Georgia

SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga., 40 F.4th 1320, 1324-1328 (11th Cir. 2022) held:

> Georgia enacted the Living Infants Fairness and Equality (LIFE) Act in 2019. 2019 Ga. Laws Act 234 (H.B. 481). Section 3 of the Act amends the definition of "[n]atural person" in the Georgia Code to mean "any human being including an unborn child." *Id.* § 3(b) (internal quotation marks omitted). And it defines "[u]nborn child" as "a member of the species of Homo sapiens at any stage of development who is carried in the womb." *Id.* § 3(e)(2) (interna quotation marks omitted). Section 4 prohibits abortions after a fetal heartbeat is detected with enumerated exceptions. *Id.* § 4(b). The Act also clarifies that removal of an "ectopic pregnancy" or "a dead unborn child caused by spontaneous abortion" is not an "abortion." *Id.* § 4(a)(1) (internal quotation marks omitted). Sections 5 through 12 amend other provisions of the Georgia Code involving child support, tort recovery for fetal homicide, informed consent for women seeking abortions, tax benefits, and related issues. *Id.* §§ 5-12…
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> Georgia's prohibition on abortions after detectable human heartbeat is rational. *See* H.B. 481 § 4(b). "[R]espect for and preservation of prenatal life at all stages of development" is a legitimate interest. *Dobbs*, 142 S. Ct. at 2284. The Georgia Legislature's findings acknowledge a state interest in "providing full legal recognition to an unborn child." H.B. 481 § 2(4). That "legitimate interest[] provide[s] a rational basis for" and "justif[ies]" the Act. *Dobbs*, 142 S. Ct. at 2284…
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> Under the proper standard, the Act's definition of natural person is not unconstitutionally vague on its face. When focusing on the text, as we must, it is hard to see any vagueness. *See Indigo Room, Inc.*, 710 F.3d at 1302. The Act defines a natural person to include unborn humans in the womb at any stage of development. *See* H.B. 481 § 3(b), (e). A person of reasonable intelligence is capable of understanding that the "core meaning [of]" the provision is to expand the definition of person to include unborn humans who are carried in the womb of their mother at any stage of development. *See Indigo Room, Inc.*, 710 F.3d at 1302. To be sure, there might be vague applications of that definition in other provisions of the Georgia Code, but challenges to those applications—like the arguments raised in the abortionists' supplemental brief about potential applications to constitutionally protected conduct—are properly brought in an as-applied manner. On its face, the statute is not void for vagueness.

O.C.G. 1-2-1. Classes of persons generally; "natural person" defined; corporations deemed artificial persons; nature of corporations generally.

(a) There are two classes of persons: natural and artificial.

(b) "Natural person" means any human being including an unborn child.

(c) Corporations are artificial persons. They are creatures of the law and, except insofar as the law forbids it, they are subject to be changed, modified, or destroyed at the will of their creator.

(d) Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.

(e) As used in this Code section, the term:

> **(1)** "Detectable human heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.
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> **(2)** "Unborn child" means a member of the species Homo sapiens at any stage of development who is carried in the womb.

O.C.G. 16-12-141. Restrictions on the performance of abortions; availability of records; civil cause of action; affirmative defenses.

(a) As used in this article, the term:

> **(1)** "Abortion" means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:
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> **(A)** Removing a dead unborn child caused by spontaneous abortion; or
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> **(B)** Removing an ectopic pregnancy.
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> **(2)** "Detectable human heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.
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> **(3)** "Medical emergency" means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
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> **(4)** "Medically futile" means that, in reasonable medical judgment, an unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.
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> **(5)** "Spontaneous abortion" means the naturally occurring death of an unborn child, including a miscarriage or stillbirth.

(b) No abortion is authorized or shall be performed if an unborn child has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat except when:

> **(1)** A physician determines, in reasonable medical judgment, that a medical emergency exists;
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> **(2)** The probable gestational age of the unborn child is 20 weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest. As used in this paragraph, the term "probable gestational age of the unborn child" has the meaning provided by Code Section 31-9B-1; or
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> **(3)** A physician determines, in reasonable medical judgment, that the pregnancy is medically futile.

(c) In conducting an abortion, if the child is capable of sustained life, medical aid then available shall be rendered.

(d) No abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-9B-2.

(e)

> **(1)** No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or in a health facility licensed as an abortion facility by the Department of Community Health.
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> **(2)** An abortion shall only be performed by a physician licensed under Article 2 of Chapter 34 of Title 43.

(f) Health records shall be available to the district attorney of the judicial circuit in which the act of abortion occurs or the woman upon whom an abortion is performed resides.

(g) Any woman upon whom an abortion is performed in violation of this Code section may recover in a civil action from the person who engaged in such violation all damages available to her under Georgia law for any torts.

