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**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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ADMINISTRATIVE COMPLAINT

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PRELIMINARY STATEMENT

1. This complaint is filed by Kelsie Norris-De La Cruz, through her attorneys, pursuant to the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (“EMTALA”). In February 2024, Texas Health Arlington Memorial Hospital (“Texas Health Arlington”) violated EMTALA when it refused Ms. Norris-De La Cruz the treatment necessary to stabilize her emergency medical condition. Specifically, Texas Health Arlington failed to provide Ms. Norris-De La Cruz treatment to terminate her ectopic pregnancy.

2. Ms. Norris-De La Cruz had a tubal ectopic pregnancy, a pregnancy in which a fertilized egg implanted in one of her fallopian tubes, instead of in her uterus. An ectopic pregnancy is never a viable pregnancy. If not treated promptly, it can be deadly for the pregnant patient. A tubal ectopic pregnancy’s growth can cause the fallopian tube to rupture. Rupture can cause major internal bleeding and/or death. Treating a ruptured fallopian tube may require surgical removal of the tube, which harms the patient’s fertility. A patient who is near rupture needs immediate treatment to preserve the patient’s reproductive organs and to protect the patient’s life and health.

3. Nevertheless, against the disagreement of an emergency room physician, and with the explicit acknowledgement that Ms. Norris-De La Cruz’s fallopian tube may rupture, Texas Health Arlington discharged Ms. Norris-De La Cruz without treating her ectopic pregnancy or transferring her to another facility. Hours later, she sought a second opinion from another OB/GYN who easily diagnosed the ectopic pregnancy and rushed Ms. Norris-De La Cruz into successful emergency surgery. This makes clear that Texas Health Arlington’s discharge of Ms. Norris-De La Cruz and failure to provide immediate medical attention to stabilize her emergency medical condition “could reasonably be expected to result in”: “placing the health of the individual . . . in

serious jeopardy”; “serious impairment to bodily functions”; or “serious dysfunction of a[] bodily organ or part”, in violation of EMTALA, 42 U.S.C. § 1395dd(b) and (e)(1)(A).

4. Ms. Norris-De La Cruz’s experience is not isolated. Since *Roe v. Wade* was overturned in 2022, there have been numerous reports of delays and denials of pregnancy-related care in emergency rooms in states with abortion bans, even for care that is legal under state law.¹ This is because of the extreme penalties for physicians who violate state abortion bans. In Texas, a physician who provides a prohibited abortion faces up to life in prison, loss of medical license, and at least \$100,000 in fines. *See* Tex. Health & Safety Code §§ 170A.004–170A.007; Tex. Penal Code §§ 12.32–12.33; Tex. Health & Safety Code §§ 171.207–171.211. Thus, some clinicians have been reluctant to provide medical intervention for a suspected or presumed ectopic pregnancy. Instead, they have forced patients to wait days or weeks and undergo additional testing to confirm and reconfirm the diagnosis.² They are doing so out of concern that, if their diagnosis is incorrect, termination would be a prohibited abortion that could result in criminal and civil penalties. The results for patients are often disastrous.³

5. These concerns do not permit denying patients care in violation of EMTALA. Hospitals cannot justify refusing to terminate ectopic pregnancies as stabilizing care required under EMTALA for emergency medical conditions by pointing to state abortion bans. Regardless

¹ Amanda Seitz, *Emergency Rooms Refused to Treat Pregnant Women, Leaving One to Miscarry in a Lobby Restroom*, The Associated Press (April 19, 2024), <https://apnews.com/article/pregnancy-emergency-care-abortion-supreme-court-roe-9ce6c87c8fc653c840654de1ae5f7a1c>.

² *See* Kellie Mullany et al., *Overview of Ectopic Pregnancy Diagnosis, Management, and Innovation*, 19 *Women’s Health*, 1, 9-10 (2023); Daniel Grossman et al., *Preliminary Findings: Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision, Advancing New Standards in Reproductive Health* (May 2023) (“Care Post-Roe Report”), <https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf>.

