U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES HEADQUARTERS
Chiquita Brooks-LaSure, Administrator
7500 Security Blvd.
Baltimore, MD 21244
Chiquita.Brooks-LaSure@cms.hhs.gov

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF REGIONAL HEALTH OPERATIONS
REGION 6
CAPT Mehran S. Massoudi, PhD, MPH
1301 Young Street, Suite 1124
Dallas, TX 75202
OASHRHA6@hhs.gov

ADMINISTRATIVE COMPLAINT

COMPLAINANT

Jaci Statton
c/o Center for Reproductive Rights
199 Water St., 22nd FL
New York, NY 10038

COMPLAINANT'S COUNSEL

Rabia Muqaddam
Meetra Mehdizadeh
Center for Reproductive Rights
199 Water St., 22nd FL
New York, NY 10038
(917) 637-3645
rmuqaddam@reprorights.org
mmehdizadeh@reprorights.org

RECIPIENT

OU Medicine, Inc. d/b/a OU Health
c/o C T Corporation System
1833 South Morgan Road
Oklahoma City, OK 73128

Oklahoma Children's Hospital OU Health
1200 N Children's Ave
Oklahoma City, OK 73104

RECIPIENT'S COUNSEL

Paul Neimeyer, J.D., LLM
Chief Legal Officer
OU Health
700 NE 13th St.
Oklahoma City, OK 73104

PRELIMINARY STATEMENT

1. This complaint is filed by Jaci Statton, through her attorneys, pursuant to the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd ("EMTALA").

2. In early 2023, Jaci and her husband were thrilled to learn that Jaci was pregnant. However, within a matter of weeks, Jaci began experiencing pain, dizziness, and nausea so severe that she could barely eat. After two visits to her local emergency room, Jaci learned from her OB/GYN that she had a partial molar pregnancy—an emergent condition which, if left untreated, creates a risk of hemorrhaging, infection, and/or death. The pregnancy was not viable, and continuing the pregnancy was putting Jaci's health and life at risk.

3. Jaci was bleeding and in such severe pain that she could barely walk when she arrived at the emergency room of the University of Oklahoma Medical Center ("OUMC") soon after. Despite how serious Jaci's condition was, staff at OUMC did not provide her with the necessary stabilizing treatment—an abortion. Instead, they moved Jaci to Oklahoma Children's Hospital, where providers told Jaci that she could die without treatment. OUMC and Oklahoma Children's Hospital are both part of the OU Health system.

4. Jaci and her husband both begged staff at Oklahoma Children's Hospital to perform an abortion, even asking to speak to a hospital ethics board and explain why Jaci should be permitted to access life-saving care. However, providers told Jaci that they could not provide an abortion until she was actively crashing in front of them or on the verge of a heart attack. In the meantime, the best that they could offer was to let Jaci sit in the parking lot so that she would be close to the hospital when her condition further deteriorated. As her condition grew more dire, Jaci fled the state to receive an abortion, traveling three hours by car during a medical emergency.

5. Pregnant people should not have to fear that they will be denied life-saving treatment from Oklahoma hospitals, nor should they be forced to wait until they are at death's door before health care providers intervene. EMTALA was designed to ensure that everyone—including people experiencing complications due to pregnancy—would be able to obtain timely medical care in emergencies. Telling a patient to sit in the parking lot and wait until they are on the brink of death and discharging them in the middle of a medical emergency is precisely the sort of ill-treatment that EMTALA was intended to prevent.

6. EMTALA's protections apply where "the absence of immediate medical attention could reasonably be expected" to result in harm to a patient's health. 42 U.S.C. § 1395dd(e)(1)(A). For patients in such situations, EMTALA prohibits hospitals from turning patients away or transferring them without first stabilizing their condition.[1] A qualifying hospital—one that has an emergency department and accepts Medicare funds—must provide these services to all patients. 42 U.S.C. § 1395cc(a)(1). Regardless of state law, "the federal EMTALA requirements have not changed, and continue to require that health care professionals offer treatment, including abortion care, that the provider reasonably determines is necessary to stabilize the patient's emergency medical condition."[2]

7. These protections are critical for pregnant Oklahomans, who are at risk of being denied emergency medical care due to Oklahoma's abortion restrictions. For over a year, there has been rampant confusion among Oklahoma medical providers about when they can provide abortion care to patients experiencing medical emergencies. A study published in April 2023 found

[1] *See* State Operations Manual, Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases, Ctrs. for Medicare & Medicaid Servs. 2 (Jul. 19, 2019), https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_v_emerg.pdf (hereinafter "SOM Appx. V").

