



**Written Testimony of the National Institute for Reproductive Health and NIRH Action Fund
Before the Joint Public Hearing: An Examination of Maternal Mortality and Morbidity Rates in
New York State
Re: Maternal Health, Dignity, and Consent Act**

February 24, 2025

Dear Chair Webb and Members of the Committee:

The National Institute for Reproductive Health Action Fund (“NIRH Action Fund”) respectfully submits this written testimony regarding the impact of non-consensual drug testing of pregnant and newly parenting patients on maternal mortality and morbidity rates in New York States.

NIRH has worked in New York for over 55 years. Our roots go back to 1968 as NARAL NY, which launched as a grassroots political 501(c)4 organization advocating for the legalization of abortion in the Empire State. Since then, we’ve expanded our fight to new states and localities. We work together with state and local reproductive health, rights, and justice organizations and other groups invested in this fight to pass laws that expand access just and equitable reproductive health care and build political power for reproductive freedom.

Non-consensual drug testing of pregnant and newly parenting patients exacerbates New York’s unacceptably high maternal mortality and morbidity rates.

New York State has one of the highest rates of racial disparities in pregnancy-related mortality in the country, with Black New Yorkers dying at five times the rate of white people.¹ Overall, the state has a rate of 19.3 deaths per 100,000 births, with deaths increasing 33% from 2018 to 2021.² Early, consistent, and quality prenatal and postpartum care help curb rates of pregnancy-related morbidity and mortality.³ Ensuring patients feel safe with their provider is essential to maintaining the patient-provider relationship necessary for consistent healthcare provision and oversight.

Currently, Black, Latine, Indigenous, and low-income pregnant and newly parenting people are tested for drugs in medical settings without their consent. Non-consensual drug testing directly threatens the trust required for a positive patient-provider relationship and runs the risk of deterring patients from future

¹See the New York State Department of Health’s March 14, 2024 release regarding their maternal mortality report. https://www.health.ny.gov/press/releases/2024/2024-03-14_maternal_mortality.htm

² See the New York Department of Health’s July 2024 Maternal Report <https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2024-22s25.pdf> and the Centers for Disease Control and Prevention’s maternal deaths and mortality rates report <https://www.cdc.gov/nchs/maternal-mortality/mmr-2018-2021-state-data.pdf>.

³ See Centers for Disease Control and Prevention. (2024, September 25). *Preventing pregnancy-related deaths*. Centers for Disease Control and Prevention. <https://www.cdc.gov/maternal-mortality/preventing-pregnancy-related-deaths/index.html>



care, which can have significant consequences on their safety and well-being through pregnancy and postpartum.

Although New York Public Health Law and Civil Rights Laws set forth general informed consent requirements in the healthcare setting, pregnant people, new parents and their newborns are nevertheless drug tested without notice, much less specific informed consent. There is often no explanation given as to the medical necessity of the test, and in many circumstances, there is no treatment provided in response to a positive drug test. Even though positive drug tests often do not lead to any medical intervention, hospitals routinely report positive drug tests to family policing system agencies—**despite the fact New York law is clear that a positive toxicology test alone does not in and of itself suggest that an infant is harmed or is at risk of harm.**⁴

The Maternal Health, Dignity, and Consent Act (S845) would protect pregnant and postpartum New Yorkers from non-consensual medical services and improve maternal health outcomes

The Maternal Health, Dignity, and Consent Act (S845) will require health care providers to obtain oral and written consent from pregnant and perinatal people and their newborns in a hospital setting, and oral consent in a non-hospital setting before testing or screening patients for substance use. The bill is carefully crafted to ensure that in case of a medical emergency, providers may test or verbally screen individuals without their specific and informed consent.

NIRH Action Fund concurs with leading medical associations, including the American College of Obstetricians and Gynecologists (ACOG)⁵ and the American Academy of Pediatrics that obtaining specific and informed consent prior to administering a drug test should be best practice. ACOG has specifically developed ethical standards around seeking informed consent and opposes non-consensual drug testing as a response to parental drug use.⁶

We especially support S845 for its potential to combat racial disparities in family surveillance.⁷ The information obtained through testing and screening can still trigger a report to “child protective services” (CPS) and be used against the patient in a family court proceeding. In New York, Black and brown families are disproportionately surveilled on suspicion of child neglect or abuse.⁸ Indeed, studies show

⁴ New York law does not require reporting to the State SCR a positive drug test of a mother or newborn at birth. <https://www.health.ny.gov/prevention/captacara/>

⁵ American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period, Statement of Policy (Dec. 2020), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>

⁶ American Academy of Pediatrics, A Public Health Response to Opioid Use in Pregnancy (2017), <https://publications.aap.org/pediatrics/article/139/3/e20164070/53768/A-Public-Health-Response-to-Opioid-Use-in>.

⁷ See F. Edwards, S. Wakefield, K. Healy, & C. Wildeman, Contact with Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US counties, *Proc. Natl. Acad. Sci. U.S.A.* 118 (30) e2106272118, <https://doi.org/10.1073/pnas.2106272118> (2021).

⁸ Black people account for less than a quarter of New York City’s population, but more than half of children removed without a court order are Black. <https://www.nyclu.org/report/racism-every-stage-data-shows-how-nycs-administration-childrens-services-discriminates>



that even universal verbal screening protocols yield racial disparities, with Black women being four times more likely to be reported to CPS than white women, despite similar rates of use.⁹ The consequences of an investigation can be far-reaching and traumatic, even if it does not conclude in the termination of parental rights.¹⁰

NIRH Action Fund appreciates the committee's interest in addressing New York's pregnancy-related mortality and morbidity rates and fully supports the passage of the Maternal Health, Dignity, and Consent Act as one tool to improve the overall health and well-being of all pregnant and postpartum New Yorkers.

Please contact our Vice President of Policy and Research, Kelli Garcia, and our Political and Legislative Manager, Niharika Rao for any questions or further information at kgarcia@nirhealth.org and nrao@nirhealth.org.

⁹ See Sarah C. M. Roberts & Amani Nuru-Jeter, Universal screening for alcohol and drug use and racial disparities in Child Protective Services reporting, *J Behav Health Serv Res.* 2012 January; 39(1): 3–16, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3297420/>.

¹⁰ The stress of an investigation can disrupt the mental health, academic, professional, and social lives of children and their parents. <https://www.hrw.org/news/2022/05/20/new-york-committee-investigate-states-child-welfare-system>