

Toolkit on STATE LEGISLATION

Pregnant women & drug abuse, dependence and addiction

Suggested Legislation:

- *State Study Approaches*
 - *Drug Screening, Testing & Reporting and Drug Courts*
 - *Safe Prescribing*
 - *Treatment & Prevention*
 - *Education & Outreach*
-
- *Suggested legislation: State study approaches*
 - ✓ **Authorize a multi-disciplinary task force to study and make evidence-based recommendations, including early intervention and prevention strategies.**
 - Recommendations should prioritize public health interventions that will optimize health outcomes for both moms and babies.
 - Data can help identify areas of the state where treatment services and community outreach are needed.
 - ✓ **Legislation should task an existing perinatal advisory group or quality collaborative with making recommendations specific to pregnant women and neonatal abstinence syndrome (NAS).**
 - State Perinatal Quality Collaboratives (PQCs) are networks of perinatal care providers and public health professionals working to improve pregnancy outcomes for women and newborns by advancing evidence-based clinical practices and processes. PQCs include hospitals, pediatricians and neonatologists, obstetricians and perinatologists, midwives, nurses, and state health department staff. PQC members identify care processes that need to be improved and use the best available methods to make changes and improve outcomes. State PQCs include key leaders in private, public, and academic health care settings with expertise in evidence-based obstetric and neonatal care and quality improvement.
 - **For example,**

“The secretary shall appoint the Perinatal Advisory Committee to make recommendations for the improvement of the following statewide health status indicators that relate to pregnancy and perinatal care:

 1. *Infant mortality;*

2. Preterm birth;
3. ***Substance abuse during pregnancy;***
4. ***Neonatal withdrawal syndrome, also called Neonatal Abstinence Syndrome (NAS); and***
5. Maternal mortality.

The committee may make recommendations on evidence-based guidelines and programs to improve the outcomes of pregnancies, including ways to improve coordination of existing programs operated by the cabinet and private organizations. -- Kentucky HB 366, enacted 2013

➤ ***Suggested legislation: Drug screening, testing & reporting and drug courts***

- ✓ **If considering mandatory urine testing**, legislation should specify:
 - Testing is permitted *only* with the patient’s consent and to confirm suspected or reported drug use.
 - Patient consent also applies to testing by hospitals when pregnant women are admitted for labor and delivery.
 - In the Medicaid program, a pregnant woman’s eligibility for Medicaid should not be contingent on submitting to a mandatory urine drug test. Similarly, reimbursement for prenatal, labor and delivery care should not be contingent on performance of urine drug testing.

- ✓ **If considering mandatory reporting of suspected or reported drug use**, legislation should specify:
 - Reporting is to the health department, with direct reporting to child protective services only for actual indications of impaired parenting. Criminal penalties and the threat of incarceration have been proven *ineffective* in reducing drug and alcohol abuse and are more likely to deter women from seeking beneficial care than they are to protect children or further the state’s goal of combating prescription drug abuse and diversion.
 - Each case of suspected substance or alcohol abuse should be evaluated independently to serve the goals of protection and provision of services to maintain or reunify families.

- ✓ **Consider an affirmative defense** or exceptions to legal prosecution for pregnant women who are in drug treatment programs or who seek help for their drug problems.
 - **For example,**

“If the patient initiates drug abuse or drug dependence treatment based upon a clinical assessment prior to her next regularly-scheduled prenatal visit and maintains compliance with both drug abuse or drug dependence treatment based on a clinical assessment as well as prenatal care throughout the remaining term of the pregnancy, then the department of children’s services shall not file any petition to terminate the mother’s parental rights or otherwise seek protection of the newborn solely because of the patient’s use of prescription drugs for non-medical purposes during the term of her pregnancy.” -- Tennessee HB 277, enacted 2013

“It is an affirmative defense to a prosecution permitted by subdivision (c)(2) that the woman actively enrolled in an addiction recovery program before the child is born, remained in the program after delivery, and successfully completed the program, regardless of whether the child was born addicted to or harmed by the narcotic drug.” -- Tennessee HB 1295, amendment

- ✓ **If promoting use of drug courts**,
 - Consider better training for drug court officials on the disease of substance abuse and addiction and the unique medical needs of pregnant women. Drug courts may be a helpful step for some but they are not a remedy for all women – especially pregnant women.

