

Exhibit 4

Frequently Asked Questions: No Public Funds for Abortion Act and Idaho Abortion Laws

Note: This information is provided for general informational purposes only and is not intended as legal advice. In the event an employee or unit of the University wishes to seek legal advice regarding compliance with the NPFAA or other aspects of Idaho's abortion laws, please contact the Office of the General Counsel.

How does the recent United States Supreme Court Decision (*Dobbs*) impact Idaho?

The U.S. Supreme Court recently overturned existing precedent protecting an individual's right to seek abortion services. As a result, the laws regarding provision of these services are rapidly evolving and vary significantly state by state. Idaho statutes currently in effect, enacted prior to *Dobbs*, now criminalize abortion in most circumstances and are currently being litigated in state and federal court. In 2021, the Idaho State Legislature adopted the "No Public Funds For Abortion Act," which generally prohibits public entities and their employees from taking a number of actions relating to abortion (described below). As the NPFAA already prohibited state employees and entities from providing services relating to abortion, these changes do not directly impact University operations, but may have related impacts as the law evolves and the changes may impact the University community. For example, since abortion itself is now banned in most cases, liability could arise if an employee were deemed to be "aiding and abetting" or assisting in the provision of abortion, which could implicate the employee directly, the individual seeking the services (if banned in that circumstance), as well as potentially records or evidence relating to the service or assistance. These FAQs focus primarily on the NPFAA provisions, which relate most directly to University operations.

When was the No Public Funds for Abortion Act Enacted? Where do I find it?

The Idaho State Legislature enacted the No Public Funds for Abortion Act during the 2021 Session of the Legislature. The original text of the Act can be found on the legislature's website for that session, but it has now been codified in Idaho Code, Title 18, Chapter 7, available here:

<https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH87/>

Who does the NPFAA apply to?

In general, NPFAA applies to public entities that utilize or receive public funds, including tuition and fees, school-based health clinics, and employees of public entities including higher education employees. NPFAA contains limitations on the use of public funds as well as public facilities and other resources.

What activities does NPFAA cover?

NPFAA contains a number of different restrictions on activities of public entities and employees. In summary, they include:

- *Contracts or Commercial Transactions with Abortion Providers.* Absent an applicable exception, the University cannot enter into contracts or commercial transactions with abortion providers or affiliates.
- *Contracts or Commercial Transactions with Providers and Facilities.* Similarly, public health care facilities cannot enter into any contract or commercial transaction with any health care provider or health care facility whereby the provider or facility agrees to "provide, perform, or induce an abortion, except when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself," subject to certain exceptions.
- *No Public Funds for Prohibited Services.* Public funds may not be used "to provide, perform or induce an abortion; assist in the provision or performance of an abortion; promote abortion; counsel in favor of abortion; refer for abortion; or provide facilities for an abortion or for training to provide or perform an abortion."
- *Prohibited Services by Public Employees.* An employee of a public institution of higher education, acting within the scope of such a person's employment, may not provide these prohibited services to any person.
- *Prohibited Services at Health Clinics.* School-based health clinics may not provide the following services: providing or performing an abortion, counseling in favor of abortion, referring for abortion, or dispensing "a drug classified as emergency contraception by the food and drug administration (FDA), except in the case of rape as defined in section 18-6101, Idaho Code," subject to exceptions.
- *State Funds for Assistance.* 18-8707 prohibits the use of any state funds to provide or procure an abortion or distribute "drugs classified as emergency contraception by the FDA, except in the case of rape as defined in Section 18-6101, Idaho Code," or distribute funds for payment for abortion, abortion referral, abortion counseling, or abortion-related medical or social services.
- *Prohibited Use of School Tuition and Fees.* NPFAA prohibits the use of school tuition or fees to be used "in any way to pay for an abortion, provide or perform an abortion, or provide facilities for an abortion or for training to provide or perform abortion." There are no exceptions listed to this prohibition.

How does NPFAA define "abortion"?

For purposes of the NPFAA, "abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, remove a dead unborn child caused by spontaneous abortion, or remove an ectopic pregnancy.

Are there any exceptions to the NPFAA prohibitions?

Except for the prohibition regarding use of school tuition and fees, most of the prohibitions provided for in the NPFAA do not apply to:

- (1) an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;
- (2) a hospital, as defined in Idaho Code; or
- (3) a contract or commercial transaction that is subject to a federal law related to Medicaid.

How is “hospital” defined for the purpose of NPFAA?

