SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2319 (Wilson and Weber)
Version: June 27, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

California Dignity in Pregnancy and Childbirth Act

DIGEST

This bill revises the California Dignity in Pregnancy and Childbirth Act (Act) by specifying what providers are subject to implicit bias training in hospitals that provide perinatal care and alternative birth centers or primary care clinics involved in perinatal care, and that the training should include recognition of intersecting identities and the multiple layers of potential biases that could come into play, resulting in harm to patients and their infants. The bill requires the initial basic training to be completed by June 1, 2025, for all current health care providers, and within six months of the start at a new facility by a provider, except as specified. The bill requires proof of compliance be submitted to the Attorney General, and makes a violation of the Act punishable by a civil penalty.

EXECUTIVE SUMMARY

Studies, including a recent California Department of Public Health (CDPH) one, [1] have found that women of color, especially Black women, die of pregnancy-related complications at much higher rates than white women. Black women make up 5 percent of those pregnant in California but account for 21 percent of the total of pregnancy-related deaths.[2] The Act was enacted in 2019 to address these stark racial disparities, by requiring health facilities to train providers of perinatal care on implicit bias and the negative and dangerous impacts it can have on patients. In 2021, the California Department of Justice (DOJ) sought to investigate compliance with the Act and found that fewer than 17 percent of responding providers had begun training employees and

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[1] *Centering Black Mothers in California*, Cal. Dept. of Pub. Health, (2023), available at https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Centering-Black-Mothers/Centering-Black-Mothers-Report-2023.pdf.

[2] *Attorney General Bonta Announces Results of Investigation into Anti-Bias Training for Pregnancy Care Providers*, Press Release, Cal. Dept. of Justice, (Oct. 27, 2023), available at https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-results-investigation-anti-bias-training.

not a single employee had been trained fully.[3] This bill seeks to address this issue by, among other, things requiring proof of compliance with the Act be provided to the Attorney General and providing civil liability for failure to complete the required training.

This bill was previously analyzed by the Senate Health Committee—where it passed by a vote of 9 to 2—regarding issues relating to the public health implications of the bill's provisions. This analysis, however, is limited to the issues within the Committee's jurisdiction—namely, the enforcement and public posting of compliance data. This bill is sponsored by the Attorney General, Rob Bonta, Black Women for Wellness Action Project, the California Black Women's Collective Empowerment Institute, the California Nurse-Midwives Association, Reproductive Freedom for All California, and Western Center on Law & Poverty. The bill is opposed by the California Family Council.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Enacts the California Dignity in Pregnancy and Childbirth Act, which requires a general acute care hospital, and a special hospital that provides perinatal care and an alternative birth center or primary care clinic that provides alternative birth center services, to implement an implicit bias program for all health care providers involved in the perinatal care of patients within those facilities. (Health & Saf. Code § 123630.3.)
    a) Defines "perinatal care" as the provision of care during pregnancy, labor, delivery, and postpartum and neonatal periods.

2) Requires the implicit bias program to include specified topics, including, among others:
    a) identification of previous or current unconscious biases and misinformation;
    b) identification of personal, interpersonal, institutional, structural, and cultural barriers to inclusion; corrective measures to decrease implicit bias at the interpersonal and institutional levels;
    c) information on the effects of historical and contemporary exclusion and oppression of minority communities;
    d) information about cultural identity across racial or ethnic groups;
    e) information about communicating more effectively across identities, including racial, ethnic, religious, and gender identities;
    f) discussion on power dynamics and organizational decision making;
    g) discussion on health inequities within the perinatal care field;

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[3] *Ibid*.

h) perspectives of diverse, local constituency groups and experts on particular racial, identity, cultural, and provider-community relations issues in the community; and
i) information on reproductive justice. (*Id*. at (b).)

