SB 8, the “Heartbeat Bill”, Guidance

The following guidance is not meant to serve as legal advice. If you have specific legal questions, we recommend you reach out to your liability insurance carrier or your own legal counsel.

SB 8 (Hughes/Slawson), AKA the “Heartbeat Bill,” passed during the 87th legislative session and was signed into law with an effective date of September 1, 2021. The bill aims to ban abortion after six weeks, before many women even know they are pregnant. It allows private citizens to enforce the law by suing anyone who performed, “aided,” “abetted,” or intended to aid or abet an abortion in violation of the ban. The law encourages such litigation by authorizing the award of a minimum of $10,000 in damages to the person who brought the suit if they are successful.

There is currently a federal lawsuit filed against Texas challenging the legality of SB 8 and seeking to block the law before it goes into effect. There are, however, concerns about the grounds for such a “pre-enforcement” suit, and there is some chance the law will go into effect on September 1st. The purpose of the law appears to be focused on creating fear regarding discussing, referring, and performing abortions.

What does this mean for Texas social workers?

We have gotten many questions from social workers across the state in a variety of settings on how this bill would impact their day-to-day work. In June and July 2021, NASW/TX sought guidance from several reproductive rights groups and attorneys on how SB 8 will impact social workers. While there is still a large amount of uncertainty surrounding the implementation of SB 8, we are able to provide the following guidance:

- From a risk prevention standpoint, the safest course for anyone is not to talk about abortion at all. This does not align with our professional values, First Amendment rights and our responsibilities to clients. The risks associated with this bill do differ depending on the type of work you do with clients (e.g., providing in-take at a women’s health clinic versus outpatient therapy in a private practice), but again, this bill’s very purpose is to not only outlaw most abortions but to stop people from discussing them.

- Talking about abortion may be construed as “aiding and abetting” abortion. There is no legal definition of “aiding and abetting” abortion (not an oversight but a gray area created by the bill’s drafters), so there is no precedent for how this could be enforced. A client’s right to self-determination is a social work value in addition to providing services within your scope, which may include conversations about abortion. We are not saying you should do your work...
differently, but it is important to know the risks associated with talking about abortion in any capacity and to protect yourself.

- **There is risk in talking about abortion, but you can take steps to mitigate that risk:**
  - Ask your liability insurance carrier if they have a plan for SB 8 (they likely won’t) and what type of legal protection or reimbursement you have for a case based on this law.
  - Ask your agency if they have a policy or plan in place regarding SB 8, and if not, encourage them to draft one.
  - Some social workers have considered asking their clients to sign an agreement to maintain the confidentiality of discussions around reproductive health and prevention. While this might encourage confidentiality, it is unlikely to be enforceable. Further, if there is any suggestion in the waiver that these discussions will occur or have occurred, there is a potential that the waiver itself might be used as evidence against you. It may be better to discuss confidentiality directly with your client rather than reducing this to writing.

- **There is support behind the scenes.** If you would like to be connected with legal partners who are interested in supporting social workers in this legal space, please reach out and we will connect you. Part of the odiousness of this law is that it puts lawyers who defend a person accused of aiding and abetting an abortion at risk of damages, which is why we are working with a group of attorneys who have received support to both challenge the law and defend providers against these attacks. At some point cases may be needed to challenge this law, and that may involve a social worker standing up for a client’s rights in a lawsuit.

We are continuing to seek guidance on this issue and will provide updates as we receive them. Abortion is legal in the United States, everyone has a right to discuss health matters with a professional – and this law was drafted to thwart the exercise of those rights. NASW/TX supports the values of social work and the autonomy of our members and their clients and encourages each provider to make the choices that best allow them to respect the dignity and worth of all people.

If you have any questions, please reach out to the NASW/TX Government Relations Director, Alison Mohr Boleware, LMSW at aboleware.naswtx@socialworkers.org.

If you’re a member of NASW, thank you! Your membership helps us have the ability to get legal guidance on important practice and licensure issues like this. If you’re not, then please know that we could use your support as members make that possible. You can always join here to receive the latest updates and join our efforts.

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