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Myths, Facts and In Between: Supporting At-Risk Birthing Parents with Substance Use Disorder and Reporting/Notification

PERINATAL SUBSTANCE EXPOSURE COALITION
LUCY C. HODDER, PROFESSOR OF LAW, DIRECTOR OF HEALTH LAW JUNE 21, 2023

Confusion around reporting

- There are shifting availability of services and supports for birthing parents experiencing mental illness and/or substance use
- There is constantly evolving evidence regarding best practices to support dyads prenatally, and post-partum
- The laws around notification of births where infants are born affected by exposure have not changed but remain important part of effort to improve both maternal and infant health and recovery.
- DCYF in New Hampshire’s relationship with families is evolving; open to dialogue around how to support families.

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Situational Awareness

- Substance Use Disorders present a myriad of challenges for mothers, babies and families.
- Navigating a SUD, including diagnosis and treatment, is significantly more challenging for vulnerable women.
- The effects of maternal substance use exacerbate economic and racial inequities in maternal and infant health outcomes.
- The US, states, and NH have set priorities to make drug treatment more readily available, especially to women of child bearing ages.

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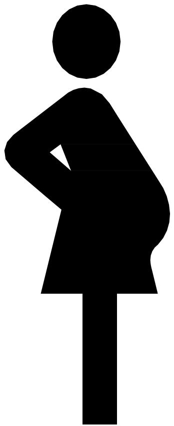
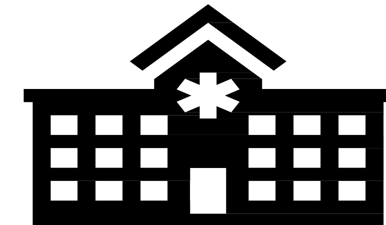
Mistrust is a Barrier to Accessing Care



For women who use substances, concern about being reported to child protective services is a significant barrier to engaging in care



2017 Survey Results, reviewed in Perinatal Task Force

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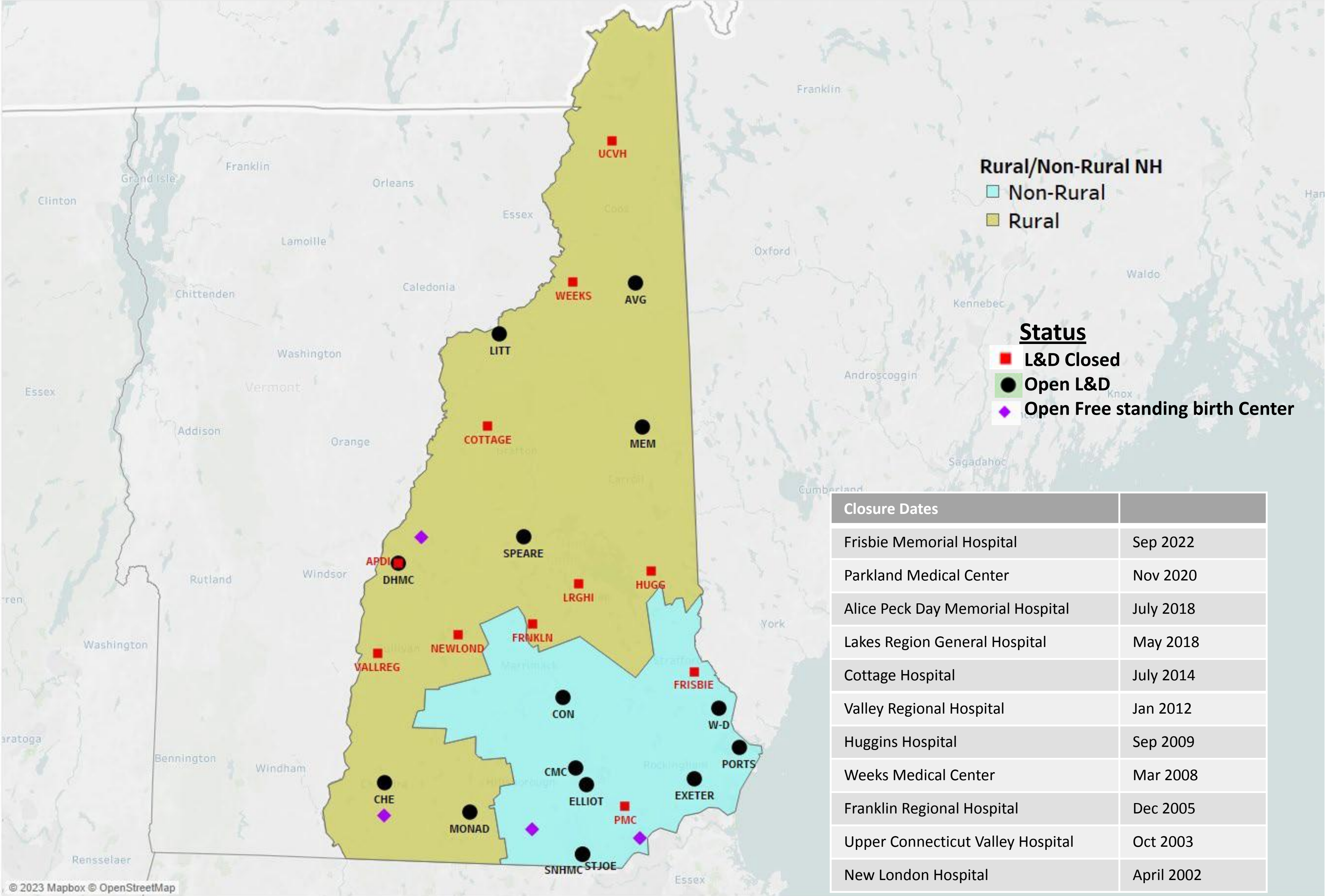
New Hampshire Open and Closed Labor and Delivery Centers