(h) It shall be an affirmative defense to prosecution under this article if:

> **(1)** A licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;
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> **(2)** An advanced practice registered nurse or registered professional nurse, as such terms are defined in Code Section 43-26-3, or a licensed practical nurse, as such term is defined in Code Section 43-26-32, engages in the practice of nursing to provide care for a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child;

(3) A licensed pharmacist engages in the practice of pharmacy, as such term is defined in Code Section 26-4-4, to provide care for a pregnant woman which results in the accidental or unintentional injury or death of an unborn child;

(4) A licensed physician assistant, as such term is defined in Code Section 43-34-102, provides care to a pregnant woman which results in the accidental or unintentional injury to or death of an unborn child; or

(5) A woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency.

O.C.G. 16-12-141.1. Disposal of aborted fetuses; reporting requirements; penalties; public report; confidentiality of identity of physicians filing reports.

(a)

(1) Every hospital and clinic in which abortions are performed or occur spontaneously, and any laboratory to which the aborted fetuses are delivered, shall provide for the disposal of the aborted fetuses by cremation, interment, or other manner approved of by the commissioner of public health. The hospital, clinic, or laboratory may complete any laboratory tests necessary for the health of the woman or her future offspring prior to disposing of the aborted fetus.

(2) Each hospital, clinic, and laboratory shall report, on a form provided by the commissioner of public health, the manner in which it disposes of the aborted fetus. Such reports shall be made annually by December 31 and whenever the method of disposal changes. The commissioner of public health shall provide forms for reporting under this Code section.

(b) Any hospital, clinic, or laboratory violating the provisions of subsection (a) of this Code section shall be punished by a fine of not less than $1,000.00 nor more than $5,000.00.

(c) Within 90 days after May 10, 2005, the Department of Human Resources (now known as the Department of Public Health for these purposes) shall prepare a reporting form for physicians which shall include:

(1) The number of females whose parent or guardian was provided the notice required in paragraph (1) of subsection (a) of Code Section 15-11-682 by the physician or such physician's agent; of that number, the number of notices provided personally under subparagraphs (a)(1)(A) and (a)(1)(B) of Code Section 15-11-682 and the number of notices provided by mail under subparagraph (a)(1)(C) of Code Section 15-11-682; and, of each of those numbers, the number of females who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

(2) The number of females upon whom the physician performed an abortion without providing to the parent or guardian of a minor the notice required by subsection (a)

of Code Section 15-11-682; and of that number, the number of females for which subsection (b) of Code Section 15-11-682 and Code Section 15-11-686 were applicable;

(3) The number of abortions performed upon a female by the physician after receiving judicial authorization pursuant to subsection (b) of Code Section 15-11-682 and Code Section 15-11-684; and

(4) The same information described in paragraphs (1), (2), and (3) of this subsection with respect to females for whom a guardian or conservator has been appointed.

(d) The Department of Public Health shall ensure that copies of the reporting forms described in subsection (c) of this Code section, together with a reprint of this Code section, are provided:

(1) Within 120 days after May 10, 2005, to all health facilities licensed as an abortion facility by the Department of Human Resources (now known as the Department of Community Health for these purposes);

(2) To each physician licensed or who subsequently becomes licensed to practice medicine in this state at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of every year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this subsection, to all health facilities licensed as an abortion facility by the Department of Community Health.

(e) By February 28 of each year following a calendar year in any part of which this subsection was in effect, each physician who provided, or whose agent provided, the notice described in subsection (a) of Code Section 15-11-682 and any physician who knowingly performed an abortion upon a female or upon a female for whom a guardian or conservator had been appointed because of a finding of incompetency during the previous calendar year shall submit to the Department of Public Health a copy of the form described in subsection (c) of this Code section with the requested data entered accurately and completely.

(f) Reports that are submitted more than 30 days following the due date shall be subject to a late fee of $500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period in which they remain overdue. Any physician required to report in accordance with this Code section who submits an incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of Public Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

(g) By June 30 of each year, the Department of Public Health shall issue a public report providing statistics for the previous calendar year compiled from all the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (c) of this Code section. The report shall also include statistics which shall be obtained by the Administrative Office of the Courts giving the total number of petitions or motions filed under subsection (b) of Code Section 15-11-682 and, of that number, the number in which the court

appointed a guardian ad litem, the number in which the court appointed counsel, the number in which the judge issued an order authorizing an abortion without notification, the number in which the judge denied such an order, and, of the last, the number of denials from which an appeal was filed, the number of such appeals that resulted in the denials being affirmed, and the number of such appeals that resulted in reversals of such denials. Each report shall also provide the statistics for all previous calendar years for which such a public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports. The Department of Public Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female or of any female for whom a guardian or conservator has been appointed.

