

1 by adding at the end the following:

2 “(7) ELIGIBILITY OF PRIMARY CARETAKER PARENTS AND PREGNANT WOMEN.—The  
3 Director of the Bureau of Prisons may not prohibit an eligible prisoner who is a primary  
4 caretaker parent (as defined in section 4051) or pregnant from participating in a program of  
5 residential substance abuse treatment provided under paragraph (1) on the basis of a failure  
6 by the eligible prisoner, before being committed to the custody of the Bureau of Prisons, to  
7 disclose to any official of the Bureau of Prisons that the prisoner had a substance abuse  
8 problem on or before the date on which the eligible prisoner was committed to the custody  
9 of the Bureau of Prisons.”.

10 (d) Implementation Date.—

11 (1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the  
12 Director of the Bureau of Prisons shall implement this section and the amendments made by  
13 this section.

14 (2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director of  
15 the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the  
16 Committee on the Judiciary of the House of Representatives a report on the implementation  
17 of this section and the amendments made by this section.

18 (e) Technical and Conforming Amendment.—The table of sections for chapter 303 of title 18,  
19 United States Code, is amended by adding at the end the following:

20 “4051. Treatment of primary caretaker parents and other individuals.”.

## 21 SEC. 1102. PUBLIC HEALTH AND SAFETY OF 22 PREGNANT WOMEN AND MOTHERS.

23 (a) Short Title.—This section may be cited as the “Stop Infant Mortality And Recidivism  
24 Reduction Act” or the “SIMARRA Act”.

25 (b) Establishment.—Not later than 270 days after the date of the enactment of this section Act,  
26 the Director of the Federal Bureau of Prisons (in this section referred to as the “Director”) shall  
27 establish a pilot program (in this section referred to as the “Program”) in accordance with this  
28 section to permit women incarcerated in Federal prisons and the children born to such women  
29 during incarceration to reside together while the inmate serves a term of imprisonment in a  
30 separate housing wing of the prison.

31 (c) Purposes.—The purposes of this section are to—

32 (1) prevent infant mortality among infants born to incarcerated mothers and greatly  
33 reduce the trauma and stress experienced by the unborn fetuses of pregnant inmates;

34 (2) reduce the recidivism rates of federally incarcerated women and mothers, and  
35 enhance public safety by improving the effectiveness of the Federal prison system for  
36 women as a population with special needs;

37 (3) establish female offender risk and needs assessment as the cornerstones of a more  
38 effective and efficient Federal prison system;

39 (4) implement a validated post-sentencing risk and needs assessment system that relies on



1 dynamic risk factors to provide Federal prison officials with a roadmap to address the pre-  
2 and post-natal needs of Federal pregnant offenders, manage limited resources, and enhance  
3 public safety;

4 (5) perform regular outcome evaluations of the effectiveness of programs and  
5 interventions for federally incarcerated pregnant women and mothers to assure that such  
6 programs and interventions are evidence-based and to suggest changes, deletions, and  
7 expansions based on the results of such evaluations; and

8 (6) assist the Department of Justice to address the underlying cost structure of the Federal  
9 prison system and ensure that the Department can continue to run prison nurseries safely  
10 and securely without compromising the scope or quality of the Department's critical health,  
11 safety and law enforcement missions.

12 (d) Duties of the Director of Bureau of Prisons.—

13 (1) IN GENERAL.—The Director shall carry out this section in consultation with—

14 (A) a licensed and board-certified ~~gynecologist or~~ obstetrician;

15 (B) the Director of the Administrative Office of the United States Courts;

16 (C) the Director of the Office of Probation and Pretrial Services;

17 (D) the Director of the National Institute of Justice; and

18 (E) the Secretary of Health and Human Services.

19 (2) DUTIES.—The Director shall, in accordance with paragraph (3)—

20 (A) develop an offender risk and needs assessment system particular to the health  
21 and sensitivities of federally incarcerated pregnant women and mothers in accordance  
22 with this subsection;

23 (B) develop recommendations regarding recidivism reduction programs and  
24 productive activities in accordance with subsection (c);

25 (C) conduct ongoing research and data analysis on—

26 (i) the best practices relating to the use of offender risk and needs assessment  
27 tools particular to the health and sensitivities of federally incarcerated pregnant  
28 women and mothers;

29 (ii) the best available risk and needs assessment tools particular to the health  
30 and sensitivities of federally incarcerated pregnant women and mothers and the  
31 level to which they rely on dynamic risk factors that could be addressed and  
32 changed over time, and on measures of risk of recidivism, individual needs, and  
33 responsiveness to recidivism reduction programs;

34 (iii) the most effective and efficient uses of such tools in conjunction with  
35 recidivism reduction programs, productive activities, incentives, and rewards; and

36 (iv) which recidivism reduction programs are the most effective—

37 (I) for federally incarcerated pregnant women and mothers classified at  
38 different recidivism risk levels; and

1 (II) for addressing the specific needs of federally incarcerated pregnant  
2 women and mothers;

3 (D) on a biennial basis, review the system developed under subparagraph (A) and  
4 the recommendations developed under subparagraph (B), using the research conducted  
5 under subparagraph (C), to determine whether any revisions or updates should be  
6 made, and if so, make such revisions or updates;

7 (E) hold periodic meetings with the individuals listed in paragraph (1) at intervals to  
8 be determined by the Director;

9 (F) develop tools to communicate parenting program availability and eligibility  
10 criteria to each employee of the Bureau of Prisons and each pregnant inmate to ensure  
11 that each pregnant inmate in the custody of a Bureau of Prisons facility understands the  
12 resources available to such inmate; and

13 (G) report to Congress in accordance with subsection ~~(i)~~(h).

14 (3) METHODS.—In carrying out the duties under paragraph (2), the Director shall—

15 (A) consult relevant stakeholders; and

16 (B) make decisions using data that is based on the best available statistical and  
17 empirical evidence.

18 (e) Eligibility.—An inmate may apply to participate in the Program if the inmate—

19 (1) is pregnant at the beginning of or during the term of imprisonment; and

20 (2) is in the custody or control of the ~~Federal~~ Bureau of Prisons.

21 (f) Program Terms.—

22 (1) TERM OF PARTICIPATION.—To correspond with the purposes and goals of the Program  
23 to promote bonding during the critical stages of child development, an eligible inmate  
24 selected for the Program may participate in the Program, subject to subsection (g), until the  
25 earliest of—

26 (A) the date that the inmate's term of imprisonment terminates;

27 (B) the date the infant fails to meet any medical criteria established by the Director  
28 or the Director's designee along with a collective determination of the persons listed in  
29 subsection (d)(1); or

30 (C) 30 months.

31 (2) INMATE REQUIREMENTS.—For the duration of an inmate's participation in the  
32 Program, the inmate shall agree to—

33 (A) take substantive steps towards acting in the role of a parent or guardian to any  
34 child of that inmate;

35 (B) participate in any educational or counseling opportunities established by the  
36 Director, including topics such as child development, parenting skills, domestic  
37 violence, vocational training, or substance abuse, as appropriate;

38 (C) abide by any court decision regarding the legal or physical custody of the child;



1 (D) transfer to the Federal Bureau of Prisons any child support payments for the  
2 infant of the participating inmate from any person or governmental entity; and

3 (E) specify a person who has agreed to take at least temporary custody of the child if  
4 the inmate's participation in the Program terminates before the inmate's release.

5 (g) Continuity of Care.—The Director shall take appropriate actions to prevent detachment or  
6 disruption of either an inmate's or infant's health and bonding-based well-being due to  
7 termination of the Program.

8 (h) Reporting.—

9 (1) IN GENERAL.—Not later than 6 months after the date of ~~the~~ enactment of this ~~section~~  
10 ~~Act~~, and once each year thereafter for 5 years, the Director shall submit a report to the  
11 Congress with regards to progress in implementing the Program.

12 (2) FINAL REPORT.—Not later than 6 months after the termination of the Program, the  
13 Director shall issue a final report to the Congress that contains a detailed statement of the  
14 Director's findings and conclusions, including recommendations for legislation,  
15 administrative actions, and regulations the Director considers appropriate.