Closure Dates	
Frisbie Memorial Hospital	Sep 2022
Parkland Medical Center	Nov 2020
Alice Peck Day Memorial Hospital	July 2018
Lakes Region General Hospital	May 2018
Cottage Hospital	July 2014
Valley Regional Hospital	Jan 2012
Huggins Hospital	Sep 2009
Weeks Medical Center	Mar 2008
Franklin Regional Hospital	Dec 2005
Upper Connecticut Valley Hospital	Oct 2003
New London Hospital	April 2002

Prepared by NH MCH Epidemiologist

Prenatal Substance Exposure

Infants born 1/1/2022 to 12/31/2022

Select Birth Hospital
None

Payer
All

Residence in NH?
- [x] In
- [x] Out

Occurred in NH
- [x] In
- [ ] Out

iDOB Start Date
1/1/2022

iDOB End Date
12/31/2022

82A1: Was the infant monitored for effects of in utero substance exposure?

Yes	No	Unknown	Total
761	11,418	1	**12,180**
6.2%	93.7%	0.0%	**100.0%**

82A2: If YES, Type of substance(s)

Substance+ includes 82A3 reclassified if applicable

Substance	Count
Cannabis+	398
Nicotine	318
Opioids+	240
Opioids (checkbox subgroup of above)	144
Alcohol	24
Stimulants+	97
Benzodiazepines	29
Cocaine	43
Barbiturates	1
Bath salts	0
Kratom	0
Other substance	224

82A3: Type (Other Specify)

Type	Count
METHADONE	16
BUPENORPHINE	15
SUBOXONE	21
SUBUTEX	6
MARIJUANA	3
BUPRENORPHINE	13
FENTANYL	15
ZOLOFT	15
HEROIN	3
VAPE	1
THC	2
LEXAPRO	2
AMPHLET, BEPRENOPHRINE	1
BUPRENORPHINE-NALOXONE	1
BUPRENORPHINE, LAMICTAL	1
BUPRENORPHINE, ZOLOFT	1
BUPRENORPHINE, ZOLOFT, LAMICT..	1
BUPROPRION,FLUOXETINE	1
BUSPIRONE & LEXAPRO	1
BYUPRENORPHINE	1
CBD	1

% 82A1 Yes with POSC

44.5%

82B. Was the infant identified as being affected by substance misuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder?

