Wynne Health Group

Memorandum

April 5, 2021

SUMMARY OF RECENT FEDERAL ACTIONS ON MATERNAL HEALTH & GENDER EQUITY

I. INTRODUCTION

This memorandum collates and summarizes key federal activity on maternal health and gender equity thus far in 2021. Section II first examines prominent legislative activity on these fronts, including important statutory changes that authorize state Medicaid programs to extend postpartum coverage to a full year. The section also includes other prominent legislative proposals to improve maternal health, as well as mentions of maternal health issues in other important health-related hearings in 2021. Section III overviews developments on the regulatory front, beginning with an examination of key recent interagency work on maternal health, as well as the White House's establishment of its Gender Policy Council. The section also discusses potential reversals on previous Trump Administration changes to the Title X family planning program and section 1557 protections.

II. LEGISLATIVE DEVELOPMENTS ON MATERNAL HEALTH POLICY

A. Black Maternal Health Momnibus Act

In March 2021, Reps. Lauren Underwood (D-IL) and Alma Adams (D-NC), along with Sen. Cory Booker (D-NJ) and the Black Maternal Health Caucus, reintroduced the Black Maternal Health Momnibus Act of 2021 (H.R. 959[1]/S. 346[2]).[3]

The bicameral legislation – comprised of 12 individual bills (up from 9 bills in the previous iteration[4]) – aims to address the maternal health crisis in America – a crisis disproportionately impacting expectant Black mothers, who are dying at 3 to 4 times the rate of their white counterparts.[5] A similar measure was advanced in the previous Congress by Rep. Underwood and Vice President Harris. At present, both the

[1] https://www.congress.gov/bill/117th-congress/house-bill/959?q=%7B%22search%22%3A%5B%22momnibus%22%5D%7D&s=1&r=1
[2] https://www.congress.gov/bill/117th-congress/senate-bill/346?q=%7B%22search%22%3A%5B%22momnibus%22%5D%7D&s=2&r=2
[3] https://blackmaternalhealthcaucus-underwood.house.gov/Momnibus; https://drive.google.com/file/d/1PQFyy_f7YZRLbDunozLrbk8y7y-_0j6o/view
[4] https://underwood.house.gov/media/press-releases/underwood-adams-harris-members-black-maternal-health-caucus-unveil-historic
[5] https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Freproductivehealth%2Fmaternalinfanthealth%2Fpregnancy-mortality-surveillance-system.htm

House and Senate measures are entirely Democratic-led and are collectively backed by more than 200 maternal and health care organizations.[6]

The updated measure builds on other core maternal health legislation, such as legislation to extend the Medicaid postpartum coverage to a year (see Part B below). Key provisions include enhanced federal investments in social determinants of health (SDOHs); funding for community-based organizations to improve maternal health outcomes for Black pregnant and postpartum people and women of color; and initiatives to enhance access to maternity care, especially for maternity care deserts.[7]

New to this year's package is a measure that accounts for the recent shift in maternal health amid the ongoing COVID-19 pandemic. For example, the updated iteration includes a provision to address the unique risks for and effects of COVID-19 during and after pregnancy, while also more broadly promoting maternal vaccinations to protect the safety of moms and babies. Finally, the updated version recognizes climate change-related risks for moms and babies by investing in initiatives that reduce levels of and exposure to extreme heat, air pollutions and other environmental threats that post risks to pregnant individuals, mothers, and their infants.[8]

B. Extension of Medicaid and CHIP Postpartum Coverage

Earlier this month, Congress included a provision in its sweeping $1.9 trillion COVID-19 and economic relief package (P.L. 117-2)[9] that extends, at state option, the Medicaid and Children's Health Insurance Program (CHIP) postpartum coverage period from 60 days following pregnancy to a full year. The option is available to states over a five-year period (vs. a seven-year period under a previous iteration[10]), beginning April 1, 2022 through April 1, 2027, and at a projected cost to the federal government of roughly $6 billion over 10 years.[11] States electing this option will be reimbursed at the state's regular Federal Medical Assistance Percentage (FMAP). Note that a similar (but not identical) proposal to extend Medicaid and CHIP postpartum coverage was included in the MOMS Act of 2020 advanced last year.[12]