16 ~~(i) Authorization of Appropriations.—To carry out this section,~~  
17 ~~there is authorized to be appropriated \$10,000,000 for each of~~  
18 ~~fiscal years 2022 through 2026.~~

## 19 SEC. 1103. RESEARCH AND REPORT ON WOMEN IN 20 FEDERAL INCARCERATION.

21 Not later than 18 months after the date of enactment of this Act, and thereafter, every other  
22 year, the National ~~Institutes~~ ~~Institute~~ of Justice, in consultation with the Bureau of Justice  
23 Statistics and the Bureau of Prisons (including the Women and Special Population Branch) shall  
24 prepare a report on the status of women in Federal incarceration. Depending on the topic to be  
25 addressed, and the facility, data shall be collected from Bureau of Prisons personnel and a  
26 sample that is representative of the population of incarcerated women. The report shall ~~include:~~  
27 ~~include—~~

28 (1) ~~With~~ ~~with~~ regard to Federal facilities wherein women are incarcerated—

29 (A) responses by such women to questions from the Adverse Childhood Experience  
30 (ACES) questionnaire;

31 (B) demographic data of such women, ~~including sexual orientation, gender identity,~~  
32 ~~and status as an American Indian, Alaska Native, or Native Hawaiian;~~

33 (C) data on the number of women who are incarcerated and placed in Federal and  
34 private facilities more than 200 miles from their place of residence;

35 (D) responses by such women to questions about the extent of exposure to sexual  
36 victimization, sexual violence and domestic violence (both inside and outside of  
37 incarceration);

38 (E) the number of such women were pregnant at the time that they entered



1 incarceration;

2 (F) the number of such women who have children age 18 or under, and if so, how  
3 many; and

4 (G) the crimes for which such women are incarcerated and the length of their  
5 sentence and to the extent practicable, any information on the connection between the  
6 crime of which they were convicted ~~& and~~ their experience of domestic violence,  
7 dating violence, sexual assault, or stalking; ~~and~~.

8 (2) ~~With~~ **with** regard to all Federal facilities where persons are incarcerated—

9 (A) a list of best practices with respect to women's incarceration and transition,  
10 including staff led programs, services, and management practices (including making  
11 sanitary products readily available and easily accessible, and access to and provision of  
12 healthcare);

13 (B) the availability of trauma treatment at each facility (including number of beds,  
14 and number of trained staff);

15 (C) rates of serious mental illness broken down by gender and security level and a  
16 list of residential programs available by site; and

17 (D) the availability of vocational education and a list of vocational programs  
18 provided by each facility.

## 19 SEC. 1104. REENTRY PLANNING AND SERVICES FOR 20 INCARCERATED WOMEN.

21 ~~The~~ **(a) In General.—The** Attorney General, in coordination with the **Chief of U.S. Director**  
22 **of the Office of** Probation and Pretrial Services and the Director of the Bureau of Prisons  
23 (including ~~the~~ Women and Special Population Branch), shall collaborate on a model of gender  
24 responsive transition for incarcerated women, including the development of a national standard  
25 on prevention with respect to domestic and sexual violence.

26 ~~In~~ **(b) Required Consultation.—In** developing the model, ~~the Chief and the Director~~  
27 **required under subsection (a), the Attorney General** shall consult with such experts within  
28 the Federal government (including the Office on Violence Against Women of the Department of  
29 Justice), **within** Indian Tribes (as defined in section 4 of the Indian Self-Determination and  
30 Education Assistance Act ~~), and (25 U.S.C. 5304)), within~~ Native Hawaiian organizations (as  
31 defined in section 6207 of the Elementary and Secondary Education Act of 1965 ~~) (20 U.S.C.~~  
32 **7517)),** and in the victim service provider community (including sexual and domestic violence  
33 and homelessness, job training and job placement service providers) as are necessary to the  
34 completion of a comprehensive plan.

35 ~~Issues addressed should include—~~ **(c) Contents.—The model required under subsection (a)**  
36 **shall address, at a minimum—**

37 (1) the development by the Bureau of Prisons of a contract for gender collaborative  
38 services; and

39 (2) identification by re-entry affairs coordinators and responsive planning for the needs of  
40 re-entering women with respect to—



1 (A) housing, including risk of homelessness;

2 (B) previous exposure to and risk for domestic and sexual violence;

3 (C) the need for parenting classes, assistance securing childcare, or assistance in  
4 seeking or securing jobs that afford flexibility (as might be necessary in the re-entry,  
5 parenting or other contexts);

6 (D) other support tailored to the needs of Indigenous women, including American  
7 Indian, Alaska Native, and Native Hawaiian women; and

8 (E) the need to ensure a family-focused reentry, ~~by~~ ~~by~~—

9 (i) including incarcerated mothers, their children, and their caregivers to create  
10 family reentry planning and programming; and

11 (ii) informing reentry information to visiting families.

## 12 **SEC. 1105. AUTHORIZATION OF APPROPRIATIONS.**

13 **To carry out this title, there are authorized to be appropriated \$10,000,000 for each of**  
14 **fiscal years 2022 through 2026.**

## 15 TITLE XII—LAW ENFORCEMENT TOOLS TO ENHANCE 16 PUBLIC SAFETY

### 17 ~~SEC. 1201. NOTIFICATION TO LAW ENFORCEMENT~~ 18 ~~AGENCIES OF PROHIBITED PURCHASE OR ATTEMPTED~~ 19 ~~PURCHASE OF A FIREARM. NICS DENIAL~~ 20 ~~NOTIFICATION ACT OF 2021.~~

21 (a) ~~In General.~~—Title I of the NICS Improvement Amendments Act of 2007 (18 U.S.C. 922  
22 note) is amended by adding at the end the following: (a) **Short Title.**—**This section may be**  
23 **cited as the “NICS Denial Notification Act of 2021”.**

24 ~~“SEC. 108. NOTIFICATION TO LAW ENFORCEMENT AGENCIES OF PROHIBITED~~  
25 ~~PURCHASE OF A FIREARM.~~

26 ~~“(a) In General.~~—In the case of a background check conducted by the National Instant  
27 Criminal Background Check System pursuant to the request of a licensed importer, licensed  
28 manufacturer, or licensed dealer of firearms (as such terms are defined in section 921 of title 18,  
29 United States Code), which background check determines that the receipt of a firearm by a  
30 person would violate subsection (g)(8), (g)(9), or (g)(10) of section 922 of title 18, United States  
31 Code, and such determination is made after 3 business days have elapsed since the licensee  
32 contacted the System and a firearm has been transferred to that person, the System shall notify  
33 the law enforcement agencies described in subsection (b).

34 ~~“(b) Law Enforcement Agencies Described.~~—The law enforcement agencies described in this  
35 subsection are the law enforcement agencies that have jurisdiction over the location from which  
36 the licensee contacted the system and the law enforcement agencies that have jurisdiction over  
37 the location of the residence of the person for which the background check was conducted, as



1 follows:

2 “(1) The field office of the Federal Bureau of Investigation.

3 “(2) The local law enforcement agency.

4 “(3) The State law enforcement agency.

5 “(4) The Tribal law enforcement agency.”

6 (b) Clerical Amendment.—The table of contents of the NICS Improvement Amendments Act  
7 of 2007 (18 U.S.C. 922 note) is amended by inserting after the item relating to section 107 the  
8 following:

9 “Sec. 108. Notification to law enforcement agencies of prohibited purchase of a firearm.”

10 SEC. 1202. REPORTING OF BACKGROUND CHECK DENIALS TO STATE, LOCAL,  
11 AND TRIBAL AUTHORITIES.

12 (a) In General.—Chapter (b) Amendment.—Chapter 44 of title 18, United States Code, is  
13 amended by inserting after section 925A the following:

14 “925B. Reporting of background check denials to State, local,  
15 and or Tribal authorities

16 “(a) In General.—If the national instant criminal background check system established under  
17 section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) (34 U.S.C.  
18 40901) (commonly referred to as ‘NICS’) provides a notice pursuant to section 922(t) of this  
19 title that the receipt of a firearm by a person would violate subsection (g)(8), (g)(9), or (g)(10)(n)  
20 of section 922 of this title or State or Tribal law, the Attorney General shall, in accordance with  
21 subsection (b) of this section—

22 “(1) report to the law enforcement authorities of the State or Tribe where the person  
23 sought to acquire the firearm and, if different, the law enforcement authorities of the State  
24 or Tribe of residence of the person—

25 “(A) that the notice was provided;

26 “(B) of the specific provision of law that would have been violated;

27 “(C) of the date and time the notice was provided;

28 “(D) of the location where the firearm was sought to be acquired; and

29 “(E) of the identity of the person; and

30 “(2) where practicable, report the incident to local or Tribal law enforcement authorities  
31 and, where practicable, State, Tribal, or local State and local prosecutors or Tribal  
32 prosecutors, in the jurisdiction where the firearm was sought and in the jurisdiction where  
33 the person resides.

34 “(b) Requirements for Report.—A report is made in accordance with this subsection if the  
35 report is made within 24 hours after the provision of the notice described in subsection (a),  
36 except that the making of the report may be delayed for so long as is necessary to avoid  
37 compromising an ongoing investigation.



1 “(c) Amendment of Report.—If a report is made in accordance with this subsection and,  
2 after such report is made, the Federal Bureau of Investigation or the Bureau of Alcohol,  
3 Tobacco, Firearms, and Explosives determines that the receipt of a firearm by a person for  
4 whom the report was made would not violate subsection (g) or (n) of section 922 or State or  
5 Tribal law, the Attorney General shall, in accordance with subsection (b), notify any law  
6 enforcement authority and any prosecutor to whom the report was made of that  
7 determination.

