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***Second Attorney General Advisory:
The effect and scope of the Human Life Protection Act***

The Attorney General's Office issued a first advisory on June 24, 2022 discussing the effect and scope of the Human Life Protection Act in the wake of the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), which overruled *Roe v. Wade*, 410 U.S. 113 (1973). The Office now issues this second Advisory to address additional questions that have arisen since the first Advisory.

Human Life Protection Act

Kentucky enacted the Human Life Protection Act, now codified at KRS 311.772, in 2019. The Act prohibits abortion in most circumstances. Generally speaking, it states that no person may knowingly and with specific intent cause or aid "the termination of the life of an unborn human being" in a pregnant woman. KRS 311.772(3)(a). Performing a prohibited abortion is a Class D felony, but pregnant mothers who receive an abortion are not subject to any criminal liability. KRS 311.772(3)(b), (5).

In sum, a physician only violates the law if he or she ***knowingly*** assists in a procedure with the ***specific intent*** of terminating the life of an unborn child in a pregnant woman. KRS 311.772(3)(a). Thus, the law is not violated if medical treatment accidentally or unintentionally causes the death of an unborn child. KRS 311.772(4)(b).

Protecting the lives and health of pregnant women

The Human Life Protection Act includes an express exception to protect the life and health of a pregnant woman. More specifically, the law does not prohibit an abortion when a physician determines in his or her “reasonable medical judgment” that the procedure is necessary to prevent (i) death, (ii) a substantial risk of death due to a physical condition, or (iii) the serious, permanent impairment of a life-sustaining organ of a pregnant woman. KRS 311.772(4)(a). A physician must make reasonable medical efforts to preserve both the life of the mother and the life of the unborn child, but must only do so “in a manner consistent with reasonable medical practice.” *Id.* The Human Life Protection Act commits those medical determinations to the “reasonable medical judgment” of the physician. *Id.*

In sum, the health exception in the Human Life Protection Act allows physicians to use their reasonable medical judgment to decide whether an abortion is necessary to avoid a substantial risk of death due to a physical condition or a serious, permanent impairment to a life-sustaining organ. This kind of health exception is not new to the practice of medicine. In fact, health exceptions to abortion laws with similar wording have long been used. *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833, 879–80 (1992). This includes in Kentucky. KRS 311.782(2)(b) (2017).

Additional Guidance

Because Kentucky law gives this Office authority to enforce the Human Life Protection Act, KRS 15.241(1)(b), Attorney General Daniel Cameron provides the following additional guidance about the law’s scope:

1. Does the Human Life Protection Act prohibit prescribing, selling, filling prescriptions for, or using contraceptives?

No. The law does not prohibit prescribing, selling, filling prescriptions for, or using a “contraceptive measure, drug, or chemical” according to the manufacturer’s instructions before a pregnancy can be determined through conventional medical testing. KRS 311.772(6); *see also* KRS 311.723(3); KRS 315.315.

2. Does the Human Life Protection Act prevent medical treatment for miscarriages?

No. The Human Life Protection Act does not apply when a woman suffers a miscarriage. The law thus does not prohibit a physician from providing miscarriage management.

3. Does the Human Life Protection Act apply to the use, care, or disposition of embryos fertilized by in vitro fertilization?

No. The Human Life Protection Act does not apply to the use, care, or disposition of embryos fertilized by in vitro fertilization. *See* KRS 311.772(3)(a); KRS 311.772(1)(b).

4. Does the Human Life Protection Act prohibit removing an ectopic pregnancy?

No. As a general matter, the removal of an ectopic pregnancy is not an abortion. *See* KRS 311.821(1)(c). Additionally, because removing an ectopic pregnancy is necessary to prevent a substantial risk of death or a serious, permanent impairment of a life-sustaining organ, physicians exercising their reasonable medical judgment can remove an ectopic pregnancy. *See* KRS 311.772(4)(a).

5. Does the Human Life Protection Act prohibit a physician from treating a life-threatening condition such as preeclampsia?

No. The health exception in the Human Life Protection Act allows physicians to use their reasonable medical judgment to treat life-threatening conditions, such as preeclampsia. Physicians can use their reasonable medical judgment to perform an abortion when necessary to prevent death, a substantial risk of death due to a physical condition, or serious, permanent impairment of a life-sustaining organ. KRS 311.772(4)(a).

6. Does a physician violate the Human Life Protection Act by accidentally or unintentionally causing the death of an unborn child?

No. The Human Life Protection Act does not apply if medical treatment accidentally or unintentionally causes the death of an unborn child. KRS 311.772(4)(b).