In contrast to the more modest postpartum coverage enacted by Congress, the Medicaid and CHIP Payment and Access Commission (MACPAC) included a recommendation in its March 2021 report to Congress to *require* states expand postpartum coverage under Medicaid and CHIP for a full year with a 100 percent federal match. MACPAC also includes a proposed requirement for states to provide full Medicaid benefits

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6 https://underwood.house.gov/sites/underwood.house.gov/files/Black%20Maternal%20Health%20Momnibus%20Act%20of%202021%20Endorsements.pdf

7 https://blackmaternalhealthcaucus-underwood.house.gov/Momnibus; https://drive.google.com/file/d/1PQFyy_f7YZRLbDunozLrbk8y7y-_0j6o/view

8 https://www.forbes.com/sites/erinspencer1/2021/02/10/momnibus-bill-takes-aim-at-reducing-black-maternal-deaths/?sh=702e13aa71ca

9 Ibid (refer to sec. 9812)

10 https://www.congress.gov/bill/117th-congress/house-bill/1319/text/eh (refer to sec. 3102 of House-engrossed version of H.R. 1319)

11 https://www.cbo.gov/publication/57056

12 https://www.congress.gov/bill/116th-congress/house-bill/4996/text?q=%7B%22search%22%3A%5B%22Helping+MOMS+Act%22%5D%7D&r=1&s=3

to individuals enrolled in all pregnancy-related pathways. MACPAC estimates that the cost of the mandatory extension of the postpartum coverage period, inclusive of the enhanced 100 percent FMAP, would be between $30-$40 billion over 10 years.[13]

While the postpartum coverage expansion passed by Congress is an important milestone, the optional provision with no enhanced federal funding is likely to serve as a foundational point by which maternal health advocates seek to enact more comprehensive proposals such as the one advanced by MACPAC.

C. Health Equity and Accountability Act from Tri-Caucus

Since 2007, the Congressional Tri-Caucus has introduced versions of the Health Equity and Accountability Act (HEAA) (H.R. 6637, 116th Congress) – a comprehensive package intended to reduce health disparities by addressing underlying conditions and factors that disproportionately affect communities of color.[14,15] More than 200 national, state, and local organizations supported the legislation in 2020.[16] The Tri-Caucus has not yet reintroduced HEAA in the 117th Congress but will likely do so in the coming months.

Title V of the legislation aims to strengthen the continuum of care for reproductive, maternal, newborn, and child health. Additionally, HEAA takes a multi-pronged approach that tackles various aspects of health care – including social determinants of health, workforce diversity, health services research, insurance coverage, and health care delivery. A sample of proposals follow:

- Provides grants to support health insurance enrollment, health education, and increased access to quality health services in underserved communities (Sec. 501)
- Requires the Centers for Disease Control and Prevention (CDC) to conduct research and expand surveillance on gestational diabetes (Sec. 509)
- Authorizes the Center for Medicare and Medicaid Innovation (CMMI) to test maternity care models (Sec. 519)
- Provides grants to increase diversity in maternal, reproductive, and sexual health professionals (Sec. 522)

D. Additional Discussion on Maternal Health in other Health-related Hearings in 2021

Maternal health issues have notably arisen in recent congressional hearings not directly focused on maternal health issues. This demonstrates the interrelatedness of maternal health policy with other key health policy

[13] https://www.macpac.gov/wp-content/uploads/2021/03/March-2021-Report-to-Congress-on-Medicaid-and-CHIP.pdf and https://mypolicyhub.com/content_entry/march-2021-report-to-congress-addresses-countercyclical-financing-postpartum-coverage-medicaid-estate-recovery-duals-and-dsh/
[14] https://www.congress.gov/bill/116th-congress/house-bill/6637
[15] https://chuygarcia.house.gov/media/press-releases/rep-chuy-garc-leads-tri-caucus-introduce-landmark-health-equity-and
[16] https://chuygarcia.house.gov/sites/chuygarcia.house.gov/files/HEAA%20Organizational%20Sign-On%20Letter%20of%20Support_4.28.20_FINAL.pdf

issues and suggests other legislative opportunities for advancing maternal health priority issues. These discussions are outlined in the below.