3) Requires a healthcare provider involved in the perinatal care of patients within a hospital or alternative birth center to complete initial basic training through the implicit bias program, and upon completion of the initial basic training, to complete a refresher course every two years thereafter, or on a more frequent basis if deemed necessary by the facility, in order to keep current with changing racial, identity, and cultural trends and best practices in decreasing interpersonal and institutional implicit bias. (*Id*. at (c).)

4) Provides for the licensure and regulation of various healing arts professions under Division 2 of the Business and Professions Code, including, among others, doctors, nurses, nurse-midwives, and midwives. (Bus. & Prof. Code § 500 et. seq.)

This bill:

1) Specifies that health care providers who are required to complete the implicit bias training described above includes:
   a) all persons licensed under Division 2 of the Business and Professions Code (commencing with Section 500) who are regularly assigned to provide perinatal care, including, but not limited to, those in primary care clinics, alternative birthing centers, outpatient clinics, or emergency departments; and
   b) all persons who are regularly assigned to positions where they interact with perinatal patients, including, but not limited to, physician assistants, medical assistants, licensed vocational nurses, doctors, or those who facilitate, control, or coordinate access to timely and appropriate medical treatment, as well as any others who provide medical and ancillary treatment.

2) Defines "perinatal care" to include, but not limited to, prenatal care.

3) Expands the topics required under the implicit bias training to also include recognition of intersecting identities, including, but not limited to, nonbinary persons and persons of transgender experience, and the multiple layers of potential biases that could come into play, resulting in harm to patients and their infants.

4) Provides that initial basic training must be completed by June 1, 2025 for all current health care providers, and within six months of the start date for all new health care providers, except as provided.

   a) Requires the training to be provided during paid work time.

5) Requires a facility to provide the Attorney General proof of compliance by February 1 of each year, commencing in 2026, as specified.

6) A facility that violates these provisions is liable for a civil penalty of $5,000 for the first violation and $15,000 for ae second and each subsequent violation.
   a) The civil penalty is to be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General in any court of competent jurisdiction.
   b) Specifies that in the event a facility's proof of compliance reveals systemic failure, as defined, of providers to complete the training requirements, the facility is liable for a civil penalty of $5,000 for a first violation, and $15,000 for the second and each subsequent violation.
   c) The penalties provided are not exclusive and do not limit other remedies available in law for other violations.

7) Authorizes the Attorney General to post on their website a list of all facilities that did not submit timely proof of compliance or that were assessed penalties. Authorizes the Attorney General to include the following information:
   a) the date the penalty was issued;
   b) the amount of the penalty;
   c) the reason the penalty was issued;
   d) the percentage of untrained providers;
   e) the date of facility noncompliance; and
   f) any other compliance data related to the Act that the Attorney General deems appropriate.

8) Authorizes the Attorney General to publish a report outlining compliance data related to the Act on a biennial basis. The report may be posted on the Attorney General's website.

9) Adds additional findings and declarations to the Act that state:
   a) the Legislature recognizes all birthing people, including nonbinary persons and persons of transgender experience; and
   b) all persons who may interact with perinatal patients to gatekeep, facilitate, or coordinate access to timely, responsive, respectful, and appropriate medical care may impact Black birthing persons' maternal mortality and morbidity outcomes, including, but not limited to, hospital or facility employees who facilitate, control, or directly or indirectly coordinate access to timely and appropriate medical treatment as well as those who provide medical and ancillary treatment.

10) Includes a severability clause.

COMMENTS

1. Stated need for the bill

The author writes:

> The United States has the highest maternal mortality rate in the developed world. In California, people of color, particularly Black women, continue to die at three to four times the rate of White women. A recent study by the California Department of Public Health found that women of color, in particular Black women, die of pregnancy-related complications at much higher rates than White Women in California. Evidence suggests one key cause of this disparity is the implicit bias of healthcare providers. A provider's level of bias, whether conscious or unconscious, can influence their interactions with patients and their diagnoses and treatment of the patient's pain, and can undermine patients' trust and engagement in care.

