

Ethical Issues and Regulatory Reporting in Treating Pregnant Women with Substance Use Disorder

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Impact of HIPAA

- ▶ Exceptions within HIPAA permit the sharing of otherwise protected medical information:
 - To report child abuse or neglect to the appropriate entity;
 - To avert a serious threat to health or safety if reported to an entity that can prevent the harm.

State Laws on Substance Use During Pregnancy: *Criminal*

- ▶ No states specify in statute that maternal substance use during pregnancy is *criminal child abuse*. [*incarceration possible*]
 - *Tennessee Statute 2014; sunset 2016*
- ▶ Some states allow for *other criminal charges* [*child endangerment; manslaughter; delivery of CDS to minor*]

Impact on Pregnant Women's Access to MAT

► Evidence suggests:

- Pregnant women who are referred to treatment by the criminal justice system are least likely to be referred to programs providing MAT.
- Poor and minority pregnant women are disproportionately impacted by this dynamic (more likely to be subject to criminal justice system; more likely to be screened; more likely to be reported).

State Laws on Substance Use During Pregnancy: *Civil*

- ▶ 23 states and DC permit by statute or regulation a **finding of civil child abuse** for illicit substance use during pregnancy
- ▶ 3 states consider it **grounds for civil commitment**
- ▶ **Maryland does not have either.**

State Laws on Substance Use During Pregnancy: *Reporting*

- ▶ 25 states and the District of Columbia require health care professionals to **report suspected prenatal drug use** during the pregnancy
- ▶ 8 states require health care professionals to **test pregnant women for prenatal drug exposure** if they suspect maternal drug use during pregnancy
- ▶ **Maryland does not have either.**

Pondering the Ethics and Efficacy

- ▶ Policymakers suggest these laws:
 - Deter maternal substance use.
 - Provide opportunity for criminal justice intervention or social services involvement at critical time.
- ▶ No evidence to support that criminalization of illicit substance use during pregnancy:
 - Reduces maternal or child morbidity or mortality; or
 - Reduces maternal substance use.

Pondering the Ethics and Efficacy

- ▶ Interrupts the patient–provider relationship in a particularly vulnerable situation;
- ▶ Deters women from seeking any medical care while pregnant and shortly after for **any medical need**, including
 - Pre–natal; post–natal
 - Vaccination
 - Substance use treatment
 - Treatment for chronic disease
 - Treatment for acute illness or injury

Child Abuse Prevention and Treatment Act (CAPTA)

- ▶ Federal law that provides funding to states—*with many conditions.*
- ▶ One condition is that the state pass a law:
 - Mandating that health care providers who are involved in the delivery or care of a child who has been affected by prenatal exposure to illegal substances notify the appropriate state agency (child protective services) of the child's condition.

Maryland Law: Definitions

- ▶ Family Law Article 5-704.2
 - *Controlled Drug*: CDS on Schedule I through V or under Title 5, Subtitle 4 of the Criminal Law Article (*includes drugs used in MAT*)
 - *Substance-Exposed Newborn*
 - Positive toxicology screen for CDS after birth;
 - Displays effects of CDS use or symptoms of withdrawal resulting from prenatal CDS exposure *as determined by medical personnel*; or
 - Displays effects of fetal alcohol syndrome.

Maryland Law

- A *health care practitioner involved in the delivery or care* of a *substance-exposed newborn*

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- Make an oral report to DSS as soon as possible AND
- Make a written report to DSS within 48 hours after the contact, examination, attention, treatment, or testing that prompted the report.

Maryland Law

- Exceptions:
 - HCP knows another person at institution made report;
 - HCP verifies that:
 - Mother was using CDS as prescribed by a licensed HCP;
 - Newborn does not display effects of withdrawal or symptoms of FAS; and
 - Newborn is not affected by substance abuse.

A report does not create a presumption that a child has been or will be abused or neglected.

Maryland Law

- Possible Outcomes with DSS Involvement
 - *No intervention;*
 - Develop a plan of safe care for newborn;
 - Assess and refer family to appropriate services, including drug treatment; and
 - If necessary, develop a plan to monitor newborn care and family's use of services.

Pondering the Ethics and Efficacy

Are they the same as for the during pregnancy criminal or civil actions?

- ✓ Maybe because
 - Same express purposes
 - Same concerns about interference with patient–provider relationship

- ✓ Maybe not because some evidence that if “done right” can have a positive impact on moms, babies, and families.

For example:

Collaborative Approach to Plans of Safe Care

Questions?

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