ACOG STATE LEGISLATIVE TOOLKIT: Establishing a Maternal Mortality Review Committee (MMRC)

How to use this toolkit: ACOG State Legislative Chairs can use this toolkit to evaluate a legislative proposal from an interested legislator, state health department official or coalition partner and to draft your own bill. There is no single approach or model bill that will fit every state; however, key components should be considered. These are identified and discussed below, including examples of legislation.

ACOG Fellows are also encouraged to consult the online resource – Review To Action – launched in 2016 by the Association of Maternal and Child Health Programs (AMCHP) in partnership with the CDC Foundation and CDC Division of Reproductive Health at http://reviewtoaction.org.

KEY COMPONENTS OF LEGISLATION

1. Findings
2. Definitions
3. Establishment of Committee
4. Members of the Committee
5. Duties of the Committee
6. Authority to Access Data
7. Mandatory Reporting of Maternal Deaths
8. Confidentiality & Immunity
9. MMRC Reports & Dissemination of Recommendations
10. Rulemaking & Effective Date
11. Funding & Fiscal Note

Note: some components may be optional based on individual state circumstances, legislative bill drafting rules in each state, and your advocacy objectives.

1. FINDINGS Section

   ➢ Discussion
   • A findings section is similar to a 'whereas' section of a resolution. Including a findings section is standard bill drafting procedure in some states. In other states, it may not be typical or required. You may want to include a findings section to call attention to the maternal mortality problem and the intent and goals of your legislation.
IN YOUR BILL: State the MMRC’s purpose and rationale. Refer to the MMRC Facilitation Guide at http://reviewtoaction.org for examples. You may want to include state-specific maternal mortality statistics – if available from the Vital Records or MCH office in your state.

**LEGISLATION EXAMPLE:**

The General Assembly finds that: Maternal deaths are a serious public health concern and have a tremendous family and societal impact; maternal deaths are significantly underestimated and inadequately documented, preventing efforts to identify and reduce or eliminate the causes of death; no processes exist in the state for the confidential identification, investigation or dissemination of findings regarding maternal deaths; and there is a need to establish a maternal mortality review program to review maternal deaths and to develop strategies for the prevention of maternal deaths. (Maryland)

2. DEFINITIONS Section

- **Discussion**
  - This is an alphabetical listing of select terms that are addressed in the bill, with their definitions. A definitions section is fairly standard in most states for most bills.
  - Maternal mortality terminology is complicated. Consult the terminology section of ReviewToAction.org to be sure your terms and definitions are correct.
  - **IN YOUR BILL:** Consider defining the following terms: aggregate data, individually identifiable information, maternal mortality, pregnancy-associated and pregnancy-related death, and severe maternal morbidity.

3. ESTABLISHMENT of COMMITTEE

- **Discussion**
  - This section of the bill is straightforward. (see legislation examples)
  - **IN YOUR BILL:** Specify which state agency or department will “host” the MMRC.
  - **IN YOUR BILL:** Some states may want to give the state health commissioner/secretary authority to delegate certain MMRC functions to a regional perinatal quality collaborative. Vermont attempted to do this, but its MMRC is inactive (see example). The work of regional collaboratives is important but not a substitute for state-level case identification and review.

**LEGISLATION EXAMPLE:**

The maternal mortality and severe maternal morbidity review committee is created in the department of health. (New Mexico)

There is established a maternal mortality review panel to conduct comprehensive, multidisciplinary reviews of maternal deaths in [STATE] for the purposes of identifying factors...
associated with the deaths and making recommendations for system changes to improve health care services for women in this state. (Vermont)

The commissioner may delegate to the Northern New England Perinatal Quality Improvement Network (NNEPQIN) the functions of collecting, analyzing, and disseminating maternal mortality information; organizing meetings of the panel; and such other substantive and administrative tasks as may be incident to these activities. The activities of the NNEPQIN and its employees or agents shall be subject to the same confidentiality provisions as apply to member of the panel. (Vermont)

4. MEMBERS of the Committee
   ➢ Discussion
   ▪ To be effective, MMRCs should be multidisciplinary and include representation of diverse local communities particularly those most affected by pregnancy-related morbidity and mortality.
   ▪ States will address this differently based on unique circumstances and goals. Consult the Committee Facilitation Guide, Appendix B, in ReviewToAction.org.
   ▪ IN YOUR BILL: Below are two different legislative approaches to specifying the members of your MMRC.
     ▪ One approach is to leave the details to your state health officials rather than specifying committee members, appointments and terms, and how often the committee meets in the bill. This approach provides the most flexibility for your MMRC and may be the preferred approach in your state. This approach also may help protect your MMRC during lean budget years, when budget cuts may not support legislatively mandated appointments and staffing.
     ▪ Alternatively, you may want to provide more specificity in the bill; for example, specify appointment of a chair and that members represent certain disciplines and communities, as well as length of members’ terms and how often the committee meets. This approach may be preferable for states with unique challenges and diverse populations. This approach is also recommended if, politically, you’re not confident in leaving the details to a state agency official.

