



State of Louisiana
Louisiana Department of Health
Office of the Secretary

To: The Honorable John Bel Edwards, Governor, State of Louisiana (Via Email)
The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (apa.submission@ag.louisiana.gov)
The Honorable Patrick Page Cortez, President, Louisiana Senate (apa.senatepresident@legis.la.gov)
The Honorable Clay Schexnayder, Speaker, Louisiana House of Representatives (apa.housespeaker@legis.la.gov)
Catherine Brindley, Editor, *Louisiana Register* (reg.submission@la.gov)
Senate Health and Welfare Committee (apa.s-h&w@legis.la.gov)
House Health and Welfare Committee (apa.h-hw@legis.la.gov)

From: Dr. Courtney N. Phillips, Secretary, LDH

Date: August 1, 2022

Re: Justification of Promulgation of Emergency Rule
List of Conditions that Shall Deem an Unborn Child "Medically Futile" (LAC 48:I.Chpater 4.101)

by Stephen K... 8-1-22

MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 49:950 *et seq.*) as amended, the Louisiana Department of Health is submitting the following emergency rule that adopts List of Conditions that Shall Deem an Unborn Child "Medically Futile" (LAC 48:I.Chapter 4.101).

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact David McCay at David.McCay@la.gov.

Attachments: Emergency Rule – List of Conditions that Shall Deem an Unborn Child "Medically Futile" (LAC 48:I.Chapter 4.101)

Cc: Joseph Kanter, MD, MPH, State Health Officer
Doris Brown, MEd, MS, APRN, CNS, LDH Assistant Secretary, OPH
Aliya Rubenstein, Rulemaking Liaison, OPH
Bethany Blackson, LDH Legislative Liaison
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

DECLARATION OF EMERGENCY

Department of Health Office of Public Health

List of Conditions that shall deem an unborn child “Medically Futile” (LAC 48:I.Chapter 4.101)

The Louisiana Department of Health, Office of Public Health (LDH/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 August 1, 2022. This emergency rule is necessary to prevent imminent peril to the public health, safety, or welfare. Without the list provided by this rule, physicians will not have a list of anomalies, diseases, disorders, and other conditions that are deemed to be “medically futile” due to the unborn child having a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth, leading to potential imminent peril to the public health, safety or welfare. Accordingly, the following Emergency Rule, effective August 1, 2022, 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

§101. 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. anencephaly;
3. acardia;
4. body stalk anomaly;
5. campomelic dysplasia;
6. craniorachischisis;
7. dysencephalia splanchnocystica (Meckel-Gruber syndrome);
8. ectopia cordis;
9. exencephaly;
10. gestational trophoblastic neoplasia;
11. holoprosencephaly;
12. hydrops fetalis;
13. iniencephaly;

- 14. perinatal hypophosphatasia;
- 15. osteogenesis imperfecta (type 2);
- 16. renal agenesis (bilateral);
- 17. short rib polydactyly syndrome;
- 18. sirenomelia;
- 19. thanatophoric dysplasia;
- 2. triploidy;
- 21. trisomy 13;
- 22. trisomy 16 (full);
- 23. trisomy 18;
- 24. trisomy 22; and
- 25. 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 48:

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

AM J 8/1/22