[2] Letter from Xavier Becerra to Hospital and Provider Associations (May 1, 2023), https://nwlc.org/wp-content/uploads/2022/11/Letter-to-Hospitals-FINAL.docx_Completed.pdf.

that, when contacted by research assistants posing as prospective patients, most Oklahoma hospitals could not provide any information about their policies and procedures for providing abortion care necessary to save a patient's life.[3] For example, a representative at one hospital claimed that "if the situation is truly life-threatening, decisions will be made," but did not explain how such decisions would be made or who would make them.[4] Another hospital representative stated, "[i]t is tricky because of state laws, but we will not let the mom die."[5] In another circumstance, hospital representatives indicated that a pregnant patient's body would be used as an "incubator" during an emergency.[6] Staff at three Oklahoma hospitals reported that they would never provide abortions—with one staff member incorrectly telling callers that "[n]owhere in the state of Oklahoma can you get an abortion for any reason"[7]—despite the fact that Oklahoma law has narrow exceptions to permit abortion in limited circumstances.

8. There was no legal basis for Oklahoma Children's Hospital to deny Jaci necessary medical care. Even the four abortion bans implemented in Oklahoma around the overturning of *Roe v. Wade* in 2022 had exceptions that extended to active medical emergencies. *See* Okla. Stat. Ann. tit. 21, § 861 (2021); Okla. Stat. Ann. tit. 63, § 1-731.4(B)(1) (2022); H.B. 4327, § 2; S.B. 1503, § 5(A). Moreover, EMTALA preempts state law "to the extent that the [state law] requirement directly conflicts with a requirement" of EMTALA. 42 U.S.C. § 1395dd(f); *see also*

[3] Phys. for Human Rts. et al., *No One Could Say: Accessing Emergency Obstetrics Information as a Prospective Prenatal Patient in Post*-Roe *Oklahoma* 1 (Apr. 2023), https://reproductiverights.org/wp-content/uploads/2023/04/OklahomaAbortionBanReport_Full_SinglePages-NEW-4-27-23.pdf.

[4] *Id.* at 12

[5] *Id.* at 14.

[6] *Id.* at 16.

[7] *Id.* at 13.

United States v. Idaho, 623 F. Supp. 3d 1096, 1109–11 (finding that Idaho abortion ban, which criminalized abortion even during medical emergencies, made compliance with EMTALA impossible and was therefore preempted). Thus, given EMTALA, and the fact that medical emergencies were exempted by Oklahoma's abortion bans, Jaci should have received the care she needed.

9. Even after court rulings blocking some (but not all) of Oklahoma's abortion bans,[8] health care providers remain confused about what care they may legally provide.[9] And pregnant Oklahomans remain at risk of being denied care. Clarity is needed so that Oklahoma hospitals and clinicians understand their obligations under EMTALA.

10. Jaci Statton respectfully requests that the U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services ("CMS") and Region 6 Office investigate Oklahoma Children's Hospital's refusal to provide her with emergency medical treatment in early March 2023 and issue a finding that Oklahoma Children's Hospital violated EMTALA by failing to provide her with stabilizing care. This investigation and finding are necessary to safeguard access to emergency medical treatment for all pregnant Oklahomans who remain at risk that hospitals will deny them care in the event that they experience a pregnancy complication. Jaci further requests that, for reasons discussed herein, CMS initiate an independent investigation into this Complaint without referral to the Oklahoma Department of Health, or, at a minimum, conduct

[8] *See Okla. Call for Reprod. Just. et al. v. Drummond et al.*, 2023 OK 24, ¶ 16, 526 P.3d 1123, 1132 (finding 63 O.S. Supp. 2022, § 1-731.4 unconstitutional and enjoining its enforcement); *see also Okla. Call for Reprod. Just et al. v. State et al.*, 2023 OK 60, ¶ 7, 531 P.3d 117, 123 (finding two civilly enforced bans unconstitutional and thus unenforceable).

