I PROMOTE-IL
INNOVATIONS TO IMPROVE MATERNAL OUTCOMES IN ILLINOIS

Decriminalizing Substance Use Disorder during Pregnancy and at Delivery in Illinois

Overview of Substance Use During Pregnancy

Substance Use Disorder (SUD) is a complex condition in which the uncontrolled use of a substance causes moderate to severe symptoms and health issues.[1] Substances can include alcohol, marijuana, tobacco, prescribed medications, or illicit drugs (e.g., heroin, cocaine, hallucinogens, methamphetamine, and opioids).[2,3] During pregnancy, substance use is associated with fetal growth restriction, fetal death, preterm labor, and an increased risk of maternal-infant separation and is a leading cause of maternal death due to overdose.[4,5] From 2017-2019, mental health conditions, including overdose/poisoning related to SUD, accounted for 23% of pregnancy-related deaths nationally.[6] In Illinois in 2016-2017, the leading cause of pregnancy-related death, which accounted for 40% of these deaths, was maternal mental health conditions, including substance use disorder.[7]

The growing consequences of SUD for birthing persons, their infants, and families can be seen in the rising number of maternal opioid-related diagnoses (MOD) and neonatal abstinence syndrome (NAS) diagnoses. Nationally, MOD increased from 3.5 per 1,000 delivery hospitalizations in 2010 to 8.2 per 1,000 delivery hospitalizations in 2017.[8] Likewise, NAS increased nationwide from 4.0 per 1,000 birth hospitalizations in 2010 to 7.3 per 1,000 birth hospitalizations in 2017.[8]

Illinois followed a similar trend in MOD and NAS diagnoses. MOD in Illinois increased from 2.0 per 1,000 delivery hospitalizations in 2010 to 4.0 per 1,000 delivery hospitalizations in 2017.[8] Cases of NAS in Illinois increased from 1.8 per 1,000 birth hospitalizations in 2010 to 3.1 per 1,000 delivery hospitalizations in 2017.[8]

Preventing the Effects of Substance Use during Pregnancy for Birthing Persons and Infants

Currently, the most comprehensive public health approach for early intervention and treatment includes: screening, brief intervention, and referral to treatment (SBIRT).[9,10] Screening during the prenatal period capitalizes on the typical pregnant person's highly motivated behavior during pregnancy to seek treatment, have consistent contact with the healthcare system, and disclose to trusted health care professionals about substance use concerns.[11] SUD screening during pregnancy also provides an opportunity to provide optimal SUD care in pregnancy, including assessing for medication assisted treatment (MAT) readiness, referral to treatment services, risk reduction strategies such as naloxone counseling, and close follow up to reduce maternal overdose deaths, improve pregnancy outcomes and increase the number of childbearing parents who can parent their newborns.[12,13] To date, SBIRT has not been universally adopted across Illinois despite efforts from the Illinois Perinatal Quality Collaborative (ILPQC) to ensure that every pregnant patient is screened for SUD and linked as needed to treatment and recovery services.[10]

Treatment for substance use during pregnancy can come in many forms depending on the substance and severity of use.[5] In the circumstance of Opioid Use Disorder (OUD) in particular, medication-assisted treatment (MAT), has been a standard method utilizing methadone or buprenorphine in combination with counseling and behavioral therapy.[4] Studies have found that methadone and buprenorphine maintenance reduce risk-taking behavior, rates of relapse, and need for neonatal abstinence

syndrome (NAS) treatment.[4] The use of MAT has been found to decrease overall substance use for the pregnant person and substance exposure for the fetus.[14] Research has also found that MAT increases prenatal care adherence reducing the risk of adverse pregnancy outcomes[15] and is associated with reduced maternal overdose events.[13]

Barriers to Prenatal Care and SUD Screening and Treatment

Pregnant persons with substance use disorders are less likely to seek treatment or report substance use due to fear of criminalization, shame, and judgement.[15,16] Further, pregnant and parenting persons may avoid seeking care within the healthcare system due to fear of being reported to the child welfare system and fear of the subsequent removal of their children.[17] In particular, Illinois along with 24 other states and DC consider substance use during pregnancy to be child abuse and neglect.[16] The Child Abuse Prevention and Treatment Act (CAPTA) requires State law to include a provision for mandatory reporting by individuals required to report child abuse and neglect.[17]

