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# Characterization of U.S. State Laws Requiring Health Care Provider Reporting of Perinatal Substance Use

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A B S T R A C T

*Background:* State policies pertaining to health care provider reporting of perinatal substance use have implications for provider screening and referral behavior, patients' care seeking and access to prenatal substance use disorder treatment, and pregnancy and birth outcomes.
*Objectives:* This study sought to characterize specific provisions enacted in state statutes pertaining to mandates that health care providers report perinatal substance use, and to determine the proportion of births occurring in states with such laws.
*Methods:* We conducted a systematic content analysis of statutes in all U.S. states that mentioned reporting by health care providers of substance use by pregnant women or infants exposed to substances in utero; inter-rater reliability was high. We calculated the number of states, and proportion of U.S. births occurring in states, with processes for mandatory reporting of perinatal substance use to authorities, and substance use disorder treatment provision for individuals who are reported.
*Results:* Twenty states (corresponding with 31% of births) had laws requiring health care providers to report perinatal substance use to child protective authorities, and four states (18% of births) had laws requiring reporting only when a health care provider believed the substance use was associated with child maltreatment. About one-half of states (13) with any reporting law had a provision promoting substance use disorder treatment in the perinatal period.
*Conclusions:* Findings inform the ongoing debate about how health policies may be used to reduce the population burden of perinatal substance use.



Perinatal substance use poses significant risks for pregnancy, delivery, and infant health outcomes, both through biological and behavioral pathways (Behnke, Smith, Committee on Substance Abuse, & Committee on Fetus and Newborn, 2013; Smith et al., 2006). Five percent of U.S. pregnant women self-report use of any illicit substance in the prior 30 days (Substance Abuse and Mental Health Services Administration, 2014). The recent opioid epidemic in the United States has disproportionately affected women of reproductive age with a corresponding increase in the rate of neonatal abstinence syndrome (Centers for Disease Control and Prevention, 2013;

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Patrick et al., 2012). As such, the question of how governmental action can protect infants from adverse effects of exposure to substance use in the perinatal period has reemerged on the national agenda.

One response to the problem of perinatal substance use has been the enactment of state laws that require health care providers to report pregnant women who use substances, or infants affected by substance use, to child protective agencies. A federal law known as the Child Abuse Prevention and Treatment Act (CAPTA) requires that, as a condition to receive federal grants for programs to prevent child abuse and neglect, state governments have policies and procedures to require health care providers to report to child protection agencies any cases of child abuse or neglect (Young, 2009). CAPTA contains a provision that requires states to have:

> policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants.

There are conflicting views on whether mandatory reporting policies constitute sound public health policy. Policies promoting substance use disorder treatment and offering long-term social services have been associated with improved outcomes (Lester, Andreozzi, & Appiah, 2004; MacMahon, 1997). However, there is also evidence that policies perceived as punitive by patients and providers discourage prenatal care and substance use disorder treatment (American College of Obstetricians and Gynecologists Committee on Ethics, 2015; Angelotta, Weiss, Angelotta, & Friedman, 2016; Roberts & Nuru-Jeter, 2012).

State laws pertaining to perinatal substance use, and interjurisdictional variation in such laws, are important for several reasons. First, specific provisions in state laws may have a significant influence on provider screening and referral behavior, patients' care seeking and access to perinatal substance use disorder treatment, and obstetric and neonatal outcomes (Roberts & Pies, 2011). Second, the U.S. opioid epidemic has opened a window of opportunity for stakeholders seeking to amend or improve health policies pertaining to perinatal substance use. Third, the characterization of specific provisions of state laws are necessary for future the evaluation of the effects of such policies on substance use disorder treatment or health outcomes. However, little prior research has investigated how state laws address health care provider reporting of perinatal substance use. The objectives of the present study were to characterize specific provisions enacted in state law pertaining to mandates that health care providers report perinatal substance use, and to determine the proportion of births occurring in states with such laws.

## Methods

We conducted a systematic content analysis of statutes in all 50 states and the District of Columbia (hereafter referred to as a state) pertaining to the reporting of perinatal substance use to child protective agencies. The Guttmacher Institute publishes annual reports on state policies that consider substance use during pregnancy to be child abuse, whether states require reporting or testing of prenatal substance use, and what substance use disorder treatment programs are available to states (Guttmacher Institute, 2015). Because we are interested in health policies that have direct implications on health care provided to pregnant and postpartum women with substance use disorders, our study is focused more narrowly on state statutes that require health care providers to report either pregnant women who use substances, or fetuses or infants who are suspected of being exposed to substances.

The LexisNexis database, a searchable repository of law, was used to identify relevant state statutes. To identify additional and newer relevant state statutes, we conducted full-text searches using the following search terms: "pregnancy or pregnant or prenatal or perinatal or infant or neonate" and "controlled substance or drug or abuse" and "health care." We identified a total of 467 individual provisions, and excluded those that contained our search terms but were not relevant to our study. We excluded the following types of laws as beyond the scope of our study: laws making the production or sale of illicit substances in the presence of children a criminal offense; laws defining parental substance use as child abuse absent a reference to substance use in the perinatal period or in utero exposure; laws pertaining to benefit packages under public health care programs; laws relative to the administration of public health programs or departments; and other laws that contained the search terms but were unrelated to health care reporting provisions. To ensure our search included all relevant statutes, we cross-referenced a document published by the Administration for Children and Families that lists state statutes relating to parental drug use and child abuse (Administration for Children and Families, 2016). A compilation, by state, of excerpts of the text of statutes included in the present study is available online (https://perinatalpolicyresearch.wordpress.com/).

### *Coding Instrument Development*

We used summative content analysis methods to develop a coding instrument to analyze the content of the public health agency websites (Hsieh & Shannon, 2005). Two authors (M.J., C.H.) read a small number of the state statutes and met to discuss themes that emerged across multiple states. The study team met and developed a 15-item coding instrument that included codes to capture specific provisions of state laws requiring that health care providers report perinatal substance use. We pilot-tested the coding instrument in a sample of statutes ($n = 8$) for clarity of the codes. After pilot testing of the instrument was complete, two authors (M.J., C.H.) coded all content, meeting weekly to adjudicate any coding discrepancies. A third coder then independently coded the statutes to assess reliability of the instrument. To measure inter-rater reliability, we used prevalence- and bias-adjusted κ statistics, which provide a measure of inter-rater reliability that is adjusted to assess reliability for binary items where "yes" and "no" values are not evenly distributed (Byrt, Bishop, & Carlin, 1993). Inter-rater reliability was substantial, with the prevalence- and bias-adjusted κ ranging from 0.56 to 1.00 and a mean κ of 0.75 (Table 1 in the Supplemental Material shows raw agreement and prevalence- and bias-adjusted κ for each specific item).

### *Measures*

We first determined whether states had laws requiring health care providers to report perinatal substance use to child protective agencies, whether states had laws requiring reporting of