(h) The Department of Public Health may by regulation alter the dates established by paragraph (3) of subsection (d) and subsections (e) and (g) of this Code section or consolidate the forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of Community Health at least once every year and the report described in subsection (g) of this Code section is issued at least once each year.

(i) The Department of Public Health shall ensure that the names and identities of the physicians filing reports under this Code section shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

O.C.G. 16-12-144. Partial-birth abortions

(a) As used in this Code section, the term:

> **(1)** "Fetus" means the biological offspring of human parents.
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> **(2)** "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before ending the life of the fetus and completing the delivery.

(b) Any person who knowingly performs a partial-birth abortion and thereby ends the life of a human fetus shall, upon conviction thereof, be punished by a fine not to exceed $5,000.00, imprisonment for not more than five years, or both. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother because her life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering condition caused by or arising from the pregnancy itself, provided that no other medical procedure will suffice to save the mother's life.

(c)

(1) The father of the fetus, and the maternal grandparents of the fetus if the mother has not attained the age of 18 years of age at the time of the abortion, may obtain appropriate relief in a civil action, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this Code section; and

(B) Statutory damages equal to three times the cost of the partial-birth abortion.

(d) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this Code section for violating this Code section or any provision thereof, or for conspiracy or for an attempt to violate this Code section or any provision thereof.

O.C.G. 15-11-682. Parental notification of abortion; hearing; venue.

(a) No physician or other person shall perform an abortion upon an unemancipated minor unless:

(1) (A) The unemancipated minor seeking an abortion is accompanied by his or her parent or guardian who shall show proper identification and state that he or she is the lawful parent or guardian of the unemancipated minor and that he or she has been notified that an abortion is to be performed on the unemancipated minor;

(B) The physician or the physician's qualified agent gives at least 24 hours' actual notice, in person or by telephone, to the parent or guardian of the unemancipated minor of the pending abortion and the name and address of the place where the abortion is to be performed; provided, however, that, if the person so notified indicates that he or she has been previously informed that the unemancipated minor was seeking an abortion or if the person so notified has not been previously informed and he or she clearly expresses that he or she does not wish to consult with the unemancipated minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; or

(C) The physician or a physician's qualified agent gives written notice of the pending abortion and the address of the place where the abortion is to be performed, sent by registered or certified mail or statutory overnight delivery, return receipt requested with delivery confirmation, addressed to a parent or guardian of the unemancipated minor at the usual place of abode of the parent or guardian. Unless proof of delivery is otherwise sooner established, such notice shall be deemed delivered 48 hours after mailing. The time of mailing shall be recorded by the physician or agent in the unemancipated minor's file. The abortion may be performed 24 hours after the delivery of the notice; provided, however, that, if the person so notified certifies in writing that he or she has been previously informed that the unemancipated minor was seeking an abortion or if the person so notified has not been previously informed and he or she certifies in writing that he or she does not wish to consult with the unemancipated minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; and

(2) The unemancipated minor signs a consent form stating that she consents, freely and without coercion, to the abortion.

(b) If the unemancipated minor or the physician or a physician's qualified agent, as the case may be, elects not to comply with any one of the requirements of subparagraph (a)(1)(A), (a)(1)(B),

or (a)(1)(C) of this Code section, or if the parent or legal guardian of the unemancipated minor cannot be located, the unemancipated minor may petition, on his or her own behalf or by next friend, any juvenile court in the state for a waiver of such requirement pursuant to the procedures provided for in Code Section 15-11-684. The juvenile court shall assist the unemancipated minor or next friend in preparing the petition and notices required pursuant to this Code section. Venue shall be lawful in any county.

(c) No abortion shall be performed unless the requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Code section have been met or the unemancipated minor has obtained a court order waiving such requirements.

O.C.G. 15-11-684. Conduct of hearing; appeal.

(a) An unemancipated minor may participate in proceedings in the court on such minor's own behalf and the court shall advise such minor of the right to court appointed counsel and shall provide such minor with such counsel upon request or if such minor is not already adequately represented.

(b) All court proceedings under this Code section shall be conducted in a manner to preserve the complete anonymity of the parties and shall be given such precedence over other pending matters as is necessary to ensure that a decision is reached by the court as expeditiously as is possible under the circumstances of the case. In no event shall the name, address, birth date, or social security number of such minor be disclosed.

(c) The requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of Code Section 15-11-682 shall be waived if the court finds either:

> **(1)** That the unemancipated minor is mature enough and well enough informed to make the abortion decision in consultation with her physician, independently of the wishes of such minor's parent or guardian; or
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> **(2)** That the notice to a parent or, if the unemancipated minor is subject to guardianship, the legal guardian pursuant to Code Section 15-11-682 would not be in the best interests of such minor.