The Attorney General, Rob Bonta, one of the sponsors of the bill, writes:

> The United States has the highest maternal mortality rate in the developed world — a burden disproportionately borne by communities of color, especially Black women. In California in particular, Black women make up 5% of those pregnant but account for 21% of the total pregnancy-related deaths. This disparity exists across all income levels. Evidence suggests one key cause of this disparity is the implicit bias of healthcare providers. A provider's level of bias, whether conscious or unconscious, can influence their interactions with patients and their diagnoses and treatment of the patient's pain, and can undermine patients' trust and engagement in care.
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> AB 2319 strengthens the Act to further address the continued racial disparity in maternal morbidity rates by changing the way that healthcare providers recognize and overcome their own implicit bias when treating pregnancy. Specifically, the key provisions of AB 2319 would: (1) provide clarity on which facilities are mandated to administer anti-bias trainings and which employees need to be trained, (2) establish firm deadlines by which trainings must be completed to better guide compliance, (3) authorize the DOJ to enforce the Act and assess civil penalties for noncompliance, and (4) authorize the DOJ to post compliance data online so the public is made aware of which facilities have provided anti-bias trainings and which have not.
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> AB 2319 is a substantial part of the systemic change needed to reduce the disparate impact on Black mothers and pregnant persons of color and to prevent these deaths from happening.

2. Disparities in maternal morbidity and mortality

The Senate Health Committee analysis of this bill analyzed the public health aspects of the bill and noted, among other data, the following:

- According to the California Birth Equity Collaborative (CBEC), an initiative at Stanford University's California Maternal Quality of Care Collaborative (CMQCC), maternal mortality rates nearly doubled in California between 1999 and 2006.
- Data shows that even in the absence of risk factors such as age over 35 years, lack of health insurance, inadequate or no prenatal care, and less than a high school education, the U.S. system of health care is not protecting Black mothers.
- According to CBEC, increasing evidence points to racism within and across multiple levels, and not race, as a key cause of these birth disparities. Data also shows variations in the quality of care and outcomes across hospitals in California, highlighting opportunities for advancing equity in quality improvement.
- AB 1810 (Committee on Budget, Ch. 34, Stats. 2018) established the California Perinatal Equity Initiative (PEI) at the CDPH, and appropriated $8 million from the General Fund, to expand the scope of interventions provided under the Black Infant Health Program (BIH).
- The goal of BIH is to improve African-American infant and maternal health, as well as decrease Black-White health inequities and social inequities for women and infants, by providing services to African-American women who are 18 years of age or older and up to 30 weeks pregnant at the time of enrollment.
- CDPH published a report in 2023 titled *Centering Black Mothers in California*, which found that factors at the societal, neighborhood, family, and individual levels have worked in concert over many generations to affect many Black birthing people's abilities to achieve optimal health across their life and to have healthy pregnancies, births, and babies.
- While rates of pregnancy-related mortality have declined, they remain much higher than those of other groups, at 47.3 pregnancy-related deaths for Black mothers per 100,000 live births, compared to 15.1 per 100,000 for Asian/Pacific Islander, 12.6 for Hispanic, and 11.1 for White.
- In 2018, Black infants were still twice as likely as other infants to die before their first birthdays, even though the mortality rate among Black infants has declined over the past decade.[4]

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[4] Sen. Health Comm. analysis on AB 2319 (2023-24 reg. sess.) as amended May 20, 2024.

3. DOJ Report on Healthcare Facilities and the California Dignity in Pregnancy and Childbirth Act

In October of 2023, the DOJ published the *Report on Healthcare Facilities and the California Dignity in Pregnancy and Childbirth Act* presenting the results of their inquiry into the extent of compliance with the Act, which became operative on January 1, 2020. The DOJ used informal letter requests and an electronic survey to collect compliance data for the period between January 1, 2020, the effective date of the statute, and July 8, 2022.[5] The DOJ issues a letter or survey to 258 facilities, 242 (93.79 percent) responded with data that showed 81.44 percent of the relevant staff in the responding facilities had completed the required training by July 8, 2022.[6] However, the DOJ notes that a substantial number of facilities had not completed or even begun training staff until after receiving the initial letter from the DOJ on August of 2021, despite the January 1, 2020 effective date of the training requirement.[7] It should be highlighted that this time period was during the height of the COVID-19 pandemic when hospitals were overwhelmed with addressing the influx of patients and new protocols to address the pandemic.

