

Bureau of Justice Assistance (BJA)

Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP)

# Substance Use and Pregnancy—Part 1

Current State Policies on Mandatory Reporting of Substance Use During Pregnancy, and Their Implications

## Introduction

The prevalence of opioid use disorders (OUDs) has increased for both men and women. Research has shown that women—especially pregnant and postpartum women (PPW)—are particularly vulnerable to developing OUDs and to facing difficulties in accessing appropriate OUD treatment. For instance, the rate of prescription opioid overdose deaths increased 351 percent among women from 1999 to 2019.<sup>1</sup> From 1999 to 2014, the rate of OUDs among pregnant women increased by 333 percent.<sup>2</sup> Access to appropriate and timely OUD treatment for PPW is critical to the health of both mothers and infants, because often this population faces unique challenges that are shaped by state policies and available long-term recovery care support.

This series of articles will examine state-level policies that support or inhibit PPWs' access to long-term recovery from OUDs. This first article reviews current federal and state policies for mandatory reporting, implications of these policies, and resources to guide Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP) grantees in understanding and responding to their respective states' policies. Subsequent articles will describe approaches to



integrate treatment for substance use disorders (SUDs) into obstetrics and gynecology (OB/GYN) care and strategies for obtaining financial support for long-term recovery programs.

## Current Federal and State Policies for Mandatory Reporting of Substance Use During Pregnancy

Health care providers overseeing the care of PPW must report any suspected alcohol or drug use. States differ in their mandatory reporting requirement policies, types of participating state agencies, and consequences for women who use substances during pregnancy. Depending on the state policy, mandatory

reporting can be either a facilitator of or a barrier to providing appropriate SUD treatment for women.

## The Child Abuse Prevention and Treatment Act (CAPTA)

CAPTA is a federal law that was enacted in 1974 as a state grant funding mechanism to support the prevention, assessment, and treatment of child abuse and neglect, including substance use by PPW.<sup>3</sup> CAPTA requires states to have policies and procedures in place for providers involved in the delivery or care of infants so that providers can report infant drug exposure to child protective services.

CAPTA's federal standards for mandatory reporting requirements influence state-level policies. States receiving CAPTA funding are required to assure the federal government that state policies address the needs of infants affected by prenatal alcohol and drug use. States must also develop a plan of safe care for affected infants. The plan must address the health of and SUD treatment for the infant and affected family members or caregivers, as well as a state monitoring system to oversee the implementation of safety plans.

## The Comprehensive Addiction and Recovery Act (CARA)

In 2016, CARA was passed to address the impact of the opioid epidemic on PPW, including their families and infants. CARA amended the original provisions in CAPTA regarding mandatory reporting requirements of providers of pregnancy and infant care. It additionally established standards of care and treatment for PPW, including the development of a safety plan for infants and caregivers.<sup>4</sup>

## State-Level Policies

Table 1, developed by the Guttmacher Institute and updated as of September 1, 2021, summarizes state policies in response to CAPTA and CARA.

## Mandatory Reporting Policies

Mandatory reporting policies are important for protecting the health of infants and their caregivers, especially when the mother is unwilling to seek treatment for SUD. Mandatory reporting can help prevent long-term impacts of substance use during pregnancy, including infant substance withdrawal, neonatal alcohol syndrome, and financial burdens of treating infants born with drug addictions. Mandatory reporting can also help to facilitate quicker access to SUD treatment for PPW, depending on the state policy.<sup>5</sup> As the goal is to keep the family unit together, access to appropriate and affordable SUD treatment is critical for women to keep custody of their children. With CAPTA and CARA, states are also able to access additional funding to provide SUD treatment to PPW at minimal cost. As demonstrated in Table 1, some states have leveraged the requirement for safe plans under CAPTA and CARA in order to prioritize SUD treatment for pregnant women, create specialized programs for them, and protect them from discrimination in SUD treatment.<sup>6</sup>

