New York State Psychiatric Association, Inc.

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TESTIMONY in Support of S845/A860: The Maternal Health, Dignity and Consent Act

Chairs Webb, Rivera, Brouk, Persaud and distinguished members of the Senate Women's Issues, Health, Mental Health, and Social Services Committees thank you for holding this important public hearing today on Maternal Mortality and Morbidity in New York State, and for the opportunity to testify. My name is Frank Dowling. I am a practicing psychiatrist with decades of education, clinical training, and treating patients, including those with substance use disorders.

Today, I am here on behalf of The New York State Psychiatric Association (NYSPA), the medical specialty society of nearly 4,000 psychiatrists practicing in New York State and a division of the American Psychiatric Association. Comments on behalf of NYSPA today will focus on much needed legislation regarding the clinical assessment and screening of substance use and lab toxicology testing in pregnant and post-partum people, including the critical need for open discussion, informed consent between physicians and patients, and voluntary assessment and testing. In addition, the elimination of automatic referral to the State Central Registry (SCR) based on a positive test result of substance use. NYSPA stands with the advocates urging passage and enactment of S845/A860, the Maternal Health, Dignity and Consent Act. It's great to see a number of Senators here today who are co-sponsors of the legislation.

As we work to advance this bill, we are not asking for any radical reformations, but instead, merely codification of New York State Department of Health Clinical Guidelines which already call for requiring informed consent before drug, cannabis, or alcohol testing be performed on pregnant or postpartum individuals or newborns.[1] Following such protocols supports healthy pregnancies, infants, and families by promoting trust and transparency between people and their health care providers — essential elements of high-quality, patient-centered care. This legislation reflects best practices in alignment with U.S. Department of Health and Human Services guidelines, and recommendations from the U.S. Commission on Civil Rights-NY Advisory Committee and national professional societies specializing in obstetrics, pediatrics, and addiction.[2][3][4]

Secret and non-consensual drug testing of a pregnant or post-partum patient, new parent or their newborn child is an ethical violation. It is harmful to the patient-physician relationship and does nothing to improve patient safety or to reduce maternal deaths. In fact, it is more likely to contribute to the already too high rates of maternal morbidity and mortality seen in New York and the US. Furthermore, the too common automatic reporting of any substance use to the SCR whenever positive information regarding a pregnant

[1] https://www.ncbi.nlm.nih.gov/books/NBK565474/pdf/Bookshelf_NBK565474.pdf
[2] https://www.usccr.gov/files/2024-05/ny-child-welfare-system-sac-report_0.pdf
[3] https://www.acog.org/advocacy/policy-priorities/substance-use-disorder-in-pregnancy
[4] https://www.asam.org/advocacy/public-policy-statements/details/public-policy-statements/2022/10/12/substance-use-and-substance-use-disorder-among-pregnant-and-postpartum-people

or post-partum person's substance use is obtained (whether this is from clinical discussion with a patient or drug testing) by hospitals and providers, results in highly stressful investigations and often may result in separation of parent and newborn, which causes psychological trauma to both parent and child.

In addition, substance use screening and testing, as well as reporting positive tests, results in a worsening of serious inequities faced by racial and ethnic minority patients. Compared to white patients, Black and Hispanic patients are more likely to be screened and tested, more likely to be reported after a positive screen or test, and more likely to be separated from their newborn children, and thus are more likely to face negative consequences including psychological trauma. This further worsens the gap in maternal morbidity and mortality faced by Black and Hispanic patients by making it more difficult to seek early prenatal care.

It is imperative to be mindful that alcohol or substance use does not necessarily indicate that someone has a substance use disorder. This remains true during pregnancy and when post-partum. In addition, many pregnant people who may have used a substance before learning of their pregnancy will significantly reduce or stop such substance use after becoming aware. For those who may have a substance use disorder, open consensual discussion with their physician and initiation of treatment will provide the best opportunity for reduction or cessation of substance use, which reduces risks for both the pregnancy and parent. Often, a pregnant person who has a substance use disorder or who has used a substance before learning of pregnancy, will delay or avoid seeking prenatal care, which raises risks to both patient and pregnancy. Non-consensual testing and automatic referrals to SCR results in higher risks by causing and exacerbating such delays and avoidance of care, compared to open discussion and testing with consent, which provides more opportunity to monitor, treat when needed, and to reduce risks and improve maternal-fetal outcomes.

Importantly, while this proposed legislation states affirmatively that a physician's or other professionals' awareness of a patient's substance use does not automatically require reporting, it also does not prevent reporting when a parent's behavior, including substance use, may result in serious risk to a pregnancy or newborn child. Such reporting, based on sound clinical assessment and judgment, is still permitted.

Too often, a care provider or hospital staff may falsely believe that any substance use, even prescribed medications for addiction treatment (MAT) taken properly as prescribed, is abuse or neglect and many unneeded reports are made. In contrast, providers and hospitals rarely report when a pregnant or post-partum patient is taking medications for other medical conditions such as diabetes, cardiovascular or cerebrovascular disease, epilepsy, asthma, or infectious diseases. This remains true even when such medications may present a risk to a pregnancy. In addition, providers are unlikely to report a pregnant or post-partum patient who is not 100% compliant with their medications, diet or other recommendations throughout pregnancy and when post-partum or breast feeding. The same approach is warranted for the care of a patient with a substance use disorder. Open clinical assessment and discussion are needed, and adjustments to a treatment plan, when clinically appropriate, are more likely to result in favorable outcomes for the parent and child, compared to secret drug testing and automatic referrals to SCR.

If the true intent of laws and regulations around substance use are to reduce risk and improve safety and outcomes, particularly for pregnant and post-partum patients and their newborns, then the time has come to require informed consent for substance use assessment and lab testing. In medicine, when there are

risks to proposed assessments or treatments, informed consent is the norm and is ethically required. Given the serious potential risks involved in assessing substance use and toxicology screening in pregnant and post-partum patients, now is the time to require open discussion, informed consent, and to make it clear that knowledge of a patient's substance use alone does not necessitate reporting to authorities such as SCR. The Maternal Health, Dignity and Consent Act, if passed, would require such consent and would not prevent reporting when there is evidence of significant risk or harm, in the judgment of a treating professional and includes an exception to proceed without consent "...if an emergency exists and the patient or newborn is in immediate need of medical attention, and an attempt to secure consent would result in delay in treatment that could increase the risk to the patient's or newborn's life or death."

We applaud the concerns and efforts by the Legislature and Governor's office to develop strategies to reduce maternal morbidity and mortality in New York State. Requiring open discussion and informed consent for clinical discussion and lab testing of substance use in pregnant and post-partum patients would help New York take steps forward to better identify and address substance use and use disorders, as one part of a multipronged approach to reduce maternal morbidity and mortality. For these reasons, NYSPA **strongly supports** the passage of the Maternal Health, Dignity and Consent Act.