- **House Energy & Commerce Subcommittee on Health – The Future of Telehealth**: Members briefly discussed at one point that increased access to telehealth could have positive effects on maternal mortality, since telehealth would facilitate access to providers with similar cultures and backgrounds to those of patients, and that seeing providers with the same background has a positive impact on health outcomes.[17]

- **House Appropriations Subcommittee on Health and Human Services, Education, and Related Agencies – COVID-19 and the Mental Health and Substance Use Crisis**: Members spoke about the effects COVID-19 has had on the mental health of expecting mothers, noting that maternal mental health (including postpartum depression) and other anxiety disorders are among the most common complications of pregnancy and childbirth. They discussed that maternal mental health issues are different in some important ways, including that many new mothers with postpartum depression are experiencing mental health disorders for the first time and are not already connected to mental health services. As such, they recommended a multi-systemic approach to this issue that integrates mental health treatment within perinatal services. Witnesses added that mental health treatment as well as early screening and identification must be a part of the standard of care, and that all women should be asked about mental health challenges when going through child birth. They noted that increased funding would be very important to ensuring such changes could occur.[18]

III. REGULATORY DEVELOPMENTS ON MATERNAL HEALTH POLICY

A. Interagency Efforts on Maternal Health

Agencies across HHS are deployed on work to improve the health and wellbeing of women and mothers. This includes offices and teams within CMS, ASPE, CDC the Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), and others. While there has not been substantial activity from these efforts so far in 2021, it is likely that activity on this front will accelerate in the event Chiquita Brooks-LaSure is confirmed as CMS Administrator and other new Administration officials begin implementing their regulatory initiatives. Along these lines, more detail may become available when President Biden releases his proposed budget to Congress, currently expected in early May.

We outline recent activity from these interagency efforts below.

[17] https://energycommerce.house.gov/committee-activity/hearings/hearing-on-the-future-of-telehealth-how-covid-19-is-changing-the
[18] https://appropriations.house.gov/events/hearings/covid-19-and-the-mental-health-and-substance-use-crises

Agency	Activity Details
ONDCP	On April 1, 2021, the White House Office of Drug Control Policy (ONDCP) released its preliminary plans to address the rise in drug overdose deaths and the opioid epidemic. Specifically, the plan includes how the ONDCP will coordinate with other White House components and the interagency to support pregnant women with substance use disorder in obtaining prenatal care and addiction treatment without fear of child removal.[19]
HRSA	On March 18, 2021, HRSA issued a grant opportunity for all states and territories to apply for funding through the FY 2021 Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program. HRSA estimates approximately $342 million will be distributed to the 56 eligible entities. This funding was made available by the Consolidated Appropriations Act, 2021 (P.L. 116-260).[20] The American Rescue Plan Act of 2021 (P.L. 117-2) provided an additional $150 million (available through September 30, 2022) to MIECHV, which has yet to be distributed.[21] Notably, Consolidated Appropriations Act, 2021 authorized grantees to use MIECHV grant funds during the COVID-19 public health emergency to: • Train home visitors in conducting virtual home visits and in emergency preparedness and response planning for families; • Acquire the technological means needed to conduct and support a virtual home visit for families enrolled in the program; and • Provide emergency supplies to families served, regardless of whether the provision of such supplies is within the scope of the approved program, such as diapers, formula, non-perishable food, water, hand soap, and sanitizer. Funding will be provided in the form of a formula grant, with one third of the grant allocation based on the proportion of children under the age of five living in poverty. The application deadline is June 15, 2021 and the period of performance is September 30, 2021 through September 30, 2023.
CDC	On April 1, 2021, the CDC released a report analyzing the rates of maternal mortality for 2019, which ultimately found that 754 women died of maternal causes in the U.S. in 2019 (an increase from 658 in 2018). Rates were substantially higher for non-Hispanic black women than non-Hispanic white women and Hispanic women.[22]
CMS	On December 22, 2020, CMS announced it was launching next phase of its Maternal and Infant Health Initiative (MIHI) to further support states' work on postpartum care visits, well-child visits, and decreasing the rate of cesarean section births in low-risk pregnancies.[23]