## Implications of Mandatory Reporting Policies

As demonstrated in Table 1, the implications of mandatory reporting requirements depend on individual state policy. Mandatory reporting requirements are intended as a means to identify and prevent the potential health issues resulting from infant alcohol and drug exposure, but such requirements can stigmatize substance use during pregnancy if providers are not properly trained to screen women for SUD and refer them to the appropriate treatment. Research has shown that women in general tend to be less forthcoming about their substance use than men because SUD in women is stigmatized, and this fear is amplified for PPW.<sup>7</sup> For example, one study found that

Table 1. State Policies on Substance Use During Pregnancy

STATE	SUBSTANCE USE DURING PREGNANCY CONSIDERED:		WHEN DRUG USE DIAGNOSED OR SUSPECTED, STATE REQUIRES:		DRUG TREATMENT FOR PREGNANT INDIVIDUALS		
	Child Abuse	Grounds for Civil Commitment	Reporting	Testing	Targeted Program Created	Pregnant People Given Priority Access in General Programs	Pregnant People Protected From Discrimination in Publicly Funded Programs
Alabama	X*					X	X
Alaska			X				
Arizona	X		X			X	
Arkansas	X		X		X	X	
California			X		X		
Colorado	X				Xξ		
Connecticut					X		
Delaware						X	
District of Columbia	X		X			X	
Florida	X				X		X
Georgia						X	
Illinois	X		X		Xξ	X	X
Indiana	X†			X	X		
Iowa	X		X	X		X	X
Kansas						X	X
Kentucky	X		X	X	X	X	X
Louisiana	X		X	X			
Maine			X			X	
Maryland					X		
Massachusetts			X				
Michigan			X				
Minnesota	X	X	X	X	X		
Missouri	XΩ				ξ	X‡	X
Montana			X				
Nebraska							
Nevada	X		X				
New York					X		
North Carolina					X		
North Dakota	X		X	X			
Ohio	X		X		Xξ	X	X
Oklahoma			X			X	X
Oregon					ξ		
Pennsylvania			X		X		
Rhode Island	X		X	X			
South Carolina	X*				X		
South Dakota	X	X	X	X			
Tennessee					Xξ	X	X
Texas	X						
Utah	X		X			X	
Virginia	X		X		Xξ		
Washington	X				Xξ		
West Virginia						XΘ	
Wisconsin	X	X	X		X	Xβ	

\* The Alabama Supreme Court held that drug use while pregnant is considered chemical endangerment of a child. The South Carolina Supreme Court held that a viable fetus is a “person” under the state’s criminal child-endangerment statute and that “maternal acts endangering or likely to endanger the life, comfort, or health of a viable fetus” constitute criminal child abuse.

† State law prohibits a medical provider from releasing information about a pregnant individual’s drug or alcohol test without the patient’s consent.

‡ Priority applies to pregnant people referred for treatment.

ξ Establishes requirements for health care providers to encourage and facilitate drug counseling.

Ω Under state’s child abuse law, a parent is considered unfit if they test positive for substances within eight hours after delivery and have previously been convicted of child abuse or neglect or if they failed to complete a drug treatment program recommended by Child Protective Services.

Θ Substance use providers that accept Medicaid must give pregnant people priority in accessing services.

β Wisconsin provides priority access to pregnant people in both general and private programs.

Source: Guttmacher Institute. (2020, April 1). *Substance use during pregnancy: State laws and policies*. <https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy>. Retrieved August 25, 2021.

women who had an SUD did not trust health care providers to protect them from the social and legal consequences of substance use during pregnancy, and they thus avoided discussing their substance use at all.<sup>8</sup> Furthermore, mandatory reporting is only the first step in a process; subsequent actions required in the policies may further discourage pregnant women from being candid about their substance use. Finally, in states that consider substance use during pregnancy to be child abuse and possible grounds for civil commitment, women can face termination of parental rights, forced admission to an inpatient treatment program, and, in the most severe cases—incarceration.

## Recommendations for COSSAP Grantees

States and local entities can advance standards of care for PPW and their infants and children by educating health care providers on mandatory reporting policies and subsequent actions required in each state.

### Research: Know Your State Policy

Begin by researching your state’s policies regarding substance use by PPW.<sup>6</sup> Use the preliminary information provided in this brief and visit your state’s website to obtain its exact policy language. Understanding state policy will help you know how the state responds to substance use by PPW and what requirements health care providers must meet. The implications of mandatory reporting requirements will differ from one state to another. Equip yourself to educate state and local agencies on those implications.