[9] *See* Ari Fife, *After court rulings, Oklahoma doctors are still confused about when abortion is legal to save a patient's life,* NPR (Jul. 7, 2023), https://www.kosu.org/health/2023-07-07/after-court-rulings-oklahoma-doctors-are-still-confused-about-when-abortion-is-legal-to-save-a-patients-life.

an independent assessment of the facts discussed in this Complaint before reaching its final compliance determination.

JURISDICTION

11. CMS is responsible for ensuring compliance with EMTALA. The CMS Region 6 Office, based in Dallas, Texas, serves the region that includes Oklahoma.[10]

12. CMS Regional Offices evaluate EMTALA complaints and, for those requiring further investigation, generally refer the case to state survey agencies to investigate on CMS's behalf.[11] However, even when a state agency conducts the investigation, CMS Regional Offices "retain delegated enforcement authority and final enforcement decisions are made there."[12] Moreover, because they are the final arbiter of whether EMTALA has been violated, CMS Regional Offices are not bound by a state agency's factual findings and may consider additional information to determine whether a facility is in compliance with EMTALA.[13]

13. In certain instances, CMS does not refer alleged EMTALA violations to state survey agencies. For example, "CMS refers appropriate cases to the OIG [Office of Inspector General]

[10] Ctrs. for Medicare & Medicaid Servs., *CMS Regional Offices*, https://www.cms.gov/Medicare/Coding/ICD10/CMS-Regional-Offices (last visited Sept. 5, 2023).

[11] State Operations Manual, Chapter 5 – Complaint Procedures, Ctrs. for Medicare & Medicaid Servs. § 5430.1 (Feb. 10, 2023), https://www.cms.gov/Regulations-and-Guidance-Guidance/Manuals/Downloads/som107c05pdf.pdf (hereinafter "SOM Ch. 5")

[12] SOM Appx. V at 7; *see also id.* at 14 (noting that "it is the responsibility of the [Regional Office]" to determine if an EMTALA violation has occurred).

[13] *See* SOM Ch. 5 § 5460 *et seq.*; *see also* SOM Appx. V at 13–14 (advising state survey agencies that staff should not tell hospitals whether investigation shows an EMTALA violation occurred "since it is the responsibility of the [CMS regional office] to make that determination").

for investigation."[14] "Appropriate cases" for OIG review may include those where a physician failed to treat or stabilize a patient with a condition that required immediate medical care.[15]

14. In this case in particular, CMS should not rely solely on a state's agency assessment of the facts in reaching its determination. Oklahoma state officials have demonstrated hostility to abortion, even in circumstances where the patient's life is at risk. Specifically, Governor Kevin Stitt has been openly critical of two recent Oklahoma Supreme Court decisions recognizing a right to abortion to preserve a patient's life, saying that he "wholeheartedly disagree[s]" with the Oklahoma Supreme Court's limited finding.[16]

15. In light of these concerns, Jaci requests that CMS and the Region 6 Office conduct an independent investigation of this Complaint, whether by referring this matter to OIG or otherwise. Alternatively, if CMS refers the matter to the Oklahoma Department of Health for investigation, Jaci requests that CMS conduct a full, independent review and consider the facts contained in this Complaint before concluding its investigation and determining whether OU Health complied with EMTALA.

FACTUAL ALLEGATIONS

Abortion is Stabilizing Medical Treatment

16. Pregnancy can lead to any number of medical emergencies where prompt termination of pregnancy is necessary to preserve the life, health, and/or future fertility of the

[14] SOM Ch. 5 § 5480.2.