³ *See* Charlotte Huff, *In Texas, Abortion Laws Inhibit Care for Miscarriages*, NPR (May 10, 2022), <https://www.npr.org/sections/health-shots/2022/05/10/1097734167/in-texas-abortion-laws-inhibit-care-for-miscarriages>.

of concerns about state law, EMTALA forbids hospitals like Texas Health Arlington from refusing stabilizing treatment to patients with presumed or suspected ectopic pregnancies, like Ms. Norris-De La Cruz, because such patients' health is in serious jeopardy without immediate treatment. Moreover, although Texas law bans nearly all abortions, Texas law explicitly *allows* termination of ectopic pregnancies.

6. Ms. Norris-De La Cruz respectfully requests that the U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services ("CMS") and Region 6 Office investigate Texas Health Arlington's refusal to provide her with emergency medical treatment in February 2024 and issue a finding that Texas Health Arlington 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 Texans who remain at risk that hospitals will deny them care if they experience an emergency medical condition, such as an ectopic pregnancy. Especially in states like Texas that severely criminalize certain pregnancy-related care, enforcing EMTALA's mandates is critical to protect the lives, health, and fertility of pregnant patients.

7. Ms. Norris-De La Cruz further requests that, for reasons discussed herein, CMS initiate an independent investigation into this Complaint without referral to the Texas Department of State Health Services, or, at a minimum, conduct an independent assessment of the facts discussed in this Complaint before reaching its final compliance determination.

8. Ms. Norris-De La Cruz also directs this complaint to the Office of Civil Rights ("OCR") to request an investigation and finding against the subjects of this complaint for having violated EMTALA, and to request a written, reasoned explanation of that finding, in light of HHS's commitment to work with CMS to address EMTALA complaints and compliance.

JURISDICTION

9. CMS is responsible for ensuring compliance with EMTALA. The CMS Region 6 Office, based in Dallas, Texas, serves the region that includes Texas, where the Recipient Texas Health Arlington is located.⁴

10. 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.⁵ However, even when a state agency conducts the investigation, CMS Regional Offices “retain delegated enforcement authority and final enforcement decisions are made there.”⁶ Moreover, administrative decisionmaker 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.⁷

11. 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] for investigation.”⁸ “Appropriate cases” for OIG investigation may include those where a physician failed to treat or stabilize a patient with a condition that required immediate medical care.⁹

⁴ Ctrs. for Medicare & Medicaid Servs., *CMS Regional Offices*, <https://www.cms.gov/Medicare/Coding/ICD10/CMS-Regional-Offices> (last visited July 22, 2024).

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

⁶ SOM Ch. 5, Appx. V; *see also id.* (noting that “it is the responsibility of the [Regional Office]” to determine if an EMTALA violation has occurred).

⁷ *See* SOM Ch. 5 § 5460 *et seq.*; *see also* SOM Ch. 5 Appx. V (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”).

⁸ SOM Ch. 5 § 5480.2.

⁹ *Id.*

12. Here, CMS should not rely solely on a state agency’s assessment of the facts in reaching its determination because of Texas state officials’ hostility toward interpreting EMTALA as requiring hospitals to provide pregnancy termination to pregnant patients experiencing emergency medical conditions. Texas submitted an amicus brief to the U.S. Supreme Court arguing that EMTALA does not require hospitals to provide abortions that are necessary to stabilize a pregnant person’s emergency medical condition because such abortions “place the health of an unborn child in serious jeopardy—indeed, it results in the child’s destruction.”¹⁰ And after a federal district court in Texas issued an order in *Texas v. Becerra* preliminarily enjoining part of CMS’s post-*Dobbs* EMTALA guidance, Texas Attorney General Ken Paxton issued a press release lauding the decision: “We’re not going to allow left-wing bureaucrats in Washington to transform our hospitals and emergency rooms into walk-in abortion clinics,” and “I will fight back to defend our pro-life laws and Texas mothers and children.”¹¹

