CENTER *for* REPRODUCTIVE RIGHTS

Testimony of the Center for Reproductive Rights

"Health Care Inequality: Confronting Racial and Ethnic Disparities in COVID-19 and the Health Care System"
U.S. House of Representatives
Subcommittee on Health of the Committee on Energy and Commerce

Chairwoman Eshoo, Ranking Member Burgess, and Members of the Subcommittee on Health of the House Committee on Energy and Commerce:

The Center for Reproductive Rights respectfully submits the following testimony to the U.S. House of Representatives Subcommittee on Health of the Committee on Energy and Commerce. The United States is experiencing a maternal health crisis which disproportionately impacts Black and Indigenous women. With the highest maternal mortality ratio in the developed world, the U.S. is one of only thirteen countries where maternal mortality is on the rise.[1] Black women are nearly four times more likely than white women to suffer a maternal death,[2] and twice as likely to suffer maternal morbidity.[3] Indigenous women are two and a half times more likely than white women to die from a maternal death.[4] The majority of U.S. maternal deaths are preventable.[5] In the U.S., racial and ethnic disparities in health are closely linked to social and economic inequalities, reflecting systemic obstacles to health that harm women of color especially. Factors such as poverty, lack of access to health care, and exposure to racism all undermine health and contribute to the disproportionately high number of maternal deaths among Black and Indigenous women.[6]

As the COVID-19 pandemic continues, so will pregnancies and the need for pregnancy-related health care. Indeed, childbirth is the leading reason for hospitalization in the United States, and nearly 4 million births occur each year.[7] Reports are already indicating that the COVID-19

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[1] The United States has a maternal mortality ratio (MMR) of 14, placing the U.S. behind 45 other countries. WORLD HEALTH ORGANIZATION (WHO) ET AL., ESTIMATES BY WHO, UNICEF, UNFPA, WORLD BANK GROUP AND THE UNITED NATIONS POPULATION DIVISION 99-104 (2019), https://www.unfpa.org/featured-publication/trends-maternal-mortality-2000-2017.
[2] Reproductive Health: Pregnancy Mortality Surveillance System, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html (last reviewed June 4, 2019); Andrea A. Creanga et al., *Racial and Ethnic Disparities in Severe Maternal Morbidity: A Multistate Analysis, 2008-2010*, 210 AM. J. OBSTET. GYNECOL. 435, 437 (2014).
[3] *Id.*
[4] Emily E. Petersen et al., *Morbidity and Mortality Weekly Report, Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017*, CTRS. FOR DISEASE CONTROL AND PREVENTION (May 10, 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1.htm.
[5] *Morbidity & Mortality Wkly Rep.*: *Vital Signs: Pregnancy-Related Deaths, United States, 2011-2015, and Strategies for Prevention, 13 States, 2013-2017*, CTRS. FOR DISEASE CONTROL AND PREVENTION (May 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1.htm?s_cid=mm6818e1_w.
[6] *See* Francine Coeytaux et al., *Maternal Mortality in the United States: A Human Rights Failure*, 83 CONTRACEPTION 189-93 (2011); Arline T. Geronimus, *The weathering hypothesis and the health of African-American women and infants: evidence and speculations*, 2 ETHNICITY & DISEASE 207-221 (1992), https://www.ncbi.nlm.nih.gov/pubmed/1467758 (finding a kind of toxic stress triggers the premature deterioration of the bodies of Black women as a consequence of repeated exposure racial discrimination and that this effect could lead to poor pregnancy outcomes).
[7] Katy B. Kozhimannil et al., *Trends in Hospital-Based Childbirth Care: The Role of Health Insurance*, 19 AM. J. MANAGEMENT

pandemic is putting further strain on the maternal health care system and exacerbating the underlying maternal health crisis facing Black and Indigenous women.[8] Therefore, it is imperative that government officials and health care decision makers ensure that pregnant people have access to high quality, respectful maternal health care during this time. In the sections that follow, the Center for Reproductive Rights identifies critical concerns and provide a series of policy recommendations to better protect the rights of all birthing people during the COVID-19 pandemic.