[15] *Id.*

[16] *See Governor Stitt Criticizes Oklahoma Supreme Court Opinion* (Mar 21. 2023); https://oklahoma.gov/governor/newsroom/newsroom/2023/march2023/governor-stitt-criticizes-oklahoma-supreme-court-opinion.html; *Governor Stitt Issues Statement Criticizing Oklahoma Supreme Court Opinion* (May 31, 2023), https://oklahoma.gov/governor/newsroom/newsroom/2023/may2023/governor-stitt-issues-statement-criticizing-oklahoma-supreme-cou.html.

patient. "[I]t is impossible to create an inclusive list of conditions that qualify" as medical emergencies and indeed would be "dangerous to attempt to create a finite list of conditions to guide the practice of clinicians attempting to navigate their state's abortion restrictions."[17] Such lists do not work because "[t]he practice of medicine is complex and requires individualization—it cannot be distilled down to a one-page document or list that is generalizable for every situation; No single patient's condition progresses at the same pace; A patient may experience a combination of medical conditions or symptoms that, together, become life-threatening; Pregnancy often exacerbates conditions or symptoms that are stable in nonpregnant individuals; There is no uniform set of signs or symptoms that constitute an 'emergency'; Patients may be lucid and appear to be in stable condition but demonstrate deteriorating health."[18]

17. Nonetheless, medical organizations have described broad categories of pregnancy-related emergent conditions. Some examples include ectopic pregnancies (where the pregnancy implants outside of the uterus); conditions that can lead to dangerous bleeding or hemorrhage; severe forms of hypertension; conditions that can lead to dangerous infection, including premature rupture of membranes, and extreme hyperemesis gravidarum (dangerous nausea and vomiting leading to hospitalization).[19]

18. Abortion care, like all pregnancy care, is time-sensitive. Delaying abortion care during a medical emergency can lead to serious complications, "such as severe sepsis requiring limb amputation, uncontrollable uterine hemorrhage requiring hysterectomy, kidney failure

[17] Am. Coll. Obstetricians & Gynecologists, *Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions* (Aug. 15, 2022), https://acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions#.

[18] *Id.*

[19] Michael S. Beeson et al., *The 2019 Model of the Clinical Practice of Emergency Medicine*, 59 J. of Emergency Med. 96, 110 (2020), https://www.jem-journal.com/article/S0736-4679(20)30154-2/fulltext.

requiring lifelong dialysis, hypoxic brain injury, or even death." *United States v. Idaho*, 623 F. Supp. 3d 1096, 1101 (D. Idaho 2022).

19. The harms associated with delaying abortion care during a medical emergency are not hypothetical. A study conducted in two Dallas hospitals after a 6-week abortion ban took effect in Texas in September 2021 found a significant increase in maternal morbidity among patients with preterm labor whose care was delayed due to the ban. The study followed 28 patients. Among these patients, 43% (12 of 28) experienced infection or hemorrhage, and one patient required a hysterectomy.[20] Other maternal morbidities included ICU admissions, blood transfusions, postpartum emergency room visits, and postpartum readmission.[21] The study authors concluded what physicians already know—"state-mandated expectant management" during a medical emergency is associated with "significant maternal morbidity."[22]

20. A partial molar pregnancy is one example of an emergent pregnancy complication for which prompt medical care is necessary. A partial molar pregnancy forms when two sperm fertilize a single egg, resulting in an embryo with too much genetic material. Additionally, irregular tissue with fluid-filled sacs develops in the placenta. The fetus cannot survive, and partial molar pregnancies usually end in a miscarriage.[23]

21. Carrying a partial molar pregnancy carries significant risks to the pregnant person. The fluid-filled sacs that form in the placenta can burst and cause excessive bleeding. As a result,

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[20] *See* Anjali Nambiar et al., *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks' Gestation or Less with Complications in Two Texas Hospitals After Legislation on Abortion*, 227 Am. J. Obstetrics & Gynecology 648, 649 (2022), https://doi.org/10.1016/j.ajog.2022.06.060.