In the DOJ report, they noted that, "compliance could be furthered by ensuring more transparency and public access to compliance data."[8] The report also noted that the statute does not "acknowledge and clarify that non-binary people and transgender men also give birth and are subject to additional compounding barriers of transphobia, homophobia, and biphobia. While Black maternal mortality is centered in the statute, ideally training should cover all forms of bias experienced by pregnant patients from at risk-groups."[9] The report states that there was confusion expressed by those in the medical community about the scope of the Act and what providers were required to complete the training as well.[10]

4. This bill seeks to address the findings of the DOJ report

This bill seeks to address the findings of the DOJ report in several ways:

- specifies that health care providers who are required to complete the implicit bias training;
- expands the definition of perinatal care to include prenatal care;

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[5] *Report on Healthcare Facilities and the California Dignity in Pregnancy and Childbirth Act*, Cal. Dept. of Justice, (Oct. 2023), available at https://oag.ca.gov/system/files/attachments/press-docs/Report%20on%20Healthcare%20Facilities%20and%20the%20California%20Dignity%20in%20Pregnancy%20and%20Childbirth%20Act%20%282%29.pdf.
[6] *Id*. at 3.
[7] *Ibid.*
[8] *Id*. at 13.
[9] *Id*. at 15.
[10] *Id*. at 16.

- provides a date by which the initial training must be completed, and when training for new providers must be completed;
- requires proof of compliance be submitted to the Attorney General annually;
- expands the training to include the recognition of intersecting identities, including, but not limited to, nonbinary persons and persons of transgender experience, and the multiple layers of potential biases that could come into play, resulting in harm to patients and their infants;
- provides a civil penalty for not complying with the implicit bias training requirements of the Act; and
- authorizes the Attorney general to post compliance data on their website.

Under the bill, a facility that violates the training provisions is liable for a civil penalty of $5,000 for the first violation and $15,000 for a second and each subsequent violation. The civil penalty is to be assessed and recovered in a civil action brought by the Attorney General in any court of competent jurisdiction. Specifies that in the event a facility's proof of compliance reveals systemic failure, as defined, of providers to complete the training requirements, the facility is liable for a civil penalty of $5,000 for a first violation, and $15,000 for the second and each subsequent violation. Systemic failure means the lesser of the following: (a) 10 percent or more of providers failing to complete the training, provided that if only one or two providers did not receive the training, the facility is provided a reasonable opportunity to cure before the penalty is assessed, or (b) 25 percent of providers failing to complete the training. These penalties are not exclusive and do not limit other remedies available in law for other violations.

The bill also authorizes the Attorney General to post on their website a list of all facilities that did not timely submit proof of compliance or that were assessed penalties, including the following information:

- the date the penalty was issued;
- the amount of the penalty;
- the reason the penalty was issued;
- the percentage of untrained providers;
- the date of facility noncompliance; and
- any other compliance data related to the Act that the Attorney General deems appropriate.

Additionally, the Attorney General is authorized to publish a report outlining compliance data related to the Act on a biennial basis, which may be posted on the Attorney General's website.

5. Statements in support

The Western Center on Law and Poverty, one of the sponsors of the bill, writes:

> The United States has the highest maternal mortality rate in the developed world - a burden disproportionately borne by communities of color, especially Black women. According to the California Department of Public Health (CDPH), Black women in California make up 5% of those pregnant but account for 21% of the total pregnancy related deaths. This disparity exists across all income levels. Evidence suggests one key cause of this disparity is the implicit bias of healthcare providers. A provider's level of bias, whether conscious or unconscious, can influence their interactions with patients and their diagnoses and treatment of the patient's pain, and can undermine patients' trust and engagement in care.
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> AB 2319 strengthens the California Dignity in Pregnancy and Childbirth Act (the Act) to further address the continued racial disparity in maternal morbidity rates by changing the way that healthcare providers recognize and overcome their own implicit bias when treating pregnancy. […] AB 2319 is an important part of the systemic change needed to reduce the disparate impact on Black mothers and pregnant persons of color and to prevent these deaths from happening.