Since 1992, the Center for Reproductive Rights has used the power of law to advance reproductive rights as fundamental human rights worldwide. Our litigation and advocacy over the past 26 years have expanded access to reproductive health care around the nation and the world. We have played a key role in securing legal victories in the United States, Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to life-saving obstetrics care, contraception, safe abortion services, and comprehensive sexuality information. We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every woman is free to decide whether or when to have children and whether or when to get married; where access to quality reproductive health care is guaranteed; and where every woman can make these decisions free from coercion or discrimination.

The Center for Reproductive Rights' Maternal Health & Rights Initiative promotes the human rights of pregnant, birthing, and postpartum people in the United States. Harnessing the power of law, policy, and strategic advocacy, the Initiative seeks to improve access to safe and respectful maternal health care for all who need it, and to ensure that all people have an opportunity to attain the highest standard of maternal health possible for themselves. The Initiative seeks government accountability for discrimination and inequalities in U.S. maternal health, and it provides advocates, lawmakers, and leaders with human rights-based advocacy tools that they can use to catalyze policy change.

I. Government leaders should ensure that disparities in maternal health outcomes are not exacerbated by the pandemic

Before the arrival of COVID-19, the United States was entrenched in a public health and human rights crisis characterized by rising maternal mortality and morbidity and wide racial and ethnic disparities in maternal health outcomes.[9] The majority of maternal deaths in the U.S. are

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CARE (2014) available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3671492/; *Births and Natalities*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/nchs/fastats/births.htm (last visited May 22, 2020).

[8] *See, e.g.*, Sandhya Raman, *COVID-19 amplifies racial disparities in maternal health*, ROLL CALL, May 14, 2020 *available at* https://www.rollcall.com/2020/05/14/covid-19-amplifies-racial-disparities-in-maternal-health/; Joia Crear-Perry, *Black Mamas Can Thrive During Childbirth, COVID-19 Or Not*, ESSENCE, March 19, 2020 *available at* https://www.essence.com/feature/black-mamas-childbirth-covid-19-coronavirus/; Claire Cleveland, *Coronavirus Is Stressing Pregnant Women And New Mothers Out. These Researchers Are Trying to Understand How to Help*, CPR NEWS, May 23, 2020 *available at* https://www.cpr.org/2020/05/23/coronavirus-is-stressing-pregnant-women-and-new-mothers-out-these-researchers-are-trying-to-understand-how-to-help/; Nina Martin, *What Coronavirus Means for Pregnancy, and Other Things New and Expecting Mothers Should Know*, PROPUBLICA, Mar. 19, 2020 *available at* https://www.propublica.org/article/coronavirus-and-pregnancy-expecting-mothers-q-and-a.

[9] *See e.g.* Linda Villarosa, *Why America's Black Mothers and Babies Are in a Life-or-Death Crisis*, N.Y. TIMES (Apr. 11, 2018) https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html; Marian F. MacDorman et

preventable,[10] reflecting weaknesses in the health care system and structural inequalities that discriminate along lines of gender, race, and income.[11] The COVID-19 pandemic adds an additional layer of vulnerability for pregnant people who now face a novel infectious disease and a strained health care system with even less capacity to meet their health care needs.

Moreover, the same communities that are at greatest risk for maternal death and illness are disproportionately affected by COVID-19. Black and Indigenous women in the U.S. are much more likely to die from pregnancy complications than white women are, and women of color suffer disproportionately high rates of maternal morbidity as well.[12] Early data show strikingly high rates of infection and death from COVID-19 among communities of color.[13] For women of color, the pandemic's impacts are further amplified by societal expectations that they take on caregiving roles and perform other "essential" work in exchange for low-wages and few labor protections.[14]

II. Government leaders should ensure that resource constraints do not lead to lower standards of care and human rights abuses in maternal health care settings

Government failures to adequately prepare and respond to the coronavirus outbreak accelerate the pandemic's harms and jeopardize the safety and rights of both health care workers and pregnant people. Health care institutions with insufficient staffing, personal protective equipment, and diagnostic tests are making difficult decisions about how to deliver care while curbing transmission of the virus. Some institutions are implementing policies that conflict with human rights principles and guidance from the World Health Organization, such as prohibiting patients in labor from choosing a support person to accompany them and separating newborns from mothers infected with COVID-19.[15] These, along with inductions of labor, birth