8 “(d) Rule of Construction.—Nothing in subsection (a) shall be construed to require a report  
9 with respect to a person to be made to the same State or Tribal authorities that originally issued  
10 the notice with respect to the person.”.

11 \*\* 23 (c) Clerical Amendment.—The table of sections of for chapter 88 44 of title 18, United  
12 States Code, is amended by inserting after the item relating to section 1801 925A the following:

13 (b) Clerical Amendment.—The table of sections for such chapter is amended by inserting after  
14 the item relating to section 925A the following:

15 “925B. Reporting of background check denials to State, local, and Tribal authorities.”.  
16 authorities.”.

## 17 SEC. 1202. ANNUAL REPORT TO CONGRESS.

18 (a) In General.—Chapter 44 of title 18, United States Code, as amended by section 1201,  
19 is amended by inserting after section 925B the following:

### 20 “925C. Annual report to Congress

21 “Not later than 1 year after the date of enactment of this section, and annually  
22 thereafter, the Attorney General shall submit to Congress a report detailing the following,  
23 broken down by Federal judicial district:

24 “(1) With respect to each category of persons prohibited by subsection (g) or (n) of  
25 section 922 or State or Tribal law from receiving or possessing a firearm who are so  
26 denied a firearm—

27 “(A) the number of denials;

28 “(B) the number of denials referred to the Bureau of Alcohol, Tobacco,  
29 Firearms, and Explosives;

30 “(C) the number of denials for which the Bureau of Alcohol, Tobacco,  
31 Firearms, and Explosives determines that the person denied was not prohibited  
32 by subsection (g) or (n) of section 922 or State law from receiving or possessing a  
33 firearm;

34 “(D) the number of denials overturned through the national instant criminal  
35 background check system appeals process and the reasons for overturning the  
36 denials;

37 “(E) the number of denials with respect to which an investigation was opened  
38 by a field division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

39 “(F) the number of persons charged with a Federal criminal offense in



1 connection with a denial; and

2 “(G) the number of convictions obtained by Federal authorities in connection  
3 with a denial.

4 “(2) The number of background check notices reported to State or Tribal  
5 authorities pursuant to section 925B (including the number of the notices that would  
6 have been so reported but for section 925B(c)).”.

7 (b) Clerical Amendment.—The table of sections for chapter 44 of title 18, United States  
8 Code, as amended by section 1201, is amended by inserting after the item relating to  
9 section 925B the following:

10 “925C. Annual report to Congress.”.

11 SEC. 1203. SPECIAL ASSISTANT U.S. ATTORNEYS AND  
12 CROSS-DEPUTIZED ATTORNEYS.

13 (a) In General.—Chapter 44 of title 18, United States Code, as amended by ~~this Act~~ section  
14 1202, is further amended by inserting after section 925B the following:

15 ~~“925C”~~“925D. Special assistant U.S. attorneys and cross-  
16 deputized attorneys

17 “(a) In General.—In order to improve the enforcement of paragraphs (8), ~~(9)~~, and ~~(10)~~(9) of  
18 section 922(g), the Attorney General may—

19 “(1) appoint, in accordance with section 543 of title 28, qualified State, Tribal, territorial  
20 and local prosecutors and qualified attorneys working for the United States government to  
21 serve as special assistant United States attorneys for the purpose of prosecuting violations of  
22 such paragraphs; ~~and~~

23 “(2) deputize State, Tribal, territorial and local law enforcement officers for the purpose  
24 of enhancing the capacity of the agents of the Bureau of Alcohol, Tobacco, Firearms, and  
25 Explosives in responding to and investigating violations of such paragraphs; ~~and~~

26 !

27 “(b) Improve Intimate Partner and Public Safety.—The Attorney General shall—

28 \*\* 24 “(1) identify ~~no less~~ **not fewer** than 75 jurisdictions among States, territories and  
29 Tribes where there are high rates of firearms violence and threats of firearms violence  
30 against intimate partners and other persons protected under paragraphs (8), ~~(9)~~, and ~~(10)~~(9)  
31 of section 922(g) and where local authorities lack the resources to address such violence;  
32 ~~and~~

33 \*\* 25 “(2) make such appointments as described in subsection (a) in jurisdictions where  
34 enhanced enforcement of such paragraphs is necessary to reduce firearms homicide and  
35 injury rates; ~~and~~.

36 “(3) establish, in order to receive and expedite requests for assistance from State, Tribal,  
37 territorial, and local law enforcement agencies responding to intimate partner violence cases  
38 where such agencies have probable cause to believe that the offenders may be in violation



1 of such paragraphs, points of contact within—

2 “(A) each Field Division of the Bureau of Alcohol, Tobacco, Firearms, and  
3 Explosives; and

4 “(B) each District Office of the United States Attorneys.

5 ~~“(b) Improve Intimate Partner and Public Safety.—The Attorney General shall—~~

6  
7 ~~\* 24 “(1) identify no less than 75 jurisdictions among States, territories and Tribes where there  
8 are high rates of firearms violence and threats of firearms violence against intimate partners and  
9 other persons protected under paragraphs (8), (9), and (10) of section 922(g) and where local  
10 authorities lack the resources to address such violence; and~~

11  
12 ~~\* 25 “(2) make such appointments as described in subsection (a) in jurisdictions where  
13 enhanced enforcement of such paragraphs is necessary to reduce firearms homicide and injury  
14 rates.~~

15 “(c) Qualified Defined.—For purposes of this section, the term ‘qualified’ means, with respect  
16 to an attorney, that the attorney is a licensed attorney in good standing with any relevant  
17 licensing authority.”.

18 (b) Clerical Amendment.—The table of sections for ~~such chapter is chapter 44 of title 18,~~  
19 **United States Code, as amended by this Act, is further** amended by inserting after the item  
20 relating to section 925B the following:

21 ~~“925C“925D.~~ Special assistant U.S. attorneys and cross-deputized attorneys.”.

22 **SEC. 1204. REVIEW ON ~~NATIVE AMERICAN~~**  
23 **~~INTERACTIONS WITH LAW ENFORCEMENT.~~**  
24 **~~CRIMINAL OFFENSES AFFECTING NATIVE~~**  
25 **~~HAWAIIANS.~~**

26 (a) ~~Review on Law Enforcement Affecting Native Hawaiians.—Not later than 180 days~~(a)  
27 **Native Hawaiian Defined.—In this section, the term “Native Hawaiian” has the meaning**  
28 **given the term in section 801 of the Native American Housing Assistance and Self-**  
29 **Determination Act (25 U.S.C. 4221).**

30 (b) **Review of Relevant Federal Crime Prevention, Victim Service, and Criminal Justice**  
31 **Programs Serving Native Hawaiians.—**

32 (1) **REPORT.—Not later than 18 months** after the date of enactment of this Act, the  
33 Attorney General shall ~~conduct a comprehensive review of law enforcement and other~~  
34 ~~crime prevention programs targeting criminal offenses that affect Native Hawaiians,~~  
35 ~~including child sexual exploitation, child abuse, intimate partner violence, human~~  
36 ~~trafficking, missing or murdered individuals, and substance abuse and submit to Congress a~~  
37 ~~report thereon. The review shall include for each such program the~~ **submit a report to**  
38 **Congress containing the following:**



1           **(A) The results and findings of the comprehensive review required to be**  
2           **conducted under paragraph (2).**

3           **(B) The amount of Federal funding for the program that is received by Native**  
4           **Hawaiian-serving organizations from relevant Federal programs, including the**  
5           **percentage of each such amount of funding as a percentage of the total amount**  
6           **disbursed by the program. The review shall also include recommendations relating**  
7           **to—**

8           **(1) social, educational, economic, and any other factor that may contribute to a**  
9           **Native Hawaiian becoming a missing or murdered Native Hawaiian; and**

10           **(2) legislation to reduce the likelihood that a Native Hawaiian may become a**  
11           **missing or murdered Native Hawaiian.**

12           **(b) Review of Native Hawaiian Victims of Various Crimes.— Not later than 180**  
13           **days after the date of enactment of this Act, the Attorney General shall conduct a**  
14           **comprehensive review of programs that provide services to victims of criminal**  
15           **offenses affecting Native Hawaiians, including child sexual exploitation, child abuse,**  
16           **intimate partner violence, human trafficking, and substance abuse. The report shall**  
17           **include for each such program the amount of Federal funding that is received by**  
18           **Native Hawaiian-serving organizations as a percentage of— relative to the total**  
19           **amount of funding dispersed for each relevant Federal program.**

20           **(1) the total amount disbursed by the program; and (C) Recommendations and**  
21           **legislative proposals to—**

22           **(2) the total amount of Federal funds disbursed by the program. (i) improve**  
23           **how relevant Federal programs address the needs of Native Hawaiians;**

24           **(ii) improve responses to and investigation of incidences of missing or**  
25           **murdered Native Hawaiians;**