13. Outside the EMTALA context, Texas officials have fought efforts to allow pregnancy termination necessary to protect patient health. In *Cox v. Texas*, a Texas physician went to state trial court and obtained a court order allowing her to provide abortion care to Kate Cox for a non-viable pregnancy that posed a risk to her future fertility, but before even requesting appellate relief, the Attorney General threatened the hospitals where the physician practices with enforcement of Texas’s abortion bans for civil or criminal liability if the hospitals allowed the

¹⁰ *Idaho v. United States*, No. 23A470, 2024 WL 1421914, Br. of Indiana, et al., as Amici Curiae in Supp. of Idaho’s Emergency Appeal for Stay Pending Appeal at 6, (Nov. 27, 2023) (internal citations and quotations omitted), https://www.supremecourt.gov/DocketPDF/23/23727/290617/20231127144632815_23A470%20tsac%20Indiana%20et%20al%20ISO%20Emergency%20Application%20for%20Stay.pdf.

¹¹ Ken Paxton, Tex. Att’y Gen., *Paxton Secures Victory Against Biden Administration, Blocks HHS from Forcing Healthcare Providers to Perform Abortions in Texas* (Aug. 24, 2022), <https://www.texasattorneygeneral.gov/news/releases/paxton-secures-victory-against-biden-administration-blocks-hhs-forcing-healthcare-providersperform>.

court-authorized abortion.¹² And in *Zurawski v. Texas*, twenty Texas patients who were denied or delayed abortion care for serious obstetrical complications and two Texas OB/GYNs sought clarity regarding the medical exception to Texas’s abortion bans, but the Attorney General and Texas Medical Board fought against any clarity in the trial court and in the Texas Supreme Court.¹³ The state’s medical expert in both *Cox* and *Zurawski* works for an anti-abortion advocacy organization and was recently appointed to Texas’s Maternal Mortality and Morbidity Review Committee.¹⁴ And despite the Texas Supreme Court’s urging, the Texas Medical Board issued regulations failing to meaningfully clarify when physicians can provide abortion care under the exceptions to Texas’s abortion bans.¹⁵

14. In light of these concerns and events, Ms. Norris-De La Cruz requests that CMS and the Region 6 Office and/or OCR conduct an independent investigation of this Complaint, whether by referring this matter to OIG or otherwise. Alternatively, if CMS refers the matter to the Texas Department of State Health Services for investigation, Ms. Norris-De La Cruz requests that CMS conduct a full, independent investigation and consider the facts contained in this Complaint before concluding its investigation and determining whether Texas Health Arlington complied with EMTALA.

¹² Ken Paxton (@TXAG), Twitter (Dec. 7, 2023, 2:49 PM), <https://twitter.com/TXAG/status/1732849903154450622>; *In re Texas*, 682 S.W.3d (Tex. 2023) (per curiam).

¹³ *Texas v. Zurawski*, No. 23-0629, 2024 Tex. LEXIS 401 (Tex. May 31, 2024).

¹⁴ Eleanor Klibanoff, *Anti-Abortion Doctor Appointed to Texas Maternal Death Review Committee*, Texas Tribune (May 22, 2024), <https://www.texastribune.org/2024/05/22/texas-maternal-mortality-committee-ingrid-skop-abortion-doctor>.

¹⁵ See *Zurawski*, No. 23-0629 at n.6 (Busby, J., & Lehrmann, J., concurring) (“But instead of fulfilling its own obligation to speak clearly and specifically, the Board has proposed a regulation that does nothing more than restate the relevant statutes.”); Bayliss Wagner, *Texas OB-GYNs Slam Proposed TMB Abortion Rules: ‘Dead Mothers do not Lead to Live Babies,’* Austin American-Statesman (May 21, 2024), <https://www.statesman.com/story/news/politics/state/2024/05/21/texas-medical-board-abortion-guidelines-women-obgyns-hospital-associations-slam-proposed-rules/7376779007/>.

