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Guidance Regarding the Regulatory Implementation of Senate Enrolled Act 1 – 2022 (ss)

On September 8, 2022, Senate Enrolled Act 1 – 2022 (special session) (“SEA 1”) became law and made changes to Indiana’s abortion laws. The implementation of SEA 1 was halted by the Indiana courts on September 22, 2022. Subsequently, the Indiana Supreme Court decided that SEA 1 can go into effect. Based on court rules, SEA 1 will become effective upon certification, on or about August 1, 2023. A separate Indiana court case implicating SEA 1 that involves arguments concerning sincerely held religious beliefs is currently being litigated and is addressed below.

SEA 1 eliminates the state licensure of abortion clinics and requires all abortion procedures (surgical and medication-induced) to be performed in a licensed hospital or licensed outpatient ambulatory surgical center whose majority ownership is held by an Indiana hospital. Therefore, upon certification of the Supreme Court decision, all abortion clinic licenses issued by the Indiana Department of Health will be rendered void and abortion clinics will no longer be permitted to provide abortions under any circumstances.

SEA 1 does not require abortion clinics to cease all operations or close. Clinics may continue to provide other health care services permitted by a practitioner’s professional license. Services rendered to patients under a practitioner’s professional license are subject to oversight by the practitioner’s respective licensing board through the Indiana Professional Licensing Agency.

Under SEA 1, abortions in Indiana are only permitted to prevent a serious health risk to the pregnant woman or to save the pregnant woman’s life, if the fetus suffers from a lethal fetal anomaly, or if the pregnant woman has been the victim of rape or incest. Detailed requirements can be found on the Indiana General Assembly’s website and are codified at Ind. Code § 16-34-2 et seq. However, as a result of the other pending Indiana court case referenced above, the women who brought forward that lawsuit may obtain an abortion based on their sincerely held religious beliefs that directs them to do so. It is currently being litigated whether the injunction in that case extends to all women in Indiana with similar religious beliefs and the medical providers who would perform those abortions. IDOH will update this guidance as the court

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makes decisions. (*Anonymous Plaintiff 1, et al. v. The Individual Members of the Medical Licensing Board of Indiana, et al.*, 49D01-2209-PL-031056)

For a patient that receives an abortion on or after August 1, 2023, documentation should be included in the patient's medical record that demonstrates compliance with the Indiana Code, including listing the reason for the abortion.