After researching your state’s policies, search for case studies or peer-reviewed articles about the policies’ real-world implications. For states with more punitive policies, for example, you might research court decisions to understand how the criminal justice system responds to substance use during

pregnancy. For states with targeted or prioritizing SUD treatment policies, research programs targeted for this population or seek studies focused on the screening and referrals of pregnant women to prioritize them for SUD treatment. Understanding the policy landscape and implications of mandatory reporting requirements is the first step in developing partnerships between state and local entities and creating resources for them.

## Develop Resources to Help Navigate Suspected Substance Use During Pregnancy

Once you have a firm understanding of your state’s policies regarding substance use during pregnancy, it is important that you disseminate that information to state and local entities to help providers navigate suspected and confirmed substance use during pregnancy. Diversifying the types of resources available will help to provide a clear understanding of the implications of the state policy and means by which state and local entities can address substance use during pregnancy.

### Examples of resources to develop

- ◀ **Tip sheets** about state-specific policies regarding substance use during pregnancy and local SUD treatments that provide specific treatment to PPW with SUD
- ◀ **Webinars** about the importance and implications of understanding mandatory reporting policies

## Summary

Mandatory reporting requirements can be critical for the health of PPW and their infants. However, state policies may either facilitate or create barriers to women’s access to appropriate SUD treatment. Pregnant women may be afraid to be forthcoming

about substance use because of stigma or punitive policies if their substance use is confirmed. As such, COSSAP grantees play an important role not only in educating state and local entities about state policies regarding substance use during pregnancy, but in disseminating information about local SUD treatment options for PPW with SUDs.

## References

1. National Institute on Drug Abuse. (2020, March 10). Overdose death rates. National Institute on Drug Abuse. Retrieved June 4, 2020, from <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.
2. Haight, S. C., Ko, J. Y., Tong, V. T., Bohm, M. K., & Callaghan, W. M. (2018, Aug 10). Opioid use disorder documented at delivery hospitalization - United States, 1999–2014. *MMWR: Morbidity and Mortality Weekly Report*, 67(31), 845–849. <https://doi.org/10.15585/mmwr.mm6731a1>.
3. National Center on Substance Abuse and Child Welfare. (2017). Child Abuse and Prevention Treatment Act (CAPTA). Substance-Exposed Infants Statutory Summary. Substance Abuse and Mental Health Services Administration (SAMHSA) and the Administration on Children, Youth and Families (ACYF), Children's Bureau. Retrieved August 25, 2021, from [https://ncsacw.samhsa.gov/files/CAPTA\\_SEI\\_Statutory\\_Summary.pdf](https://ncsacw.samhsa.gov/files/CAPTA_SEI_Statutory_Summary.pdf).
4. U.S. Government Printing Office. (2016). Comprehensive Addiction and Recovery Act of 2016, Pub. L. No. 114–198, 114 Stat. 1221. U.S. Government Printing Office. <https://www.govinfo.gov/app/details/PLAW-114publ198>.
5. Seibert, J. H., Stockdale, H. S., Feinberg, R. K., Dobbins, E. E., Theis, E., & Karon, S. L. (2019). State policy levers for expanding family-centered medication-assisted treatment.
6. Guttmacher Institute. (2020, April 1). Substance use during pregnancy: State laws and policies. Retrieved August 25, 2021, from <https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy>.
7. Committee on Health Care for Underserved Women, American College of Obstetricians and Gynecologists. (2011, Jan). AGOG Committee Opinion No. 473: substance abuse reporting and pregnancy: the role of the obstetrician-gynecologist. *Obstetrics and Gynecology*, 117(1), 200–201. <https://doi.org/10.1097/AOG.0b013e31820a6216>.
8. Roberts, S. C., & Nuru-Jeter, A. (2010, May-Jun). Women's perspectives on screening for alcohol and drug use in prenatal care. *Women's Health Issues*, 20(3), 193–200. <https://doi.org/10.1016/j.whi.2010.02.003>.

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