



Health Facility Compliance Guidance Letter

Number: GL 21-2001-A
Title: Updated Abortion Procedure Documentation and Abortion and Sonogram Election Form Requirements (SB 8-87R) [Amended]
Provider Types: Abortion Facilities, Ambulatory Surgical Centers, Hospitals
Date Issued: November 30, 2022

1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 21-2001, issued on September 14, 2021, to notify providers the Texas Health and Human Services Commission (HHSC) adopted rules in Texas Administrative Code Title 25 (25 TAC) Chapter 139 to implement [Senate Bill \(SB\) 8](#), which are described in this guidance letter. These rules, which took effect November 24, 2022, were published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7696). Refer to new [Section 2.3](#) below for more information about these rules.

HHSC provides guidance to licensed providers on legislation passed during the 87th Legislature, Regular Session (2021). SB 8, relating to abortion, including abortions after detection of an unborn child’s heartbeat; authorizing a private civil right of action, took effect September 1, 2021.

SB 8 added [Texas Health and Safety Code \(HSC\) §171.008](#), which requires physicians who perform an abortion on or after September 1, 2021, to maintain certain documentation regarding the reasons for the abortion. SB 8 also amended the language of the abortion and sonogram election form required by [HSC §171.012](#).

This letter provides instruction to abortion facilities, including ambulatory surgical centers and hospitals where abortions are performed, on the passage of SB 8 and outlines provider responsibilities and expectations.

Note: Although SB 8 added a ban on performing an abortion if a physician detects a fetal heartbeat required by [HSC §171.203](#) or fails to perform a test

to detect a fetal heartbeat, SB 8 also amended [HSC §171.005](#) to explicitly prohibit HHSC from enforcing this ban. Instead, the ban may only be enforced through private civil enforcement action as provided by SB 8.

2.0 Policy Details & Provider Responsibilities

Due to the amendments made by SB 8, abortion facilities and ambulatory surgical centers and hospitals where abortions are performed must update the abortion and sonogram election form required under [HSC §171.012](#). These facilities must also include the information required under [HSC §171.008](#) in a patient's medical record and the physician's practice records.

2.1 Updates to Abortion and Sonogram Election Form

SB 8 amended the language in the required abortion and sonogram election form a facility must provide to patients on whom an abortion is performed under [HSC §171.012](#), Voluntary and Informed Consent. Facilities must update this form to comply with SB 8. The amended form is reproduced below for reference:

ABORTION AND SONOGRAM ELECTION

- (1) The information and printed materials described by Sections 171.012(a)(1)-(3), Texas Health and Safety Code, have been provided and explained to me.
- (2) I understand the nature and consequences of an abortion.
- (3) Texas law requires that I receive a sonogram prior to receiving an abortion.
- (4) I understand that I have the option to view the sonogram images.
- (5) I understand that I have the option to hear the heartbeat.
- (6) I understand that I am required by law to hear an explanation of the sonogram images unless i certify in writing to one of the following:

___ I am pregnant as a result of a sexual assault, incest, or other violation of the Texas Penal Code that has been reported to law enforcement authorities or that has not been reported because I reasonably believe that doing so would put me at risk of retaliation resulting in serious bodily injury.

___ I am a minor and obtaining an abortion in accordance with judicial bypass procedures under Chapter 33, Texas Family Code.

___ My unborn child has an irreversible medical condition or abnormality, as identified by reliable diagnostic procedures and documented in my medical file.

(7) I am making this election of my own free will and without coercion.

(8) For a woman who lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245, Texas Health and Safety Code, or a facility that performs more than 50 abortions in any 12-month period only:

I certify that, because I currently live 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period, I waive the requirement to wait 24 hours after the sonogram is performed before receiving the abortion procedure. My place of residence is: _____.

SIGNATURE

DATE

2.2 Updates to Physician Documentation

SB 8 also amended HSC Chapter 171 to add [HSC §171.008](#), Required Documentation. A facility must ensure a patient's medical records and the physician's practice records include all physician documentation required under [HSC §171.008](#), which may include (as applicable):

- The physician's written documentation, when an abortion was performed or induced because of a medical emergency, that certifies the abortion was necessary due to a medical emergency and specifies the patient's medical condition requiring the abortion.
- The physician's written documentation, when an abortion was performed or induced to preserve the health of the patient, that specifies the medical condition the abortion was asserted to address and provides the medical rationale for the abortion.
- The physician's written documentation, when an abortion is performed for reasons other than to preserve the health of the pregnant patient, that specifies that maternal health was not a purpose of the abortion.

[HSC §171.008](#) is reproduced below for reference:

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical

emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

Note: HHSC also updated the Induced Termination of Pregnancy (ITOP) online reporting form in accordance with SB 8's amendments to the abortion reporting requirements at [HSC §245.011](#). HHSC informed providers of these changes through a GovDelivery notice on August 30, 2021.

2.3 HHSC Rules Implementing SB 8

To comply with SB 8's provisions, HHSC amended the following rules in [25 TAC Chapter 139](#), which took effect November 24, 2022:

- [25 TAC §139.2](#)
- [25 TAC §139.4](#)

- [25 TAC §139.5](#)
- [25 TAC §139.32](#)
- [25 TAC §139.52](#)
- [25 TAC §139.55](#)

3.0 Background/History

SB 8 requires HHSC to enforce amended [HSC §171.012](#), which modified the language of the abortion and sonogram election form, and [HSC §171.008](#), which requires physicians who perform an abortion to maintain certain documentation regarding the reasons for the abortion.

4.0 Resources

View Senate Bill 8 (87th Legislature, Regular Session, 2021) at:
<https://capitol.texas.gov/tlodocs/87R/billtext/html/SB00008F.htm>.

View Health and Safety Code, Chapter 171, Abortion, at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.171.htm>.

View Health and Safety Code Chapter 245, Abortion Facilities, at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.245.htm>.

View Texas Administrative Code Title 25 Chapter 139 at:
[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=139](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=139).

To receive future updates, sign up for GovDelivery at:
<https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

5.0 Contact Information

If you have any questions about this letter, please contact the Policies and Rules Unit by email at: HCR_PRU@hhs.texas.gov.