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TO: The Honorable Joseph F. Vallario, Jr., Chair
Members, House Judiciary Committee
The Honorable C.T. Wilson

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Richard A. Tabuteau

DATE: March 14, 2018

RE: **SUPPORT** – House Bill 1744 – *Child Abuse and Neglect – Substance-Exposed Newborns – Reporting*

The Maryland State Medical Society, the Mid-Atlantic Association of Community Health Centers, the Maryland Chapter of the American Congress of Obstetricians and Gynecologists and the March of Dimes submit this letter of **support** for House Bill 1744 with a noted reservation concerning the potential for the proposed changes to create the unintended consequence of stigmatizing pregnant women who have appropriately sought medical or drug treatment for substance abuse or mental health disorders and are compliant with that treatment thereby creating a possible disincentive for those women to seek obstetrical care.

House Bill 1744 reflects changes to Maryland's current reporting framework for State compliance with the federal Child Abuse Prevention and Treatment Act (CAPTA). In 2013, legislation was enacted that established the existing reporting requirements relating to substance-exposed newborns to ensure that Maryland was in compliance with CAPTA requirements. The current reporting framework reflects the work of a broad range of stakeholders who sought to carefully balance the requirements of the federal law, which is focused on the need to assess and provide services to substance-exposed infants and their families, with the challenge of not creating a disincentive for women who are in medical or drug treatment to seek prenatal care or delivery in an institution. A woman who is compliant with treatment and her newborn can test positive for substance exposure resulting in a report to the Department of Social Services (DSS). To address that concern, current law provides a reporting exemption for women and their infants, if at the time of delivery, the substance exposure was due to a controlled substance currently prescribed by a health care practitioner or the presence of the controlled substance was consistent with a prescribed medical or drug treatment administered to the mother or the newborn. Current law also provides that a report made under this section does not create a presumption that a child has been or will be abused or neglected.

In 2016, the Comprehensive Addiction and Recovery Act was enacted which included amended CAPTA reporting provisions. To be in compliance with the federal law, State law must ensure that health care practitioners report all substance-exposed newborns to local departments of social services. CAPTA no longer provides an exception to this reporting requirement for circumstances involving prescribed drugs and therefore Maryland law must be amended to ensure the State does not lose its federal grant funding, more than \$450

million annually, which is distributed to all 24 local departments of social services to support child protective services programs that benefit at-risk families and children.

The named organizations recognize the need to amend current Maryland law to come into compliance with federal requirements in order to preserve federal funding. To that end, they support the proposed changes to the reporting requirements but would also like to bring to the Committee's attention that Guidance, issued by the federal Administration for Children and Families clarifies that "*States have flexibility to define the phrase, "infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure," so long as the state's policies and procedures address the needs of infants born affected by both legal (e.g., prescribed drugs) and illegal substance abuse.*" With this in mind, we urge the Committee to encourage the Department to work with stakeholders to consider further amendments to this section of the law to address how the Department responds to reports made under this Section for infants whose exposure is the result of a currently prescribed controlled substance, the mother is compliant with the prescribed medical or drug treatment, and there are no additional risk factors.

In 2017, Senate Bill 27 was introduced by the Department to address the need to amend the current language. Similar concerns regarding stigmatization of pregnant women were raised with that legislation which ultimately was defeated. House Bill 1744, while not a Department bill, has improved the provisions with respect to screening from those proposed last year in that the bill does not connect the requirement for reporting to testing of the mother, but rather limits it to positive screening and/or symptoms of withdrawal of the newborn. The bill also further amends last year's provisions for DSS follow up and "safe care" planning by involving the local health departments in those follow up assessments. It is not clear whether the local health departments have resources or personnel that is qualified to do these assessments and development of "safe care" plans and further their involvement does not necessarily change the potential to stigmatize the mothers and families, especially if a home visit is involved. The above-named organizations would recommend that the State consider allowing the birthing institutions and treating providers to develop the "safe plan of care" for those infants who test positive or show symptoms but for whom the provider/facility does not believe require a home assessment. Such an approach would greatly reduce the perceived stigma that may attach to DSS reporting.

We understand the importance of ensuring that Maryland is compliant with federal law and the need to amend the reporting requirements. We believe however it may be possible to further modify the means of managing those reports that decrease the potential for creating barriers to obstetrical care and facilitates efficient and effective prioritization and provision of services by DSS for those women and infants most critically in need of services.

With its request for consideration of possible amendments to be developed in concert with other stakeholders and the Department of Human Resources noted, the named organizations support the passage of House Bill 1744.

For more information call:

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