

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Epidemiology and Health Planning

(Emergency Amended After Comments)

901 KAR 5:120E. Abortion reporting.

RELATES TO: KRS 213.101, 213.106, 311.595, 311.720, 311.774, 311.781, 311.782, 311.783

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7), 2022 Ky. Acts ch. 210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information. This administrative regulation establishes the reporting criteria for abortions.

Section 1. Definitions.

- (1) "Abortion" is defined by KRS 311.720(1).
- (2) "Probable post-fertilization age" is defined by KRS 311.781(6).
- (3) "Reasonable medical judgment" is defined by KRS 311.781(7).
- (4) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8).

Section 2. Reporting.

- (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).
- (2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion.
- (3) The report shall be made within three (3) days after the end of the month in which the abortion was performed through the cabinet's electronic database or on VS-913, Report of Abortion.
- (4) The report shall:
 - (a) Contain the information required to be certified in writing including the following:
 1. The probable post-fertilization age of the unborn child;
 2. Whether the abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;
 3. The available methods or techniques considered and the reasons for choosing the method or technique employed;
 4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;

5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of the pregnant woman than other available methods of abortion; and

6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3); and

(b) Not contain information that identifies the woman or man involved.

(5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting.

(1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported by the physician prescribing the medication and the pharmacy dispensing the medication within three (3) days after the end of the month in which the prescription was issued.

(2) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(3) The report shall:

(a) Contain the drug or combination or drugs prescribed;

(b) The information required by 2022 Ky. Acts ch. 210; and

(c) Not contain information that identifies the woman or man involved.

Section 4. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(5) and (6).

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form VS-913P, "Abortion Prescription Reporting Form", 8/2022; and

(b) Form VS-913, "Report of Abortion", 8/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

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