[21] *Id.*

[22] *Id.*

[23] *Partial Molar Pregnancy*, Cleveland Clinic, https://myclevelandclinic.org/health/diseases/12332-partial-molar-pregnancy (last visited Sept. 5, 2023).

patients may develop sepsis, a uterine infection, preeclampsia, or shock from blood loss.[24] Patients with molar pregnancies may experience a condition called gestational trophoblastic neoplasia, where irregular tissue from the pregnancy continues to grow even after the pregnancy has been terminated.[25] Patients with molar pregnancies can also develop a rare form of cancer called choriocarcinoma.[26]

22. Patients with partial molar pregnancies may experience a number of debilitating symptoms, including pain and severe nausea and vomiting. They also develop higher levels of human chorionic gonadotropin (HCG), a pregnancy hormone.[27]

23. Treatment of a partial molar pregnancy involves removing the tissue from the uterus by performing a dilation and curettage (D&C).[28] A D&C is a procedure in which the patient's cervix is dilated and an "instrument is used to remove tissue from the inside of the uterus."[29] "Complications [from a D&C] are rare."[30]

OU Health Did Not Provide Jaci with A Necessary Abortion During a Medical Emergency[31]

24. Jaci Statton is 26 years old and lives with her family in Central Oklahoma.

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[24] *Pregnancy*, Cleveland Clinic, https://myclevelandclinic.org/health/diseases/17889-molar-pregnancy (last visited Sept. 5, 2023).

[25] *Id.*

[26] *Id.*

[27] *Molar Pregnancy*, supra note 23.

[28] *Molar Pregnancy*, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/molar-pregnancy/diagnosis-treatment/drc-20375180 (last visited Sept. 5, 2023).

[29] Am. Coll. Obstetricians & Gynecologists, *Dilation & Curettage (D&C)*, https://www.acog.org/womens-health-faqs/dilation-and-curettage (last visited Sept. 5, 2023).

[30] *Id.*

[31] The allegations contained herein are to the best of Jaci's knowledge and recollection.

25. Early in 2023, Jaci learned that she was pregnant. She and her husband were surprised but excited. They have three young children and thought that adding another child to their families would bring even more joy into their lives.

26. Everything looked good during Jaci's first appointment with her OB/GYN. She and her husband discussed baby names, and her friends started buying baby clothes and gifts for the nursery.

27. In February, Jaci started experiencing lower abdominal pain, nausea, and dizziness. Over the course of several days, her symptoms worsened. Jaci went to the local emergency room at St. Anthony Shawnee in mid-February, where she was treated and discharged in stable condition.

28. Less than two weeks later, Jaci was standing in the kitchen when she started to feel very sick and nearly passed out. Jaci looked down and saw blood soaking through her jeans.

29. Jaci's husband grabbed the kids and took her to the emergency room at St. Anthony Shawnee. There, staff ran Jaci's blood work and performed other diagnostic tests. Jaci was stable when she was discharged from the hospital with advice to follow up with her doctor or return to the emergency department if her symptoms progressed.

30. The next day, Jaci went to see her OB/GYN. Jaci's doctor did an ultrasound and delivered crushing news to Jaci and her husband: Jaci had a partial molar pregnancy.

31. The doctor explained that the pregnancy was nonviable and could become cancerous. On the ultrasound, Jaci's doctor showed her that she had cysts inside her uterus. Any time one of those cysts ruptured, she would bleed. If more cysts ruptured, Jaci could bleed out. The doctor explained that the fetus was not viable and that continuing the pregnancy was dangerous.

32. At this point, Jaci was so sick that she could not eat and could hardly walk. She was very lethargic, and then she started bleeding again. Jaci's husband took her to the emergency room at OUMC.

33. At OUMC, after performing more bloodwork to confirm the diagnosis, the doctors told Jaci that she needed a D&C. However, the ultrasound tech objected because he could detect fetal cardiac activity on the ultrasound. Jaci heard the doctors arguing with him and telling him to look again at the ultrasound. The ultrasound tech declared that there was cardiac activity and insisted that physicians could not intervene to treat Jaci. Jaci was then moved to another facility within the OU Health system—Oklahoma Children's Hospital.

34. At Oklahoma Children's, medical staff acknowledged that Jaci's condition was serious and that the pregnancy was threatening her life. They told her that an abortion was the best medical decision and that it needed to happen soon. However, because they could still detect cardiac activity on an ultrasound, Jaci's providers would not perform an abortion. Staff made it clear why they were refusing to treat Jaci, telling her, in sum and substance, that they believed that they were prevented from providing care due to Oklahoma law until Jaci was near death.

