Supporting the Health and Safety of Pregnant and Parenting People who Use Substances and their Newborns

This document provides guidance to New York City (NYC) clinicians on supporting the health and safety of pregnant and parenting people who use substances and their newborns.

For comprehensive information and guidance, see:

- Guidance[1] on implementing the requirements of the federal Child Abuse Prevention and Treatment Act and the Comprehensive Addiction and Recovery Act (CAPTA CARA), developed by New York State Department of Health (DOH), Office of Addiction Services and Supports (OASAS), and the Office of Children and Family Services intended for clinicians and their leadership.
- Guidance[2] on mandated reporting in New York State.

Screening and Toxicology Testing

New York State Public Health Law and NYC Human Rights Law requires medical providers to obtain informed consent from the patient prior to conducting any toxicology testing of the patient or their child, with exceptions for emergency situations, and requires that the consent be documented in the patient's medical record.[3] **Suspicion of parental drug use is not a medical basis for toxicology testing,** which, per New York State guidance, "should only be performed when medically indicated as part of the work up for the pregnant individual and infant to determine the appropriate medical treatment."[4]

Unintentional overdose contributes significantly to maternal mortality rates in the United States, including within NYC in recent years. If screening or toxicology results indicate opioid use, pregnant and post-partum parents should be educated about the risk of overdose and provided with resources on overdose prevention and intervention.

The American College of Obstetricians and Gynecologists (ACOG) recommend universal verbal screening for substance use during pregnancy.[5] ACOG does not recommend routine toxicology testing during pregnancy and delivery of pregnant or birthing patients or newborns. Clinicians should only use validated screening tools, such

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[1] Full link: https://health.ny.gov/prevention/captacara/#:~:text=CAPTA%20CARA%20is%20a%20federal,substance%20affected%20newborns%20born%20annually

[2] Full link: https://nysmandatedreporter.org/MandatedReporters.aspx

[3] For additional information, see the New York State Department of Health's CAPTA CARA FAQ document, available here: https://health.ny.gov/prevention/captacara/docs/capta_cara_faq.pdf

[4] NYS Department of Health. Dear Hospital CEO/Birth Center Administrator, November 23, 2021. https://health.ny.gov/prevention/captacara/docs/dear_hospital_letter.pdf

[5] ACOG. Substance Use Disorder in Pregnancy. https://www.acog.org/advocacy/policy-priorities/substance-use-disorder-in-pregnancy#:~:text=ACOG%20recommends%20testing%20be%20performed,factor%20in%20determining%20family%20separation.

as 4Ps,[6] National Institute on Drug Abuse (NIDA) Quick Screen,[7] and the Car, Relax, Alone, Forget, Family/Friends, Trouble (CRAFFT) screening tool for adolescents and young adults ages 12-21.[8] A positive screen does not indicate a substance use disorder but can indicate a need for further assessment and support.

Supporting Pregnant and Postpartum Persons Affected by Substance Use, Their Newborns, and Other Caregivers

Pregnant and post-partum persons, newborns and families impacted by substance use deserve comprehensive support, care, and/or treatment. Early interventions and recovery support in the prenatal period is critical to the recovery of the parent and safety of the child. Universal verbal screening, brief intervention and referral to treatment (SBIRT) protocols have been shown to effectively support people.[9]

Pregnant and post-partum people may avoid seeking medical care out of fear that their substance use will impact the care they receive or lead to a report to child protective services and/or the removal of their newborn. Destigmatizing substance use may make patients more willing to seek treatment, as well as prenatal and postnatal health care. Respectful and safe environments in clinical settings promote an atmosphere that allows patients to more readily disclose substance use and receive appropriate medical care and other service resources when necessary. Additional information for healthcare providers on the NYC Standards for Respectful Care at Birth can be found on the NYC Health Department webpage (www.nyc.gov/health).