FACTUAL ALLEGATIONS

A. Ectopic Pregnancy is an Emergency Medical Condition that Requires Stabilizing Treatment

15. Pregnancy can lead to any number of emergency medical conditions for which stabilizing care is needed because failure to provide such immediate medical attention “could reasonably be expected to result in” “placing the health” of the pregnant patient “in serious jeopardy,” “serious impairment to bodily functions,” or “serious dysfunction of a[] bodily organ or part,” in violation of EMTALA, 42 U.S.C. § 1395dd(b) and (e)(1)(A). Delaying such care can lead to serious complications, including hemorrhage, loss of reproductive organs, sepsis, or even death of the pregnant patient.

16. An ectopic pregnancy is a pregnancy where the fertilized egg implants and grows in a location other than inside of the uterine cavity. Ectopic pregnancies often implant in one of the fallopian tubes but may also implant in the scar from a previous cesarean delivery or other locations including the abdominal cavity, the cervix, or an ovary. Ectopic pregnancies cannot result in live births and are life-threatening to the pregnant person because the pregnancy will grow and rupture if left untreated and can cause massive internal bleeding. Ectopic pregnancies must be terminated with medication or surgery as soon as possible after diagnosis.¹⁶

17. Treatment of a tubal ectopic pregnancy involves either medication or surgery. If an ectopic pregnancy is detected early and the patient’s vital signs are stable, it is most commonly treated with injection of a medication called methotrexate, which prevents the cells in the

¹⁶ See The American College of Obstetricians and Gynecologists (“ACOG”), *Practice Bulletin 193: Tubal Ectopic Pregnancy*, 131 *Obstetrics Gyn.* e91 (2018) (hereinafter “ACOG Practice Bulletin 193”); Soc’y for Maternal Fetal Med. (“SMFM”) et al., *SMFM Consult Series #63: Cesarean Scar Ectopic Pregnancy*, 227 *Am. J. Obstetrics Gyn.* B9 (2022); ACOG, *Facts Are Important: Understanding Ectopic Pregnancy*, <https://www.acog.org/advocacy/facts-are-important/understanding-ectopic-pregnancy>.

pregnancy from continuing to grow.¹⁷ The pregnancy is then absorbed by the body over a couple of weeks. If the ectopic pregnancy is not detected early and has grown too large to be treated with methotrexate, the pregnancy must be surgically removed from the fallopian tube.¹⁸ Surgical intervention entails removal of part or all of the affected fallopian tube (salpingectomy) or removal of the ectopic pregnancy while leaving the affected fallopian tube in site (salpingostomy).¹⁹

18. Ectopic pregnancy is the leading cause of maternal mortality in the first trimester, accounting for 5-10% of all pregnancy-related deaths.²⁰ Texas's Maternal Mortality and Morbidity Review Committee and the Department of State Health Services released a joint report in 2022 finding that the leading cause of pregnancy-related deaths in Texas was obstetric hemorrhage, and one of the most common underlying causes of such hemorrhage was ruptured ectopic pregnancy. In 2019, at least 13 women in Texas died from a ruptured ectopic pregnancy.²¹

B. Texas Health Arlington Refused to Provide Stabilizing Treatment to Ms. Norris-De La Cruz for An Ectopic Pregnancy²²

19. Ms. Norris-De La Cruz is 25 years old and lives in the Dallas-Fort Worth area.

20. In early January 2024, Ms. Norris-De La Cruz began to suspect she was pregnant although she had taken steps to prevent pregnancy. Ms. Norris-De La Cruz had experienced two prior miscarriages and was familiar with the symptoms of pregnancy. On January 6, 2024, she took an at-home pregnancy test that was positive.

¹⁷ ACOG, *FAQs: Ectopic Pregnancy* (Feb. 2018), <https://www.acog.org/womens-health/faqs/ectopic-pregnancy>.

¹⁸ *Id.*

¹⁹ ACOG Practice Bulletin 193 at e98.

²⁰ Kellie Mullany et al., *Overview of Ectopic Pregnancy Diagnosis, Management, and Innovation*, at 1.

²¹ Texas Health and Human Servs., *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022* ("Texas MMRC 2022 Report"), <https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/Joint-Biennial-MMMRC-Report-2022.pdf>.

