

October 10, 2023

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Executive Officer  
Executive Secretariat  
U.S. Equal Employment Opportunity Commission  
Washington, DC

**Re: Regulations To Implement the Pregnant Workers Fairness Act (RIN 3046-AB30)**

The Jacobs Institute of Women's Health at The George Washington University Milken Institute School of Public Health appreciates the opportunity to comment on the draft "Regulations To Implement the Pregnant Workers Fairness Act" (RIN 3046-AB30). We applaud the draft regulation's flexible approach to supporting documentation and recommend that the revised rule specify that pregnant workers are eligible for accommodations to protect them from exposure to infectious diseases.

The mission of Jacobs Institute of Women's Health is to identify and study aspects of healthcare and public health, including legal and policy issues, that affect women's health at different life stages; to foster awareness of and facilitate dialogue around issues that affect women's health; and to promote interdisciplinary research, coordination, and information dissemination, including publishing the peer-reviewed journal *Women's Health Issues*. We represent an interdisciplinary group of affiliated faculty members who are experts in research, health policy, and medical care related to women's health.

**Supporting Documentation**

We strongly support the statements that 1) a covered entity is not required to seek supporting documentation from a worker who seeks an accommodation under the PWFA, 2) that it is not reasonable for the employer to require documentation when both the limitation and need for reasonable accommodation are obvious, and 3) that employers should provide requested accommodations on an interim basis if supporting documentation is necessary but not yet available. We thank the Commission for recognizing that workers might require accommodations before they are able to access care with a provider who can supply documentation, and that the lack of maternity care providers in some counties makes it challenging to obtain the kinds of appointments that would allow workers to secure documentation for their pregnancy-related limitations.

The maldistribution of maternal health providers, especially in rural areas, is well-documented<sup>1,2</sup> and appears to have worsened in recent years.<sup>3</sup> Compounding this issue is a lack of healthcare providers who accept Medicaid.<sup>4,5,6</sup> Analysis of Medicaid claims data by the Fitzhugh Mullan Institute for Health Workforce Equity at the George Washington University shows that between 2016 and 2019, the number of obstetrician-gynecologists (OBGYNs) treating Medicaid patients declined; Iowa, for instance, lost 10% of its Medicaid OBGYN workforce during that time period.<sup>7</sup> Occupations that are physically demanding, such as food service and construction, have large proportions of workers covered by Medicaid.<sup>8</sup> In other words, Medicaid beneficiaries often hold the kinds of jobs that might require accommodations during pregnancy, but they face higher barriers than their privately insured peers to seeing providers who could supply documentation. A flexible approach to documentation can therefore improve equity.

### Infectious Disease Exposures

Changes in immunity and physiology make pregnant people more susceptible to several infectious diseases, and pregnant populations experience increased severity and complications with diseases such as influenza.<sup>9,10</sup> The Centers for Disease Control and Prevention identified pregnant and recently

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<sup>1</sup> Strasser J, Dewhurst E, & Westergaard S. (2022). Where and what specialty does the health workforce practice? An examination of the geographic distribution of primary care providers. Fitzhugh Mullan Institute for Health Workforce Equity, George Washington University. [https://www.gwhwi.org/uploads/4/3/3/5/43358451/er\\_3.pdf](https://www.gwhwi.org/uploads/4/3/3/5/43358451/er_3.pdf)

<sup>2</sup> Brigance C, Lucas R, Jones E, Davis A, Oinuma M, Mishkin K, & Henderson Z. (2022). Nowhere to Go: Maternity Care Deserts Across the U.S. (Report No. 3). March of Dimes. <https://www.marchofdimes.org/research/maternity-care-deserts-report.aspx>

<sup>3</sup> Woodcock AL, Carter G, Baayd J, Turok DK, Turk J, Sanders JN, Pangasa M, Gawron LM, & Kaiser JE. (2023). Effects of the Dobbs v Jackson Women's Health Organization Decision on Obstetrics and Gynecology Graduating Residents' Practice Plans. *Obstetrics & Gynecology*, online ahead of print. [https://journals.lww.com/greenjournal/fulltext/9900/effects\\_of\\_the\\_dobbs\\_v\\_jackson\\_women\\_s\\_health.904.aspx](https://journals.lww.com/greenjournal/fulltext/9900/effects_of_the_dobbs_v_jackson_women_s_health.904.aspx)

<sup>4</sup> Holgash K & Heberlein M. (2019). Physician acceptance of new Medicaid patients: What matters and what doesn't. *Health Affairs Forefront*. <https://www.healthaffairs.org/content/forefront/physician-acceptance-new-medicaid-patients-matters-and-doesn-t>

<sup>5</sup> Sommers BD & Kronick R. (2016). Measuring Medicaid physician participation rates and implications for policy. *Journal of Health Politics, Policy and Law*, 41(2):211-224.