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al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends From Measurement Issues*, 128 OBSTETRICS AND GYNECOLOGY 447, 447-55 (2016) *available at* https://www.ncbi.nlm.nih.gov/pubmed/27500333; *Severe Maternal Morbidity in the United States*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/reproductivehealth/maternalinfanthealthseverematernalmorbidity.html (last visited May 22, 2020); Emily E. Petersen et al., *Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States*, 68 MORBIDITY AND MORTALITY WEEKLY REPORT 423, 423-429 (2019) *available at* https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1.htm.

[10] Petersen et al., *supra* note 4.

[11] Zinzi D. Bailey, et al., *Structural racism and health inequities in the USA: evidence and interventions*, 389 THE LANCET 1453, 1453-1463 (2017) *available at* https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(17)30569-X.pdf; U.N. COMM. ON THE ELIMINATION OF RACIAL DISCRIMINATION, CONCLUDING OBSERVATIONS ON THE COMBINED SEVENTH TO NINTH PERIODIC REPORTS OF THE UNITED STATES OF AMERICA at 7, U.N. Doc CERD/C/USA/CO/7-9 (2014) *available at* https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2fCO%2f7-9&Lang=en.

[12] Peterson et al., *supra* note 4; Andreea A Creanga et al., *Racial and Ethnic Disparities in Severe Maternal Morbidity: A Multistate Analysis*, 2008-2010, 210 AM. J. OBSTETRICS AND GYNECOLOGY 435E.1, 435.E1-435.E8 (2013) available at https://www.ncbi.nlm.nih.gov/pubmed/24295922.

[13] Liz Szabo & Hannah Recht, *The Other COVID Risks: How Race, Income, ZIP Code Influence Who Lives Or Dies*, KAISER HEALTH NEWS, Apr. 22, 2020 *available at* https://khn.org/news/covid-south-other-risk-factors-how-race-income-zip-code-influence-who-lives-or-dies/.

[14] Campbell Robertson & Robert Gebeloff, *How Millions of Women Became the Most Essential Workers in America*, N.Y. TIMES (Apr. 18, 2020) *available at* https://www.nytimes.com/2020/04/18/us/coronavirus-women-essential-workers.html.

[15] WORLD HEALTH ORGANIZATION (WHO), *Clinical management of severe acute respiratory infection when COVID-19 is suspected*, WHO Doc. WHO/2019-nCoV/clinical/2020.4 (Mar. 13, 2020) *available at* https://www.who.int/publications-detail/clinical-management-of-severe-acute-respiratory-infection-when-novel-coronavirus-(ncov)-infection-is-suspected; WORLD HEALTH ORGANIZATION (WHO), *Q&A: Pregnancy, childbirth and COVID-19* (Mar. 18, 2020) *available at* https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-on-covid-19-pregnancy-and-childbirth.

interventions, and early hospital discharges, are just some of the ways that hospitals are managing capacity and contagion concerns in labor and delivery settings.

Policies that restrict pregnant people's rights—or rely on stressed providers to use their discretion when determining what rights birthing people will retain during a pandemic—risk amplifying the impact of implicit biases. Provider biases influence diagnoses and treatment decisions and adversely affect Black and low-income women especially.[16] Experiencing discrimination and mistreatment during pregnancy and childbirth can be traumatizing, but in an obstetric emergency, it can also be life-threatening. For instance, a Black woman whose pain is ignored or not prioritized by her maternity care providers might die because a pregnancy complication went unrecognized and untreated.