26           **\*\* 26 (B) legislation to (iii) reduce the likelihood that a Native Hawaiian may**  
27           **become involved in the criminal justice system; and:**

28           **(iv) address any other relevant matters deemed necessary by the Attorney**  
29           **General.**

30           **(2) COMPREHENSIVE REVIEW.—The Attorney General shall conduct a**  
31           **comprehensive review of relevant Federal programs.**

32           **(3) RELEVANT FEDERAL PROGRAM.—In this subsection, the term “relevant Federal**  
33           **program” means any—**

34           **(A) law enforcement or other crime prevention program targeting criminal**  
35           **offenses that affect Native Hawaiians, including child sexual exploitation, child**  
36           **abuse, intimate partner violence, human trafficking, missing or murdered**  
37           **individuals, and substance abuse;**

38           **(B) any program that provide services to victims of criminal offenses affecting**  
39           **Native Hawaiians, including child sexual exploitation, child abuse, intimate**  
40           **partner violence, human trafficking, and substance abuse; and**



1 **(C) any criminal justice system program or service available to and used by**  
2 **Native Hawaiians in various jurisdictions, including diversion programs, in-**  
3 **prison education programs, and reentry services.**

4 (c) Report on Native Hawaiians in the Criminal Justice System.—

5 (1) ~~CRIMINAL JUSTICE SYSTEM.—NOT IN GENERAL.—~~Not later than 180 days after the  
6 date of enactment of this Act, the Attorney General, acting through the National Institute of  
7 Justice, in coordination with the Bureau of Justice Statistics, shall **prepare a** report on the  
8 interaction of Native Hawaiians with the criminal justice system, ~~including.~~

9 **(2) CONTENTS OF REPORT.—The report required under this subsection shall**  
10 **include—**

11 **(A) known statistics related to** the percentage of persons who are Native  
12 Hawaiians out of the total of—

13 ~~(A)(i)~~ all persons arrested;

14 ~~(B)(ii)~~ all persons detained in Federal, State, and local jails;

15 ~~(C)(iii)~~ all persons subject to pretrial supervision;

16 ~~(D)(iv)~~ all persons subject to post-conviction supervision;

17 ~~(E)(v)~~ all persons incarcerated in Federal and State prisons; and

18 ~~(F)(vi)~~ all persons subject to post-release supervision;

19 ~~(2) Programs and services.—The report shall also include the programs and services~~  
20 ~~available to and used by Native Hawaiians in various jurisdictions, including diversion~~  
21 ~~programs, in-prison education programs, and reentry services. The report shall also~~  
22 ~~include the number of~~ **(B) an explanation of why the statistics described in**  
23 **subparagraph (A) may not be comprehensive;**

24 **(C) recommendations on how data collection related to the statistics described**  
25 **in subparagraph (A) could be improved;**

26 **(D) a description of any** culturally relevant programs available to Native Hawaiians  
27 who interact with the **Federal** criminal justice system. ~~The report shall also include;~~  
28 **and**

29 **(E) a summary of any available** data on the number of Native Hawaiians who are  
30 incarcerated and placed in Federal and private **correctional** facilities more than 200  
31 miles from their place of residence.

32  
33 ~~(3) Recommendations.—The report shall also include~~  
34 ~~recommendations relating to—~~

35 ~~(A) social, educational, economic, and any other factor that may~~  
36 ~~contribute to a Native Hawaiian becoming involved in the~~



1 ~~criminal justice system; and~~

2  
3 ~~\* 26 (B) legislation to reduce the likelihood that a Native~~  
4 ~~Hawaiian may become involved in the criminal justice system.~~

5 TITLE XIII—CLOSING THE LAW ENFORCEMENT  
6 CONSENT LOOPHOLE

7 SEC. 1301. SHORT TITLE.

8 This title may be cited as the “Closing the Law Enforcement Consent Loophole Act of 2021”.

9 SEC. 1302. ~~PENALTIES FOR CIVIL RIGHTS OFFENSES~~  
10 ~~INVOLVING SEXUAL MISCONDUCT. PROHIBITION ON~~  
11 ~~ENGAGING IN SEXUAL ACTS WHILE ACTING UNDER~~  
12 ~~COLOR OF LAW.~~

13 ~~(a) In General.—Section 2243 of title 18, United States Code, is~~  
14 ~~amended—~~

15 ~~(1) in the section heading, by adding at the end the following:~~  
16 ~~“or by any person acting under color of law”;~~

17  
18 ~~\* 18 (2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;~~

19 ~~(3) by inserting after subsection (b) the following:~~

20 ~~“(c) Of an Individual by Any Person Acting Under Color of Law.—~~

21 ~~“(1) In general.—Whoever, acting under color of law, knowingly engages in a sexual act with~~  
22 ~~an individual, including an individual who is under arrest, in detention, or otherwise in the actual~~  
23 ~~custody of any Federal law enforcement officer, shall be fined under this title, imprisoned not~~  
24 ~~more than 15 years, or both.~~

25 ~~“(2) Definition.—In this subsection, the term ‘sexual act’ has the meaning given the term in~~  
26 ~~section 2246.”; and~~

27 ~~(4) in subsection (d), as so redesignated, by adding at the end the following:~~

28 ~~“(3) In a prosecution under subsection (c), it is not a defense that the other individual~~  
29 ~~consented to the sexual act.”;~~

30 ~~\*\* 27 (a) In General.—Section 534 Amendment.—Chapter 13 of title 28 18, United States~~  
31 ~~Code, is amended by adding at the end the following:~~



1 **“250. Penalties for civil rights offenses involving sexual**  
2 **misconduct**

3 **“(a) Offense.—It shall be unlawful for any person to, in the course of committing an**  
4 **offense under this chapter or under section 901 of the Fair Housing Act (42 U.S.C. 3631),**  
5 **engage in, or cause another to engage in, sexual misconduct.**

6 **“(b) Penalties.—Any person who violates subsection (a) shall be—**

7 **“(1) in the case of an offense involving aggravated sexual abuse, as defined in section**  
8 **2241, or if the offense involved sexual abuse, as defined in section 2242, or if the**  
9 **offense involved an attempt to commit such aggravated sexual abuse or sexual abuse,**  
10 **fined under this title and imprisoned for any term of years or for life;**

11 **“(2) in the case of an offense involving abusive sexual contact of a child who has not**  
12 **attained the age of 16, of the type prohibited by section 2244(a)(5), fined under this**  
13 **title and imprisoned for any term of years or for life;**

14 **“(3) in the case of an offense involving a sexual act, as defined in section 2246, with**  
15 **another person without the other person’s permission, and it does not amount to**  
16 **sexual abuse or aggravated sexual abuse, be fined under this title and imprisoned for**  
17 **not more than 40 years;**

18 **“(4) in the case of an offense involving abusive sexual contact of the type prohibited**  
19 **by subsection (a)(1) or (b) of section 2244, but excluding abusive sexual contact**  
20 **through the clothing—**

21 **“(A) fined under this title and imprisoned for not more than 10 years; and**

22 **“(B) if the offense involves a child who has not attained the age of 12 years,**  
23 **imprisoned for not more than 30 years;**

24 **“(5) in the case of an offense involving abusive sexual contact of the type prohibited**  
25 **by section 2244(a)(2)—**

26 **“(A) fined under this title and imprisoned for not more than 3 years; and**

27 **“(B) if the offense involves a child under the age of 12, imprisoned for not more**  
28 **than 20 years; and**

29 **“(6) in the case of an offense involving abusive sexual contact through the clothing of**  
30 **the type prohibited by subsection (a)(3), (a)(4), or (b) of section 2244—**

31 **“(A) fined under this title and imprisoned for not more than 2 years; and**

32 **“(B) if the offense involves a child under the age of 12, imprisoned for not more**  
33 **than 10 years.”.**

34 **(b) Sexual Abuse.—Section 2242 of title 18, United States Code, is amended—**

35 **(1) in paragraph (1), by striking “or” at the end;**

36 **(2) in paragraph (2)(B), by inserting “or” after the semicolon; and**

37 **(3) by inserting after paragraph (2) the following:**



1           **“(3) engages in a sexual act with another person without that other person’s consent,**  
2           **to include doing so through coercion;”.**

3           **(c)(b)** Definition.—Section 2246 of title 18, United States Code, is amended—

4           (1) in paragraph (5), by striking “and” at the end;

5           (2) in paragraph (6), by striking the period at the end and inserting “; and”; and

6           (3) by inserting after paragraph (6) the following:

7           “(7) the term ‘Federal law enforcement officer’ has the meaning given the term in section  
8           115.”.

