

## How Discrimination on the Basis of Age Shows Up in Perinatal Care

Young birthing people and birthing people over age 35 experience higher than average rates of preterm delivery, low birth weight, or other adverse effects from perinatal care because they receive different care than other pregnant people. The Department of Health and Human Services' Office for Civil Rights acknowledges that harms because of age have intersectional dimensions and that many harms do not fit neatly into the categories of current nondiscrimination protections. This means that people's experiences of discrimination are often based off of multiple identities that they hold (intersectionality) and that the legal system is structured to respond to discrimination based on protected characteristics ignores this intersectionality. When you receive perinatal care that is different because of your age, you may have experienced discrimination "on the basis of age."

### What is Discrimination on the Basis of Age:

- Examples of common discriminatory practices from medical professionals
  - undermining the autonomy or decisional capacity of the birthing person on the basis that they lack the necessary maturity to make their own medical decisions
  - hospital systems or medical providers limiting or refusing to let parents get care from a midwife
  - inducing birthing people without telling them why or pressuring them to agree, especially young people
  - prescribing Pitocin without medical indication
  - rupturing membranes without the pregnant person's consent or pressuring them to agree
  - forcing parents to have episiotomies or epidurals
  - conducting vaginal exams without consent
  - violating the privacy of the birthing person by disclosing information to parents or other family members without their consent

### Who is Affected

Birthing people experience discrimination, or treatment that is different, based on their age. Both groups are considered "at risk" by providers. This perception is grounded in social stigma, not scientific evidence.

Age-based discrimination is a consequence of structural inequality, discrimination, patriarchy, and disrespect for equality and human rights.

*Minors who are pregnant* can legally consent to medical care relating to their pregnancy without permission from a parent or guardian, so their age alone can't be an excuse for different perinatal care by their medical providers.

*Birthing people over age 35* are often labeled "Advanced Maternal Age," an unclear and socially constructed term that can result in an interruption of the natural birthing process, dangerous medical interventions, and psychological harm.

### Why it Matters

Pregnant people of all ages have a right to give birth without discrimination. When a pregnant person's age limits the care available to them or influences the way the care they receive is delivered, it is unjust. Mistreatment of pregnant people based on their age increases the potential for post-birth complications, preterm labor, low

birthweight, and postpartum depression and posttraumatic stress. These risks can increase for survivors of sexual assault.

### Legal Protections

Receiving (or not receiving) perinatal care that is different than other people based on age is discrimination on the basis of age. It is illegal for organizations in the United States that provide health care using government funding to treat people differently based on their age. In practice, this means that an organization cannot refuse to treat, deny benefits, or discriminate against a person because of their age if they receive money from the federal government. 42 U.S. Code § 6102; 42 U.S. Code § 18116. The Office of Civil Rights in the US Department of Health and Human Services (HHS) has the legal authority to enforce this law. 42 U.S. Code § 18116.

### How to File an OCR Complaint

You can file a complaint **through OCR's [online portal](#)** or by mail, fax, or e-mail. OCR provides free language assistance services and services are accessible to persons with disabilities.

You will need to:

- Name the health care or social service provider that discriminated against you,
- Describe what happened,
- Explain why you believe what happened was discrimination (were you treated differently than other people on the basis of race, color, national origin, sex, age and/or disability? Does the facility or institution have a practice or policy that applies to everyone, but that has a discriminatory impact on a protected group?).
- File the complaint through the portal within 180 days of when the act or omission complained of occurred, or if that time has already passed, explain why you had “good cause” to need more time.

Elephant Circle can assist you with filing an OCR complaint. Sign up [here](#) to schedule a consultation with a member of our team.