention at or after the abortion or delivery.

Deaths under unusual circumstances:

Virginia law requires health care providers to notify the Office of the Chief Medical Examiner of deaths that occur in unusual circumstances, including deaths from “trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent good health, or when unattended by a physician...or in any suspicious, unusual or unnatural manner.”³⁶ On its face, this Virginia law does not appear to apply to most spontaneous pregnancy loss or self-managed abortion, because – absent violence or trauma to the pregnant person – they do not present *per se* “unusual circumstances” that implicate the need for a criminal investigation.

Emergency medical treatment:

Virginia law requires all emergency medical service agencies to report certain information about each call they respond to. The agencies must report, at a minimum, “the type of medical emergency or nature of the call, the response time, the treatment provided and other items as prescribed by the Board [of Health].”³⁷ Generally, the law implies that descriptions of the type of medical emergency, nature of the call, and treatment provided should include any clinically significant event. The fact that a patient took abortion medication is not a clinically significant event, since the treatment of miscarriage, whether prompted or spontaneous, does not change at the point of care.

However, physical harm to induce miscarriage or ingestion of noxious substances would be clinically significant and Virginia law implies that information should be shared with the treating provider. Health care providers are not required to report a patient's intent as related to their illness or injury. If the patient was the victim of a crime or was in law enforcement custody at the time of the emergency, emergency medical service agencies are required to disclose the prehospital care report to law enforcement upon request.³⁸

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.³⁹ 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. 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 Virginia involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.

2. Va. Code Ann. § 18.2-71 criminalizes abortions that are not performed consistent with other Virginia abortion law. Though self-managed abortion is outside the scope of the plain language of the statute, prosecutors have brought criminal charges against women who self-managed abortions under Va. Code Ann. § 18.2-71 on four occasions in the past twenty years, and at least one court in Virginia has interpreted the statute to apply to actions taken by pregnant people, including self-managed abortion. None of those cases resulted in convictions. Although prosecution for self-managed abortion is not supported by the text of the statute, it is important to note that Virginia—like other states—may seek to prosecute self-managed abortion even where laws do not explicitly apply.

3. In Virginia, a child is anyone under the age of 18. Va. Code Ann. § 1-204.

4. The obligation to report applies to health care providers who *"in their professional or official capacity*, have reason to suspect that a child is an abused or neglected child." Va. Code Ann. § 63.2-1509 (emphasis added); see also Va. Code Ann. § 63.2-100 (defining "abused or neglected child"). Health care providers must report suspected child abuse regardless of the identity of the suspected abuser. Va. Code Ann. § 63.2-1508.

5. For purposes of the statute pertaining to vulnerable adult abuse, Virginia defines "adult" as "any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, 'adult' may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services." Va. Code Ann. § 63.2-1603.

6. Va. Code Ann. § 63.2-1606; *see also* Va. Code Ann. § 63.2-100 (defining "adult abuse").

7. Va. Code Ann. § 63.2-100(4) ("Abused or neglected child" means any child less than 18 years of age . . . whose parents or other person responsible for his care, or an intimate partner of such parent or person, commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.").

Citations

8. Advisory Op. of Va. Att'y Gen. Mark R. Herring, 2014 WL 4664856, at *1 (Va. A.G. Sept. 12, 2014). The 2014 Advisory Opinion clarified the stance taken in a previous advisory opinion that "medical personnel and their staff have a duty to report statutory rape when a child victim reveals such incidence to them in a conversation." Advisory Op. of Va. Att'y Gen. Jerry W. Kilgore, 2003 WL 793454, at *2 (Va. A.G. Feb. 11, 2003).
9. In the report, the health care provider must (1) "disclose all information" that forms the basis for their suspicion, (2) "make available . . . any information, records, or reports that document the basis for the report, and (3) cooperate with local law enforcement and/or the investigating agency. Va. Code Ann. § 63.2-1509. However, if the health care provider maintains a record of the minor, then they must "make related information, records and reports available . . . unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g)." Va. Code Ann. § 63.2-1509. This requirement could encompass clinical notes.
10. See Va. Code Ann. §§ 63.2-1509 (children under 18 years of age), 63.2-1603 (vulnerable adults).
11. Va. Code Ann. § 63.2-1509; Va. Code Ann. § 63.2-100.
12. Va. Code Ann. § 18.2-61.
13. Va. Code Ann. § 18.2-63.
14. Advisory Op. of Va. Att'y Gen. Mark R. Herring, 2014 WL 4664856, at *2 (Va. A.G. Sept. 12, 2014) (a health care provider is not required to report statutory rape if the health care provider "obtain[s] [that] information solely from their review of medical records and do not have any interaction or engagement with" the child). Virginia recognizes an exception if the health care provider learns about a statutory rape from a conversation with the child. See Advisory Op. of Va. Att'y Gen. Jerry W. Kilgore, 2003 WL 793454, at *2 (Va. A.G. Feb. 11, 2003) (health care providers must "report statutory rape when a child victim reveals such incidence to them in a conversation").
15. Va. Code Ann. § 63.2-100(4).
16. See Va. Code Ann. § 54.1-2967 (referring to the list of "weapon[s] specified in § 18.2-308"); Va. Code Ann. § 18.2-308(A) ("(i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, sling bow, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection[.]").