35. Staff at Oklahoma Children's wanted to send Jaci home with instructions to return if she got sicker. However, because Jaci lives almost an hour away, her husband was worried that they would not make it back to the hospital in time. At one point, as Jaci clutched her stomach in pain, her husband pleaded with the hospital doctor to save her life. He begged them for the opportunity to speak to a hospital ethics board and ask for an exception for Jaci, reminding staff that they lived an hour from the hospital and may not be able to return if Jaci's condition worsened.

36. Jaci's providers were sympathetic but firm: They would not offer her a D&C unless she was at death's door. They said words to the effect of, "[t]he best we can tell you to do is sit in

the parking lot, and if anything else happens, we will be ready to help you. But we cannot touch you unless you are crashing in front of us or your blood pressure goes so high that you are fixing to have a heart attack."

37. Jaci watched as her husband, with his head in his hands, came apart and cried. He said to Jaci, in sum and substance, "I'm going to lose you. I'm going to lose our baby … I'll lose my family."

38. As Jaci's condition continued to worsen, a doctor at Oklahoma Children's began talking to Jaci about the need to travel to a neighboring state with abortion access in order to get the care that she needed. Shortly thereafter, Jaci and her family drove around 200 miles to Wichita, Kansas to reach the closest facility that would provide her with a D&C.

39. It was not until Jaci was inside the clinic that she was finally able to process the heartbreak of losing a wanted pregnancy and the anxiety around the process of trying to get life-saving care.

40. While Jaci was getting treated, her family waited in the parking lot, where they were surrounded by protesters holding signs saying, "stone all whores." After the procedure, Jaci returned to the car where her family was waiting. As they drove past the clinic, her family covered Jaci's face with a blanket to keep her from seeing or hearing the protestors.

41. Jaci has not physically recovered from her ordeal. Months later, she continues to have significant pain on the right side of her abdomen, where the cysts were concentrated during the partial molar pregnancy. She also feels more fatigued and more sensitive to heat. And, nearly six months after her abortion, Jaci's hormone levels are just now approaching a "normal" level after having been elevated for months. Jaci had an intrauterine device (IUD) inserted at the clinic in Kansas where she received her abortion to prevent future pregnancies. However, in May 2023,

Jaci had to have a second procedure to remove additional tissue which had grown around the IUD and displaced it. At that time, Jaci opted to undergo tubal ligation to prevent future pregnancies because she believes that it is too risky to become pregnant again in Oklahoma.

42. Similarly, Jaci and her family continue to experience lasting emotional harm related to the ill-treatment at Oklahoma Children's. While she believes that it was the right choice for her health, Jaci is still sometimes sad that she will not be able to have more children. Jaci has also started taking antidepressants and continues to be upset that OU Health denied her care when she needed it most.

LEGAL ALLEGATIONS

43. Congress enacted EMTALA in 1986 to "provide an 'adequate first response to a medical crisis' for all patients." *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 880 (4th Cir. 1992) (quoting 131 Cong. Rec. S13904 (daily ed. Oct. 23, 1985) (statement of Sen. Durenberger)). Any hospital that has an emergency department and receives Medicare funds is subject to EMTALA's requirements. 42 U.S.C. § 1395cc(a)(1).

44. EMTALA requires that a patient seeking care for an "emergency medical condition" at a hospital that accepts Medicare funds must be provided treatment necessary to stabilize the patient. 42 U.S.C. § 1395dd(b)(1). EMTALA defines an "emergency medical condition" to include: "(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in – (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part . . . ." *Id.*

§ 1395dd(e)(1). "[C]omplications of pregnancy loss" are emergency medical conditions under EMTALA.[32]

45. Patients who are found to have an "emergency medical condition" must be "stabilized" and treated within the capabilities of the hospital. Hospitals may admit a patient "as an inpatient in good faith in order to stabilize the emergency medical condition." 42 C.F.R. § 489.24(d)(2)(i). However, EMTALA "requires more than the admission and further testing of a patient; it requires that actual care, or treatment, be provided as well." *Moses v. Providence Hosp. and Med. Ctrs., Inc.*, 561 F.3d 573, 582 (6th Cir. 2009).