9           **(e) Clerical(d) Technical and Conforming** Amendment.—The table of sections for chapter  
10           **109A, 13** of title 18, United States Code, is amended by ~~amending the item related to section~~  
11           ~~2243 to read as follows:~~ **inserting after the item relating to section 249 the following:**

12           ~~“2243. Sexual abuse of a minor or ward or by any person acting under color of law.”;~~ **“250.**  
13           **Penalties for civil rights offenses involving sexual misconduct.”.**

## 14           **SEC. 1303. INCENTIVES FOR STATES.**

15           (a) Authority To Make Grants.—The Attorney General is authorized to make grants to States  
16           that have in effect a law that—

17           (1) makes it a criminal offense for any person acting under color of law of the State to  
18           engage in a sexual act with an individual, including an individual who is under arrest, in  
19           detention, or otherwise in the actual custody of any law enforcement officer; and

20           (2) prohibits a person charged with an offense described in paragraph (1) from asserting  
21           the consent of the other individual as a defense.

22           (b) Reporting Requirement.—A State that receives a grant under this section shall submit to  
23           the Attorney General, on an annual basis, information on—

24           (1) the number of reports made to law enforcement agencies in that State regarding  
25           persons engaging in a sexual act while acting under color of law during the previous year;  
26           and

27           (2) the disposition of each case in which sexual misconduct by a person acting under  
28           color of law was reported during the previous year.

29           (c) Application.—A State seeking a grant under this section shall submit an application to the  
30           Attorney General at such time, in such manner, and containing such information as the Attorney  
31           General may reasonably require, including information about the law described in subsection (a).

32           (d) Grant Amount.—The amount of a grant to a State under this section shall be in an amount  
33           that is not greater than 10 percent of the average of the total amount of funding of the 3 most  
34           recent awards that the State received under the following grant programs:

35           (1) Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34  
36           U.S.C. 10441 et seq.) (commonly referred to as the “STOP Violence Against Women  
37           Formula Grant Program”).

38           (2) Section 41601 of the Violence Against Women Act of 1994 (34 U.S.C. 12511)



1 (commonly referred to as the “Sexual Assault Services Program”).

2 (e) Grant Term.—

3 (1) IN GENERAL.—The Attorney General shall provide an increase in the amount provided  
4 to a State under the grant programs described in subsection (d) for a 2-year period.

5 (2) RENEWAL.—A State that receives a grant under this section may submit an  
6 application for a renewal of such grant at such time, in such manner, and containing such  
7 information as the Attorney General may reasonably require.

8 (3) LIMIT.—A State may not receive a grant under this section for more than 4 years.

9 (f) Uses of Funds.—A State that receives a grant under this section shall use—

10 (1) 25 percent of such funds for any of the permissible uses of funds under the grant  
11 program described in paragraph (1) of subsection (d); and

12 (2) 75 percent of such funds for any of the permissible uses of funds under the grant  
13 program described in paragraph (2) of subsection (d).

14 (g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this  
15 **chapter section** \$5,000,000 for each of fiscal years 2022 through 2026.

16 (h) Definition.—For purposes of this section, the term “State” means each of the several States  
17 and the District of Columbia, Indian Tribes, and the Commonwealth of Puerto Rico, Guam,  
18 American Samoa, the Virgin Islands, and the Northern Mariana Islands.

## 19 SEC. 1304. REPORTS TO CONGRESS.

20 (a) Report by Attorney General.—Not later than 1 year after the date of enactment of this Act,  
21 and each year thereafter, the Attorney General shall submit to Congress and make publicly  
22 available on the Department of Justice website a report containing—

23 (1) the information required to be reported to the Attorney General under section ~~3(b)~~  
24 **1303(b)**; and

25 (2) information on—

26 (A) the number of reports made, during the previous year, to Federal law  
27 enforcement agencies regarding persons engaging in a sexual act while acting under  
28 color of law; and

29 (B) the disposition of each case in which sexual misconduct by a person acting  
30 under color of law was reported.

31 (b) Report by GAO.—Not later than 1 year after the date of enactment of this Act, and each  
32 year thereafter, the Comptroller General of the United States shall submit to Congress a report on  
33 any violations of section 2243(c) of title 18, United States Code, as amended by section ~~2~~ **1302**,  
34 committed during the 1-year period covered by the report.

35 **(c) Report by Attorney General on Conflicts Between State’s Marriage-age and Age-**  
36 **based Sex Offenses.—Not later than 1 year after the date of enactment of this Act, and each**  
37 **year thereafter, the Attorney General shall submit to Congress a report that examines**  
38 **inconsistencies between State laws on marriage-age and State laws on age-based sex**  
39 **offenses and, in particular, States with laws that—**



1 (1) provide an exception to definitions of age-based sex offenses (including statutory  
2 rape), or a defense to prosecution for such offenses, based on the marriage of the  
3 perpetrator to the victim; or

4 (2) allow marriages between parties at ages, or with age differences between them,  
5 such that sexual acts between those parties outside of marriage would constitute an  
6 age-based sex offense (including statutory rape).

## 7 SEC. 1305. DEFINITION.

8 In this title, the term “sexual act” has the meaning given the term in section 2246 of title 18,  
9 United States Code.

## 10 TITLE XIV—OTHER MATTERS

### 11 SEC. 1401. NATIONAL STALKER AND DOMESTIC 12 VIOLENCE REDUCTION.

13 ~~\*\* 28~~ Section 224(a) 40603 of the ~~Crime Control~~ **Violence Against Women** Act of 1990  
14 1994 (34 U.S.C. 20334(a)) 12402) is amended by striking “2014 through 2018” and inserting  
15 “2022 through 2026”.

16 ~~Section 40603 of the Violent Crime Control and Law~~  
17 ~~Enforcement Act of 1994 (34 U.S.C. 12402) is amended by~~  
18 ~~striking “2014 through 2018” and inserting “2022 through~~  
19 ~~2026”.~~

### 20 SEC. 1402. FEDERAL VICTIM **ASSISTANTS AND** 21 **WITNESS COORDINATORS** REAUTHORIZATION.

22 Section 40114 of the Violence Against Women Act of 1994 (Public Law 103–322); **108 Stat.**  
23 **1910**) is amended to read as follows:

#### 24 “SEC. 40114. AUTHORIZATION FOR FEDERAL **VICTIM’S** 25 **VICTIM AND WITNESS** COORDINATORS.

26 “There are authorized to be appropriated for the United States ~~Attorneys~~ **attorneys** for the  
27 purpose of appointing ~~victim/witness~~ **victim and witness** coordinators for the prosecution of sex  
28 crimes and domestic violence crimes where applicable (such as the District of Columbia),  
29 \$1,000,000 for each of fiscal years 2022 through 2026.”.

### 30 SEC. 1403. CHILD ABUSE TRAINING PROGRAMS FOR 31 JUDICIAL PERSONNEL AND PRACTITIONERS 32 REAUTHORIZATION.



1 \* 28 Section 224(a) of the Crime Control Act of 1990 (34 U.S.C. 20334(a)) is amended by  
2 striking “2014 through 2018” and inserting “2022 through 2026”.

3 Section 224(a) of the Crime Control Act of 1990 (34 U.S.C. 20334(a)) is amended by  
4 striking “subtitle” and all that follows and inserting “subtitle \$2,300,000 for each of fiscal  
5 years 2022 through 2026”.

## 6 SEC. 1404. SEX OFFENDER MANAGEMENT.

7 Section 40152(c) of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C.  
8 12311(c)) is amended by striking “2014 through 2018” and inserting “2022 through 2026”. to  
9 read as follows:

10 “(c) Authorization of Appropriations.—There are authorized to be appropriated to  
11 carry out this section \$5,000,000 for each of fiscal years 2022 through 2026.”.

## 12 SEC. 1405. COURT-APPOINTED SPECIAL ADVOCATE 13 PROGRAM.

14 Section 219(a) of the Crime Control Act of 1990 (34 U.S.C. 20324(a)) is amended by striking  
15 “2014 through 2018” and inserting “2022 through 2026”.

## 16 SEC. 1406. SEXUAL ASSAULT FORENSIC EXAM 17 PROGRAM GRANTS.

18 Section 304(d) of the DNA Sexual Assault Justice Act of 2004 (34 U.S.C. 40723(d)) is  
19 amended by striking “2019 through 2024” and inserting “2022 through 2026”.

## 20 SEC. 1407. REVIEW OF 1406A. STRATEGIES TO 21 IMPROVE COORDINATION OF SEXUAL ASSAULT 22 FORENSIC NURSE EXAM TRAINING AND PROGRAM 23 SUSTAINABILITY.

24 Not later than 1 year after the date of the enactment of this Act,  
25 the Attorney General and Secretary of the Department of Health  
26 and Human Services shall issue and disseminate guidance and  
27 best practices to improve sexual assault forensic nurse exam  
28 training and program sustainability. Such guidance shall include  
29 technical assistance and best practices with respect to—

30 (1) aspects of performing the medical forensic exam, including  
31 anogenital photography, other photographic documentation,  
32 photographic documentation record management, and quality



1 assurance peer review;

2 (2) training and certification;

3 (3) leadership development;

4 (4) examiner program sustainability and examiner retention;

5 (5) education of community stakeholders, including law  
6 enforcement officials, victim advocates, and prosecutors; and

7 (6) use of telehealth for both training examiners and conducting  
8 the exams, including the Project ECHO model and other models.

