

**REPORT ON LEGISLATION BY THE
BIOETHICAL ISSUES COMMITTEE, HEALTH LAW COMMITTEE,
SCIENCE AND LAW COMMITTEE AND SEX AND LAW COMMITTEE**

A.2007 / S.1507 (Budget Article VII) – Part R

Enacts into law major components of legislation necessary to implement the state health and mental hygiene budget for the 2019-2020 state fiscal year; to amend the public health law, in relation to maternal mortality review boards and the maternal mortality and morbidity advisory council

THIS BILL IS APPROVED

The Bioethical Issues, Health Law, Science and Law and Sex and Law Committees of the New York City Bar Association submit this report in support of proposed Budget Article VII legislation which would amend the public health law in the State of New York by establishing a Maternal Mortality Review Board to review maternal deaths and morbidity.

BACKGROUND

Maternal death and morbidity are serious health concerns that impact pregnant women and their families.¹ Maternal deaths have a devastating impact on families and communities. Maternal morbidity also threatens a pregnant woman’s future health. An alarming statistic ranks New York State as 30th in the nation regarding maternal mortality in 2018, with 20.6 maternal deaths per 100,000 live births.² In 2015, there were 14 maternal deaths per 100,000 live births

¹ “Maternal death” and “severe maternal morbidity” are defined terms under the proposed legislation; *see* § 2509 (2)(c) and (d): “maternal death” means the death of a woman during pregnancy or within a year from the end of pregnancy; “severe maternal morbidity” means unexpected outcomes of pregnancy, labor, or delivery that result in significant short- or long-term consequences to a woman’s health). For the purposes of this report, “maternal death” will be used interchangeably with the more commonly used term “maternal mortality.”

² Explore Maternal Mortality in New York, 2018 Health of Women and Children Report, United Health Foundation, https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality/state/NY (all websites last visited Feb. 8, 2019).

across the United States.³ Also, as of 2015, the United States has a higher maternal mortality ratio than ratios reported for most high-income countries.⁴

Factors such as race, socioeconomic background, quality and access to health care and health insurance, education and environment influence maternal mortality and morbidity rates. In 2010, the New York Academy of Medicine noted that in some of New York’s poorest neighborhoods, maternal mortality rates were five times higher than in affluent neighborhoods.⁵ Women without health insurance had fetal mortality rates almost four times higher than those covered by health insurance and Medicaid.⁶ Perhaps most troubling, serious racial disparities exist as black women have significantly higher maternal mortality rates than white women – even accounting for variabilities in economic background, availability of health insurance and prenatal care, and the underlying health of such women.⁷ Thus, there are multiple, significant social and economic disparities that affect risks for pregnant women in New York State.

Analysis of public health data on maternal mortality and morbidity is essential to assuring equitable access to care for all pregnant women. In April 2018, Governor Cuomo announced an initiative on maternal mortality and reducing racial disparities in maternal health outcomes.⁸ This initiative created a Taskforce on Maternal Mortality and Disparate Racial Outcomes and establish the Maternal Mortality Review Board. The Committees strongly support this initiative as one step in addressing the public health problem of maternal mortality and morbidity. However, we believe that codifying language is important to ensuring a comprehensive, consistent and lasting approach towards improving maternal health outcomes. We call for swift action by the Legislature by adopting the Governor’s proposal for a Maternal Mortality Review Board as outlined here in the final New York State Budget.

³ The World Factbook, Maternal Mortality Ratio, Central Intelligence Agency (CIA), <https://www.cia.gov/library/publications/resources/the-world-factbook/rankorder/2223rank.html>. Maternal mortality rate is the annual number of female deaths per 100,000 live births from any cause related to by pregnancy or its managements.

⁴ Priya Agrawal, “Editorial: Maternal mortality and morbidity in the United States of America,” World Health Organization (WHO) Bulletin of the World Health Organization, 2015; 93:135, <http://www.who.int/bulletin/volumes/93/3/14-148627/en/>.

⁵ “Maternal Mortality in New York: A Call to Action Findings and Priority Action Steps,” The New York Academy of Medicine, Dec. 14, 2010, 1, <http://www.nyam.org/publications/publication/maternal-mortality-in-new-york-a/>.