CAPTA/CARA

Yes	No	Unknown	Total
261	11,905	14	**12,180**
2.1%	97.7%	0.1%	**100.0%**

% 82B Yes with POSC

84.7%

83: Was a Plan of Safe/Supportive Care (POSC) created?

Yes	No	Unknown	Total
394	11,785	1	**12,180**
3.2%	96.8%	0.0%	**100.0%**

Data Source: Vital Records Birth Certificate Data
Prepared by MCH Epidemiologist

Data Refreshed: *6/21/2023 8:29:12 AM*

Engagement in Behavioral Health: Pregnancy and Postpartum

- Pregnancy is strongly associated with substance use treatment initiation
  - Rates of SUD treatment participation > 90% [pre-COVID]
- Less than 40% of postpartum people with OUD/SUD participate in postpartum care
- 80% of pregnant people with OUD/SUD have at least one additional mental health diagnosis
- High rates of treatment discontinuation postpartum
- Loss of child custody is associated with treatment initiation, and also with treatment discontinuation

Prenatal Substance Exposure in New Hampshire - 2022

- **6.2%** (761) of infants born in NH hospitals were **monitored for the effects of in utero** substance exposure
  - Cannabis and opioids were the most common exposure
  - Out of 12,180 occurrent births (in NH birthing hospitals)

- **2.1%** (261) of infants were identified as being **affected by substance misuse or withdrawal symptoms** resulting from prenatal drug exposure, or Fetal Alcohol Spectrum Disorder

- The **leading** cause of pregnancy-associated deaths in NH is **accidental drug overdose, the overwhelming majority occurring postpartum**

New Hampshire vital statistics data (C. Nyamasege, PhD, MPH, MS NH DHHS)

Federal and NH Law Requires Plans of Safe Care

The Law: A Plan of Safe Care must be developed for all infants affected by prenatal drug or fetal alcohol exposure in order to support mothers, infants and their families per federal and state requirements.

Best Practices: A Plan of Safe Care can be shared as a critical tool – not only for every infant born exposed to prenatal substance exposure but for all mothers and their infants.

- *2016 Comprehensive Addiction and Recovery Act, amending the Child Abuse Prevention and Treatment Act*
- *RSA 132:10-e and f*

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What is required?

IN NEW HAMPSHIRE, ACCORDING TO THE LAW, PRENATAL SUBSTANCE EXPOSURE ALONE IS NOT GROUNDS TO SUBSTANTIATE CHILD ABUSE OR NEGLECT.

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Child Abuse Prevention Treatment Act

The Comprehensive Addiction and Recovery Act

- Recent changes to CAPTA CARA outline state mandates requiring data collection around the impact of substance exposed infants and developments of plans of safe care.
- **2016 Amendments:** remove the word “illegal” and require a Plan of Safe Care for all infants **“born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or Fetal Alcohol Spectrum Disorder.”**
- Since July 2018 in NH, birthing hospitals are required to submit notification of when an infant is born exposed, and develop POSC before infants is discharged.
- Neither CAPTA/CARA nor NH POSC law defines child abuse or neglect

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CARA's Changes to CAPTA

(Comprehensive Addiction and Recovery Act)

Healthcare providers delivering infants effected by substance exposure or withdrawal symptoms must "notify" DHHS.

Notification

1

A POSC must be developed for infants affected by substance exposure

Affected Infants

2

- Affected infants born
- Infants for whom a POSC was developed
- Infants for whom a referral was made for appropriate services

Annual Aggregated Reporting to

3

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NH's Statutory Plan of Safe Care Requirements

July 1, 2018

SB 549: RSA 132:10-e and f

Infant Born…	Health Provider Shall Develop a POSC
"When an infant is born identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or fetal alcohol spectrum disorder…"	"… the health provider shall develop a Plan of Safe Care in cooperation with the infant's parents or guardians and NH DHHS, Division of Public Health Services, as appropriate."

