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The American College of Obstetricians and Gynecologists

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Testimony on Behalf of the
American College of Obstetricians and Gynecologists (ACOG), District II
Joint Legislative Budget Hearing: Health

The American College of Obstetricians and Gynecologists (ACOG), District II appreciates the opportunity to provide written testimony on the Governor's Fiscal Year 2020-21 Proposed Budget. As the leading group of physicians delivering women's health care, ACOG District II promotes policies that reflect and prioritize the health needs of New York women. We appreciate the Joint Committee's consideration of our testimony in their review of this year's budget proposal. ACOG District II partners closely with the Legislature, Executive and state agencies to provide clinical guidance and expertise on key reproductive health issues and is committed to addressing ongoing health disparities and finding opportunities to bolster access and improve the quality of health care services delivered in the state. ACOG appreciates New York legislators' dedication to improving access and health outcomes for all women, and it is through this lens that we respectfully submit the following testimony outlining the additional investments necessary for New York State to realize sustainable improvements in maternal and reproductive health care.

Continue Funding from the 2019-20 Enacted Budget to Support Ongoing Maternal Mortality Prevention Work

ACOG District II greatly appreciates the decisive action by the New York State Legislature during the 2019 legislative session to prioritize $8 million over two years to support a variety of maternal mortality prevention initiatives, and for enacting historic legislation to improve New York's maternal death review process through the creation of the maternal mortality review board (MMRB). These actions signified a commitment by the Legislature to support programming necessary to make measurable progress on maternal health outcomes in our state.

We were pleased that this funding was again prioritized in the Governor's proposed 2020-21 budget. This funding stream will be critical to implement and sustain the MMRB, to develop a pilot program on implicit bias training for hospitals, to expand community health workers, and to build a data warehouse on maternal health to support quality improvement initiatives. These initiatives were among the top recommendations of the Taskforce on Maternal Mortality and Disparate Racial Outcomes – and require the continued investment from our state.

Despite the recent focus on our state's maternal mortality crisis, the work is far from over. New York State's maternal mortality ranking of 30th in the nation speaks volumes for the need for a sustained investment to combat this public health crisis. New York's stark rates of maternal mortality are compounded by persistent racial, ethnic, and economic disparities. Black women are nearly four times more likely to die during pregnancy and childbirth compared to white women.[1] Moreover, 67% of maternal deaths from 2012-2013 were among women insured through the Medicaid program.[2] Similarly, severe maternal morbidity, unexpected life-threatening complications of labor and delivery, has increased steadily in recent years—in New York City the rate rose 28.2% from 2008 to 2012. It is imperative that the state continue to support maternal mortality prevention initiatives to affect change.

[1] Centers for Disease Control and Prevention. Pregnancy Mortality Surveillance System. https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html, Accessed January 30, 2019.
[2] New York State Department of Health. New York State Maternal Mortality Review: Update. July 25, 2017.

The maternal mortality crisis in our state follows a period of declining investment and the persistent undervaluing of maternal healthcare. New York has been inconsistent and insufficient in supporting maternal health programming, including surveillance, quality improvement work, and investment in community-based resources. The complexities of improving maternal health outcomes requires our state to invest in maternal health care on multiple levels for the long-term.

Include $250,000 in General Operating Funds for the Safe Motherhood Initiative

ACOG District II's Safe Motherhood Initiative (SMI) works with obstetric teams across the state to develop and implement clinical bundles that outline standardized approaches for managing obstetric emergencies associated with maternal mortality and morbidity. Funding for the SMI has been historically established through a legislative add-on of $250,000 in the Enacted Budget.

Through the Safe Motherhood funding, the SMI offers easily accessible tools through the SMI app and assists hospitals in implementing the bundles through on-site hospital implementation visits. The implementation visits provide obstetric teams with hands-on technical assistance and quality improvement support to overcome barriers and challenges in meeting their patient safety goals. ACOG was also able to provide educational programming to nearly 400 physicians on best practices related to hypertension in pregnancy, postpartum health and implicit bias in health care. In 2020, the SMI will disseminate new evidence-based tools for the prevention and management of maternal sepsis, a leading cause of maternal death.