Rather than retreating from human rights based standards of care[17] during the COVID-19 pandemic, government and healthcare decision makers should look to the human rights framework as a guide for ensuring pregnant people's rights to respectful maternity care and preventing the normalization of policies and practices that increase harm to women and marginalized communities.[18]

III. Government leaders and health care decision makers should immediately implement policies to guarantee pregnant people access to high quality, human rights affirming health care

Many of the policy changes required to mitigate risks to maternal health and rights during the COVID-19 pandemic were needed before it began and will still be needed after it ends. Before the pandemic, pregnant and birthing people faced a fragmented health care system that did not adequately protect their health and rights. The coronavirus outbreak has only exacerbated that reality. Whether the U.S. emerges from this crisis with a health care system that has enhanced or diminished capacity to protect maternal health depends on the decisions that law and policy makers make at this critical moment. To support positive maternal health outcomes, policy makers at the federal, state, and hospital administration level should implement the following recommendations:

The state and federal governments, along with health care institutions, should ensure access to lifesaving, hospital-based maternal health care that respects pregnant individuals' human rights.

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[16] William J. Hall et al., *Implicit Racial/Ethnic Bias Among Health Care Professionals and Its Influence on HealthCare Outcomes: A Systematic Review*, 105 AM. J. OF PUBLIC HEALTH e60, e60-e76 (2015) *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/ PMC4638275/pdf/AJPH.2015.302903.pdf;%20; Nina Martin & Renee Montagne, *Black Mothers Keep Dying After Giving Birth. Shalon Irving's Story Explains Why*, NPR (Dec. 7, 2017 7:51 PM ET), *available at* https://www.npr.org/2017/12/07/568948782/ black-mothers-keep-dying-after-giving-birth-shalon-irvings-story-explains-why.

[17] *Safer Together: Respectful Maternity Care and COVID-19*, WHITE RIBBON ALLIANCE, https://www.whiteribbonalliance.org/ safertogether (last visited May 22, 2020).

[18] Special Rapporteur on violence against women, its causes and consequences, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, U.N. Doc. A/74/137 (Jul. 11, 2019) (Dubravka Šimonović) *available at* https://undocs.org/A/74/137; WORLD HEALTH ORGANIZATION (WHO), *Clinical management of severe acute respiratory infection when COVID-19 is suspected*, WHO Doc. WHO/RHR/14.23 (2015) *available at* https://apps.who.int/iris/bitstream/handle/10665/134588/WHO_RHR_14.23_eng.pdf; jsessionid=D167C2850CE07BFA6EA9B000F7AE859B?sequence=1.

- As hospital policies change, updated policies should be effectively communicated to pregnant people and the public, and never applied to patients in arbitrary or discriminatory ways. Information must reach all patients and communities, enabling pregnant people to prepare for changing scenarios, make informed medical decisions, and protect their health.
- All pregnant people should be able to labor and birth accompanied by at least one support person of their choosing. According to the World Health Organization, "[a]ll women have the right to a safe and positive childbirth experience, whether or not they have a confirmed COVID-19 infection."[19] This includes, "a companion of choice." Continuous labor support by birthing partners and doulas improves outcomes and is especially important for people of color, people with disabilities, non-English speakers, young people, and anyone else who is at risk of discrimination.[20] In addition to physical and emotional support, a support person can alert hospital staff to complications and assist the birthing person with communicating their needs. At a time when health care workers are short staffed and over-burdened by COVID-19, it is especially important for people in labor to have someone they know and trust at their side.
- Decisions to separate babies from parents in hospitals should be based on the best available evidence, made in cooperation and communication with parents, and in consideration of all the risks and benefits, including the benefits of close contact and breastfeeding, and the physical and mental health risks of separation for both parent and child. This is consistent with guidance from the World Health Organization.[21]
- Government leaders and healthcare employers should ensure that health care workers have the diagnostic tests and personal protective equipment (PPE) they need to protect themselves, their patients, and their own families. Birth workers and hospital staff interacting with pregnant people should be prioritized along with other frontline workers who will necessarily be in close contact with COVID positive patients during the pandemic.[22]

Government officials and health care decision makers should ensure that pregnant people can safely birth outside of hospital settings. The pandemic will continue to strain the capacity of the health care system and its workers for months to come. Pregnant people need more options to ensure access to safe, respectful births that meet their individual and family needs.

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[19] WORLD HEALTH ORGANIZATION (WHO), *Infographic: All women have the right to a safe and positive childbirth experience, whether or not they have a confirmed COVID-19 Infection* (2020) *available at* https://www.who.int/images/default-source/health-topics/coronavirus/pregnancy-breastfeeding/who---pregnancy---3.png.

