

Reproductive Health in a Post-Roe System: The Experience in Idaho

Christine Neuhoff, JD, MBA
Senior Vice President and Chief Legal Officer
St. Luke's Health System

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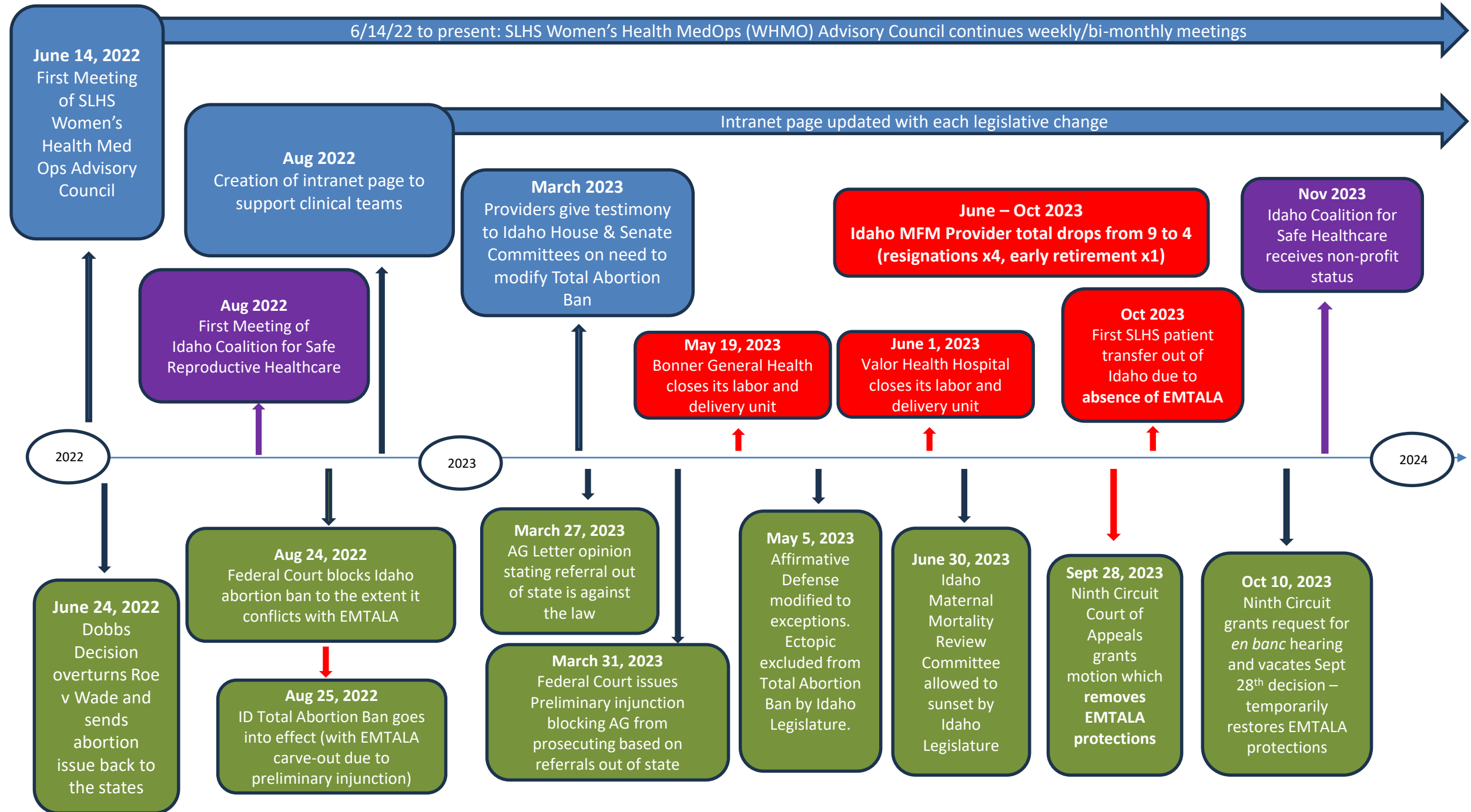


Introduction

Overview

- Idaho's abortion ban was problematic from the outset. It failed to account for the many scenarios faced daily by the state's hospitals and healthcare providers – and a mountain of evidence that such legislation leads to devastating public health outcomes.
- Idaho's abortion ban has inserted the threat of criminal prosecution into the exam room, as patients and their physicians navigate what should be private medical decisions about high-risk pregnancies or significant pregnancy complications.
- Idaho physicians and clinicians are in a difficult position – and Idaho communities are experiencing the consequences of decisions made far removed from the realities of safe, quality health care.