The SMI is similar to recent quality improvement programs in California which have proven successful in reversing maternal mortality trends. ACOG District II urges the Legislature to once again support the $250,000 Legislative add-on to support the Safe Motherhood Initiative in the 2020-21 Enacted budget. We must continue to prioritize the delivery of high quality maternal health care.

Reject Cuts to Medicaid Payments

ACOG District II stands with providers across the state opposed to efforts to balance the budget through decreased reimbursement for services provided through the Medicaid program. Reimbursement for care for Medicaid recipients in New York is already among the lowest in the country.[3]

The 1% across the board cut implemented in January puts a significant strain on our state's health care providers, including ob-gyns working at the front lines of the maternal mortality crisis. Maternal health care has persistently been overlooked and undervalued and additional cuts are untenable and not constructive to our state's broader efforts to improve its maternal mortality ranking.

Support Family Planning Funding

ACOG District II stands in solidarity with the state's network of family planning providers of the state. We applaud the Governor's proposal of $14.2 million increase in funding for family planning services to address the loss of federal Title X funding. We strongly urge the legislature to support this funding proposal and to send a clear message of New York's support for comprehensive reproductive health care access. This critical safety-net must be protected.

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[3] Kaiser Family Foundation. Medicaid Physician Fee Index. https://www.kff.org/medicaid/state-indicator/medicaid-fee-index/?activeTab=map&currentTimeframe=0&selectedDistributions=all-services&selectedRows=%7B%22states%22:%7B%22all%22:%7B%7D%7D,%22wrapups%22:%7B%22united-states%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

Include the Physician Voice in the Proposed Medicaid Redesign Team

ACOG District II requests significant physician involvement in the proposed Medicaid Redesign Team (MRT) process. Specifically, ACOG strongly recommends the creation of a Medical Liability Reform Workgroup. Physician input and engagement will be critical to the MRT achieving its goals of finding efficiencies while protecting patient care and supporting the physician workforce.

The state would be remiss in examining cost drivers within the Medicaid program without taking into account how the current liability climate impacts health care costs. Given the rising medical liability premiums and exorbitant malpractice pay-outs, the practice of defensive medicine has become a reality for the physicians of our state. This has the unfortunate effect of driving up the cost of providing care.

Without a systematic and comprehensive effort to address the impacts of our harsh medical liability environment on our physician workforce, the impact of the redesign will be limited. We urge you to seek input from the physician community to create meaningful, sustainable improvements in the Medicaid program.

Reject Physician Disciplinary Process Changes

ACOG District II joins other physician groups across the state to strongly object to an Executive Budget proposal (Part L of the Health/Mental Hygiene Art. VII bill) that would allow the NYS Health Department to disregard essential due process protections when a complaint has been filed against a physician, and make information public about a physician under disciplinary investigation. While ACOG shares the goal of assuring the State has ample power to protect the public when the conduct of a particular health care provider places patients at risk, the Commissioner already has authority to take summary action prior to the conclusion of a disciplinary hearing in the absence of a finding of misconduct. We respectfully urge that these provisions be rejected from the Budget.

ACOG agrees with the goal of expediting that New York's disciplinary process when alleged professional misconduct involves circumstances which present a serious and imminent threat to the public We have for many years worked proactively with the Administration and Legislature on laws to enhance the ability of the Office of Professional Medical Conduct (OPMC) to "summarily suspend" physicians in instances where available evidence of a threat to public safety was overwhelming. We also understand that circumstances do occur in which existing OPMC practices are insufficient to adequately protect the public.

