



August 26, 2022

Dear Governors:

Access to the full range of reproductive health care is essential to individuals' health. In light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, we write to you to highlight the opportunity for states to partner with us to promote access to critical reproductive health care services and to underscore the importance of federal laws that protect individuals' access to abortion in certain situations, including protections in the Emergency Medical Treatment and Labor Act (EMTALA). Since the Supreme Court's decision, several states have enacted or are proposing laws that restrict abortion care, or have laws that took effect as a result of the Supreme Court's decision. Under the Constitution, states cannot avoid their responsibilities under federal law, or interfere with a medical professional's obligations under federal law to provide this essential medical care. As the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services, it is our obligation to ensure that individuals have access to the medical care to which they are entitled, regardless of directly conflicting state law.

There have been many reports nationwide of delays or denials of health care that have put women's health and lives at serious risk. We are closely monitoring these reports and will take action to help ensure access to care.

Access to Care for Medicaid Enrollees. As you know, Medicaid serves as a lifeline to more than 80 million people nationwide, and is a critical source of coverage for millions of women and girls of reproductive age. While many states restrict or are seeking to restrict abortion care, we know that many others are interested in expanding access to this essential health care. States do not need to seek federal approval to design approaches to expand access to health care that are funded solely with state dollars. However, to the extent that states are interested in developing approaches that use federal funding, including Medicaid funding under section 1115 demonstration authority, we welcome the opportunity to work with these states. This is a priority for HHS, and states interested in federal Medicaid funding to expand access to care within the scope of Medicaid's legal authority for women traveling from a state that has restricted or prohibited abortion are encouraged to engage with the Centers for Medicare & Medicaid Services.

Federal privacy law permits state Medicaid agencies to share information about a Medicaid beneficiary only when that information is directly related to the Medicaid state plan, including establishing eligibility, determining amount of medical services, providing services for beneficiaries, and conducting or assisting with an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan (e.g., fraud, abuse, or misappropriation of funds).¹

Emergency Medical Care. Reminding providers of their obligation to ensure that women in states that have banned abortion have access to health- and life-saving care is essential. On July 11, 2022 we issued guidance to remind patients and providers of the law.² The Emergency Medical Treatment and Labor Act (EMTALA)³ provides that, if a person presents to an emergency department associated with a hospital enrolled in Medicare, and the person has an “emergency medical condition,” the hospital must offer the medical treatment necessary to stabilize that condition. The definition of “emergency medical condition” includes any condition that, absent immediate medical attention, could reasonably be expected to deteriorate, placing the patient’s health or life in serious jeopardy — including conditions such as complications of pregnancy loss or preeclampsia with severe features, if these conditions otherwise meet the definition of emergency medical condition. When a physician determines that the necessary stabilizing treatment is an abortion, EMTALA requires that the hospital offer that stabilizing treatment. And when a state law prohibits abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA’s emergency medical condition definition — that state law is preempted to the extent it conflicts with EMTALA. On August 24, 2022, a district court issued a preliminary injunction barring the enforcement of a State abortion ban to the extent the ban was in conflict with EMTALA.⁴

In the days since the *Dobbs v. Jackson Women’s Health Organization* decision, we have seen many reports of individuals who have had medically necessary care denied or delayed on the basis of state abortion restrictions, including cases that may have violated the individual’s rights under EMTALA. We are reviewing these cases and will investigate reports or complaints regarding an EMTALA violation as appropriate. As previously stated, if the results of an investigation indicate that a provider violated one or more of the provisions of EMTALA, the provider may be subject to the imposition of civil monetary penalties, and potentially exclusion from Medicare and State health care programs, including Medicaid. Furthermore, where a state purports to prohibit providers from offering the emergency care that EMTALA requires, HHS will not hesitate to refer the matter to the Department of Justice to take appropriate legal action.

¹ 1902(a)(7) of the Social Security Act, as implemented under 42 CFR 431, Subpart F.

² Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss (QSO-21-22-Hospitals- UPDATED JULY 2022), available at <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurvey/certificationgeninfopolicy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0>. On August 24, 2022, the Northern District of Texas issued a preliminary injunction prohibiting certain applications of this guidance. *Texas v. Becerra*, No. 5:22-CV-185-H (N.D. Tex.). HHS will comply with the court’s injunction. In light of that injunction, we have not sent this letter to Texas.

³ 42 U.S.C. § 1395dd

⁴ See Memorandum Decision and Order, *United States v. Idaho*, No. 1:22-cv-003289-BLW (D. Idaho Aug. 24, 2022).

As our nation faces this unprecedented crisis, it is our obligation to ensure that individuals in need of critical reproductive care are able to access the care they need and are entitled to under law. States should carefully examine their laws and regulations to ensure that they conform to the obligations described in the federal laws referenced above. Finally, we look forward to partnering with you to deliver on our shared goals of providing high quality reproductive health care to all Americans.

Sincerely,

/s/

Xavier Becerra
Secretary

/s/

Chiquita Brooks-LaSure
Administrator