- For example, some drug courts pressure women to detox which is not a safe or medically recommended approach for pregnant and their fetuses. And often, the only choice given to a woman with a positive drug test is inpatient treatment which is impractical and not feasible for women supporting families.

➤ **Suggested legislation: Safe prescribing**

✓ **If considering adoption of state rules or guidelines on appropriate prescribing,**

- Legislation should not interfere with or foreclose legitimate clinical treatment options including opioid-assisted therapy (OAT) with methadone or buprenorphine for pregnant women. OAT is the medical standard of care for women who misuse or abuse prescription opiates.
- Legislation should avoid setting arbitrary dosing limits and permit individualized treatment plans for women.
- Consider a ‘safe harbor’ for clinicians who treat pregnant women with substance dependence.
- **For example,**

“Any physician or other health care provider who does not recognize that the pregnant woman has used prescription drugs that place the fetus in jeopardy, or who complies with the provisions of this subsection, or any physician or facility that initiates substance abuse treatment consistent with community standards of care pursuant to this subsection, shall be presumed to be acting in good faith and shall have immunity from any civil liability that might otherwise result by reason of such actions.” -- Tennessee HB 277, enacted 2013

✓ **If considering whether to mandate physician use of PDMPs,**

- It is critical that prenatal care providers only be required to check the PDMP once during the patient’s pregnancy, and not at every visit.

➤ **Suggested legislation: Treatment and prevention**

✓ **When assessing drug and alcohol abuse treatment programs and services in the state,** legislation should:

- Give pregnant women priority admission to available treatment slots in licensed methadone clinics.
- Give priority access to pregnant women who are referred by a clinician to drug abuse treatment programs that receive public funding.
- **For example,**

“Notwithstanding subsection (e), a pregnant woman referred for drug abuse or drug dependence treatment at any treatment resource that receives public funding shall be a priority user of available treatment. All records and reports regarding such pregnant woman shall be kept confidential. The department of mental health and substance abuse services shall ensure that family-oriented drug abuse or drug dependence treatment is available, as appropriations allow. A treatment resource that receives public funds shall not refuse to treat a person solely because the person is pregnant as long as appropriate services are offered by the treatment resource.” -- Tennessee HB 277, enacted 2013

- Ensure that outpatient and family-oriented drug treatment is available and affordable especially for women.

- Expand the type of substance abuse treatment programs, facilities, and providers eligible for reimbursement under Medicaid. For example, reimbursement may be limited to residential treatment only or certain classes of health facilities, unnecessarily excluding outpatient programs.
- ✓ **When appropriating funds**, consider legislation that:
 - Targets funds to local jurisdictions to assist in the development and implementation of multi-disciplinary teams that collaborate on the identification, referral and provision of family-centered, outpatient services for the mother, her newborn and her family.
 - Establishes a pilot intervention program in specific cities or counties that includes supportive services for the family.
 - Increases funding for substance abuse and mental health services in the Medicaid program.
- ✓ **When considering prevention measures**, legislation should:
 - Support community-based psychosocial services for new mothers.
 - Support preventive and other health care for women in prisons.
 - Expand coverage of preconception care and counseling and family planning services for low-income women and women who rely on Medicaid.
 - Maintain focus on the most harmful substances: alcohol and tobacco.

➤ *Suggested legislation: Education and outreach*

- ✓ **When considering public awareness initiatives**, legislation should:
 - Support responsible media reporting about drug abuse and addiction including NAS.
 - Consult with medical experts and community anti-drug coalitions.
 - Ensure that school-based prevention efforts are evidence-based and evaluated.