6. Statements in opposition

The California Family Council writes in opposition, stating:

> AB 2319, [is] a piece of legislation that fundamentally misconstrues the nature of implicit bias and imposes harmful consequences on medical professionals for adhering to biological truths.
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> Firstly, it is not implicit bias to recognize that only females give birth. This is a biological fact that has been consistently observed and confirmed by science. The notion that acknowledging such a fundamental truth constitutes bias is both erroneous and misleading. Medical professionals must rely on accurate biological information to provide the best care possible, and penalizing them for recognizing basic biological differences undermines the integrity of medical practice.
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> Secondly, AB 2319 unfairly shames medical staff for believing that male and female bodies are biologically distinct. It is essential for healthcare providers to understand and acknowledge these distinctions to ensure appropriate medical care. By labeling this understanding as biased, the bill risks creating an environment where medical professionals may feel pressured to deny biological realities, leading to potential harm to patients. This bill could deter medical professionals from entering or remaining in the field, exacerbating existing shortages and impacting the quality of care available to patients.

Lastly, the recognition of motherhood as biologically based upholds the dignity of women. Motherhood is an intrinsic and unique aspect of female biology, and acknowledging this fact celebrates and respects the role of women in society. Denying the biological basis of motherhood not only diminishes the special contributions of women but also erodes the foundational understanding of family and community. Affirming the biological reality of motherhood is essential to supporting women's rights and ensuring their unique experiences are valued and respected.

SUPPORT

Attorney General, Rob Bonta (sponsor)
Black Women for Wellness Action Project (sponsor)
California Black Women's Collective Empowerment Institute (sponsor)
California Nurse-Midwives Association (sponsor)
Reproductive Freedom for All California (sponsor)
Western Center on Law and Poverty (sponsor)
ACCESS REPRODUCTIVE JUSTICE
ACLU California Action
American Atheists
Asian Americans Advancing Justice
Board of Supervisors for the City and County of San Francisco
Black Woman Organized for Political Action, Political Action Committee
California Black Health Network
California Black Women's Collective Empowerment Institute
California Commission on the Status of Women and Girls
California State Association of Psychiatrists
California State Council of Service Employees International Union
California Women's Law Center
Catalyst California
California Family Resource Association
California Federation of Teachers
Children Now
Children's Partnership
Courage California
Disability Rights California
Diversity Uplifts
Equality California
Essential Access Health
Health Access California
Health Net
Hispanas Organized for Political Equality (HOPE)
National Council of Jewish Women Los Angeles
National Council of Negro Women, Inc., Northern California Region

National Health Law Program
Perinatal Health Equity Initiative
Rising Communities
The Child Abuse Prevention Center
Women's Foundation of California
Women's Health Specialists

OPPOSITION

California Family Council

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 464 (Mitchell, Ch. 533, Stats. 2019) enacted the California Dignity in Pregnancy and Childbirth Act, which requires hospitals and alternative birth centers to implement an implicit bias program for all health care providers involved in the perinatal care of patients within those facilities.

AB 241 (Kamlager-Dove, Ch. 417, Stats. 2019) requires continuing education courses for physicians, nurses, and physician assistant to containing curriculum on understanding implicit bias.

PRIOR VOTES

Senate Health Committee (Ayes 9, Noes 2)
Assembly Floor (Ayes 56, Noes 5)
Assembly Appropriations Committee (Ayes 11, Noes 4)
Assembly Health Committee (Ayes 12, Noes 2)

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