Pregnant people and parents with substance use disorder may also lack access to consistent or robust social support and appropriate care or treatment. Hospitals must link patients impacted by substance use to appropriate services at discharge.[10] Postpartum parents with substance use disorder should be connected to services, which may include substance use disorder treatment programs,[11] Family Support / Prevention Services, home visiting programs, and/or mental health services. Where possible, the pregnant person and baby should be treated as an interactional dyad when making treatment recommendations and service referrals. NYC providers and their staff can find information about substance use and other community providers to support patients upon discharge from the Office of Addiction Services and Supports (OASAS). This resource page allows providers to filter by designation including the

[6] Ewing H. A practical guide to intervention in health and social services with pregnant and postpartum addicts and alcoholics: theoretical framework, brief screening tool, key interview questions, and strategies for referral to recovery resources. Martinez (CA): The Born Free Project, Contra Costa County Department of Health Services; 1990

[7] NIDA Quick Screen V1.0. https://nida.nih.gov/sites/default/files/pdf/nmassist.pdf

[8] The Center for Adolescent Behavioral Health Research. The CRAFFT 2.1 Manual. https://crafft.org/wp-content/uploads/2021/10/CRAFFT_2.1_Provider-Manual_2021.10.28.pdf

[9] ACOG. Opioid Use and Opioid Use Disorder in Pregnancy, 2017. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/08/opioid-use-and-opioid-use-disorder-in-pregnancy

[10] 10 New York Codes, Rules, and Regulations 405.9(f)

[11] Examples include medication for addiction treatment, inpatient detoxification/rehabilitation programs, including residential "parents with children" treatment programs and/or outpatient withdrawal management and treatment programs

"parents with children" to identify programs for mothers and their children, and child care resources.[12]

The NYC Administration for Children's Services (ACS) funds a broad array of in-home services to help families overcome day-to-day challenges, prevent involvement with child protection services, and reduce placements into foster care. Services offered include help with mental health concerns, substance use, domestic violence, exploited youth, and home care services. These and other services can be accessed via the ACS Support Line at 212-676-7667 or at connect@acs.nyc.gov. Family support services, also known as prevention services, are available for pregnant/expecting parents and to families with children ages 0-18 (or 21 if the child is exiting foster care). Family support services are available to all New York City families at no cost.

An open ACS case or report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) is **not** required to access family support services. A report to the SCR is **not** a substitute for referring a family to these services or other supports and is not an appropriate way to refer a family for substance use assessment, treatment or related supports.

Developing a Plan of Safe Care (POSC)

Federal regulations require that Plans of Safe Care (POSCs) be created by the clinician who identifies a substance use need, to support the health and safety of newborns, and pregnant or postpartum people "affected by substance use" and their families or caregivers. Most frequently, this clinician will be providing pregnancy care for the pregnant or postpartum person. A newborn is diagnosed as substance affected if the child is physiologically impacted by

- documented withdrawal symptoms; or
- a neonatal abstinence syndrome (NAS) diagnosis; or
- fetal alcohol spectrum disorder (FASD) diagnosis.[13]

Federal and state law does **not** require that child protective services be involved in the development of a POSC. In addition, the existence of a POSC does **not** warrant a report to the SCR. Hospitals and medical providers are required to report quarterly instances of newborns physiologically impacted by substance use and the creation of a POSC using the Health Electronic Response Data System, as detailed in the last section of this document titled: Federal Reporting Requirements.[14]

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[12]Full link: https://webapps.oasas.ny.gov/providerDirectory/index.cfm?search_type=2

[13] The Child Abuse Prevention and Treatment Act (CAPTA) with amendments made by the *Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act* or the *SUPPORT for Patients and Communities Act*, Public Law (P.L.) 115-271, enacted October 24, 2018.

[14] HERDS is accessible via this link: https://hcsauth.health.ny.gov/authenticationendpoint/login.do?RelayState=%252Fhcs%252Findex.html&commonAuthCallerPath=/samlsso&forceAuth=true&passiveAuth=false&sessionDataKey=b08c8cc5-0f2c-4b68-bd8b-

The clinical care team, in partnership with patients, tailor POSCs to 1) address the basic needs of the infant and family; 2) identify support systems; and 3) link families to services and/or community-based organizations when appropriate. Guidance on POSCs, including templates and data reporting requirements, can be found on the New York State Department of Health CAPTA CARA webpage.[15]

When is a report to the SCR required?

