



State of Louisiana
Louisiana Department of Health
Office of the Secretary

**LOUISIANA DEPARTMENT OF HEALTH
MEMORANDUM AND GUIDANCE**

TO: Healthcare Providers and Healthcare Professionals

FROM: Michael Harrington, MBA, MA
LDH Secretary

Ralph L. Abraham, M.D.
LDH Surgeon General

RE: Act 246 of the 2024 Louisiana Regular Legislative Session

DATE: September 6, 2024

The Louisiana Department of Health issues the following Memorandum and Guidance regarding Act 246 of the 2024 Louisiana Regular Legislative Session ("Act 246"). Act 246 becomes effective October 1, 2024.

This Memorandum and Guidance serves to provide notice of the requirements of Act 246, as well as provide guidance for hospital inpatient settings.

This Act (a copy of which is attached) revised the list of Schedule IV controlled dangerous substance drugs in La. R.S. 40:964 to include Mifepristone and Misoprostol as follows¹:

§964. Composition of schedules

Schedules I, II, III, IV, and V shall, unless and until added pursuant to R.S. 40:962, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

* * *
SCHEDULE IV
* * *

F. Mifepristone, Misoprostol. Unless listed in another schedule, any material, compound, mixture, or preparation containing any detectable quantity of mifepristone or misoprostol.

Please be advised that Mifepristone and Misoprostol may be prescribed and administered in accordance with R.S. 14:87.9(C)(6). A copy of R.S.14:87.9 is attached. Mifepristone and Misoprostol are legal with a valid prescription in Louisiana subject to compliance with all applicable Louisiana laws.

Hospital Inpatient Settings:

This Memorandum and Guidance seeks to clarify that Mifepristone and Misoprostol may be utilized in Louisiana hospitals to treat postpartum hemorrhage and incomplete miscarriages in accordance with R.S. 14:87.9(C)(6), and in compliance Louisiana laws and regulations.

Pursuant to the hospital licensing rules, all scheduled drugs (including Mifepristone and Misoprostol as of October 1, 2024) should be compounded, packaged, dispensed, and securely stored (in locked/secured cabinet, compartment, or other system) in accordance with the hospital's current policies and procedures. In addition, the hospital's pharmacy shall have a current controlled dangerous substance license to dispense controlled substances to patients in the hospital.

A hospital may include Mifepristone and Misoprostol in a secured automated medication dispensing/delivery system, such as the Pyxis system. Such systems are allowed in hospital emergency departments, labor and delivery units/rooms, operating units/rooms, and other floors/units/rooms of a hospital as deemed appropriate by the hospital.

Further, a hospital may authorize certain scheduled drugs to be included in a locked or secured area of an obstetric hemorrhage cart or "crash cart". Such authorization should be approved by the hospital's Chief Medical Officer and its Director of Pharmacy; additionally, such approval and process should be included in a hospital's pharmacy policy and procedures manual.

Prescription Drug Monitoring Program:

This Memorandum and Guidance directs all questions regarding the Prescription Drug Monitoring Program to the Louisiana Board of Pharmacy who administers and oversees such program. Information for the Louisiana Board of Pharmacy, Prescription Drug Monitoring Program may be found at www.pharmacy.la.gov.

Should any provider or medical professional have additional questions about Act 246, including compliance and implementation concerns, the Louisiana Department of Health recommends that the provider/professional seek legal advice from its own legal counsel.

Thank you for your attention to this matter.



Michael Harrington, MBA, MA
LDH Secretary



Ralph L. Abraham, M.D.
LDH Surgeon General

¹ Act 246 also created the crime of “Coerced criminal abortion by means of fraud”.

