



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

May 6, 2022

Dear Provider:

This letter seeks to clarify language in New York State (NYS) Public Health Law (PHL) related to the provision of abortion care in New York State.

Under New York State [Public Health Law § 2599-BB](#), abortion is legal in the State of New York when the patient, “is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient’s life or health.” To ensure that New York State-based providers are offering abortion care in alignment with current standards of practice, the Department now defines “commencement of pregnancy” to begin with the implantation of a blastocyst(s).

Previously, a 1993 letter from New York State Department of Health (NYSDOH) General Counsel Peter Millock defined the commencement of pregnancy to be at the time of conception, which is typically two weeks after the last menstrual period. Since that letter was issued, medical and scientific understanding has evolved and that definition is no longer regarded as clinically accurate. The new definition stated above aligns with the definition of pregnancy as stated by the American College of Obstetricians & Gynecologists (ACOG) in its [revitalized: Gynecology Data Definitions](#) released in 2018. Per ACOG, pregnancy is defined as “a *physiologic state of a woman that follows implantation of a blastocyst(s).*” This definition was developed by ACOG and is formally endorsed by an additional 12 professional medical organizations, including the American Academy of Family Physicians, the American College of Nurse-Midwives, and the National Association of Nurse-Practitioners in Women’s Health.

Pursuant to the PHL, for an abortion needed after twenty-four weeks from the commencement of pregnancy there must be “an absence of fetal viability, or the abortion is necessary to protect the patient’s life or health.” For determining whether an abortion is necessary to protect the health of a patient, the Department has identified the following categories of factors which should be considered: physical, emotional, psychological, familial, and age of the patient. Any factor within these categories may be considered relevant to the well-being or health of the patient and should be taken into consideration by healthcare providers when making abortion determinations related to protecting patient health. This understanding of health as it relates to abortion care aligns with current and longstanding NYSDOH guidance outlined in the [“New York State Medicaid Program: Policy Guidelines Manual for Article 28 Certified Clinics.”](#)

Please keep in mind that pursuant to Article 25-A of the PHL (the Reproductive Health Act) and PHL § 2504, any pregnant person, regardless of age, may consent to an abortion without parental consent.

Healthcare providers offering abortion care should continue to exercise their clinical judgment within the parameters of the PHL, as outlined above. Providers offering abortion care are encouraged to ensure that clinical policies align with public health law and the definitions outlined above. Additional questions related to public health law may be directed to the Department for further consideration as necessary.

Sincerely,

A handwritten signature in cursive script that reads "Mary J. Bassett". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Mary T. Bassett, M.D., M.P.H.
Commissioner of Health