46. Stabilizing care, as defined by EMTALA, includes the care "necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during" the patient's discharge or transfer. 42 U.S.C. § 1395dd(e).

47. CMS specifically lists D&C, along with other medical or surgical means of terminating a pregnancy, as an example of "stabilizing treatment" that covered hospitals may need to provide for pregnant patients experiencing medical emergencies.[33] *See also United States v. Idaho*, 623 F. Supp. 3d at 1109 ("When an abortion is the necessary stabilizing treatment, EMTALA directs physicians to provide that care if they reasonably expect the patient's condition will result in serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or serious jeopardy to the patient's health." (citing 42 U.S.C. § 1395dd(3)(1))).

[32] *See Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss,* Ctrs. for Medicare & Medicaid Servs. 4 (Sept. 17, 2022), https://www.cms.gov/files/document/qso-21-22-hospital-revised.pdf (hereinafter "EMTALA Guidance").

[33] *Id.*

48. Oklahoma Children's Hospital is subject to EMTALA. Oklahoma Children's Hospital operates an emergency department[34] and is a component of OU Health. OU Health participates in Medicare.[35]

49. A partial molar pregnancy is an emergency medical condition under EMTALA. Staff at Oklahoma Children's Hospital were well-aware that the absence of medical treatment was likely to harm Jaci's health; indeed, the reason they advised her to sit in the parking lot and wait until her condition worsened was that staff assumed that, without treatment, Jaci's condition was almost certain to deteriorate to the point of imminent death.

50. Oklahoma Children's had the capacity to provide stabilizing care to Jaci. On information and belief, the Mother & Baby Center at Oklahoma Children's regularly treats patients with high-risk pregnancies[36] and thus has the capacity to perform standard gynecological procedures like a D&C. Indeed, while Jaci was hospitalized and begging for treatment, her providers never indicated that they were incapable of providing her with the necessary treatment and even told her that they *would* treat her if she were on the verge of death.

51. Oklahoma Children's knew that failing to treat Jaci would lead to a material deterioration of her condition. In fact, over the course her hospitalization at Oklahoma Children's, Jaci's condition did significantly deteriorate. Moreover, her providers assumed that her condition would continue to deteriorate to the point where they would then be able to intervene when they advised her to wait in her car until she was at death's door so that they could then intervene.

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[34] *See* Oklahoma Children's Hospital, https://www.ouhealth.com/oklahoma-childrens-hospital/ (noting that the hospital has "Oklahoma City's only 24/7 pediatric emergency room" as well as an "obstetrics emergency room") (last visited Sept. 5, 2023).

[35] *See OU Medicine, Inc. Financial Assistance Policy*, https://www.ouhealth.com/documents/content/2021-Financial-Assistance-Policy-English.pdf (last visited Sept. 5, 2023).

[36] *See Pregnancy & Childbirth*, Oklahoma Children's Hospital, https://www.ouhealth.com/health-services/pregnancy-childbirth (last visited Sept. 5, 2023).

52. Discharging Jaci without treatment in the midst of a medical emergency is the epitome of an EMTALA violation.

RELIEF REQUESTED

53. Jaci Statton respectfully requests that CMS and/or HHS OIG:

a. Conduct an independent investigation of Oklahoma Children's Hospital for EMTALA violations arising from their refusal to provide her with necessary stabilizing treatment to preserve her life and health;

b. Take all necessary steps to remedy all unlawful conduct identified in its investigation, including by imposing all appropriate penalties and by clarifying that EMTALA preempts Oklahoma law;

c. Monitor any resulting agreements between CMS and OU Health and/or Oklahoma Children's Hospital to ensure compliance with EMTALA; and

d. Provide other appropriate equitable relief.

Respectfully submitted,

/s/Rabia Muqaddam
Rabia Muqaddam
Meetra Mehdizadeh
Center for Reproductive Rights
199 Water St., 22nd FL
New York, NY 10038
(917) 637-3645
rmuqaddam@reprorights.org
mmehdizadeh@reprorights.org

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