TESTIMONY IN SUPPORT OF H.221, AN ACT TO SUPPORT FAMILIES
BEFORE THE JOINT COMMITTEE ON
CHILDREN, FAMILIES & PERSONS WITH DISABILITIES
JUNE 15, 2021

The Massachusetts Medical Society (MMS) is a professional association of over 25,000 physicians, residents, and medical students across all clinical disciplines, organizations, and practice settings. The Medical Society is committed to advocating on behalf of patients, to give them a better health care system, and on behalf of physicians, to help them provide the best care possible. We write in support of H.221, An Act to support families.

The Medical Society believes that health care is a human right and strives for universal access to health care and nondiscrimination in health care settings for all people. As physicians, we are deeply committed to the health and well-being of pregnant people and children and also concerned about the many determinants of health of our patients. Throughout our nation’s history, systemic and institutional power structures have created inequities and perpetuated and exacerbated negative health and social outcomes for people of color. This is particularly acute in the context of child protective services, which disproportionately impacts people and families of color. We recognize the autonomy of all patients, including pregnant people, and oppose legislative interference in clinical decision-making when a person is found to have used or is using illicit or therapeutically prescribed narcotics during pregnancy. We further recognize that pregnant people with substance misuse or use disorders generally require diagnosis and treatment for the benefit of mother and fetus. The MMS opposes the criminalization of substance use on the basis of pregnancy, including via the misuse of existing child endangerment or child abuse laws that were not intended for this purpose. As we strive for health equity, we are committed to finding solutions to the complex medical and social problems of substance abuse and advocating for vulnerable patients, especially during time periods most critical to their health such as the perinatal period.

The Medical Society has serious concerns about the current mandated reporting framework for substance exposed newborns under Chapter 51A of the general laws and the harm it may cause to pregnant people and their families, which are outlined below. We believe these harms will be mitigated under this legislation, which will create an alternative pathway for reporting while keeping the Commonwealth compliant with federal child welfare reporting requirements.

The current 51A mandated reporting requirements for substance exposed newborns tend to be interpreted strictly and as a result, may undermine harm reduction efforts and present barriers to patients seeking substance use disorder/opioid use disorder treatment. Child welfare reporting is shrouded in fear and stigma, which impacts decision-making during pregnancy for pregnant people with substance use disorder. Moreover, child welfare reporting has been well documented as a barrier and a deterrent to pregnant individuals seeking and receiving both prenatal care and treatment for substance use disorder; the patient-doctor relationship may be compromised, and quality of care may suffer, when patients cannot fully disclose problems of addiction or substance to their physician for fear of child welfare reporting or prosecution. Our physician members have shared countless stories of pregnant patients who have affirmatively decided to wean off their medication for opioid use disorder – which is evidence-based to treat pregnant people with OUD – to avoid a referral to DCF for fear of losing child custody, increasing the risk of harm for both the pregnant person and the fetus. Being “screened out” at
DCF does little to provide any reassurance and the referral itself is stigmatizing enough to direct decisions that may not be in the best interest of their health and well-being overall.

Notably, there are several classes of medication taken during pregnancy, including antidepressants and benzodiazepines, which may impact the fetus and cause neonatal withdrawal symptoms requiring medical treatment at birth, but current guidance only requires 51A reports for medications to treat opioid use disorder, stigmatizing and discriminating against pregnant people with substance use disorder. Medical treatment decisions for substance use disorders should be made on an individual basis by patients in consultation with their physician and based on medical risks and benefits, as with any other chronic conditions, free from fear and stigma associated with child welfare reporting. Insofar as 51A reporting for substance exposed newborns deters pregnant people from accessing and continuing treatment, that is not in concordance with standards of care for OUD, and there is no data we are aware of to support a position that the use of prescribed medications for any medical condition, including SUD, is independently indicative of child abuse or neglect.

Such discrimination against pregnant people with OUD and their families is further exacerbated by racial disparities in maternal mortality and severe maternal morbidity. In Massachusetts, Black women die from pregnancy-related causes at twice the rate of White women and overall rates of pregnancy-associated mortality increased 33% from 2012 to 2014 alone. Compounding this trend, Massachusetts and the nation are in the midst of an opioid use epidemic, which has only been intensified during the COVID-19 pandemic and is adversely impacting maternal health. A report from the Massachusetts Executive Office of Health and Human Services (EOHHS) found that more than a third (38.3%) of deaths among women delivering a live birth between 2011 and 2015 were fatal opioid-related overdoses. This same report recommended further assessment of the impact of treatment engagement and retention on maternal overdose during the postpartum period and analysis to determine factors that may predict or protect against overdose among mothers in the first year postpartum. We must do more to eliminate disparities and end stigma and discrimination harming pregnant people with OUD and enact policies that facilitate access to treatment and perinatal care.

Beyond being antithetical to harm reduction principles, the Medical Society has concerns about the discriminatory impact of the current reporting system. Right now there are vastly differing interpretations of 51A requirements among institutions, and even different hospitals in the same system often screen and report differently; for example, some hospitals screen and automatically generate 51A reports for marijuana use, while others may screen but exercise discretion in reporting. We are concerned this discretion in screening lends itself to racial profiling and results in inequities, with families of color disproportionately reported to DCF. As the 51A Mandated Reporter Commission’s report notes, “children of color are over-represented at all stages of involvement with Child Protective Services, including the initial reporting stage.”

The Medical Society supports H.221, which will align Massachusetts reporting requirements with federal requirements related to the delivery or care of infants affected by in-utero substance exposure or a Fetal Alcohol Spectrum disorder. Importantly, this legislation would also deidentify the data reported, which would not constitute a per se report that any parent has abused or neglected a child and shall not trigger or require prosecution for any illegal action. Consistent with federal reporting requirements under CAPTA, this legislation allows reporting of infants born exposed to substances, such as prescribed medication for opioid use disorder or prescribed chronic pain medication, which do not reach the standard of a mandated reporter’s reasonable cause to believe a child is suffering or will suffer child abuse or neglect, to the Department of Children and Families. This allows to the state to collect data as required by CAPTA through an alternative mechanism from the current system of child abuse and neglect reports.

These proposed changes to how instances of substance-exposed newborns are reported are an important first step toward rectifying racial inequities and discrimination in our child welfare reporting system and our health care system. Without the threat of a mandatory report of abuse for taking medically indicated medication, more pregnant people with substance use disorder will be comfortable seeking necessary prenatal care and maintaining their evidence-based treatment, leading to overall improvements in maternal and infant health outcomes.

As such, the Medical Society would urge a favorable report of H.221. Thank you very much for your consideration of these important issues. We appreciate the opportunity to offer these comments as you consider ways to improve the Commonwealth’s response to, and prevention of, child abuse and neglect.