While states have the discretion to *notify* rather than report substance using pregnant persons, **considering substance use during pregnancy to be child abuse under civil child-welfare statutes**, leads to an increased risk of incarceration, other legal implications, and loss of custody for pregnant persons. According to the White Office of National Drug Control Policy: "**Having SUD in pregnancy is not, by itself, child abuse or neglect. …[and] Criminalizing SUD in pregnancy is ineffective and harmful as it prevents pregnant women with SUD from seeking and receiving the help they need."**[18]

Child Abuse Prevention and Treatment Act (CAPTA): Reporting versus Notifying Child Protective Services (CPS) and Plans of Safe Care (POSC)

Reporting versus Notification

The Child Abuse Prevention and Treatment Act (CAPTA) and its 2016 update (Comprehensive Addiction and Recovery Act (CARA) allow for *notification* rather than *reporting* of substance using pregnant persons: In states with **mandatory reporting** of SUD during pregnancy, providers are required to report those using substances to Child Protective Services (CPS) for child abuse and neglect. However, in states utilizing **notification**, health care providers involved in the delivery or care of infants affected by substance abuse or withdrawal symptoms are only required to **notify** the child protective services system.

- Notification **DOES NOT** require prosecution for any illegal activity.[17]
- Notification **DOES NOT** necessarily constitute a report of abuse or neglect.[17]

States are beginning to use notification rather than reporting when SUD is identified during pregnancy or at delivery. Currently, 14 states are considered innovators and have some sort of notification policy rather than reporting of substance use during pregnancy.[19] In these states, notification is not considered a report of child abuse or neglect unless there is evidence of maltreatment or risk of harm to the infant.[20]

Plans of Safe Care:

To receive CAPTA funds, states are required to develop and implement **Plans of Safe Care (POSC)** for substance exposed infants.[20] POSC are for those "born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder" and plans must fully address the needs of both the infant and family/caregiver.[17] **POSC work best when they are developed prior to the birth of the infant, are based on a comprehensive multi-disciplinary assessment, consider intervention points during and beyond pregnancy,** provide access to coordinated evidence-based, trauma informed, family focused services and

when there is specified monitoring and oversight by States.[17] ILPQC has developed POSC documents that have been adopted by the AAP for promotion and adoption nationally.[10,21]

Call to Action for the Decriminalization of Substance Use during Pregnancy and at Delivery and Change from Reporting to Notification

Illinois must no longer consider substance abuse during pregnancy/at delivery to be Child Abuse and Neglect and **must eliminate the *Reporting for Child Abuse and Neglect* requirement to the Illinois Department of Children and Family Services for SUD during pregnancy/at delivery.** In addition, it is time for Illinois to move to ***Notification* from *Reporting*** in order to address the growing and significant substance use problem for pregnant and birthing persons**.** IL should join other states who currently use a **Notification Policy** and develop a robust approach to implementing **Plans of Safe Care** for all pregnant persons/infants for whom notifications are sent. **Illinois' Notification Policy** should include[17]:

- Defining who is included under the Policy, developing regulations based on the Notification definitions, and adapting Illinois' current Child Welfare Policy Manuals and Practice Guidelines to support the Notification definitions.
- Providing statewide training to outpatient and inpatient prenatal care providers on the development and use of **POSC**.
- Creating a mechanism to monitor the development and implementation of **Plans of Safe Care** potentially including funding of a **POSC technical support entity** (e.g., ILPQC or ICAAP).
- Developing an evaluation process to ensure that the shift from Reporting to Notification of SUD during pregnancy/at delivery has no unintended consequences for the health and well-being of birthing persons, infants, and families.

It is time for all maternal and child health advocates and professionals to support legislation that decriminalizes SUD during pregnancy and at delivery in Illinois, moves IL from a Reporting to a Notification state, and ensures there are sufficient resources for the development and implementation of Plans of Safe Care and for the treatment of SUD across Illinois.

Importantly, the issue of SUD during pregnancy is receiving significant attention during the current IL Legislative Session. During the week of January 30th, Senate Resolution 36 and House Resolution 37 were filed, calling for more resources dedicated to home-visiting programs, which play a vital role in preventing opioid use disorder and often assist children born with Neonatal Abstinence Syndrome. The resolutions also urge that some of the resources coming to Illinois from the settlement of lawsuits against opioid manufacturers and distributors be dedicated to home-visiting programs. Click here and here for more **information on pending 2023 legislation in the IL Legislature related to the decriminalization of substance use disorder during pregnancy**.

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