Protecting the Perinatal Period
Human Rights is a Health Outcome

Freedom from discrimination, mistreatment and harm is an important health outcome. This has been recognized by a growing consensus of providers and advocates around the world.[1] Unfortunately, discrimination, mistreatment and harm regularly occur during the perinatal period contributing to poor birth and health outcomes for parent and child.[2] The Giving Voice to Mothers study found that 1 in 6 surveyed reported experiencing one or more type of mistreatment during perinatal care, with the rate being higher in hospitals and for people of color.[3] To improve care, human rights must be protected. The following are tractable first steps:

- **No discriminatory malpractice insurance**
  - *The Division of Insurance would require insurance malpractice plans to cover care for vaginal birth after cesarean (VBAC).*
  - Currently, malpractice insurance does not allow for VBACs to take place in birth centers, reducing the options for families using Medicaid.

- **Increase the statute of limitations for informed consent violations**
  - *Change the amount of time people have to file a lawsuit for lack of informed consent from two to three years.*
  - When someone experiences a lack of informed consent during perinatal care in Colorado, they have only one year to seek redress through a civil lawsuit. One year is the shortest time period available for bringing such a suit. For any claim it is hard to identify the issue, find an attorney and file a case within one year. For someone who is postpartum and experienced a traumatic birth it can be impossible. Simply extending the timeline so that someone who experienced such a violation during labor has three years would be much more humane and facilitate defense of their human rights.

- **Amend the advance directives law so that pregnant people aren't excluded**
  - *Change the law so that pregnant people are not excluded from being able to have their medical decision-making honored when they become incapacitated.*
  - Everyone has a right to direct their health care decisions in advance should they become incapacitated by establishing a living will or advance directive. But many people don't know that in Colorado a pregnant patient's advance directives will be given "no force or effect until the patient is no longer pregnant."[4] Even

[1] Disrespect and Abuse During Facility-Based Childbirth, WHO/RHR/14.23 (2014); Lynn P. Freedman et al., Defining Disrespect and Abuse of Women in Childbirth: A Research, Policy and Rights Agenda, 92(12) Bulletin of the World Health Org. 915 (2014); Office of the U.N. High Comm'r for Human Rights (OHCHR), *Technical Guidance on the Application of a Human Rights-Based Approach to the Implementation of Policies and Programmes to Reduce Preventable Maternal Morbidity and Mortality,* ¶ 12, U.N. Doc. A/HRC/21/22 (July 2, 2012).
[2] *Id.*
[3] Vedam, Saraswathi et al., *The Giving Voice to Mothers Study: Inequity and Mistreatment during Pregnancy and Childbirth in the United States*. 16 *Reproductive Health.* 77 (2019).
[4] Colorado Revised Statutes § 15-18-104. Declaration as to medical treatment

pregnant people should be able to plan for the health decisions they would want to have should tragedy strike.[5]

- **Develop a model of care for incarcerated folks during the perinatal period**
  - *The Department of Corrections (DOC) would require policies that demonstrate basic care for incarcerated people who are pregnant. DOC would also have to increase it's report related to the use of shackles on pregnant people.*
  - Pregnant people who are incarcerated often experience subpar care and do not have access to childbirth preparation or lactation support. While a 2010 law protects incarcerated pregnant people from inhumane shackling more attention to the human rights of incarcerated pregnant people is warranted.

- **Track disrespectful maternity care through the Colorado Civil Rights Division and make a public report**
  - *The Civil Right Division would have a new duty to track and report disrespectful maternity care.*
  - There is currently no way to track the extent of the problem of human rights violations during pregnancy and birth and people who experience harms that aren't always capable of or interested in filing lawsuits lack a way to effectively communicate these violations. Complaints at the facility level are often unreported, complaints to the licensing agency are often ignored. Merely collecting and reporting these harms would be a tremendous step toward protecting these human rights.

- **Require that licensed facilities allow for every birthing person to have a companion or doula in the birth room or operating room, in addition to a partner or spouse**
  - *CDPHE would require licensed facilities to demonstrate policies that allow everyone to have a support person.*
  - The pandemic has exposed how readily human rights protections can be dispensed with during crisis, especially for pregnant people. All over the world reports of women laboring without adequate support have risen during the pandemic[6] – which can more severely impact some people who are already at risk, like Black and Indigenous women in the U.S. Mitigating virus transmission cannot come at the expense of human rights and should not have to.[7]

- **Require that licensed facilities have policies and procedures that prevent removal of infants from their families after birth.**
  - *CDPHE would require licensed facilities to demonstrate policies that keep newborns with their families to support the physiologic postpartum process.*
  - Similarly, during the pandemic some families have experienced removal of their infant immediately at birth due to uncertainty about the virus, interrupting vital physiologic and developmental processes without informed consent. This critical moment should be protected for both health and human rights purposes.

[5] A tragic case in Texas brought this issue to public attention, see https://www.npr.org/sections/health-shots/2014/01/28/267759687/the-strange-case-of-marlise-munoz-and-john-peter-smith-hospital
[6] BRBA and HRIC reports.
[7] OHCHR Technical Guidance supra note 1.

- Other families have experienced this sort of experimental removal in the face of concerns about prenatal substance exposure or when the birthing parent is incarcerated. While there is no evidence that removal is necessary there is evidence that maintaining skin-to-skin contact for at least an hour after birth is vital to human development and postpartum recovery.

- **Require that licensed facilities have policies and procedures that prohibit physiologic birth without consent**
  - *CDPHE would require licensed facilities to demonstrate policies that prohibit facilities from excluding clients seeking physiologic birth or interrupt the process of physiologic birth without consent.*
  - Whether through hospital policy or malpractice policy many facilities do not support vaginal birth after cesarean. Which means the physiologic process of labor either never begins or labor is prematurely stopped, through surgery, or they are turned away from the facility – often unable to find any provider to attend them. Not only does this create undue health risks, it is a human rights violation to force anyone into surgery without their consent.
  - The U.N. Special Rapporteur on the right to health called informed consent "a fundamental feature of respecting an individual's autonomy, self-determination and human dignity."[8] And The U.N. Special Rapporteur on Violence Against Women, in July 2019, said that this lack of informed consent constitutes a human rights violation that could be attributed to States and national health systems.[9]

- **Require that all facilities accept transfers from community birth**
  - *CDPHE would require licensed facilities to demonstrate that they use best-practices for transfer from community to hospital birth.*
  - Best practice guidelines were developed through a Delphi process and have been published for use[10].
  - "Evidence shows that a lack of integration and coordination and unreliable collaboration across birth settings and maternity care providers is associated with poor birth outcomes for pregnant people and infants in the U.S."[11]

[8] Anand Grover, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, U.N. Doc. A/64/272, ¶ 18 (Aug.10, 2009).
[9] Report of the U.N. Special Rapporteur on Violence Against Women: Its Causes and Consequences on a Human Rights-Based Approach to Mistreatment and Violence Against Women in Reproductive Health Services with a Focus on Childbirth and Obstetric Violence, July 2019.
[10] https://www.birthplacelab.org/best-practice-guidelines-for-transfer-and-collaboration
[11] The National Academies, Birth Settings in America: Outcomes, Quality, Access, and Choice, Policy Brief at https://www.nap.edu/resource/25636/Birth%20Settings%20Policy%20Brief.pdf