

# DOJ Sues Idaho Over Conflict Between EMTALA and State Abortion Restrictions

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In a newly filed lawsuit against the State of Idaho, the federal government argues that Idaho’s “near-total ban on abortion,” scheduled to take effect on August 25, 2022, overreaches by prohibiting abortion even where federal law may require physicians to perform an emergency abortion.

The 1986 Emergency Medical Treatment and Labor Act (EMTALA) was originally intended to stop “patient dumping” by hospitals seeking to avoid providing emergency care to individuals based on their ability to pay. Now, in the wake of [Dobbs v. Jackson Women’s Health Organization \(Dobbs\)](#), the US Department of Justice (DOJ) lawsuit highlights how EMTALA has unexpectedly become important in the debate over the state and federal roles in regulating abortion. DOJ’s lawsuit, filed on August 2, 2022, is the first abortion-related legal action by the federal government against a state following the *Dobbs* Court’s decision that the US Constitution does not guarantee an individual right to abortion. The federal court [complaint](#) argues that the Idaho law is invalid to the extent it conflicts with EMTALA’s requirements governing emergency care.

## EMTALA and Abortion

EMTALA requires Medicare-participating hospitals to screen patients seeking care in a hospital’s emergency department and to provide treatment to such patients where necessary to “stabilize” an “emergency medical condition.” On its face, EMTALA does not directly regulate abortion procedures. Yet, as the Centers for Medicare and Medicaid Services (CMS) recently stated in [post-Dobbs guidance](#), in some circumstances, EMTALA may mandate the performance of an abortion to stabilize an obstetrical emergency affecting a patient who is pregnant, but not in active labor.

[As we noted in a recent alert](#), CMS’ interpretation of EMTALA casts doubt on the enforceability of recently-enacted state abortion laws. In CMS’ view, some of those laws are so restrictive that they do not permit an abortion even where EMTALA would classify the patient’s condition as a medical emergency that requires an emergency abortion. A number of those state laws do include exceptions

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authorizing abortion in limited circumstances, including where necessary to save a woman's *life or physical health*. CMS, however, posits that under EMTALA, emergency abortion may be the necessary stabilizing treatment even where life or physical health are *not* the only health conditions requiring stabilizing treatment.

## Is Danger to Mental Health an EMTALA Emergency?

Those state laws with narrow grounds for an emergency abortion could raise EMTALA compliance issues. For instance, a physician might diagnose a patient's mental or emotional trauma as an emergency warranting an abortion as stabilizing treatment. But that topic — a pregnant woman's mental health — looms as a controversial part of the debate over EMTALA and abortion. What is the basis for finding an emergency rooted in mental or emotional trauma? Surely there are some situations where such an emergency clearly exists. On the other hand, some will argue, if a mental health emergency is defined too broadly or diagnosed too liberally, the result might be effective to permit abortion on demand.

Some states, such as Louisiana, have designed their abortion laws to forestall that very result. Louisiana recently passed legislation ([Senate Bill 342](#)), which took effect on June 17, 2022, limiting the definition of a "medical emergency" to a "physical condition, not including any emotional, psychological, or mental condition[.]"

## A Potential Medical Dilemma

Arriving at the correct definition of an obstetrical mental health emergency, and deciding whether the law even recognizes such an emergency, will surely be a controversial process. Consider the decision facing a physician practicing in a state whose abortion statute does not permit abortion when a diagnosable mental health emergency exists. If the physician nevertheless performs an abortion based on such a diagnosis, she could face prosecution under state law.

Idaho is one state where this conflict between EMTALA and state law seems evident. If Idaho's abortion law (as codified in Idaho Code § 18-622) takes effect as scheduled on August 25, 2022, it will criminalize the performance of most abortions. The limited scenarios where abortion will be authorized include where "necessary to prevent the *death* of the pregnant woman[.]" As DOJ alleges in its complaint, however, "EMTALA's definition of an emergency medical condition — for which [a] hospital would be required to facilitate stabilizing treatment — is broader than just those circumstances where treatment is 'necessary to prevent . . . death' under Idaho law." To the extent the Idaho law makes an emergency abortion unavailable in conflict with EMTALA, DOJ argues that the court should rule the state law "preempted," or overridden, by the federal law.

## The Texas Lawsuit

DOJ's preemption argument against the Idaho abortion law is consistent with CMS' position in the agency's July 11, 2022 guidance. The issue is hardly settled, however. As DOJ presses forward in its case against Idaho, it will also be on defense elsewhere, responding to a [separate lawsuit](#) by the State of Texas claiming that the federal government's interpretation of EMTALA as imposing an "Abortion Mandate" is unlawful. Texas's claims could provide an outline of legal defenses Idaho could assert in its litigation with DOJ.

## What Should Emergency Health Care Providers Do?

As these two cases suggest, the federal courts will likely have the final say as to how broadly EMTALA applies in the abortion context. Hospitals and physicians should consult with their legal counsel to monitor these developments and stay informed about how abortion regulations are being enforced in the states where they operate.

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