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EXPLAINER

Medications for Opioid Use Disorder Benefit Families: In Virginia, Policy Deters Expectant Moms from Taking Them

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Today in Virginia, more than 4,700 children are living in foster care. Between one-third and 40 percent were removed from their families due to "parental drug use."

A Virginia law that requires the reporting of any prenatal substance exposure—including medications prescribed for opioid use disorder (OUD)—triggers many of these family separations, which harm both children and mothers. Such laws and accompanying regulatory policies run counter to the state's efforts to improve maternal and family outcomes. What's more, they put women's health, recovery, and children at risk.

OUD and Pregnancy

OUD isn't a common problem among pregnant women. Just under 0.5 percent of pregnant women use illicit opioids like heroin or illicitly manufactured fentanyl, and 1.4 percent engage in nonmedical use of prescription opioids. Of the 100,000-plus women in Virginia who are pregnant each year, an estimated 400 will use illicit opioids and 1,400 will misuse prescription opioids. However, when left untreated, OUD has an outsized impact on the health and well-being of women and their families.

For example, overdoses are a key driver of pregnancy-associated death in the United States. In 2022, 86 percent of accidental pregnancy-associated deaths in Virginia were due to a drug overdose. Untreated OUD also increases the likelihood of a number of risks to the infant including stillbirth, low birth weight, preterm birth, and treatable but uncomfortable withdrawal symptoms.

Medications for opioid use disorder (MOUD) can prevent many of these harms. Considered the gold standard for OUD treatment, buprenorphine and methadone have proven safe and effective for both mother and fetus when taken during pregnancy. Because MOUD have better clinical outcomes than abstinence-based approaches, they are medical experts' preferred treatment. Compared to untreated OUD, treatment with MOUD reduces overdose risk, preterm birth, and low birth weight. Buprenorphine may reduce the likelihood of infant withdrawal compared to untreated OUD. Additionally, mothers who take MOUD during pregnancy are more likely to engage with healthcare systems (including continuing treatment) for themselves and their children after birth.

We know that improving access to and engagement with MOUD can effectively minimize the harms associated with OUD during pregnancy; however, despite Virginia's commitment to supporting maternal and family health, the state's policy landscape doesn't always facilitate this.

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What Virginia Is Doing

Among its efforts to improve pregnancy outcomes for women and infants, Virginia has taken steps to increase pregnant women's access to evidence-based treatment for OUD. However, these improvements risk being undermined by policies that penalize pregnant women for taking these medications.

For example, the state implemented the Addiction and Recovery Treatment Services (ARTS) program in 2017 to improve Medicaid's coverage of substance use disorder treatment. In the program's first year, the proportion of Medicaid-enrolled pregnant women with OUD increased nearly eightfold—from 4 percent to 31 percent. Virginia's Medicaid program also added mandates to ensure consistent access to MOUD for these women and removed prior authorization requirements for specific buprenorphine formulations and doses.

Despite these family-supporting policies, Virginia remains one of 23 states that require medical professionals and others to report women to child protective services for exposing their fetus in utero to controlled medications taken as prescribed. This means women can be reported solely for taking MOUD during pregnancy, which results in a cascade of harms to both mother and child.

"For purposes of subsection A, 'reason to suspect that a child is abused or neglected' shall, due to the special medical needs of infants affected by substance exposure, include **(i)** a finding made by a health care provider within six weeks of the birth of a child that the child was born affected by substance abuse or experiencing withdrawal symptoms resulting from **in utero drug exposure**; **(ii)** a diagnosis made by a health care provider within four years following a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to **maternal abuse of a controlled substance during pregnancy**; or (iii) a diagnosis made by a health care provider within four years following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol."

Consequences of Penalizing Treatment

Many reports of prenatal substance use—including medical use—lead child welfare agencies to surveil families, remove children from their homes, and temporarily or permanently terminate custody. These penalties and disruptions to family life harm everyone involved. Family separation, especially when there is no imminent risk to the child, constitutes a trauma for children and parents with significant and lasting emotional consequences. Research demonstrates that it damages the physical and psychological health of children, families, and even communities. Additionally, mothers who use substances during pregnancy may face criminal charges, even when taking something as prescribed. Fear of these consequences can deter women from seeking medical care during pregnancy, exacerbating health risks to both mother and infant. Targeted research shows that policies penalizing prenatal substance use are consistently associated with poorer health and mental health outcomes for pregnant women and their fetuses including low birth weight, younger gestational age, lower Apgar scores, stillbirth and mortality, infant withdrawal symptoms, maternal overdose, mental health issues, and poor engagement in OUD treatment.

Conclusion

Laws that penalize women for taking MOUD during pregnancy place families at risk and threaten to undermine Virginia's progress in improving maternal and infant health and its fight against the overdose crisis. The trauma of family separation increases children's risks for a range of immediate and long-term physical and mental health issues. Custody loss derails treatment engagement and increases mothers' risk for overdose. The fear of these penalties can lead expectant mothers with OUD to stop taking MOUD or to avoid health system interactions (e.g., prenatal care)—both decisions that place their health and pregnancy at risk. To protect families, lawmakers should look to legislation that supports rather than punishes mothers in recovery and seeks to keep families together.

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