Life-of-Mother Exemption Policy Brief

Updated: February 17, 2023

The Issue

Tennessee's "Trigger Law" addressing obstetrical care places physicians and other medical professionals at risk of felony prosecution for actions taken to save a mother's life or prevent irreversible health conditions. The most common cause of "life-of-mother" medical procedures is the removal of an ectopic or tubal pregnancy. The March of Dimes estimates that one in every 50 pregnancies are ectopic, a condition in which the fetus cannot survive. Unfortunately, there are other pregnancy complications necessitating the need to end a pregnancy such as severe cardiac disease, end-stage renal disease (kidney disease), lupus nephritis, cancers requiring immediate treatment, severe pulmonary hypertension, and other conditions that, in the presence of pregnancy, would likely lead to death or permanent, irreversible injury to the mother.

Tennessee Human Life Protection Act, passed in 2019 and triggered by the U.S. Supreme Court's decision in Dobbs v. Jackson Women's Health Organization, addresses legalities for maternal care in Tennessee and specifically makes all abortions a Class C felony.

Today, Tennessee's medical providers and hospitals are asking the Tennessee General Assembly to preserve the original intent of this 2019 Law, which was to prevent so-called elective abortions, but preserve "life-of-mother" protection procedures. We should remove the "affirmative defense" clause used here, which causes confusion and places good medical practice in jeopardy.

At best, this ambiguity delays needed care for women whose lives are at risk while legal clarification is sought. At worst, the current law could place physicians at risk of a felony conviction, loss of hospital privileges, prison time, etc., for protecting lives.

How We Got Here

From 1989 to 2021 numerous laws that address abortion were passed and signed into law in Tennessee.

During the 111th General Assembly, Tennessee passed the Human Life Protection Act that supersedes previous abortion legislation and punishes providers who attempt to terminate pregnancies based on medical necessity. The law attempts to protect providers through the availability of an affirmative defense for physicians who terminate a pregnancy to save the life or health of the mother. The challenge is that affirmative defense can only be invoked after a physician is charged with a criminal abortion, which, if convicted, subjects the doctor to a 15-year prison sentence. After a felony charge , the damage to the doctor's career is likely irreversible. Upon booking, a mug shot is taken with the high likelihood that it will be splayed in the hometown newspaper. Hospital privileges will be revoked, as will the ability to participate in patients' health insurance networks, leading to potential job loss.

In being charged under current law, and long before the ability to defend his or her actions in court, a physician's career and reputation will be destroyed. Because of a national databank, even upon acquittal at trial, the charge, privilege loss, etc. will follow them for the rest of his or her professional career.

Who would want to begin to practice medicine in Tennessee under these risky conditions? The biggest losers are the patients when communities lose doctors who take care of prenatal care, perform deliveries, and manage complicated pregnancies. Besides the loss of doctors who leave the state because of inadequate legal protection, new doctors and potential trainees are reluctant to come to Tennessee.

What is affirmative defense and why is it shaky ground?

An affirmative defense is an excuse from a crime written into law. Typically, in a criminal case, the state has the burden of proof to show the defendant violated the law. However, an affirmative defense flips that burden and forces the physician invoking it to prove that his or her actions met every element of the affirmative defense—with a preponderance of evidence. If the jury finds that the defendant has met the burden of proof, it must acquit the defendant.

The Solution

SB745/HB883 removes the law's affirmative defense and makes a clear exception for pregnancy terminations done to prevent death or irreversible impairment of major bodily function of the mother. It provides certainly and clarity for the physician needing to take appropriate medical actions to save the life of a mother. The bill also:

- clarifies that commonly performed medically necessary procedures, such as ectopic pregnancy removals, are not criminal abortions;
- authorizes the doctor to petition the Tennessee Board of Medical Examiners to hold a hearing to determine the medical necessity of the abortion before a criminal trial is held;
- allows for termination of a pregnancy when a non-survivable fetal anomaly is diagnosed;
- provides immunity for pharmacists for dispensing drugs that can be used to induce abortion, but have other recognized non-abortion indications such as cancer and lupus; and
- removes from Tennessee Code confusing or conflicting laws and language that were superseded by the Trigger Law.

SB745/HB883 Supporting Organizations

TMA Tennessee Medical Association

TNA Tennessee Nurses Association

THA Tennessee Hospital Association

Tennessee Pharmacists Association
★ For Patients ★ For Pharmacists ★ For Tennessee

TnPATH
Tennessee's Public & Teaching Hospitals

The American College of Obstetricians and Gynecologists
Women's Health Care Physicians
Tennessee Section

Vanderbilt Health