²² The allegations contained herein are to the best of Ms. Norris-De La Cruz's knowledge and recollection.

21. Ms. Norris-De La Cruz was in her last year of college, and after the positive pregnancy test, she and her boyfriend began to plan for their baby. As she waited for her first prenatal appointment, however, she began to experience concerning symptoms.

22. On January 14, Ms. Norris-De La Cruz began cramping and experiencing vaginal bleeding and discolored discharge. After several hours of bleeding, Ms. Norris-De La Cruz visited the emergency room at Medical City Healthcare. There, Ms. Norris-De La Cruz received her first blood test in this pregnancy, which showed her level of the pregnancy hormone human chorionic gonadotropin (hCG) at 675 miu/ml. She was told that this result, combined with her bleeding, suggested she might be having a miscarriage, but that she should return in two days for another blood test. She returned on January 16, and her hCG had dropped to 232 miu/ml. The staff informed her they suspected she may have a “failed early pregnancy” but they also could not rule out the possibility that she had an ectopic pregnancy. Ms. Norris-De La Cruz understood that she might eventually miscarry on her own and that she should seek medical care if she continued to experience cramping and bleeding.

23. The next day was Ms. Norris-De La Cruz’s first day of school, and she tried to distract herself from grief over her failed pregnancy with schoolwork. For the next several weeks, however, she continued to have vaginal bleeding and started having severe cramps on her right side. Sometimes the pain was so intense that she struggled to stand and was afraid to drive herself to school. At one point, she began passing blood clots and made an appointment at her college’s health center. At her appointment there on February 12, the staff noted severe localized pain on her right side and told Ms. Norris-De La Cruz to go to the hospital emergency room immediately.

24. That same day, February 12, Ms. Norris-De La Cruz rushed to the emergency room at Texas Health Arlington where her mother met her. Emergency room staff drew blood and

performed an ultrasound. Instead of her hCG decreasing as it should have done if it were a miscarriage, Ms. Norris-De La Cruz's hCG had increased to 1,180 mIU/ml. At first, Ms. Norris-De La Cruz was excited and thought this meant her pregnancy was still viable. But on her ultrasound, the hospital located a six-centimeter adnexal mass, as well as complex fluid in the pelvis, and was unable to find an intrauterine or extrauterine gestational sac. The mass was so large that Ms. Norris-De La Cruz could see it on her ultrasound herself. All signs pointed to an ectopic pregnancy. The hospital emergency room staff documented in her chart "ectopic pregnancy remains a consideration until proven otherwise."

25. Ms. Norris-De La Cruz was devastated. The hospital emergency room physician counseled her on the treatment options for an ectopic pregnancy: she could receive an injection of a drug called methotrexate or surgery to remove the pregnancy. Because Ms. Norris-De La Cruz had a bad experience with months of bleeding during a prior miscarriage, she decided she wanted the surgery to ensure the procedure was complete that day. As Ms. Norris-De La Cruz waited for the on-call OB/GYN to arrive, she felt like she was grieving this pregnancy for a second time.

26. Once the on-call OB/GYNs arrived, however, Texas Health Arlington refused to provide Ms. Norris-De La Cruz with any treatment for her ectopic pregnancy. Two different OB/GYNs at Texas Health Arlington acknowledged that her pregnancy could rupture but still denied her medical care, discharged her, and told her to return in 48 hours for another blood test. In the process, hospital staff demeaned and disrespected Ms. Norris-De La Cruz and her mother.