“Hospital” is defined in 39-1301 as:

- o (a) “Hospital” means a facility which:
 - (1) Is primarily engaged in providing, by or under the supervision of physicians,
 - (a) concentrated medical and nursing care on a twenty-four (24) hour basis to inpatients experiencing acute illness; and (b) diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons; and (c) rehabilitation services for injured, disabled, or sick persons; and (d) obstetrical care.
 - (2) Provides for care of two (2) or more individuals for twenty-four (24) or more consecutive hours.
 - (3) Is staffed to provide professional nursing care on a twenty-four (24) hour basis.

Are there prohibitions on emergency contraception?

The NPFAA prohibits any school based health clinic from dispensing emergency contraception, except in the case of rape. In addition, NPFAA prohibits any employee of a public institution of higher education from dispensing emergency contraception (except in the case of rape) in the scope of such person’s employment. Finally, NPFAA prohibits the use of state funds to distribute emergency contraception, except in the case of rape.

What if the transaction or arrangement does not involve an expenditure of public funds?

Many of the prohibitions do not involve direct use of public funds and apply regardless of a direct expenditure of public funds. For example, 18-8703 prohibits Boise State (as a unit of state government) from entering into any “contract or commercial transaction” with an “abortion provider or affiliate of an abortion provider” regardless of whether or not there is an expenditure of public funds. Similarly, use of state facilities, equipment, resources are prohibited, regardless of expenditure of public funds and employees are prohibited from providing prohibited services regardless of direct expenditure of funds.

Can public employees provide objective resources that reference abortion and emergency contraception?

NPFAA prohibits promoting abortion, counseling in favor of abortion, referring for abortion, and providing facilities or training for abortion. NPFAA also prohibits assisting in the provision of abortion and dispensing or distributing emergency contraception. General information and resources can be provided, so long as the employee or unit is not engaging in the prohibited actions in providing the resources. Resources could also be provided in limited circumstances under an exception listed in the NPFAA. For example, emergency contraception may be provided in the case of rape. Any student or community members seeking information and resources should be referred to one of the University’s licensed counselors or providers.

Can curriculum include information or training regarding abortion and emergency contraception?

Based on the plain language of the NPFAA, curriculum and training could include general information and educational materials that discuss abortion, so long as it does not engage in prohibited activity in so doing. For example, the material should not promote abortion. Faculty is encouraged to contact OGC with any specific questions regarding curriculum and training materials.

What happens if someone violates the prohibitions contained in the NPFAA?

Violation of the NPFAA could expose a person to criminal liability, and the Act itself references the criminal penalties applicable for misuse of public monies. Possible penalties could include, depending on the circumstances:

- o Misdemeanor with maximum fine of \$1,000 and jail time of up to one year.
- o For multiple violations, amounts can be combined, which could result in a felony offense.
- o Similarly, being found guilty of multiple violations will result in a felony-level offense.
- o Additionally: termination of employment, restitution, disqualified from certain public employment, others.

What are the current Idaho criminal laws regarding abortion and related services?

For folks inquiring about the current state of laws surrounding abortion in Idaho, there are some good resources online attempting to summarize the current state of the various laws in Idaho surrounding abortion specifically. Please be aware that this is currently rapidly evolving, there are multiple court cases pending surrounding these laws. The Office of General Counsel cannot speak to the accuracy of such information and cannot provide advice to folks surrounding compliance with or even the general meaning and interpretations of these laws. Folks needing or wanting more specific information, based on their personal circumstances, should seek guidance from their own advisors based upon their own circumstances. University clients with specific questions should contact OGC for specific guidance.

Here is one source of such general information:

[Idaho Abortion Laws: New Law and EMTALA Exception Now Effective | Holland & Hart LLP](#)

Am I allowed to state my opinion, attend public events, regarding these issues?

As is always the case, private individuals acting outside of their employment have first amendment rights to political speech. Faculty may also have protection with regard to academic freedom as relates to scholarship. These instances can be very fact-based and vary based on the content and circumstances of the speech whether or not the speech is protected speech. Further guidance on political speech is forthcoming but for questions. In general, such speech is protected if acting in one's capacity as a private citizen (outside work hours, not utilizing university resources, etc.).

What should I do if I am a faculty member or employee and a pregnant student reaches out to me for advice?

The best solution is to refer the student to University's licensed counselors and medical providers or to outside counselors, who are trained and ready to assist and refer students to needed resources and information. Faculty should not be providing advice or guidance to students in this scenario.