⁶ *Id.*

⁷ Press Release: Governor Cuomo Announces Comprehensive Initiative to Target Maternal Mortality and Reduce Racial Disparities in Outcomes, April 23, 2018, <https://www.governor.ny.gov/news/governor-cuomo-announces-comprehensive-initiative-target-maternal-mortality-and-reduce-racial>; *see also* Linda Villarosa, “Why America’s Black Mothers and Babies Are in a Life-or-Death Crisis,” The New York Times Magazine, April 11, 2018, <https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html>.

⁸ *Id.*, Press Release.

REASONS FOR SUPPORT

The proposed Budget legislation will create a vital and long overdue public health initiative to address a complex problem that has clear social and economic determinants, and that has likely touched the life of every resident of the state of New York at some point.

Section 1 of the proposed Budget legislation would establish a review board that will review maternal mortality and morbidity, analyze their causes and disseminate strategies for reducing the risks of maternal mortality and morbidity. In addition, the bill permits the City of New York to establish its own review board to study maternal mortality and morbidity. The proposed legislation would establish much-needed systems to study causes of death of pregnant women or death within 12 months of the end of pregnancy, or adverse health outcomes resulting from pregnancy, labor or delivery, by compiling and analyzing relevant information to understand the facts and devise solutions to address the unacceptably high rates of maternal morbidity and mortality in New York.

Section 3 outlines the composition of the Maternal Mortality Review Board and provides that members will be multidisciplinary experts and experts who serve and are representative of the racial and ethnic diversity of women and mothers in the state. It is critical that the board reflect diversity not just of the people who are giving birth, but of the people who interface with birthing people. This section also provides that the board is not subject to open meetings law.

Section 4 gives the commissioner of the Maternal Mortality Review Board wide latitude to gather necessary information to study maternal mortality and morbidity. Necessary medical records such as death records, autopsy records, toxicology reports, hospital discharge records, and birth certificates can be requested. In cases involving maternal death and severe maternal morbidity, oral and written statements from family members and other knowledgeable parties can be elicited. In cases of maternal death, experts can even be consulted to evaluate the cause of death.

Furthermore, Section 4 permits oral or written statements from a family member or interested party who may have information relating to a woman's pregnancy, and possibly including information about social and economic factors that might not be mentioned in medical records.

Section 5 provides that each board (city or state) make and report findings and recommendations to the advisory council, including best practices and strategies for reducing the risks of maternal mortality and morbidity. Each board will also develop recommendations to the commissioner or city commissioner on specific areas such as racial, economic, or other disparities and their effect on maternal health outcomes. Reports and findings of the state board are to be issued every other year and shall be public documents.

The proposed legislation balances the confidentiality of pregnant women and treating healthcare providers with the investigatory power to extract necessary information to study and improve maternal healthcare. Section 6 provides in pertinent part: "All information and records received, meetings conducted, reports and records made and maintained and all books and

papers obtained by the commissioner as well as the board shall be confidential and shall not be made open or available, including under article six of the public officers law, and shall be limited to board members as well as those authorized by the commissioner.” The proposal includes safeguards against the disclosure of personal identifying information of pregnant women, healthcare practitioners or any other individual, as well as identifying information with respect to hospitals or healthcare facilities, and geographic information that may inadvertently identify the woman, practitioner, or facility, and further provides: “Such information shall not be discoverable or admissible as evidence in any action in any court or before any other tribunal, board, agency or person.”

The City Bar opposes the inclusion of any bill language which would provide that a court of competent jurisdiction could order the review board to disclose information it gathers. Given the importance of protecting confidentiality for mothers and treating healthcare providers in a public health review process and intervention of this kind (as further discussed below in our reasons for support) our Committees oppose such language, as it dilutes confidentiality protections in the bill and could potentially have a chilling effect on the conduct of a full and comprehensive review of all relevant information. The Legislature should recognize confidentiality as critical to assuring fidelity to the legislative and public health goals of maternal health protection.

CONCLUSION

All pregnant women should be entitled to conditions that assure the healthiest possible pregnancy and short- and long-term health outcomes. The high rates of maternal mortality and morbidity across the United States, and particularly in New York, are a grave concern that call for immediate legislative attention due to the devastating impact on pregnant women, their families, and the entire New York State community. The proposed Budget legislation aims to study and disseminate information and strategies to help reduce high maternal mortality and morbidity rates, especially among black women and other detrimentally affected subgroups. The Committees believe that it is important for the state to promote maternal healthcare research and remedies to support the goals of the proposed legislation. The Committees register their unequivocal support for this bill that will improve healthcare for all pregnant women.

Bioethical Issues Committee
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Brian McGovern, Chair

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