(d) A court that conducts proceedings under this Code section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a record of the evidence be maintained. The juvenile court shall render its decision within 24 hours of the conclusion of the hearing and a certified copy of same shall be furnished immediately to the unemancipated minor. If the juvenile court fails to render its decision within 24 hours after the conclusion of the hearing, then the petition shall be deemed granted. All juvenile court records shall be sealed in a manner that will preserve anonymity.

(e) An expedited appeal completely preserving the anonymity of the parties shall be available to any unemancipated minor to whom the court denies a waiver of notice. The appellate courts are authorized and requested to issue promptly such rules as are necessary to preserve anonymity and to ensure the expeditious disposition of procedures provided by this Code section. In no

event shall the name, address, birth date, or social security number of such minor be disclosed during the expedited appeal or thereafter.

(f) No filing fees shall be required of any unemancipated minor who uses the procedures provided by this Code section.

O.C.G. 15-11-687. Immunity of health care provider acting in good faith.

Any physician or any person employed or connected with a physician, hospital, or health care facility performing abortions who acts in good faith shall be justified in relying on the representations of the unemancipated minor or of any other person providing the information required under this article. No physician or other person who furnishes professional services related to an act authorized or required by this article and who relies upon the information furnished pursuant to this article shall be held to have violated any criminal law or to be civilly liable for such reliance, provided that the physician or other person acted in good faith.

O.C.G. 15-11-688. Penalty.

Any person who violates the provisions of this article shall be guilty of a misdemeanor and any person who intentionally encourages another to provide false information pursuant to this article shall be guilty of a misdemeanor.

O.C.G. 31-9A-3. Voluntary and informed consent to abortion; availability of ultrasound.

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Notwithstanding any provision of law to the contrary, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) The female is told the following, by telephone or in person, by the physician who is to perform the abortion, by a qualified agent of the physician who is to perform the abortion, by a qualified agent of a referring physician, or by a referring physician, at least 24 hours before the abortion:

> **(A)** The particular medical risks to the individual patient associated with the particular abortion procedure to be employed, when medically accurate;
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> **(B)** The probable gestational age and presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of an unborn child at the time the abortion would be performed; and
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> **(C)** The medical risks associated with carrying an unborn child to term.

The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. Such information may not be provided by a tape recording but must be provided during a consultation in which the physician or a qualified agent of the physician is able to ask questions of the female and the female is able to ask questions of the physician or the physician's qualified agent. If in the medical judgment of the physician any physical examination, tests, or other information subsequently provided to the physician requires a revision of the information previously supplied to the patient, that revised information shall be communicated to the patient prior to the performance of the abortion. Nothing in this Code section may be construed to preclude provision of required information in a language understood by the patient through a translator;

(2) The female is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by a qualified agent of the physician who is to perform the abortion at least 24 hours before the abortion:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) That the father will be liable pursuant to subsection (a) of Code Section 19-7-49 to assist in the support of her child;

(C) How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each listed entity; and

(D) That she has the right to review the printed materials described in Code Section 31-9A-4 and that these materials are available on a state sponsored website at a stated website address. The physician or the physician's qualified agent shall orally inform the female that materials have been provided by the State of Georgia and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the website, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to review the printed materials other than on the website;

(3) The female certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) of this Code section has been furnished her and that she has been informed of her opportunity to review the information referred to in subparagraph (D) of paragraph (2) of this Code section;

(4) For all cases in which an ultrasound is performed prior to conducting an abortion or a pre-abortion screen:

> **(A)** The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community; and
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> **(B)** At the conclusion of these actions and prior to the abortion, the female certifies in writing that:
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> > **(i)** She was provided the opportunity described in subparagraph (A) of this paragraph;
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> > **(ii)** Whether or not she elected to view the sonogram; and
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> > **(iii)** Whether or not she elected to listen to the fetal heartbeat, if present; and

(5) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's qualified agent receives a copy of the written certifications prescribed by paragraphs (3) and (4) of this Code section and retains them on file with the female's medical record for at least three years following the date of receipt.

O.C.G. 31-10-19. Reporting of induced termination of pregnancy.

Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation or weight, shall be reported directly to the department within ten days by the person in charge of the institution or clinic, or designated representative, in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution or clinic, the attending physician shall prepare and file the report within the time specified by this Code section.

O.C.G. 33-24-59.17. Coverage of certain abortions through certain qualified health plans prohibited; definitions.

(a) No abortion coverage shall be provided by a qualified health plan offered within the State of Georgia through a state law, a federal law, or regulation or exchange created by the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and regulations or guidance issued under those acts, except in the case of medical emergency.

(b) For the purposes of this Code section, the term “abortion” has the same meaning as provided in Code Section 31-9A-2.

(c) For the purposes of this Code section, the term “medical emergency” has the same meaning as provided in Code Section 31-9A-2.

(d) Nothing in this Code section shall be construed as creating or recognizing a right to an abortion.

(e) It is not the intention of this Code section to make lawful an abortion that is unlawful.