[19] https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf?fbclid=IwAR2TBk34U_XRqlqK_pAYnUd_9f7zY3IbCQI9KxI6S5eYeRJdFzl9B09hZ84
[20] https://www.congress.gov/bill/116th-congress/house-bill/133
[21] https://www.congress.gov/bill/117th-congress/house-bill/1319
[22] https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/maternal-mortality-2021.htm
[23] https://www.cms.gov/newsroom/news-alert/cms-launches-next-phase-medicaid-and-chip-maternal-and-infant-health-initiative

ASPE	On December 3, 2020, ASPE published the Department's Action Plan for improving maternal health, which includes three key targets for improvement: [24] • Reducing the maternal mortality rate by 50 percent in five years; • Reducing the low-risk cesarean delivery rate by 25 percent in five years; and • Achieving blood pressure control in 80 percent of women of reproductive age with hypertension in five years. The plan includes examples of specific actions HHS could take in support of its goals and objectives, including: • Potential work on new care models for maternal health; • Development and public reporting of new quality measures for maternal mortality and morbidity; • Developing a new program of Rural Obstetric Readiness; and • New funding for projects related to maternal health data through the Patient-Centered Outcomes Research Trust Fund, among others.

B. MOM Model Update

The Centers for Medicare & Medicaid Innovation (CMMI) began operating the Maternal Opioid Misuse (MOM) model in 2020, which is designed to improve care for pregnant and postpartum Medicaid beneficiaries with opioid use disorder (OUD). The model intends to improve quality and expand access for this population through state-driven care delivery improvement, health care infrastructure expansion, and sustainable payment transformation.[25]

Nine states are currently participating in the model in what CMMI is calling the "transition period," during which states are preparing for full implementation of the model next year. While states were originally expected to begin enrolling beneficiaries as they continued the transition period in January 2021, CMMI postponed the date on which states could begin enrolling beneficiaries until July 1, 2021.[26] No other changes to the model have been announced since the transition to the current Biden-Harris Administration, though the agency notes it is currently reviewing all requirements in place for Years 1 and 2 of the model.

C. White House Council on Gender Policy Council

On March 8, 2021, President Biden signed an EO establishing the White House Gender Policy Council as a part of the Administration's broader strategy to advance gender equity and equality.[27] Per the EO, the Council is directed to coordinate federal efforts around combatting systemic bias and discrimination,

[24] https://aspe.hhs.gov/initiative-to-improve-maternal-health
[25] https://innovation.cms.gov/innovation-models/maternal-opioid-misuse-model
[26] https://www.cms.gov/files/document/covid-innovation-model-flexibilities.pdf
[27] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-establishment-of-the-white-house-gender-policy-council/

increasing economic opportunity for women in the workforce; combatting gender stereotypes in education; increasing access to comprehensive and reproductive health care; and preventing all forms of gender-based violence, among others. The Council will involve leadership from multiple federal departments and will be led by two co-chairs designated by the President.

A subsequent blog post authored by the two co-chairs of the Council – Jennifer Klein and Julissa Reynoso – noted that each member of the Council will execute on a plan for addressing general equity and equality within each of their respective agencies. The Council itself will submit its own government-wide strategy to the President on strategies for advancing gender equity.[28]

D. Title X

The Biden Administration is in the process of reversing the Trump Administration's overhaul of the regulations governing the Title X family planning program, known as the "domestic gag rule" (84 Fed. Reg. 7714).[29] The Guttmacher Institute estimates that 981 U.S. clinics – roughly one in four Title X-funded sites as of June 2019 – likely withdrew from the Title X program due to the "domestic gag rule."[30] The Trump Administration's transformation of Title X reduced its capacity to serve patients by at least 46 percent, potentially affecting approximately 1.6 million patients, according to the Guttmacher Institute.[31]

On March 18, 2021, the Department of Health and Human Services (HHS) announced its plans to promulgate new regulations that are "substantively similar" to the regulations that governed the Title X federal family planning program in 2000 during the tail end of the Clinton Administration (65 Fed. Reg. 41270).[32,33] This decision responds to President Biden's directive, issued on January 28, 2021, to HHS to assess the Trump-era regulations and "consider, as soon as practicable, whether to suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those regulations, consistent with applicable law, including the Administrative Procedure Act."[34]