27. The first OB/GYN at Texas Health Arlington refused to listen to Ms. Norris-De La Cruz before ultimately denying her care. That OB/GYN initially recommended an injection of methotrexate to treat the ectopic pregnancy, but Ms. Norris-De La Cruz insisted that she had chosen surgery instead. The OB/GYN then shifted course and said Ms. Norris-De La Cruz might

also be suffering a miscarriage from a new pregnancy and should be discharged and return in 48 hours for another blood test, but Ms. Norris-De La Cruz explained that was impossible because she had not had sex since December, before her first hospital visit. Ms. Norris-De La Cruz's mother asked if the hospital's refusal to provide care had anything to do with Texas's abortion bans but received no response. As the conversation became more heated, the OB/GYN confirmed it was possible that Ms. Norris-De La Cruz could rupture over the next 48 hours and subsequently stormed out of the room. The OB/GYN recorded in Ms. Norris-De La Cruz's chart that "although this is likely an ectopic pregnancy if she has not [had] intercourse since December, [Ms. Norris-De La Cruz] is not a reliable historian as she is very angry and upset." Other hospital staff documented the exchange as "a less than ideal interaction with the specialist" in Ms. Norris-De La Cruz's chart.

28. Desperate for treatment, Ms. Norris-De La Cruz and her mother decided to wait several hours until the hospital shift change when they would be able to speak with a different on-call OB/GYN. As they waited, the emergency room doctor who first saw Ms. Norris-De La Cruz reviewed her file and again recommended treatment for ectopic pregnancy. The emergency room doctor noted in Ms. Norris-De La Cruz's file: "I do not feel comfortable discharging her home and do not think that is in her best interest."

29. The next morning, on February 13, a second OB/GYN examined Ms. Norris-De La Cruz. This second OB/GYN instructed Ms. Norris-De La Cruz to go home and return to the emergency room in 48 hours for another blood test.

30. At this point, Ms. Norris-De La Cruz and her mother realized Texas Health Arlington would not provide her medical treatment, so they began looking for a different provider. Ms. Norris-De La Cruz's mother called an abortion clinic in New Mexico, but the clinic, shocked

at Ms. Norris-De La Cruz's experience, explained that management of an ectopic pregnancy is not illegal in Texas. Ms. Norris-De La Cruz and her mother looked for hospitals in Houston, but staff told them that Ms. Norris-De La Cruz may face the same treatment at those hospitals because hospitalists around the state were delaying treatment for ectopic pregnancy, and requesting extra hCG numbers before providing appropriate treatment.

31. Ms. Norris-De La Cruz also told a good friend what was happening. Her friend happened to be at an OB/GYN appointment that morning and showed the staff a picture of Ms. Norris-De La Cruz's sonogram. Her friend's OB/GYN recommended Ms. Norris-De La Cruz come in for a consultation. During the consultation, the friend's OB/GYN recommended surgery immediately. Hours later, on the evening of February 13, her friend's OB/GYN performed emergency surgery on Ms. Norris-De La Cruz to remove the ectopic pregnancy.

32. By the time Ms. Norris-De La Cruz received treatment, her pregnancy was near rupture and the adnexal mass had grown so much that they had to remove most of Ms. Norris-De La Cruz's right fallopian tube, and she lost approximately 75% of her right ovary. The removal of the fallopian tube and ovary, that was necessitated by the delay in treatment, likely will impact her ability to have a child in the future. And, waiting any longer, could have cost Ms. Norris-De La Cruz her life.

LEGAL ALLEGATIONS

33. 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). Because Texas Health Arlington operates an emergency department and participates in Medicare, it is subject to EMTALA.²³

34. Under EMTALA, when an individual “comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide “such treatment as may be required to stabilize the medical condition” or transfer the individual to another medical facility. 42 U.S.C. § 1395dd(b)(1). EMTALA defines “emergency medical condition” 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.” *Id.* § 1395dd(e)(1).

35. Patients who are determined to have an “emergency medical condition” must receive stabilizing care within the hospital’s capabilities. “[T]o stabilize” is defined as “to provide such medical treatment of the condition as may be 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)(3)(A). Although 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), 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).

²³ Texas Health Arlington operates an emergency department. See Texas Health Resources, *Emergency Services*, <https://www.texashealth.org/health-and-wellness/emergency-services> (last visited July 23, 2024). Texas Health participates in Medicare. See Texas Health Resources, *Insurance Plans Accepted*, <https://www.texashealth.org/Costs-and-Billing/Insurance-Plans-Accepted> (last visited July 23, 2024).