6/14/22 to present: SLHS Women's Health MedOps (WHMO) Advisory Council continues weekly/bi-monthly meetings

Intranet page updated with each legislative change and court decision

Jan – June 2024

Pregnant patients with emergency medical conditions must be transferred out of state to receive necessary stabilizing treatment

Feb 2024

Idaho Physician Well-Being Action Collaborative and Idaho Coalition for Safe Healthcare issue report showing Idaho lost 22% of its practicing obstetricians in the first 15 months after Idaho's abortion ban took effect

April 1, 2024

West Valley Medical Center closes its labor and delivery unit

April 3, 2024

Healthcare providers update legislators on impact of Idaho's law on women's health workforce and access to care

2024

Jan 5, 2024

US Supreme Court grants Idaho's request to stay preliminary injunction...meaning Idaho can enforce abortion ban even when it conflicts with EMTALA. Court also grants writ of certiorari before judgment with argument to occur in April 2024.

April 24, 2024

US Supreme Court hears oral arguments in Moyle vs United States and Idaho vs United States to determine whether EMTALA preempts Idaho's abortion ban

June 27, 2024

US Supreme Court dismisses Idaho's appeal as improvidently granted and restores the preliminary injunction preventing enforcement of abortion ban to the extent it conflicts with EMTALA

Dec 10, 2024

En banc panel of Ninth Circuit to hear oral arguments in United States vs Idaho

Idaho's Abortion Ban

Defense of Life Act

IDAHO CODE § 18-622

Defense of Life Act (aka Total Abortion Ban)

- Anyone who performs or attempts to perform an abortion of a clinically diagnoseable pregnancy is guilty of a felony unless it is necessary to **prevent the death** of the pregnant patient or in the case of **reported** rape or incest but only in the first trimester.

Definitions

- "pregnancy" means the condition of having a **developing fetus** in the body and commences at fertilization.
- "abortion" means the use of any means to **intentionally** terminate a clinically diagnoseable pregnancy **with knowledge** that it will, with reasonable likelihood, cause the death of the unborn child.

Idaho's Abortion Ban

Penalties

❖ *Both Defense of Life Act & Fetal Heartbeat Act*

- 2-5 years imprisonment for any health care professional who performs or assists in performing an abortion
- Loss of license to practice medicine, nursing, pharmacy, etc.
- In neither law is the pregnant patient subject to criminal charges

❖ *Fetal Heartbeat Act – Civil Penalty (aka "vigilante law")*

- Allows pregnant patient, father, grandparent, sibling, aunt or uncle of fetus to sue the medical professional who knowingly or recklessly attempted or performed an abortion
- A prevailing plaintiff will be awarded no less than \$20,000

Emergency Medical Treatment and Labor Act

Stabilizing care is required for more than “preventing death”

- EMTALA requires hospitals to provide a medical screening exam and any treatment necessary to stabilize an emergency medical condition to any patient who comes to the emergency department.
- According to 42 U.S.C. § 1395dd(e)(1)(A), an “emergency medical condition” is defined as “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.”

Additional Information

The following sources provide further information

- Idaho Coalition for Safe Healthcare: <https://www.idahocsh.org/>
- Idahoans for Healthy Moms: <https://www.idahohealthymoms.org/problem>
- Briefs filed in the United States Supreme Court by the parties in Idaho v United States and Moyle v United States, as well as dozens of *Amicus Curiae* briefs, can be found at:
<https://www.supremecourt.gov/docket/docketfiles/html/public/23-726.html>