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The ASCENT Center for Sexual and Reproductive Health Research, Education and Policy

Updated August 8th, 2022

On July 11th Judge Stone of Utah's Third District Court issued a preliminary injunction on Utah's "abortion trigger ban," SB 174. He stated that Utahns would face "irreparable harm" and "increased health risks" if they were not able to access abortion care. With this injunction in effect, Utahns can access abortions up to 18 weeks of pregnancy, and after 18 weeks, with certain exceptions. Here is a summary of the current legal landscape in Utah:

- The morning of Friday, June 24th, 2022, the United States Supreme Court released its decision to overturn the precedent set in Roe v Wade, meaning abortion law is now decided by individual states.
- By the evening of June 24th, Utah's Senate Bill 174 (often referred to as the *trigger bill*) was put into effect. The bill bans abortion in Utah, except under specific exceptions.
- In response to the bill, the Planned Parenthood Association of Utah (PPAU) and the ACLU brought a lawsuit against the state. On Monday, June 27th, a Utah Third District Court judge granted a 14-day restraining order, halting enforcement of SB 174.
- **On July 11th a Third District Court judge issued a preliminary injunction in the case. This injunction means SB 174 (the trigger bill) is not currently in effect. The injunction will remain in place until the constitutionality of the law is settled,** most likely in Utah's Supreme Court.
- The preliminary injunction does not impact the 18-week gestational ban (HB 136 Abortion Amendments) which remains in place. **This means, while abortion services are currently legal in Utah, they are only available for individuals up to 18 weeks of pregnancy (and beyond for certain maternal and fetal conditions).** Abortion care is available at Planned Parenthood of Utah and Wasatch's Women Center.

Please email hello@fpe.org or text (801) 839-5356 with general questions about abortion or contraception in Utah. Providers can also contact a member of the Family Planning clinical team by calling the University of Utah Hospital operator at (801) 581-2121 and asking for the Family Planning provider on call.

Below we have answered some frequently asked questions about what would happen if SB 174 ever takes effect.

WHAT HAPPENS IN UTAH IF THE TRIGGER BAN (SB 174) IS EVENTUALLY PUT INTO EFFECT?

SB 174 prohibits all abortions, with the following four exceptions:

- If an abortion is necessary to avert *the death of a woman on whom the abortion is performed*
- If an abortion is necessary to avert *a serious risk of substantial and irreversible impairment of a major bodily function of the woman*
- If the fetus has a defect that is *uniformly diagnosable and uniformly lethal; or has a severe brain abnormality that is uniformly diagnosable* (confirmed by two maternal fetal medicine physicians)
- If the pregnancy is the result of rape or incest and the physician performing the abortion confirms the rape or incest was reported to law enforcement

Importantly, the definition of abortion does NOT include "removal of an ectopic pregnancy" or "removal of a dead unborn child." **Medical procedures to treat an ectopic pregnancy, miscarriage, or stillbirth at any gestational age remain legal under SB 174.**

HOW DOES THE JULY 11TH ANNOUNCEMENT FROM THE BIDEN ADMINISTRATION CHANGE ABORTION ACCESS IN UTAH?

On July 11th the Biden Administration issued clarifying guidance regarding the Emergency Medical Treatment and Active Labor Act (EMTALA). The Secretary of Health and Human Services (HHS) sent a letter to medical providers saying: *if a physician believes that a pregnant patient presenting at an emergency department, including certain labor and delivery departments, is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment.* That same day, the Centers for Medicare & Medicaid Services released a memorandum to state survey agencies reinforcing hospital, provider, and staff obligations under EMTALA regarding patients who are pregnant or are experiencing pregnancy loss:

- **"A physician's professional and legal duty** to provide stabilizing medical treatment to a patient who presents under EMTALA to the emergency department and is found to have an emergency medical condition **preempts any directly conflicting state law or mandate** that might otherwise prohibit or prevent such treatment.
- **If a physician believes that a pregnant patient** presenting at an emergency department is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician **must** provide that treatment. 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."**
- Utah's trigger ban (currently under injunction) and the 18-week ban (currently enacted) both contain exceptions for injury and death of the pregnant person.
- While the guidance from HHS does not change the legality of providing emergency abortion care (because it was already legal in Utah), it does reinforce the vital importance of providers' ability to assess, and respond to, a range of emergency medical situations during pregnancy. **Providers in Utah are protected by both state and national laws in providing life-saving care.**

HOW CAN INDIVIDUALS ACCESS ABORTION CARE IF THE TRIGGER BAN (SB 174) IS PUT INTO EFFECT?

- Utah does not currently have laws about crossing state lines to access abortion care. Pregnant people can travel out of state to receive abortion care. Websites such as **abortionfinder.org** and **ineedana.com** provide up-to-date information on the legality of abortion in each state.

- While providers in Utah will not be allowed to provide abortion care (except in the circumstances mentioned above), SB 174 does not prohibit providers from discussing pregnancy options with their patients, or from conducting ultrasounds to determine how far along a pregnancy is, or from providing medical care after an abortion.

- Some people may choose to access medication abortion on their own by ordering mifepristone and misoprostol through the mail. ACOG's clinical guidelines state that patients can "safely and effectively use" mifepristone and misoprostol at home for medication abortion up to 10 weeks gestational age. The World Health Organization recommends self-managed medication abortion as a safe option for individuals less than 12 weeks' gestation.

- While rare, some individuals may experience complications from a medication abortion. Some individuals may also have increased anxiety and seek reassurance after a self-managed abortion. If an individual seeks care after a self-managed abortion, we are not aware of any legal requirement that the provider report the individual. The role of medical providers is just that, to provide medical care. There is no requirement to report the potential etiology of someone's early pregnancy complication.

- Providers are legally allowed to provide post-abortion care, which is similar to care following a miscarriage.

- Self-managed medication abortion and early miscarriage present the same clinically. Specific information about the cause of bleeding and pain in early pregnancy (miscarriage vs. medication abortion with mifepristone and misoprostol) is not required to treat the patient. At this time patient's medical records are protected under HIPAA, but there is a future possibility records could be requested via court order.

- **The University of Utah's Early PregnancyAccess Clinic (EPAC) provides safe and respectful care to people who are experiencing complications in early pregnancy such as vaginal bleeding and pelvic pain for any reason. You can contact EPAC with questions at 801.213.2995, Option 2.**

WHAT TYPE OF ABORTION CONVERSATIONS AND OPTIONS COUNSELING CAN I HAVE WITH MY PATIENTS IF THE TRIGGER BAN (SB 174) IS PUT INTO EFFECT?

- Currently, Utah law does not stipulate what providers can say to their patients about abortion. This does not change with enactment of SB 174.

- Providers are free to discuss all pregnancy options, including abortion, with their patients without violating state law.

WOULD THE TRIGGER BAN (SB 174) RESTRICT ACCESS TO EMERGENCY CONTRACEPTION?

- No, SB 174 only relates to abortion and does not restrict access to any form of contraception, including emergency contraception. Emergency contraception, like all forms of contraception, does not cause abortions. Emergency contraception works to prevent pregnancy, not to end an existing pregnancy.
- There are four types of emergency contraception:
  - **Plan B:** a pill available over-the-counter (Plan B is the brand name, available under several generic names), most effective when taken within 72 hours of unprotected intercourse
  - **Ella:** a pill available by prescription only, more effective than Plan B, can be effective up to 5 days after unprotected intercourse
  - **Hormonal IUD** and **Copper IUD:** a contraceptive device placed in the uterus by a provider, most effective form of emergency contraception, effective up to 5 days after unprotected intercourse
- ACOG recommends providers counsel all individuals at risk of pregnancy about their options for emergency contraception. They further recommend that **providers can increase access to emergency contraception through advance prescription of ulipristal acetate (ella®) and by creating workflows that allow for same-day insertion of IUDs for emergency contraception.**