

DECLARATION OF EMERGENCY

Department of Health Office of Public Health

Conditions that Shall Deem an
Unborn Child “Medically Futile”
(LAC 48:I.401)

The Louisiana Department of Health, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted by R.S. 14:87.1, hereby adopts the following emergency rule. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) generally, and R.S. 49:962 specifically.

The LDH/OPH finds it necessary to promulgate an Emergency Rule effective January 27, 2023. This emergency rule is necessary to prevent imminent peril to the public health, safety, or welfare. Without the list provided by this rule, physicians may be hesitant to terminate medically futile pregnancies, possibly resulting in significant physical harm or death to pregnant women exhibiting such medically futile pregnancies. Accordingly, the following Emergency Rule, effective January 27, 2023, shall remain in effect for a maximum of 180 days, or until the final Rule is promulgated, whichever occurs first.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 4. Medically Futile Pregnancies

§401. Conditions that Shall Deem an Unborn Child “Medically Futile”

A. Pursuant to Act 545 of the 2022 Regular Session of the Louisiana Legislature, the Department of Health establishes the following exclusive list of anomalies, diseases, disorders, and other conditions that shall deem an unborn child “medically futile” for purposes of R.S. Title 14, Chap. 1, Part V, Subpart A:

1. achondrogenesis;
2. acrania;
3. anencephaly;
4. acardia;
5. body stalk anomaly;
6. campomelic dysplasia;
7. craniorachischisis;
8. dysencephalia splanchnocystica (Meckel-Gruber syndrome);
9. ectopia cordis;
10. exencephaly;
11. gestational trophoblastic neoplasia;
12. holoprosencephaly;
13. hydrops fetalis;
14. iniencephaly;
15. perinatal hypophosphatasia;
16. osteogenesis imperfecta (type 2);
17. renal agenesis (bilateral);
18. short rib polydactyly syndrome;
19. sirenomelia;
20. thanatophoric dysplasia;
21. triploidy;
22. trisomy 13;
23. trisomy 16 (full);
24. trisomy 18;

25. trisomy 22; and

26. a profound and irremediable congenital or chromosomal anomaly existing in the unborn child that is incompatible with sustaining life after birth in reasonable medical judgment as certified by two physicians that are licensed to practice in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:87.1

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

Public Comments

Interested persons may submit written comments to David McCay, Louisiana Department of Health, P.O. Box 3836, Baton Rouge, LA 70821-3836. He is responsible for responding to inquiries regarding this Emergency Rule.

Dr. Courtney N. Phillips
Secretary

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