36. An ectopic pregnancy is an emergency medical condition requiring stabilization under EMTALA. As discussed above, ectopic pregnancies are never viable and, without treatment, can rupture or burst. Rupturing or bursting can lead to major internal bleeding, removal of the fallopian tube(s), and death. The absence of medical treatment for an ectopic pregnancy can “reasonably be expected to result” in (1) placing the health of the pregnant patient “in serious jeopardy,” (2) as well as causing “serious impairment to bodily functions,” and (3) “serious dysfunction of any bodily organ or part.” *See* 42 U.S.C. § 1395dd(e)(1).

37. Texas Health Arlington violated EMTALA for these three independent reasons when it discharged Ms. Norris-De La Cruz without providing her the stabilizing care necessary to treat her ectopic pregnancy. First, hospital staff knew that failing to treat Ms. Norris-De La Cruz could reasonably be expected to result in seriously jeopardizing her health—specifically, in a ruptured ectopic pregnancy. Second, hospital staff knew that failing to treat Ms. Norris-De La Cruz for ectopic pregnancy could result in causing serious impairment to bodily functions related to becoming pregnant and childbirth. Third, hospital staff knew that failing to treat Ms. Norris-De La Cruz could result in a dysfunction of her reproductive system and fallopian tubes. Indeed, Ms. Norris-De La Cruz had to get most of her right fallopian tube removed. The first OB/GYN to see her confirmed she may rupture over the next 48 hours, and the emergency room physician wrote in her file: “I do not feel comfortable discharging her home and do not think that is in her best interest.” If Ms. Norris-De La Cruz had been unable to secure emergency treatment elsewhere that same day, she likely would have ruptured outside of a hospital setting. The delay and discharge by Texas Health Arlington thus recklessly endangered Ms. Norris-De La Cruz’s health, as well as bodily functions and organs involved in future fertility, in violation of EMTALA.

38. Texas Health Arlington had the capacity to provide stabilizing care to Ms. Norris-De La Cruz. While Ms. Norris-De La Cruz was hospitalized and begging for treatment, her providers never indicated that they were incapable of providing her with the necessary treatment. The providers noted that they could provide methotrexate or a surgical procedure, but declined to do so and instead insisted that she first wait and return to the hospital two days later and undergo additional testing.

39. Although not required to support a determination that Texas Health Arlington violated EMTALA based on the above facts, it is clear that terminating Ms. Norris-De La Cruz's ectopic pregnancy would have been legal under Texas law. Under that law, an act "done with the intent to[] . . . remove an ectopic pregnancy" "is not an abortion" within the meaning of that state law, and is therefore not prohibited. Tex. Health & Safety Code § 245.002(1)(C); *see also id.* §§ 170A.001(1), 170A.002 (prohibiting "abortion" as defined in Tex. Health & Safety Code § 245.002). Ectopic pregnancy is defined as "the implantation of a fertilized egg or embryo outside of the uterus." *Id.* § 245.002(4-a). Further, the Texas Legislature recently created an affirmative defense to civil liability for physicians providing "medical treatment to a pregnant woman in response to: (1) an ectopic pregnancy at any location." Tex. Civ. Prac. & Remedies Code § 74.552(a)(1).

40. There can be no valid argument, even under Texas law, that a hospital is justified in discharging a patient and instructing them to wait two days and then return for additional testing to reconfirm their ectopic diagnosis or that a hospital must obtain absolute certainty about the diagnosis before providing treatment. As just discussed, providing medical treatment "with the intent to[] . . . remove an ectopic pregnancy" "is not an abortion" in Texas. Tex. Health & Safety Code § 245.002(1)(C) (emphasis added). So if a physician determines that a patient likely has an

ectopic pregnancy and provides treatment with the intent to terminate the presumed ectopic pregnancy, that act is not an abortion under Texas law, even in the remote circumstance that the pregnancy was not in fact ectopic. Texas law does not require absolute certainty that a pregnancy is ectopic before treatment can be provided.