<sup>6</sup> Spivack SB, Murray GF, Rodriguez HP, & Lewis VA. (2021). Avoiding Medicaid: Characteristics of primary care practices with no Medicaid revenue. *Health Affairs (Millwood)*, 40(1):98-104.

<sup>7</sup> Chen C, Luo Q, Bodas M, Vichare A, Erikson C, & Pittman P. (2023). Tracking The Elusive Medicaid Workforce To Improve Access. *Health Affairs Forefront*. <https://www.healthaffairs.org/content/forefront/tracking-elusive-medicaid-workforce-improve-access>

<sup>8</sup> Garfield R, Rudowitz R, Orgera K, & Damico A. (2019). Understanding the Intersection of Medicaid and Work: What Does the Data Say? Henry J. Kaiser Family Foundation. <https://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work-What-Does-the-Data-Say>

<sup>9</sup> Jamieson DJ, Theiler RN, & Rasmussen SA. (2006). Emerging Infections and Pregnancy. *Emerging Infectious Diseases*, 12(11):1638-1643. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3372330/>

<sup>10</sup> Kourtis AP, Read JS, Jamieson DJ. (2014). Pregnancy and Infection. *New England Journal of Medicine*, 370(23):2211-2218. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4459512/>

pregnant people as one of the populations at higher risk for severe COVID-19.<sup>11</sup> The draft regulation recognizes exposures to certain chemicals as a situation in which pregnant workers are entitled to accommodations. We ask that the revised regulation also recognize potential exposure to infectious diseases as a situation for which pregnant workers can request accommodations.

Accommodations to limit exposure to airborne diseases (flu, COVID-19, etc.) could include improved indoor air quality via ventilation, air filtration, and air disinfection;<sup>12,13,14</sup> moving workers from areas of high exposure risk (e.g., crowded rooms) to areas of lower exposure risk (including telework where feasible); and providing high-quality respiratory protection (e.g., respirators approved the National Institute for Occupational Safety and Health).<sup>15</sup> In the revised regulation, we recommend that the Commission add to the list of reasonable accommodation examples in § 1636.3(i)(2) “reducing exposure to airborne infectious diseases by improving workplace air quality, moving pregnant workers to areas of less exposure, and/or providing high-quality respiratory protection.”

This addition would allow pregnant workers to avoid severe complications of influenza, COVID-19, and other infectious diseases. Where it spurs employers to improve indoor air quality, all employees in those workplaces will benefit from less missed time due to illness.

Thank you for this opportunity to comment. If you have any questions, please contact Jacobs Institute of Women’s Health managing director Liz Borkowski at 202-994-0034 or borkowsk@gwu.edu.

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<sup>11</sup> National Center for Immunization and Respiratory Diseases, Division of Viral Diseases, Centers for Disease Control and Prevention (Updated February 9, 2023.) Underlying Medical Conditions Associated with Higher Risk for Severe COVID-19: Information for Healthcare Professionals. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/underlyingconditions.html>

<sup>12</sup> U.S. Environmental Protection Agency. (2022) Clean Air Building Challenge.

[https://www.epa.gov/system/files/documents/2022-03/508-cleanairbuildings\\_factsheet\\_v5\\_508.pdf](https://www.epa.gov/system/files/documents/2022-03/508-cleanairbuildings_factsheet_v5_508.pdf)

<sup>13</sup> Milton DK, Nardell EA, & Michaels D. We Have the Technology to Stop Superspreading Without Masks. *The New York Times*, April 21, 2022. <https://www.nytimes.com/2022/04/21/opinion/superspreader-events-disinfect-air.html>

<sup>14</sup> Occupational Safety and Health Administration. (2020). Occupational Exposure to COVID-19; Emergency Temporary Standard. <https://www.osha.gov/sites/default/files/covid-19-healthcare-ets-preamble.pdf>

<sup>15</sup> National Center for Immunization and Respiratory Diseases, Division of Viral Diseases, Centers for Disease Control and Prevention. Types of Masks and Respirators (Updated May 11, 2023). <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>