9 ~~SEC. 1407. REVIEW ON~~ LINK BETWEEN SUBSTANCE  
10 USE AND VICTIMS OF DOMESTIC VIOLENCE DATING  
11 VIOLENCE, SEXUAL ASSAULT, OR STALKING.

12 Not later than ~~24 months~~ **2 years** after the date of enactment of this Act, the Secretary of the  
13 Department of Health and Human Services shall complete a review and submit **to Congress** a  
14 report ~~to Congress~~ on whether being a victim of domestic violence, dating violence, sexual  
15 assault, or stalking increases the likelihood of having a substance use disorder.

16 SEC. 1408. INTERAGENCY WORKING GROUP TO STUDY  
17 FEDERAL EFFORTS TO COLLECT DATA ON SEXUAL  
18 VIOLENCE.

19 (a) Establishment.—Not later than 180 days after the date of **the** enactment of this Act, the  
20 Attorney General shall establish an interagency working group ~~(in this section referred to as the~~  
21 **“Working Group”**) to study Federal efforts to collect data on sexual violence and to make  
22 recommendations on the harmonization of such efforts.

23 (b) Composition.—The Working Group shall be comprised of at least one representative from  
24 **each of** the following agencies, who shall be selected by the head of that agency:

25 (1) The Centers for Disease Control and Prevention.

26 (2) The Department of Education.

27 (3) The Department of Health and Human Services.

28 (4) The Department of Justice.

29 (5) The Equal Employment Opportunity Commission.

30 (c) Duties.—The Working Group shall consider the following:

31 (1) What activity constitutes different acts of sexual violence.

32 (2) Whether reports that use the same terms for acts of sexual violence are collecting the



1 same data on these acts.

2 (3) Whether the context which led to an act of sexual violence should impact how that act  
3 is accounted for in reports.

4 (4) Whether the data collected is presented in a way that allows the general public to  
5 understand what acts of sexual violence are included in each measurement.

6 (5) Steps that agencies that compile reports relating to sexual violence can take to avoid  
7 double counting incidents of sexual violence.

8 (d) Report Required.—Not later than 2 years after the date of **the** enactment of this Act, the  
9 Working Group shall publish and submit to Congress a report on the following:

10 (1) The activities of the Working Group.

11 (2) Recommendations to harmonize Federal efforts to collect data on sexual violence.

12 (3) Actions Federal agencies can take to implement the recommendations described in  
13 paragraph (2).

14 (4) Recommendations, if any, for congressional action to implement the  
15 recommendations described in paragraph (2).

16 (e) Termination.—The Working Group shall terminate 30 days after the date on which the  
17 report is submitted pursuant to subsection (d).

18 (f) Definitions.—In this section:

19 (1) HARMONIZE.—The term “harmonize” includes efforts to coordinate sexual violence  
20 data collection to produce complementary information, as appropriate, without  
21 compromising programmatic needs.

22 (2) SEXUAL VIOLENCE.—The term “sexual violence” includes an unwanted sexual act  
23 (including both contact and non-contact) about which the Federal Government collects  
24 information.

25 **SEC. 1409. NATIONAL DOMESTIC VIOLENCE HOTLINE.**

26 Not later than 3 months after the date of enactment of this Act, a national domestic  
27 violence hotline for which a grant is provided under section 313 of the Family Violence  
28 Prevention and Services Act shall include the voluntary feature of texting via telephone to  
29 ensure all methods of communication are available for victims and those seeking

30 assistance.**(3) WORKING GROUP.—The term “Working Group” means the interagency  
31 working group established under subsection (a).**

32  
33 **\* ~~32 SEC. 1410. DEPUTY ASSISTANT ATTORNEY  
34 GENERAL ON CULTURALLY SPECIFIC COMMUNITIES  
35 WITHIN THE OFFICE OF JUSTICE PROGRAMS.~~**

36 **~~There shall be a Deputy Assistant Attorney General on~~**



1 ~~Culturally Specific Communities within the Office of Justice~~  
2 ~~Programs who shall, under the guidance and authority of the~~  
3 ~~Assistant Attorney General Office of Justice Programs —~~

4 ~~(1) oversee the administration of grants related to culturally~~  
5 ~~specific services and contracts with culturally specific~~  
6 ~~organizations;~~

7 ~~(2) coordinate development of Federal policy, protocols, and~~  
8 ~~guidelines on matters relating to domestic violence, dating~~  
9 ~~violence, sexual assault and stalking, in culturally specific~~  
10 ~~communities;~~

11  
12 ~~\* 33 (3) advise the Assistant Attorney General of the Office of~~  
13 ~~Justice Programs concerning policies, legislation,~~  
14 ~~implementation of laws, and other issues relating to domestic~~  
15 ~~violence, dating violence, sexual assault and stalking in~~  
16 ~~culturally specific communities;~~

17  
18 ~~\* 34 (4) provide technical assistance, coordination, and support~~  
19 ~~to other offices and bureaus in the Department of Justice to~~  
20 ~~develop policy and to enforce Federal laws relating to domestic~~  
21 ~~violence, dating violence, sexual assault, and stalking in~~  
22 ~~culturally specific communities;~~

23  
24 ~~\* 35 (5) ensure that appropriate technical assistance, developed~~  
25 ~~and provided by entities having expertise in culturally specific is~~  
26 ~~made available to grantees and potential grantees proposing to~~  
27 ~~serve culturally specific communities; and~~

28 ~~(6) ensure access to grants and technical assistance for culturally~~



~~specific organizations and analyze the distribution of funding in order to identify barriers for culturally specific organizations.~~

~~SEC. 1411~~ **SEC. 1409.** NATIONAL RESOURCE CENTER ON WORKPLACE RESPONSES TO ASSIST VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE ASSISTANCE FOR MICROBUSINESSES.

Section 41501(b) of the ~~Violent Crime Control and Law Enforcement~~ **Violence Against Women** Act of 1994 (34 U.S.C. 12501(b)) is amended—

(1) in paragraph ~~(2)~~, by inserting after “State and local governments” the following:~~(2)—~~

**(A) by striking “companies and public entities” and inserting “companies, public entities”;** and

**(B) by inserting “, and employers with fewer than 20 employees” ; after “State and local governments”;** and

(2) in paragraph (3), by inserting before the period at the end the following: “, which materials shall include a website with resources for employers with fewer than 20 employees, including live training materials”.

~~SEC. 1412~~ **SEC. 1410.** CIVIL ACTION RELATING TO DISCLOSURE OF INTIMATE IMAGES.

(a) Definitions.—In this section:

~~(1) Consent.—The term “consent” means, with respect to an individual, an affirmative, conscious, and voluntary authorization made by the individual free from force, fraud, misrepresentation, or coercion of the depicted individual.~~

~~(2) COMMERCIAL PORNOGRAPHIC CONTENT.—The term “commercial pornographic content” means any material that is subject to the record keeping requirements under section 2257 of title 18, United States Code.~~

**(2) CONSENT.—The term “consent” means an affirmative, conscious, and voluntary authorization made by the individual free from force, fraud, misrepresentation, or coercion.**

**(3) DEPICTED INDIVIDUAL.—The term “depicted individual” means an individual whose body is disclosed appears in whole or in part in an intimate image, visual depiction and who is identifiable by virtue of the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, or from information displayed in connection with the visual depiction.**

**(4) DISCLOSE.—The term “disclose” means to transfer, publish, distribute, or make accessible an intimate image.**

~~(5) Identifiable.—The term “identifiable” means recognizable by an individual other than~~



1 the depicted individual from—(5) INTIMATE VISUAL DEPICTION.—The term “intimate  
2 visual depiction”—

3 (A) the intimate image itself; or

4 (B) information or text displayed in connection with the intimate image.

5 (6) Intimate image.—The term “intimate image”—

6 (A) means a photograph, film, video recording, or digital recording that shows—(A)  
7 means a visual depiction, as that term is defined in section 2256(5) of title 18,  
8 United States Code, that depicts—

9 (i) the uncovered genitals, pubic area, anus, or post-pubescent female nipple of  
10 an identifiable individual; or

11 (ii) the display or transfer of bodily sexual fluids fluids—

12 (I) on to any part of the body of an individual; identifiable individual;

13 (iii) an (II) from the body of an identifiable individual; or

14 (III) an identifiable individual engaging in sexually explicit conduct ; or

15 (iv) an individual being subjected to sexually explicit conduct; and

16 (B) includes any image visual depictions described in subparagraph (A) captured or  
17 recorded produced while the depicted identifiable individual was in a public place  
18 only if if—

19 (i) the depicted individual did not not—

20 (i) voluntarily display the content depicted in the image; or

21 (ii) the depicted individual did not consent to the sexual conduct depicted in the  
22 image..

