

April 18, 2025

Thomas P. Weierman
Deputy General Counsel, Department of Children and Families
One Ashburton Place, 3rd Floor
Boston, MA 02108

Re: Comments regarding proposed 110 CMR 2.00

Dear Mr. Weierman,

We were proud to partner with the Department of Children and Families, the Department of Public Health, the Office of the Child Advocate, and the Legislature to pass reforms to the 51A statute concerning substance exposed newborns in the last legislative session. We appreciate the opportunity to provide comments on the Department's proposed regulations in response to this new law - Chapter 285 of the Acts of 2024.

Below please find our comments and recommendations related to the proposed *110 CMR 2.00*:

Glossary - "Physical Injury (d)"

We agree "addiction to drug at birth" should be removed from the definition of "physical injury".

However, we believe the addition of "(d) exposure to patterns of harmful substance use" is inappropriate under the definition of "physical injury" and should be removed entirely. This proposed change is inconsistent with the legislative intent of Chapter 285 to prevent unnecessary referrals of substance-exposed newborns to DCF.

As written, this proposed change implies exposure to a caregiver's substance use constitutes a "physical injury" to a child. This is inaccurate. While "exposure to patterns of harmful substance use" may lead to a physical injury, it is not a physical injury in and of itself. This revision is inconsistent with the other criteria listed under the definition of physical injury (i.e. bone fracture, soft tissue swelling), which describe tangible injuries.

Further, DCF's current definition of neglect already encompasses the underlying child welfare concerns that may arise from "exposure to harmful patterns of substance use". When substance use compromises a caregiver's ability to meet a child's basic needs, mandated reporters are already obligated to file a 51A report.

In addition, this proposed change is expansive and would represent a major policy shift. The proposed revision expands the focus from a clearly defined point in time (i.e. birth) to a broad and indefinite period. This lack of temporal clarity will create significant confusion for mandated reporters, making it difficult to determine when a 51A is warranted. This ambiguity will likely increase unnecessary referrals to DCF and unwarranted interventions in families' lives.

Healthcare providers who are mandated reporters feel the proposed change is confusing. Specifically enumerating one type of behavior —substance use—is both unnecessary and

inconsistent. No similar risks are outlined in regulation for other types of behaviors, and singling out substance use in this way is stigmatizing.

In addition, the proposed language is vague and subjective. While some healthcare providers may have an understanding of the term “exposure to patterns of harmful substance use”, this is not common terminology and is unclear to other mandated reporters who are also obligated to file reports of abuse and neglect based on this definition. One of the major drivers behind the recent reforms to the 51A statute was to create more clarity for mandated reporters. The proposed change does not achieve this and instead creates more confusion.

Given the above, we believe the proposed change is inconsistent with the new 51A statute and the intent of the new law, Chapter 285 of the Acts of 2024. As laid out in this legislation and G.L. c. 111, § 11E, we recommend DPH create regulations and guidance related to the roles and responsibilities of health care providers who care for substance exposed newborns.

Thank you for the opportunity to offer comments regarding these proposed regulations. Should you have any questions about our input or would like further detail, please do not hesitate to reach out to Andrea Pessolano, Senior Manager of State Advocacy at Boston Medical Center, at andrea.pessolano@bmc.org.

Sincerely,

Boston Medical Center

Massachusetts Medical Society

Massachusetts General Brigham

Massachusetts Organization for Addiction Recovery

ACLU of Massachusetts

M.I.R.A.C.L.E. MAMAS INC

Massachusetts Public Health Alliance

Massachusetts Chapter of the American Academy of Pediatrics

Massachusetts Section of the American College of Obstetricians and Gynecologists

Massachusetts Society of Addiction Medicine

American College of Physicians, Massachusetts Chapter

Pregnancy Justice

Rebecca Greening, Esq., Clinical Instructor & Lecturer on Law, Family Justice Clinic, Legal Services Center of Harvard Law School, in individual capacity only