**LEGISLATION EXAMPLE:**

➢ Approach ONE (Mississippi)

*The committee shall be multidisciplinary and composed of such members as deemed appropriate by the department. The committee may develop subcommittees to carry out the purposes of the committee.*

➢ Approach TWO (New Mexico, Texas)

- specify each type of member (eg, ob and nurse providers, representatives of hospitals and birth centers)
- specify who appoints members
specify maximum number of members
specify length of term including initial members’ terms
specify that the composition of the committee reflect the racial, ethnic and linguistic diversity of the state
specify inclusion of members from both rural and urban areas of the state
specify inclusion of members who work in and represent communities affected by maternal deaths and morbidity and by a lack of access to perinatal services
specify election of a chair
specify members shall serve without compensation
specify how often the committee meets: at the call of the chair, bi-annually, or quarterly
specify meetings of the committee are closed to the public

5. DUTIES of the Committee

➢ Discussion

- The MMRC’s function and duties should be broadly specified, including access to records (discussed in the next section).

- In this section of the bill, you’ll need to provide authorization for certain MMRC functions. For example, because the MMRC is likely to consult with outside experts and may outsource meeting logistics, you will need to provide authorization for this in your bill.

- OPTIONAL: Consider including a provision that authorizes (but does not require) your MMRC to expand its focus to severe maternal morbidities, not just deaths. Severe maternal morbidity is now considered a sentinel event. Because it can be a near miss for maternal mortality and even in the absence of consensus on a comprehensive list of conditions that represent severe maternal morbidity, ACOG and SMFM support comprehensive case review by facilities. In states with relatively few maternal deaths, including the option to review severe maternal morbidity may be desirable. It may also help persuade legislators and health officials to support the bill.

- IN YOUR BILL: Specify — in general terms — that the MMRC will do the following:
  ✓ Identify, study and review cases of maternal deaths.
  ✓ Review medical records and other relevant data, including birth and death certificates, autopsy, hospital ER, medical transport, social services and mental health records/reports.
  ✓ Develop recommendations for the prevention of maternal deaths.
  ✓ Disseminate findings and recommendations to policy makers, health care providers, health care facilities, and the public.

- IN YOUR BILL: Specify that the MMRC is authorized to consult with experts and contract with outside parties.
  ✓ Consult with relevant experts and stakeholders to evaluate records and data.
  ✓ Contract with external organization(s) to assist in collecting, analyzing and disseminating maternal mortality information.
Contract with outside parties to organize and convene meetings of the committee.
Other tasks as may be incident to these activities.

- **OPTIONAL FOR YOUR BILL:** Provide authority for the MMRC to review severe maternal morbidity, but leave this up to your MMRC to decide. You want permissive but not mandatory language in the bill so that if your MMRC decides to expand its focus, you don’t have to go back to the legislature for the enabling authority. For example, “The committee also may review cases and trends in severe maternal morbidity.” (South Carolina, Texas)

6. **AUTHORITY to ACCESS DATA**

   - **Discussion**
     - This is a critical component. While most states have existing laws that permit access to records for public health and epidemiologic purposes, it is important to specify in your bill that the MMRC has authority to obtain certain records from specific entities, as noted below and in the preceding section. This assures that nurse abstractors can obtain prenatal care records, for example.

     - It is important to specify discreet entities, not just types of data/reports in this section of the bill.