23 (7)(6) SEXUALLY EXPLICIT CONDUCT.—The term “sexually explicit conduct” has the  
24 meaning given the term in subparagraphs (A) and (B) of section 2256(2) of title 18, United  
25 States Code.

26 (b) Civil Action.—

27 (1) RIGHT OF ACTION.—EXCEPT ACTION.—

28 (A) IN GENERAL.—Except as provided in paragraph (4), a depicted individual, or in  
29 the case of a depicted individual who is a minor, the parent of the depicted individual,  
30 whose intimate image an individual whose intimate visual depiction is disclosed, in  
31 or through affecting interstate or foreign commerce or using a any means or facility of  
32 interstate or foreign commerce (including the internet), without the consent of the  
33 depicted individual, and where such disclosure was made by a person who acted  
34 knowingly without, or with reckless disregard for, the consent of the depicted  
35 individual knows that, or recklessly disregards whether, the individual has not  
36 consented to such disclosure, may bring a civil action against that person in an  
37 appropriate district court of the United States for appropriate relief. relief as set forth  
38 in paragraph (3).



1           **(B) RIGHTS ON BEHALF OF CERTAIN INDIVIDUALS.—In the case of an individual**  
2 **who is under 18 years of age, incompetent, incapacitated, or deceased, the legal**  
3 **guardian of the individual or representative of the identifiable individual’s estate,**  
4 **another family member, or any other person appointed as suitable by the court,**  
5 **may assume the identifiable individual’s’ rights under this section, but in no event**  
6 **shall the defendant be named as such representative or guardian.**

7 (2) CONSENT.—For purposes of an action under paragraph (1)—

8           ~~(A) evidence that the depicted individual provided consent to the capture or~~  
9 ~~recording of the intimate image shall not, by itself, constitute evidence that the~~  
10 ~~depicted individual provided consent to the disclosure of the intimate image; and~~ **the**  
11 **fact that the individual consented to the creation of the depiction shall not**  
12 **establish that the person consented to its distribution; and**

13 ~~(B) evidence that the depicted~~ **(B) the fact that the** individual disclosed the ~~image to~~  
14 **intimate visual depiction to someone else shall not establish that the person**  
15 **consented to the further disclosure of the intimate visual depiction by** the person  
16 ~~alleged to have violated paragraph (1) shall not, by itself, constitute evidence that the~~  
17 ~~depicted individual provided consent to the further disclosure of the intimate image.~~

18 (3) RELIEF.—

19           (A) IN GENERAL.—In a civil action filed under this section—

20                   (i) an individual may recover the actual damages sustained by the individual or  
21 liquidated damages in the amount of \$150,000, and the cost of the action,  
22 including reasonable attorney’s fees and other litigation costs reasonably incurred;  
23 and

24                   (ii) the court may, in addition to any other relief available at law, order  
25 equitable relief, including a temporary restraining order, a preliminary injunction,  
26 or a permanent injunction ordering the defendant to cease display or disclosure of  
27 the ~~image~~ **visual depiction.**

28           (B) PRESERVATION OF ANONYMITY.—In ordering relief under subparagraph (A), the  
29 court may grant injunctive relief maintaining the confidentiality of a plaintiff using a  
30 pseudonym.

31 (4) ~~EXCEPTIONS.—A DEPICTED~~ **EXCEPTIONS.—An identifiable** individual may not bring  
32 an action for relief under this section relating to—

33           (A) an intimate image that is commercial pornographic content, **unless that**  
34 **unless—**

35                   ~~(i) the~~ content was produced by force, fraud, misrepresentation, or coercion of the  
36 depicted individual; ~~and~~

37                   ~~(ii) the claim of force, fraud, misrepresentation, or coercion under clause (i) is~~  
38 ~~demonstrated through a preponderance of evidence;~~

39           (B) a disclosure made in good faith—

40                   (i) to a law enforcement officer or agency;



- 1 (ii) as part of a legal proceeding;
- 2 (iii) as part of medical education, diagnosis, or treatment; or
- 3 (iv) in the reporting or investigation of—
- 4 (I) unlawful content; or
- 5 (II) unsolicited or unwelcome conduct;
- 6 (C) a matter of public concern or public interest; or
- 7 (D) a disclosure reasonably intended to assist the ~~depicted individual~~, **identifiable**
- 8 **individual.**

9 ~~SEC. 1413. CERTAIN ACTIVITIES RELATING TO~~

10 ~~INTIMATE VISUAL DEPICTIONS.~~

11 ~~(a) Short Title.—This section may be cited as the “Stopping~~

12 ~~Harmful Image Exploitation and Limiting Distribution Act of~~

13 ~~2021” or the “SHIELD Act of 2021”.~~ **SEC. 1411.**

14 **SURVIVORS’ BILL OF RIGHTS.**

15 **\*\* 29** (a) In General.—The Attorney General shall make grants to States **or Indian Tribes**

16 that have in place a law that provides to sexual assault survivors the rights, at a minimum, under

17 section 3772 of title 18, United States Code.

18 **\*\* 30** (b) Grant Amount.—Subject to the availability of appropriations, a grant to a State **or**

19 **Indian Tribe** under this section shall be equal to 10 percent of the average of the amount of

20 funding of the 3 most recent awards that the State **or applicable Indian tribal government and**

21 **Indian Tribe** received under part T of title I of the Omnibus Crime Control and Safe Streets Act

22 of 1968 (34 U.S.C. 10441 et seq.) (commonly referred to as the “STOP Violence Against

23 Women Formula Grant Program”).

24 **\*\* 31** (c) Application.—A State **or Indian Tribe** seeking a grant under this section shall

25 submit an application to the Attorney General at such time, in such manner, and containing such

26 information as the Attorney General may reasonably require, including information about the

27 law described in subsection (a).

28 **(d) Authorization of Appropriations.—There are authorized to be appropriated**

29 **\$20,000,000 for each of fiscal years 2022 through 2026 to carry out this section.**

30 **SEC. 1412. CHOOSE RESPECT ACT.**

31 **(a) Short Title.—This section may be cited as the “Choose Respect Act”.**

32 **(b) Designation.—**

33 **(1) IN GENERAL.—Chapter 1 of title 36** ~~(b) In General.—Chapter 88 of title 18,~~ United

34 States Code, is amended by adding at the end the following:

35 ~~“1802. Certain activities relating to intimate visual depictions~~



1 ~~“(a) Definitions.— In this section:~~

2 ~~“(1) Communications service.— The term ‘communications~~  
3 ~~service’ means—~~

4 ~~“(A) a service provided by a person that is a common carrier, as~~  
5 ~~that term is defined in section 3 of the Communications Act of~~  
6 ~~1934 (47 U.S.C. 153), insofar as the person is acting as a~~  
7 ~~common carrier;~~

8 ~~“(B) an electronic communication service, as that term is~~  
9 ~~defined in section 2510;~~

10 ~~“(C) an information service, as that term is defined in section 3~~  
11 ~~of the Communications Act of 1934 (47 U.S.C. 153); and~~

12 ~~“(D) an interactive computer service, as that term is defined in~~  
13 ~~section 230(f) of the Communications Act of 1934 (47 U.S.C.~~  
14 ~~230(f)).~~

15 ~~“(2) Information content provider.— The term ‘information~~  
16 ~~content provider’ has the meaning given that term in section~~  
17 ~~230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)).~~

18 ~~“(3) Intimate visual depiction.— The term ‘intimate visual~~  
19 ~~depiction’ means any visual depiction (as that term is defined in~~  
20 ~~section 2256(5))—~~

21 ~~“(A) of an individual who is reasonably identifiable from the~~  
22 ~~visual depiction itself or information displayed in connection~~  
23 ~~with the visual depiction;~~

24 ~~“(B) in which—~~

25 ~~“(i) the individual has obtained 18 years of age and is engaging~~  
26 ~~in sexually explicit conduct; or~~

27 ~~“(ii) the naked genitals, anus, pubic area or post-pubescent~~  
28 ~~female nipple of the individual are visible;~~



1 ~~“(C) in which the content described in subparagraph (B) is not~~  
2 ~~simulated; and~~

3 ~~“(D) in original or modified format.~~

4 ~~“(4) Sexually explicit conduct.—The term ‘sexually explicit~~  
5 ~~conduct’ has the meaning given that term in section 2256(2)(A).~~

6 ~~“(b) Offense.—Except as provided in subsection (d), it shall be~~  
7 ~~unlawful to knowingly use any means or facility of interstate or~~  
8 ~~foreign commerce to distribute an intimate visual depiction of an~~  
9 ~~individual—~~

10 ~~“(1) with knowledge of or reckless disregard for—~~

11 ~~“(A) the lack of consent of the individual to the distribution; and~~

12 ~~“(B) the reasonable expectation of the individual that the~~  
13 ~~depiction would remain private; and~~