Mandated reporters must call the SCR when, in their professional role, they develop a reasonable cause to suspect that a child is being maltreated or abused by a parent or other person legally responsible for the child. Abuse and maltreatment are defined as follows:

- Abuse includes non-accidental serious physical injury, risk of serious physical injury, or sex abuse.
- Maltreatment involves failure to provide the minimum degree of care, which results in impairment or imminent danger of impairment to the child's physical, mental or emotional condition. The determination of whether a minimum degree of care was taken (in providing food, clothing, medical care, etc.) hinges upon whether the parent was financially able to do so or was offered financial or other reasonable means to do so. Poverty, in and of itself, is not child maltreatment.

The SCR cannot register a report of suspected abuse or maltreatment of an unborn child.

A positive toxicology report on its own <u>does not</u> require an SCR report, nor does a pregnant person's past or present substance use, or late, limited or minimal prenatal care.

In assessing for possible maltreatment of a newborn by a person who has used or may be using substances, mandated reporters should assess whether the parent has failed to provide a minimum degree of care and whether that failure has caused or will cause impairment or imminent risk of impairment. The following factors <u>may</u> be relevant in this determination:

- the ability of the person(s) who will be caring for the newborn to respond to the newborn's current and anticipated needs;
- the provider's assessment of the family's ability to meet the newborn's physical condition and follow-up health care needs, with appropriate social and medical supports; and

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[15] Full link: https://www.health.ny.gov/prevention/captacara/

- for parents whose substance use presents risks for their ability to care for the newborn, their engagement in appropriate and accessible care or treatment, that addresses or otherwise mitigates the risk to the newborn.[16]

While the child protective system plays a vital role in ensuring the safety of children, unnecessary child welfare involvement can cause undue stress to families. NYC data shows that Black and Hispanic families are significantly more likely to be reported to the SCR than white families.[17] To mitigate bias, mandated reporters can ask themselves if they would make the same decision to call the SCR if the child or family were of a different race, gender, sexual orientation, culture, age, or socio-economic status. It can also be helpful to recognize and seek to mitigate the stigma and biases that people with substance use disorders and mental health diagnoses experience. To further mitigate bias and make sound decisions, it can also be helpful to huddle or consult with colleagues, including those with different perspectives and/or expertise (clinical, social work, etc.), to determine whether there is indeed reasonable cause to suspect abuse or maltreatment.

Federal Reporting Requirements

Healthcare systems are required to submit aggregate, de-identified quarterly data reporting the number of births involving a substance-affected newborn and the creation of a POSC by completing the CAPTA Data Survey (*New York State CAPTA Data Form to the Office of Children and Family* Services) in the Health Commerce System (HCS) Health Electronic Response Data System (HERDS). The report is due no later than the 5th day of the month following the end of each quarter and satisfies the CAPTA federal reporting requirement.[18]

Having a POSC or being referred to a provider to develop a POSC, does not mean the pregnant or birthing individual should be reported to child protective services, and creation of a POSC will not generate child protective involvement. Refer to the section above titled: "When is a report to the SCR required?" for guidance on when a report to the SCR is appropriate.

Additional information is available on the New York State Department of Health's CAPTA CARA website.[19]

[16]While not recommended or required for every parent struggling with SUD, if the parent is entering an inpatient residential treatment program and there is no other reasonable cause to suspect child abuse or maltreatment, an SCR report is not necessary

[17]See, for example: https://www.nyc.gov/assets/acs/pdf/data-analysis/2024/demographics-children-fy-2024.pdf

[18]CAPTA requires that health care providers involved in the delivery or care of infants affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a Fetal Alcohol Spectrum Disorder notify the child protective services system of the occurrence.

[19] Full link: https://www.health.ny.gov/prevention/captacara/