SENATE BILL NO. 276

BY SENATORS PRESSLY, ABRAHAM, ALLAIN, BARROW, BASS, CATHEY, CLOUD, CONNICK, EDMONDS, FESI, HENRY, HODGES, KLEINPETER, LAMBERT, MCMATH, MIGUEZ, MILLER, MIZELL, MORRIS, REESE, SEABAUGH, STINE, TALBOT AND WOMACK AND REPRESENTATIVES AMEDEE, BAMBURG, BAYHAM, BERAULT, BUTLER, CHENEVERT, CREWS, DICKERSON, EGAN, EMERSON, FIRMENT, GLORIOSO, HORTON, MACK, OWEN, SCHAMERHORN, THOMPSON AND WYBLE

AN ACT

To amend and reenact R.S. 14:87.1(1)(a) and R.S. 40:969(C) and to enact R.S. 14:87.6.1, R.S. 15:1352(A)(71), and R.S. 40:964(Schedule IV)(F), relative to abortion; to create the crime of coerced criminal abortion by means of fraud; to provide relative to the crime of criminal abortion by means of abortion-inducing drugs; to provide penalties; to provide relative to the definition of crime racketeering activity; to add certain substances to Schedule IV of the Uniform Controlled Dangerous Substances Law; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:87.1(1)(a) is hereby amended and reenacted and R.S. 14:87.6.1 is hereby enacted to read as follows:

§87.1. Definitions

Wherever used in this Subpart, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall have the following meanings:

(1)(a) "Abortion" or "induced abortion" means the performance of any act with the intent to terminate a clinically diagnosable pregnancy with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child, whether or not the child survives, by one or more of the following means:

* * *

§87.6.1. Coerced criminal abortion by means of fraud

A. Coerced criminal abortion by means of fraud is committed when a

1 person knowingly and intentionally engages in the use of an abortion-inducing
2 drug on a pregnant woman, without her knowledge or consent, with the intent
3 to cause an abortion.

4 B.(1) Except as provided in Paragraph (2) of this Subsection, whoever
5 commits the crime of coerced criminal abortion by means of fraud shall be
6 imprisoned at hard labor for not less than five nor more than ten years, fined
7 not less than ten thousand nor more than seventy-five thousand dollars, or both.

8 (2) Whoever commits the crime of coerced criminal abortion by means
9 of fraud when the unborn child is more than three months of gestational age
10 shall be imprisoned at hard labor for not less than ten nor more than twenty
11 years, fined not less than fifty thousand nor more than one hundred thousand
12 dollars, or both.

13 C. The prosecution of a person pursuant to this Section shall not be a
14 defense against the prosecution under any other provision of law, including
15 murder or attempted murder, should the person commit the crime of coerced
16 criminal abortion by means of fraud and the use of an abortion-inducing drug
17 results in the death or serious bodily injury of the pregnant woman.

18 Section 2. R.S. 15:1352(A)(71) is hereby enacted to read as follows:

19 §1352. Definitions

20 A. As used in this Chapter, "racketeering activity" means committing,
21 attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating
22 another person to commit any crime that is punishable under the following
23 provisions of Title 14 of the Louisiana Revised Statutes of 1950, the Uniform
24 Controlled Dangerous Substances Law, or the Louisiana Securities Law:

25 * * *

26 (71) R.S. 14:87.9 (Criminal abortion by means of abortion-inducing
27 drug)

28 * * *

29 Section 3. R.S.40:969(C) is hereby amended and reenacted and R.S. 40:964(Schedule
30 IV)(F) is hereby enacted to read as follows:

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§964. Composition of schedules
Schedules I, II, III, IV, and V shall, unless and until added pursuant to R.S. 40:962, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

* * *
SCHEDULE IV
* * *

F. Mifepristone, Misoprostol. Unless listed in another schedule, any material, compound, mixture, or preparation containing any detectable quantity of mifepristone or misoprostol.

* * *

§969. Prohibited acts--Schedule IV; penalties

* * *

C.(1) Possession. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule IV unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, or as provided in R.S. 40:978, while acting in the course of his professional practice or except as otherwise authorized by this Part. Any person who violates this Subsection with respect to:

~~(1)(a)~~ Flunitrazepam shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years, and may, in addition, be required to pay a fine of not more than five thousand dollars.

~~(2)(b)~~ Any other controlled dangerous substance shall be imprisoned with or without hard labor for not less than one year nor more than five years and, in addition, may be required to pay a fine of not more than five thousand dollars.

(2) It shall not be a violation of this Subsection for a pregnant woman to possess mifepristone or misoprostol for her own consumption.