41. The refusal of Texas Health Arlington to treat Ms. Norris-De La Cruz was not justified by the preliminary injunction that had been issued by the federal court in *Texas v. Becerra*. In that case, the court enjoined CMS's post-*Dobbs* EMTALA guidance, which states that if abortion is the stabilizing treatment necessary to resolve a pregnant patient's emergency medical condition, then an abortion must be provided under EMTALA, even if unlawful under state law. *Texas v. Becerra*, 89 F.4th 529, 535-36 (5th Cir. 2024). CMS's enjoined guidance does not come into play in Ms. Norris-De La Cruz's situation because, as just discussed, terminating her ectopic pregnancy would not have been an unlawful abortion under Texas law. As the Fifth Circuit explained, Texas physicians can "comply with both EMTALA and state law by offering stabilizing treatment in accordance with state law." *Id.* at 542.

42. To prevent further danger to pregnant patients' health, lives, bodily functions and organs, it is critical that EMTALA be enforced against hospitals like Texas Health Arlington that refuse to provide stabilizing treatment for the emergency medical condition of ectopic pregnancy. That is true even if state law were to indicate that such treatment was unlawful, but that issue need not be decided here because the treatment was *lawful* under Texas law. Enforcing EMTALA in these circumstances would dispel any physician concerns and ensure that hospitals in Texas are appropriately concerned that *refusing* stabilizing treatment for patients with ectopic pregnancies would risk investigations, penalties, and liability.

43. The need for enforcement is urgent because Ms. Norris-De La Cruz’s mistreatment is not an isolated incident. Preliminary findings from a study including Texas physicians reported that physicians are undertaking additional documentation and consultations with other physicians before providing care for ectopic pregnancies.²⁴ These additional steps have resulted in delays and refusals in care. Similarly, a study of the impact of Louisiana’s abortion ban on maternal health care found that medical treatment of ectopic pregnancies has been delayed even though the law does not criminalize care in those circumstances.²⁵ Physicians there are also undertaking burdensome, additional, and unnecessary documentation procedures before providing care to patients with ectopic pregnancies to ensure their medical judgment will not be second-guessed by state officials.²⁶ Patients presenting to the hospital with ectopic pregnancies were often required to delay treatment for a day, then return the next day because, as a doctor opined, they “need to prove beyond a very reasonable doubt that the bad thing is happening.”²⁷ There are also reports of pregnant people with ectopic pregnancies forgoing care in their state and instead traveling out of state due to fear that receiving treatment is a crime.²⁸ Pregnant Louisianans who have suffered ectopic pregnancies have also experienced hours-long delays due to medical staff’s refusal to provide care due to fear of prosecution in cases where fetal cardiac activity is still detected.²⁹

²⁴ Care Post-*Roe* Report at 10.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Physicians for Human Rights, et al., *Criminalized Care: How Louisiana’s Abortion Bans Endanger Patients and Clinicians* at 28 (Mar. 2024) (hereinafter “Criminalized Care”), <https://phr.org/wp-content/uploads/2024/03/PHR-Report-Criminalized-Care-March-2024.pdf>.

²⁸ Care Post-*Roe* Report at 10.

²⁹ Criminalized Care at 28.

44. This situation is untenable and warrants swift investigation and a determination that Texas Health Arlington's failure to treat Ms. Norris-De La Cruz's ectopic pregnancy violated EMTALA.

RELIEF REQUESTED

45. Ms. Norris-De La Cruz respectfully requests that CMS, HHS OIG, and/or OCR:
- a. Conduct an independent investigation of Texas Health Arlington for EMTALA violations arising from their refusal to provide her with necessary stabilizing treatment to preserve her life, health, bodily functions, and bodily organs;
 - b. Take all necessary steps to remedy all unlawful conduct identified in its investigation, including by imposing all appropriate penalties;
 - c. Monitor any resulting agreements between CMS and Texas Health Arlington to ensure compliance with EMTALA; and
 - d. Provide other appropriate equitable relief.

Respectfully submitted,

/s/Molly Duane

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