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New Hampshire Law - RSA 132:10-e and f

To Ensure the Safety and Wellbeing	Supporting Treatment
"to ensure the **safety and well-being** of the infant, to address the **health and substance use treatment needs** of the infant and affected family members or caregivers, and to ensure that **appropriate referrals** are made and services are delivered to the infant and affected family members or caregivers."	"The plan shall take into account whether the infant's prenatal drug exposure occurred as the **result of medication assisted treatment, or medication prescribed for the mother by a health care provider**, and whether the infant's mother **is or will be actively engaged in ongoing substance use disorder treatment following discharge** that would mitigate the future risk of harm to the infant."

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New Hampshire Law - RSA

Provide the POSC upon discharge	Include "in the instructions for the infant"
"A copy of the plan of safe care shall be included in the **instructions for the infant upon discharge from the hospital or from the health care provider** involved in the development of the plan of safe care. ..	…The plan of safe care **shall not be submitted to the department of health and human services unless** it is pursuant to **RSA 132:10-f** or the department makes an **official request** for a copy of the plan in compliance with confidentiality requirements."

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New Hampshire's Plan of Safe/Supportive Care (POSC) Process

Baby Born

Is the infant affected by prenatal drug and/or alcohol exposure?

- NO → A POSC is NOT required by law
- YES → Notification of Birth* → Develop or update POSC → Inform Health Plan of POSC → Inform Infant's PCP

Is a formal report of child abuse or neglect made to DCYF?

- NO → POSC is sent home with mother upon discharge
- YES → The POSC is sent to DCYF and sent home with mother upon discharge

It is best practice to begin developing a POSC prenatally and to develop a POSC for all mothers and infants.

Perinatal Substance Exposure Task Force of the NH Governor's Commission on Alcohol and Other Drugs

***Notification is captured through answering "Prenatal Substance Exposure" question 82B on the birth worksheet.**

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What is the “Notification” Requirement? Notification is NOT the same as Reporting

New Hampshire has a federal data reporting requirement, which is referred to as “notification”. The health care provider at the hospital notifies exposure through the birth record.

The state reports annually to the federal Children’s Bureau the aggregate number of infants born affected by prenatal drug and/or alcohol exposure for whom a POSC was created and for whom services were referred.

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What about Abuse and Neglect?

132-10-f

"When a health care provider suspects that an infant has been **abused or neglected pursuant** to RSA 169-C:3, the provider **shall report** to the department of health and human services in accordance with RSA 169-C:29. If the infant has a plan of safe care developed under RSA 132:10-e, **a copy of the plan shall accompany the report**."

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What is Reporting?

Reporting	Guidance
• A provider may determine circumstances warrant a mandatory report to DCYF. • A report must be made when a provider ‘has a reason to suspect’ an infant has been abused or neglected pursuant to RSA 169-C:3. • If a report is made to DCYF, a copy of the POSC must accompany the report.	Mandatory reporting is required under NH RSA 169-C:29 whenever anyone has a reason to suspect child abuse and/or neglect. **Prenatal substance exposure along does not alone substantiate a finding of child abuse and neglect or a mandatory report.**

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DCYF Guidance

- Reports are credible if made regarding prenatal exposure to substances when a parent of an infant used substances during pregnancy
  - Evidence to support can include that the infant is born affected by exposure or
  - Birthing parent self reports or there is a positive toxicology or other evidence of exposure.
- DCYF consider breastfeeding or breast milk exposure to substances as causing a substance exposed infant including non-prescribed substances, certain alcohol use, use of Rx against medical advice
- DCYF will ask for additional indicators of impact in order to consider “for harm” or “harm likely” p will caregiver be unable to safely care for the infant?

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Hospital Policies

- New and varied policies and procedures around protocols for
  - breast feeding when there is self-reported exposure during pregnancy
  - Ordering toxicology screenings
  - Response to self-reported use of marijuana
  - Timing of reports to DCYF when suspect child abuse or neglect associated with pre-natal substance exposure
  - Timing and frequency of exposure that may result in a report to DCYF
- Inconsistency can lead to variable outcomes for mothers and infants

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DCYF Responses

- Variable expectations
- Outreach to stakeholders in process
- Engagement by field offices
- Future collaborations

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