* * *

Section 4. This Act shall become effective on October 1, 2024.

Section 5. This Act shall be cited and referred to as "The Catherine and Josephine

1 Herring Act".

2 Section 6. The Board of Pharmacy is directed to notify all pharmacists in Louisiana
3 about the provisions of this law and that lawful prescriptions for mifepristone and
4 misoprostol may be filled in accordance with R.S. 14:87.9(C)(6).

5 Section 7. The Louisiana Department of Health is directed to notify all healthcare
6 practitioners and providers in Louisiana about the provisions of this law and that
7 mifepristone and misoprostol may be prescribed and administered in accordance with R.S.
8 14:87.9(C)(6).

9 Section 8. If any provision of this Act or the application thereof is held invalid, such
10 invalidity shall not affect other provisions or applications of this Act which can be given
11 effect without the invalid provisions or applications, and to this end the provisions of this
12 Act are hereby declared severable.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 14. Criminal Law (Refs & Annos)
Chapter 1. Criminal Code (Refs & Annos)
Part V. Offenses Affecting the Public Morals (Refs & Annos)
Subpart A. Offenses Affecting Sexual Immorality (Refs & Annos)
3. Abortion (Refs & Annos)

LSA-R.S. 14:87.9

§ 87.9. Criminal abortion by means of abortion-inducing drugs

Effective: August 1, 2022

Currentness

A. Criminal abortion by means of an abortion-inducing drug is committed when a person knowingly causes an abortion to occur by means of delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug.

B. (1) Any person who knowingly performs an abortion by means of an abortion-inducing drug in violation of this Section shall be imprisoned at hard labor for not less than one nor more than five years, fined not less than five thousand nor more than fifty thousand dollars, or both.

(2) Any person who knowingly performs an abortion by means of an abortion-inducing drug in violation of this Section that results in the death or serious bodily injury of the pregnant woman shall be imprisoned at hard labor for not less than five nor more than ten years, fined not less than ten thousand nor more than seventy-five thousand dollars, or both.

(3) Any person who knowingly performs or induces an abortion that results in the death or serious bodily injury of a pregnant woman under the age of eighteen in violation of this Section shall be imprisoned at hard labor for not less than fifteen nor more than fifty years, fined not less than fifteen thousand nor more than one hundred thousand dollars, or both.

C. None of the following shall be construed to create the crime of criminal abortion by means of an abortion-inducing drug:

(1) Any action taken when a physician or other licensed medical professional is acting in the course of administering lawful medical care.

(2) Any act taken or omission by a pregnant woman with regard to her own unborn child.

(3) Possessing for her own consumption or consuming an abortion-inducing drug by a pregnant woman in violation of this Section.

(4) Lawfully prescribing, dispensing, or distributing a drug, medicine, or other substance for a bona fide medical reason that is not intended to cause an abortion in violation of this Section.

(5)(a) The act of administering an abortion-inducing drug when the drug is administered by a physician licensed by the state of Louisiana who administers the abortion-inducing drug in person to the pregnant woman.

(b) The provisions of Subparagraph (a) of this Paragraph shall not be a defense against prosecution under any other provision of law that makes the abortion unlawful, whether the other provision of law is in effect on August 1, 2022, or becomes unlawful at a later date.

(6) Any act by a licensed pharmacist or pharmacy related to filling a prescription for a drug, medicine, or other substance prescribed for a bona fide medical reason shall not subject the pharmacist or the pharmacy to the criminal consequences of this Section. A diagnosis or a diagnosis code shall be written on the prescription by the prescriber indicating that the drug, medicine, or other substance is intended for a purpose other than to cause an abortion in violation of this Section.

Credits

Added by [Acts 2022, No. 548, § 1](#).

LSA-R.S. 14:87.9, LA R.S. 14:87.9

The Constitution, Revised Statutes Titles 2, 4, 8, 9, 13 and 15, and the Codes are current through the 2024 First Extraordinary, Second Extraordinary and Regular Sessions. All other statutes and codes are current through the 2024 First Extraordinary and Second Extraordinary Sessions.