However, our system of justice which provides the essential parameters for our professional misconduct statutes recognizes the need for an appropriate balance between the public interest and the rights of the accused. There are enormous adverse professional implications when disciplinary action is taken against a physician, or even when there has been an accusation, including loss of reputation and the risk of being dropped by Medicaid and other insurers. With Google and other search functions, an unproven allegation released to the public could linger forever in cyberspace, and permanently and unfairly scar a reputation. Worse, we worry about the crippling impact that making accusations public would have on the trusted relationship physicians have with their patients, creating mistrust and fear. Targeting physicians, when no other class of individuals accused of a crime or impropriety would face such exposure, would exacerbate the difficulty we already have in attracting new physicians to practice in New York.

It is important to remember that an accusation does not prove wrongdoing. In fact, most complaints to OPMC of alleged misconduct do not become actual findings of misconduct. Indeed, most complaints to OPMC do not even get so far as advancing to a formal Investigation Committee review. According to the 2018 OPMC Annual report, while over 9,000 complaints were received by OPMC, and 8,782 complaints closed, only 210 cases resulted in the filing of actual charges. **This represents 2% of filed complaints that ended in actual charges.** Given the significant disparity between the

number of complaints and the number of cases where there is ultimately some finding of misconduct, it is imperative we limit the bypassing of these important due process protections to circumstances when it is clear that the delay of going through these procedures threatens the safety of the public. A subjective assessment that a physician may be a "risk," as this legislation would propose, should not be enough to merit bypassing these long-standing due process protections.

Furthermore, Public Health Law Section 230 (12)(a) already grants power to the Department of Health to summarily suspend a physician from medical practice without an otherwise required hearing and pre-hearing where there is a "determination that a licensee is causing, engaging in or maintaining a condition or activity which in the commissioner's opinion constitutes an imminent danger to the health of the people." This power was then expanded through a 2018 law that authorizes the Commissioner to summarily suspend a physician's license if they have been accused (not convicted) of a felony charge and, in the commissioner's opinion, the physician's "alleged conduct constitutes an imminent danger to the health of the people."

With regard to making charges public, PHL Section 10 (a)(iv) provides for the ability of the Commissioner of Health to make charges against a physician public once it is determined that there is enough evidence to warrant a formal hearing. Since there are still a relatively small number of cases each year that get so far as having formal charges brought, it is completely unfair to enable the release of enormously prejudicial information with little if any review process to determine that even formal charges are warranted.

In conclusion, existing statute permits the Commissioner to act in the public interest where there is sufficient evidence to warrant such exceptional action to protect the public from aberrant health care practitioners. Furthermore, this proposal is prejudicial and excessive in that it abandons long-standing due process protections, and could unfairly destroy professional reputations and the patient-physician relationship so essential for providing high quality care. Therefore, we urge that this proposal be rejected.

Adequately Fund the Excess Medical Liability Program

We are pleased that the Governor's proposed budget continues to fund the Excess Medical Liability Program. Unfortunately, this funding level has been reduced from its historical funding level of $127.4 million to $105.1 million. While we are aware that there has been a drop in enrollment in the program over the last few years, likely due to the significant increase in the hospital employment of physicians, we urge the Legislature to carefully review whether that funding is adequate to ensure full funding for the program for those who have historically been covered. Moreover, we are very concerned that the Article 7 bill does not include the extensive historical language extending the program and believe the language must be amended to include this historical language that has been included in every other previous extension of the program.

The Excess Fund provides an additional layer of $1 million dollars of coverage to physicians with hospital privileges who maintain primary coverage at the $1.3 million/ 3.9 million dollar level. This additional coverage mechanism is particularly important to the obstetrician-gynecologists in New York State who contend with severe liability exposure and pay among the highest medical liability premiums in the country. We encourage the Legislature to ensure this vital Excess Medical Liability Program is extended and adequately funded in the budget in order to allow ob-gyns to continue to deliver health care to New York women.

In summary, thank you for consideration of our budget testimony. As an organization representing physicians who are entrusted to care for women during all stages of their lives, we urge the Legislature to strongly support maternal health quality improvement initiatives and ensure dedicated funding is included in the final budget. As leading authorities in women's health care, ACOG welcomes the opportunity to share further clinical insight on these or other women's health issues.