     - In some areas of the country, a state MMRC may need to acquire information from contiguous states. **IN YOUR BILL:** You will need to specify this. For example, “The commissioner and chair may acquire the information described in subdivision (1) of this subsection from health care facilities, maternal mortality review programs, and other sources in other states to ensure that the panel’s records of Vermont maternal mortality cases are accurate and complete.” (Vermont)

   - **LEGISLATION EXAMPLE:**
     
     The department of health has the authority to: Request and receive data as described in (a) of this subsection from health care providers, health care facilities, clinics, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, and the department of social and health services and its licensees and providers. (Washington)

     Data for the committee’s review and reporting shall be provided to the committee, upon the request of the committee, by the State Medical Examiner’s Office, State Department of Health, Department of Human Services, medical examiners, coroners, health care providers, law enforcement agencies, any other agencies or officials having information that is necessary for the committee to carry out its duties under this section. (Mississippi)

     The department may have access to the following information that may include the identity of a patient to fulfill its duties under this chapter: birth records; fetal death records; maternal death records; hospital and birthing center discharge data. (Texas)
The committee may access medical records and other health information relating to an incidence of maternal mortality and severe maternal morbidity at any time within five years from the date of the incidence. (New Mexico)

7. MANDATORY REPORTING OF MATERNAL DEATHS

- Discussion
  - An evolving area of concern is whether or not to require physicians and facilities to report all maternal deaths. Some states with well-established, mature MMRCs are considering mandatory reporting—instead of voluntary—in an effort to improve data collection and speed-up the lag time in getting case reports.

- Michigan passed a mandatory maternal death reporting law in 2016. (see below)

- CAUTION: Some groups have been active and outspoken on this issue calling for mandatory maternal death reporting BUT not thru public health channels and NOT peer-review protected. You will need to make the political assessment in your state as to whether or not adding a mandatory reporting provision in your bill or pursuing a stand-alone bill like Michigan’s risks getting hijacked by groups who have a different agenda than ACOG.

LEGISLATION EXAMPLE:

A physician or an individual in charge of a health facility who is present for or is aware of a maternal death shall submit information regarding that death at the time and in the manner specified or approved by the department. (Michigan)

A health care provider, the office of the medical investigator and the vital records and health statistics bureau of the department shall notify the chief medical officer of any incident of maternal mortality or severe maternal morbidity within three months of the incident. (New Mexico)

Health care providers; health care facilities; clinics; laboratories; medical records departments; and state offices, agencies, and departments shall report all maternal mortality deaths to the chair of the maternal mortality review panel and the commissioner of health or designee. (Vermont)

8. CONFIDENTIALITY & IMMUNITY

- Discussion
  - Maternal mortality review should be confidential and protected from any discovery or legal action. Confidentiality of records obtained by the committee and all proceedings and activities of the MMRC is a critical component of this legislation. Similarly, it is critical that members of the committee have immunity from prosecution.
- **IN YOUR BILL:** Be as comprehensive and detailed as possible. Records, reports, proceedings and findings should be protected from lawsuits and subpoena. MMRC members should not be questioned in any civil or criminal proceedings.

**LEGISLATION EXAMPLE:**

All information, records of interviews, written reports, statements, notes, memoranda or other data obtained by the department, the committee, or other persons, agencies, or organizations so authorized by the department under this section shall be confidential. (Georgia, Mississippi)

No person participating in such review shall disclose in any manner, the information so obtained except in strict conformity with such review project. (Mississippi)

A member of the committee or person employed by or acting in an advisory capacity to the committee and who provides information, counsel, or services to the committee is not liable for damages for an action taken within the scope of the functions of the committee. This section does not provide immunity for a violation of a state or federal law or rule relating to the privacy of health information or the transmission of health information, including under HIPAA. (Texas)

All proceedings and activities of the committee under this section, opinions of members of the committee formed as a result of those proceedings and activities, and records obtained, created, or maintained under this section, including records of interviews, written reports and statements procured by the department or any other person, agency or organization acting jointly or under contract with the department in connection with requirements of this section, shall be confidential and shall not be subject to the [STATE] Public Records Act relating to open meetings and inspection of records, or subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding; however, nothing in this section shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and independently of the proceedings of this committee. (Georgia, Mississippi)

Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this section shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. (Georgia)

9. **MMRC REPORTS & DISSEMINATION of RECOMMENDATIONS**

- **Discussion**
  - Including a public reporting requirement in your bill can help keep public attention on this issue – and assure that your state health officials continue to prioritize maternal health and mortality prevention!

  - Check-in with stakeholders about the frequency and content of these MMRC reports – particularly your state MCH officials who typically will be given this reporting responsibility.
IN YOUR BILL: Consider requiring the state agency or department that hosts your MMRC to report annually or biennially on relevant MMRC findings and recommendations, including

- aggregated non-individually identifiable data
- recommendations based on the data review
- how the state can most effectively direct state resources to decrease maternal mortality.