[28] https://www.whitehouse.gov/briefing-room/blog/2021/03/12/the-white-house-gender-policy-council-a-message-from-the-co-chairs/
[29] https://www.federalregister.gov/documents/2019/03/04/2019-03461/compliance-with-statutory-program-integrity-requirements
[30] https://www.guttmacher.org/article/2020/02/estimating-impact-changes-title-x-network-patient-capacity
[31] Ibid.
[32] https://opa.hhs.gov/about/news/opa-newsroom
[33] https://www.federalregister.gov/documents/2000/07/03/00-16758/standards-of-compliance-for-abortion-related-services-in-family-planning-services-projects
[34] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/

In the announcement, HHS shared its targeted timeline:

Tentative Deadline	HHS Action
April 15, 2021	Publication of new Notice of Proposed Rulemaking (NPRM) in the *Federal Register*
June 14, 2021*	Deadline for public comments (assuming 60-day public comment period)
Early Fall 2021	Publication of final rule in the *Federal Register* and finalized regulations become effective
December 2021	Fiscal Year (FY) 2022 funding announcement

* Estimated date based on a 60-day public comment period.

E. Section 1557 Protections

On June 12, 2020, the Centers for Medicare & Medicaid Services (CMS) under the Trump Administration finalized its revised interpretation of the Affordable Care Act (ACA)'s Section 1557 gender identity protections.[35] In brief, these changes eliminated nondiscrimination protections for transgender patients and women seeking abortions, reverting to a "plain" definition of sex meaning "the biological binary of male and female that human beings share with other mammals."

While the Biden-Harris Administration has not formally proposed to reverse these changes, it has signaled a likely willingness to do so via recent Executive Actions. Specifically, President Biden signed an executive order (EO) on January 20, 2021 to combat discrimination on the basis of gender identity or sexual orientation. Specifically, the EO directs the head of all federal agencies to review existing regulations and identify those that are inconsistent with laws that prohibit sex discrimination.[36] In addition, the recent confirmation of Rachel Levine as HHS Assistant Secretary further signals intended policymaking around protections for transgender individuals.

A reversal of the Trump Administration's Section 1557 revisions would require further rulemaking from the Biden-Harris Administration. As previously mentioned, the Administration may share more on its intentions regarding this issue in its forthcoming budget proposal.

F. MACPAC Session on VBP & Maternal Health

On January 28, 2021, the Medicaid and CHIP Payment and Access Commission (MACPAC) convened a session to discuss preliminary findings from a series of case studies on value-based purchasing (VBP) models for maternity care.[37] Specifically, Commission staff examined existing VBP models for maternity care in five states: Arkansas, Connecticut, Colorado, North Carolina, and Tennessee. The five models spanned the categories of episode-based payment models, pay-for-performance models, and pregnancy medical homes. Overall, staff found the following in their analysis of these models:

[35] https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-11758.pdf
[36] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/
[37] https://www.macpac.gov/wp-content/uploads/2021/01/Value-Based-Payment-for-Maternity-Care-in-Medicaid.pdf

- Staff determined the VBP models being studied were not designed to fundamentally alter the paradigm of care delivery for maternity care, and instead seeks to incentivize providers to better comply with standard clinical practice.
- The models typically used changes in payment to drive targeted improvements on quality measures and also aimed to reduce spending. Staff further noted some stakeholders suggested that models should be focused solely on quality because Medicaid already reimburses providers at a much lower rate than other payers and that more substantial reductions in cost could be problematic.
- Payment incentives were not directly tied to reductions in maternal mortality/morbidity or racial disparities, and, as mentioned, were instead tied to whether providers were operating according to standard clinical practices.
- Providers reported it was helpful for them to know how they are performing against their peers in regards to quality improvement efforts.

Given these findings, some Commissioners expressed skepticism that current VBP approaches would ever meaningfully address issues such as social risk, disparities, and maternal mortality and morbidity. However, others saw the existing models as the on-ramp to more sophisticated models that could drive change in these arenas. The Commission plans to publish an issue brief based on their findings and discussions in the next few months, which could inform future payment model innovation in maternity care.

IV. CONCLUSION

We hope this is a helpful overview of recent federal activity on maternal health and gender equity. Please let us know if you have any questions or if you would like to discuss any matters in more detail.