[20] Meghan A. Bohren et al., *Continuous support for women during childbirth*, 7 COCHRANE DATABASE OF SYSTEMATIC REVIEWS (2017) *available at* https://www.cochrane.org/CD003766/PREG_continuous-support-women-during-childbirth.

[21] WORLD HEALTH ORGANIZATION (WHO), *Infographic: Close contact and early, exclusive breastfeeding helps a baby to thrive* (2020) *available at* https://www.who.int/images/default-source/health-topics/coronavirus/pregnancy-breastfeeding/who---pregnancy---4.png.

[22] Noelle Breslin et al., *Coronavirus disease 2019 infection among asymptomatic and symptomatic pregnant women: two weeks of confirmed presentations to an affiliated pair of New York City hospitals*, 2 AM. J. OF OBSTETRICS & GYNECOLOGY MFM (2020) *available at* https://www.sciencedirect.com/science/article/pii/S2589933320300483;
Noelle Breslin et al., *Coronavirus disease 2019 in pregnancy: early lessons*, 2 AM. J. OF OBSTETRICS & GYNECOLOGY MFM (2020) *available at* https://www.sciencedirect.com/science/article/pii/S2589933320300410.

- State government officials should permit credentialed midwives to practice in their jurisdiction without civil or criminal penalties.
- State and federal policy makers should identify and remove barriers to opening birth centers and other short and long-term alternative birthing sites for people with low risk pregnancies.
- State and federal policy makers and health insurance decision makers should further ensure that public and private insurance covers credentialed midwifery services provided in an individual's home or at a freestanding birth center, and that these services are reimbursed adequately and equitably.
- Local, state, and federal policy makers, along with hospitals, should work with midwives to integrate midwifery care and births outside hospitals into broader health systems, ensuring that emergency responders and hospitals are prepared to facilitate safe transfers when a person in labor needs a different level of care.

The state and federal governments should expand access to affordable health services that support maternal health, for the duration of this pandemic and beyond. While social distancing and stay at home measures are in effect, people who are pregnant, giving birth, and postpartum should be supported to access comprehensive health services wherever they are sheltering in place.

- The state and federal governments and health insurance decision makers should remove in-network/out-of-network insurance restrictions on providers.
- The state and federal governments and health insurance decision makers should ensure that midwifery care, childbirth education, doula services, mental health care, lactation support, and family planning are covered by public and private insurance and can be provided via a range of telehealth methods.
- The state and federal governments should remove barriers to public insurance before, during, and after pregnancy by expanding Medicaid in states that have not done so, implementing presumptive eligibility for pregnant individuals and automatic enrollment for newborns, and increasing income eligibility thresholds.
- The state and federal governments should combat the one-third of maternal deaths that occur after childbirth[23] by expanding access to postpartum care, including (optional) home-visiting programs and extension of pregnancy-related Medicaid coverage through the full postpartum year.

Finally, the state and federal governments should ensure that equity and accountability measures are built into public health responses to both COVID-19 and the maternal mortality crises.

- State and federal government entities must continue to maintain and improve data on maternal health outcomes by race and ethnicity and should collect similar data on

[23] *Pregnancy-related Deaths*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/vitalsigns/maternal-deaths/index.html (last visited May 26, 2020).

COVID-19 to ensure that diagnoses and treatment reach and include Black and Indigenous communities.

- Government funding for maternal health programs should be maintained.
- Government and health care policy makers at all levels should include women of color, pregnant people, and maternal health care providers in decision-making bodies working on pandemic response.

IV. Conclusion

The Center for Reproductive Rights deeply appreciates the opportunity to submit its testimony to the Committee and commends the Committee for addressing this critical issue. As the Committee examines the racial and ethnic disparities in COVID-19 in the health care system, we believe it is imperative to consider the ways in which the COVID-19 pandemic will exacerbate the underlying U.S. maternal health crisis. The aforementioned policy recommendations help ensure that the rights of birthing people, particularly from communities of color, are not further sacrificed during this public health emergency.