Reports could be distributed to:

- General Assembly
- Chairs of the relevant House/Assembly and Senate committees
- Key government agencies
- Health care providers and facilities
- Governor, Lt. Governor

LEGISLATION EXAMPLE:
On or before January 15 of each year, the commissioner of health shall submit a report to the house committees on health care and on human services and the senate committee on health and welfare containing at least the following information: (1) a description of the adverse events reviewed by the panel during the preceding 12 months, including statistics and causes; (2) corrective action plans to address, in the aggregate, such adverse events; and (3) recommendations for system changes and legislation relating to the delivery of health care in Vermont. (Vermont)

Reports of aggregated nonindividually identifiable data shall be compiled on a routine basis for distribution in an effort to further study the causes and problems associated with maternal deaths. Reports shall be distributed to the General Assembly, health care providers and facilities, key government agencies, and others necessary to reduce the maternal death rate. (Georgia)

10. RULEMAKING and EFFECTIVE DATE

Discussion

In some states, bill drafting rules specify that certain requirements be legislated later thru the agency rulemaking process – not put in the bill itself. If this applies in your state, include a provision that gives your Secretary of Health authority to adopt and promulgate rules to carry out the provisions of the bill. Specify a deadline for this rulemaking.

LEGISLATION EXAMPLE:

RULEMAKING.—By December 31, 2017, the secretary of health shall adopt and promulgate rules to carry out the provisions of this act. (New Mexico)

RULEMAKING. The commissioner of health, with the advice and recommendation of a majority of the members of the panel, shall adopt rules... related to the following: (1) The system for identifying and reporting maternal deaths to the commissioner or designee. (2) The form and manner through which the panel may acquire information under section XXX of this title. (3) The
protocol to be used in carefully and sensitively contacting a family member of the deceased woman for a discussion of the events surrounding the death, including allowing grieving family members to delay or refuse such an interview. (4) Ensuring de-identification of all individuals and facilities involved in the panel’s review of cases. (Vermont)

- **Discussion**
  - Specify a deadline for when members of the new MMRC must be appointed.
  
  - Specify when the first public report of the MMRC’s activities is due, if that’s a requirement in your bill (see discussion above).
  
  - What is a Sunset clause? Sunset clauses are typical for newly appointed task forces and commissions. These clauses will “sunset” (ie, expire) the new committee or task force at a specified future date, unless the legislature acts to extend it. **Ideally, you want to avoid a sunset clause in your MMRC bill.** However, in some states including a sunset clause may make the bill more acceptable to “lukewarm” legislators and could get your bill over the finish line. **For example**, Maryland lawmakers included a three-year sunset provision in their initial law which was later removed after lawmakers saw the value of maternal death reviews.

11. **FUNDING & FISCAL NOTE**

- **Discussion**
  
  - Some states require a fiscal impact report for this legislation, which is prepared by a standing finance committee of the legislature. These reports estimate the fiscal implications of a MMRC on the state budget. They may also include a summary of legislative intent and a review of national trends. The fiscal impact report is a key part of the legislature’s deliberation and voting on the bill.
  
  - The cost of conducting maternal mortality review varies by state and depends on several factors including type and quantity of information being collected including case identification and abstraction, challenges in case finding, placement of the committee, frequency of meetings, and how widely review findings and recommendations are disseminated. **See ReviewToAction.org** for types of costs.
  
  - In the preamble or ‘findings’ section of your bill, include a statement about the importance of continual funding. (see below)
  
- **Federal funding:** Although placement in a state agency gives you access to federal funding – which typically supports epidemiology and analysis, often case abstraction and some meeting coordination – do include a provision in your bill directing the state agency where your MMRC is placed to apply for and use any available federal money to fund the duties of the committee. (see below)
You can also tap into **private funding** from philanthropic groups and foundations; give the “go-ahead” to do this in your bill. (see below)

**LEGISLATION EXAMPLE:**

*The legislature additionally finds that comprehensive reviews of child and maternal deaths are a matter of ongoing concern. Because the program of reviews must be sustainable, the legislature recognizes the need to provide funding to conduct child and maternal death reviews not only in the current biennium, but in subsequent biennia as well. (Hawaii)*

*The department shall apply for and use any available federal money to fund the duties of the department and the task force under this chapter. (Texas)*

*The department may accept gifts and grants from any source to fund the duties of the department and the task force under this chapter. (Texas)*