Citations

17. Va. Code Ann. § 54.1-2967.
18. If a patient was (1) the victim of a crime, or (2) in the custody of law enforcement at the time of the emergency, then emergency medical service agencies must disclose the prehospital care report to law enforcement upon request. Va. Code Ann. § 32.1-116.1.
19. Va. Code Ann. § 63.2-1509. This requirement does not apply to newborns affected by or experiencing withdrawal symptoms from prescribed medications like methadone, buprenorphine, or medical marijuana. For more information on prenatal and newborn drug testing and reporting, see If/When/How's resource, [Prenatal Drug Exposure: CAPTA Reporting Requirements for Medical Professionals](#).
20. Va. Code Ann. § 63.2-1509(B).
21. Va. Code Ann. § 54.1-2967.
22. For instance, Hampton County, Virginia requires health care providers to report to the police "any person who has been knifed, stabbed, shot, poisoned or wounded, either by himself or by any other person." Hampton, Virginia Code of Ordinances § 29-2.
23. Va. Code Ann. § 54.1-2400.1. The duty to warn against serious harm to a third party may be discharged by: (1) seeking "involuntary admission of the client;" (2) making "reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18;" (3) making "reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work;" (4) taking "steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned;" (5) providing "therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat;" or (6) "In the case of a registered peer recovery specialist, or a qualified mental health professional who is not otherwise licensed by a health regulatory board at the Department of Health Professions, reports immediately to a licensed mental health service provider to take one or more of the actions set forth in this subsection." Va. Code Ann. § 18.2-76.1.
24. Such clinical interventions could include informing the client about clinics in Virginia or nearby where they can receive abortion care, or encouraging the client to call the Repro Legal Helpline if they are considering self-managing an abortion.
25. Va. Code Ann. § 32.1-264.
26. Va. Code Ann. § 32.1-264(C).
27. Va. Code Ann. § 63.2-1508.
28. Va. Code Ann. § 32.1-249 (death prior to the complete expulsion or extraction from its mother of a product of human conception, regardless of the duration of pregnancy).

Citations

29. Va. Code Ann. § 32.1-264(A).
30. Virginia law defines "induced termination of pregnancy" as "the intentional interruption of pregnancy to produce other than a live-born fetus." Va. Code Ann. § 32.1-249(a).
31. Va. Code Ann. § 32.1-264. Virginia law defines "spontaneous fetal death" as "the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy." Va. Code Ann. § 32.1-249(b).
32. Va. Code Ann. § 32.1-264(A).
33. Va. Code Ann. § 32.1-264(C). Under the statute, the Chief Medical Examiner must investigate the cause of a fetal death that occurs without medical attention at or after the abortion or delivery. Va. Code Ann. § 32.1-264(D). However, because health care providers are not required to inquire into the circumstances of self-managed abortions, they are not required to determine whether a self-managed abortion occurred with or without medical attention.
34. See Va. Code Ann. § 32.1-276 (detailing penalties, all of which relate to deception, false statements, and stealing, not for failing to report).
35. 12 Va. Admin. Code § 5-550-120.
36. Va. Code Ann. § 32.1-283. This statute imposes a mandatory reporting requirement on a broad group of individuals, including "the physician in attendance, hospital, law-enforcement officer, funeral director, or any other person having knowledge of such death." *Id.*
37. Va. Code Ann. § 32.1-116.1.
38. *Id.*
39. 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.