

## Proposed Notice of Intended Action

The following proposed Noticed of Intended Action are in response to [HF 732](#), Prohibiting and Requiring Certain Actions Relating to Abortion Involving the Detection of a Fetal Heartbeat. This legislation directed the Board of Medicine to adopt rules to administer this statute.

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The proposed rulemaking actions are to adopt new rule 653-13.17:

### **653-13.17 (135L, 146A, 146E, 147, 148, 272C) Standards of practice for physicians who perform or induce abortions – definitions – detection of fetal heartbeat – fetal heartbeat exceptions – discipline.**

**13.17(1):** This section sets forth the standards of practice for physicians who perform or induce abortions. *See* Iowa Code section 146E.2(5).

**13.17(2):** *Definitions.* As used in this section or in Iowa Code section 146E:

*a.* “*Private health agency*” means any establishment, facility, organization, or other entity that is not owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, or other entities that are health care providers include the following:

1. a hospital as defined in Iowa Code section 135B.1;
2. a health care facility as defined in Iowa Code section 135C.1;
3. a health facility as defined in Iowa Code section 135P.1; or
4. other similar entities that either are or employ or provide the services of a health care provider.

*b.* “*Public health agency*” means any establishment; facility; organization; administrative division; or entity that is owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, administrative divisions, or other entities that are health care providers include the following:

1. a hospital as defined in Iowa Code section 135B.1;

2. a health care facility as defined in Iowa Code section 135C.1;
3. a health facility as defined in Iowa Code section 135P.1; or
4. other similar entities that either are or employ or provide the services of a health care provider.

c. The phrase “*the pregnancy is the result of incest*” means a circumstance in which a sex act occurs between closely related persons that involves a vaginal penetration that causes a pregnancy. The closely related persons must be related, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew. For purposes of this rule, a closely related person includes a stepparent, stepchild, or stepsibling, including siblings through adoption.

d. The phrase “*the pregnancy is the result of a rape*” means a circumstance in which the pregnancy is the result of conduct that would be a prosecutable offense under §§ 709.2, 709.3, 709.4, or 709.4A, when perpetrated against a female.

e. “*Standard medical practice*” means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of Iowa Code section 146E and this section, “standard medical practice” includes employing the appropriate means of detection depending on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

**13.17(3):** *Detection of fetal heartbeat.* A physician who intends to perform or induce an abortion must determine via abdominal ultrasound whether the woman is carrying an unborn child with a detectable fetal heartbeat.

a. *Obligation.* The obligation under this section requires a bona fide effort to detect a fetal heartbeat in the unborn child. This effort must be made in good faith and according to standard medical practice and reasonable medical judgment.

b. *Method.* Consistent with standard medical practice and reasonable medical judgment, the physician shall perform an exterior abdominal ultrasound on the woman to determine whether the unborn child has a detectable fetal heartbeat. This shall be performed with real-time

ultrasound equipment with a transducer of appropriate frequency. The equipment must be properly maintained and in proper functioning order. At minimum, the ultrasound shall examine the full region of the woman's body between the chest and pelvis, including the side flanks between the rib cage and hips.

**13.17(4): *Fetal heartbeat exceptions.*** The following applies to a physician who intends to perform or induce an abortion under a fetal heartbeat exception as defined in Iowa Code section 146E and this section:

*a.* For purposes of this rule, a pregnancy resulting from incest or rape may be reported within the appropriate timeframe to a licensed physician whose services are retained for an abortion procedure.

*b.* To determine whether a pregnancy is the result of incest, a physician who intends to perform or induce an abortion must gather the following information from the woman seeking an abortion:

Did a sex act occur between the woman and a closely related person, meaning, either legitimately or illegitimately, an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew, including a stepparent, stepchild, or stepsibling to include an adopted sibling?

On what date did the act occur?

If initial reporting was to someone other than the physician who intends to perform or induce an abortion, on what date was the act reported to a law enforcement agency, public health agency, private health agency, or family physician?

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for incest applies. This information shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information provided by the woman seeking the abortion upon a good-faith assessment that the woman is being truthful. The physician who intends to perform or induce an abortion may require the woman seeking the abortion to sign a certification form attesting that the information she gave was true and accurate to the best of her understanding.

c. To determine whether a pregnancy is the result of rape, a physician who intends to perform or induce an abortion must gather the following information from the woman seeking an abortion:

On what date did the sex act that caused the pregnancy occur?

What was the age of the woman seeking an abortion at the time of that sex act?

Did the sex act constitute a rape?

Was the rape perpetrated against the woman seeking an abortion?

If initial reporting was to someone other than the physician who intends to perform or induce an abortion, the date the rape was reported to a law enforcement agency, public health agency, private health agency, or family physician?

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for rape applies. This information shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information as provided by the woman seeking the abortion upon a good-faith assessment that the person is being truthful. The physician who intends to perform or induce an abortion may require the woman seeking the abortion to sign a certification form attesting that the information she gave was true and accurate to the best of her understanding.

d. A certification from an attending physician that a fetus has a fetal abnormality that in the attending physician's reasonable medical judgment is incompatible with life must contain the following information:

The diagnosis of the abnormality;

The basis for the diagnosis, including the tests and procedures performed, the results of those tests and procedures, and why those results support the diagnosis; and

A description of why the abnormality is incompatible with life.

The diagnosis and the attending physician's conclusion must be reached in good faith following a bona fide effort, consistent with standard medical practice and reasonable medical judgment, to determine the health of the fetus. The certification must be signed by the attending physician. A physician who intends to perform or induce an abortion may rely in good faith on a certification from an attending physician if the physician who intends to perform or induce an abortion has a copy of the certification. The certification

must be included by the physician who intends to perform or induce an abortion in the woman's medical records.

**13.17(5): *Discipline.*** Failure to comply with this rule or the requirements of Iowa Code section 146E may constitute grounds for discipline.