14 ~~“(2) without an objectively reasonable belief that such~~  
15 ~~distribution touches upon a matter of public concern.~~

16 ~~“(c) Penalty.—Any person who violates subsection (b) shall be~~  
17 ~~fined under this title, imprisoned not more than 2 years, for each~~  
18 ~~individual victim depicted, or both.~~

19 ~~“(d) Exceptions.—~~

20 ~~“(1) Law enforcement, lawful reporting, and other legal~~  
21 ~~proceedings.—This section—~~

22 ~~“(A) does not prohibit any lawful law enforcement, correctional,~~  
23 ~~or intelligence activity;~~

24 ~~“(B) shall not apply in the case of an individual acting in good~~  
25 ~~faith to report unlawful activity or in pursuance of a legal or~~  
26 ~~professional or other lawful obligation; and~~

27 ~~“(C) shall not apply in the case of a document production or~~



1 ~~filing associated with a legal proceeding.~~

2 ~~“(2) Service providers.— This section shall not apply to any~~  
3 ~~provider of a communications service with regard to content~~  
4 ~~provided by another information content provider unless the~~  
5 ~~provider of the communications service intentionally solicits, or~~  
6 ~~knowingly and predominantly distributes, content that the~~  
7 ~~provider of the communications service actually knows is in~~  
8 ~~violation of this section.~~

9 ~~“(e) Threats.— Any person who intentionally threatens to~~  
10 ~~commit an offense under subsection (b) shall be punished as~~  
11 ~~provided in subsection (c).~~

12 ~~“(f) Venue and Extraterritoriality.— A prosecution under this~~  
13 ~~section may be brought in a district where the defendant or the~~  
14 ~~depicted individual resides or in a district where the intimate~~  
15 ~~visual depictions are distributed. There is extraterritorial Federal~~  
16 ~~jurisdiction over an offense under this section if the defendant or~~  
17 ~~the depicted individual is a citizen or permanent resident of the~~  
18 ~~United States.”.~~ **“146. Choose Respect Day**

19 **“(a) Designation.—October 1 is Choose Respect Day.**

20 **“(b) Recognition.—All private citizens, organizations, and Federal, State, and local**  
21 **governmental and legislative entities are encouraged to recognize Choose Respect Day**  
22 **through proclamations, activities, and educational efforts in furtherance of changing the**  
23 **culture around the tolerance of violence against women.”.**

24 **(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1**  
25 **of title 36, United States Code, is amended by adding at the end the following:**

26 **“146. Choose Respect Day.”.**

27 **(c) Media Campaign.—**

28 **(1) DEFINITIONS.—In this subsection:**

29 **(A) DIRECTOR.—The term “Director” means the Director of the Office on**  
30 **Violence Against Women.**

31 **(B) NATIONAL MEDIA CAMPAIGN.—The term “national media campaign” means**  
32 **the national “Choose Respect” media campaign described in paragraph (2).**



1           **(2) MEDIA CAMPAIGN.—**The Director shall, to the extent feasible and appropriate,  
2           conduct a national “Choose Respect” media campaign in accordance with this section  
3           for the purposes of—

4                   **(A)** preventing and discouraging violence against women, including domestic  
5                   violence, dating violence, sexual assault, and stalking by targeting the attitudes,  
6                   perceptions, and beliefs of individuals who have or are likely to commit such  
7                   crimes;

8                   **(B)** encouraging victims of the crimes described in subparagraph (A) to seek  
9                   help through the means determined to be most effective by the most current  
10                  evidence available, including seeking legal representation; and

11                  **(C)** informing the public about the help available to victims of the crimes  
12                  described in subparagraph (A).

13           **(3) USE OF FUNDS.—**

14                   **(A) IN GENERAL.—**Amounts made available to carry out this section for the  
15                   national media campaign may only be used for the following:

16                           **(i)** The purchase of media time and space, including the strategic planning  
17                           for, tracking, and accounting of, such purchases.

18                           **(ii)** Creative and talent costs, consistent with subparagraph (B).

19                           **(iii)** Advertising production costs, which may include television, radio,  
20                           internet, social media, and other commercial marketing venues.

21                           **(iv)** Testing and evaluation of advertising.

22                           **(v)** Evaluation of the effectiveness of the national media campaign.

23                           **(vi)** Costs of contracts to carry out activities authorized by this subsection.

24                           **(vii)** Partnerships with professional and civic groups, community-based  
25                           organizations, including faith-based organizations and culturally specific  
26                           organizations, and government organizations related to the national media  
27                           campaign.

28                           **(viii)** Entertainment industry outreach, interactive outreach, media  
29                           projects and activities, public information, news media outreach, corporate  
30                           sponsorship and participation, and professional sports associations and  
31                           military branch participation.

32                           **(ix)** Operational and management expenses.

33           **(B) SPECIFIC REQUIREMENTS.—**

34                           **(i) CREATIVE SERVICES.—**In using amounts for creative and talent costs  
35                           under subparagraph (A), the Director shall use creative services donated at  
36                           no cost to the Government wherever feasible and may only procure creative  
37                           services for advertising—

38                                   **(I)** responding to high-priority or emergent campaign needs that  
39                                   cannot timely be obtained at no cost; or



1 (II) intended to reach a minority, ethnic, or other special audience  
2 that cannot reasonably be obtained at no cost.

3 (ii) TESTING AND EVALUATION OF ADVERTISING.—In using amounts for  
4 testing and evaluation of advertising under subparagraph (A)(iv), the  
5 Director shall test all advertisements prior to use in the national media  
6 campaign to ensure that the advertisements are effective with the target  
7 audience and meet industry-accepted standards. The Director may waive this  
8 requirement for advertisements using not more than 10 percent of the  
9 purchase of advertising time purchased under this section in a fiscal year and  
10 not more than 10 percent of the advertising space purchased under this  
11 section in a fiscal year, if the advertisements respond to emergent and time-  
12 sensitive campaign needs or the advertisements will not be widely utilized in  
13 the national media campaign.

14 (iii) CONSULTATION.—For the planning of the campaign under paragraph  
15 (2), the Director may consult with—

16 (I) the Office for Victims of Crime, the Administration on Children,  
17 Youth and Families, and other related Federal Government entities;

18 (II) State, local, and Indian Tribal governments;

19 (III) the prevention of domestic violence, dating violence, sexual  
20 assault, or stalking, including national and local non-profits; and

21 (IV) communications professionals.

22 (iv) EVALUATION OF EFFECTIVENESS OF NATIONAL MEDIA CAMPAIGN.—In  
23 using amounts for the evaluation of the effectiveness of the national media  
24 campaign under subparagraph (A)(v), the Attorney General shall—

25 (I) designate an independent entity to evaluate by April 20 of each  
26 year the effectiveness of the national media campaign based on data  
27 from any relevant studies or publications, as determined by the  
28 Attorney General, including tracking and evaluation data collected  
29 according to marketing and advertising industry standards; and

30 (II) ensure that the effectiveness of the national media campaign is  
31 evaluated in a manner that enables consideration of whether the  
32 national media campaign has contributed to changes in attitude or  
33 behaviors among the target audience with respect to violence against  
34 women and such other measures of evaluation as the Attorney General  
35 determines are appropriate.

36 (4) ADVERTISING.—In carrying out this subsection, the Director shall ensure that  
37 sufficient funds are allocated to meet the stated goals of the national media campaign.

38 (5) RESPONSIBILITIES AND FUNCTIONS UNDER THE PROGRAM.—

39 (A) IN GENERAL.—The Director shall determine the overall purposes and  
40 strategy of the national media campaign.

41 (B) DIRECTOR.—



1 (i) **IN GENERAL.**—The Director shall approve—

2 (I) the strategy of the national media campaign;

3 (II) all advertising and promotional material used in the national  
4 media campaign; and

5 (III) the plan for the purchase of advertising time and space for the  
6 national media campaign.

7 (ii) **IMPLEMENTATION.**—The Director shall be responsible for  
8 implementing a focused national media campaign to meet the purposes  
9 described in paragraph (2) and shall ensure—

10 (I) information disseminated through the campaign is accurate and  
11 scientifically valid; and

12 (II) the campaign is designed using strategies demonstrated to be the  
13 most effective at achieving the goals and requirements of paragraph (2),  
14 which may include—

15 (aa) a media campaign, as described in paragraph (3);

16 (bb) local, regional, or population specific messaging;

17 (cc) the development of websites to publicize and disseminate  
18 information;

19 (dd) conducting outreach and providing educational resources  
20 for women;

21 (ee) collaborating with law enforcement agencies; and

22 (ff) providing support for school-based public health education  
23 classes to improve teen knowledge about the effects of violence  
24 against women.

25 (6) **PROHIBITIONS.**—None of the amounts made available under paragraph (3) may  
26 be obligated or expended for any of the following:

27 (A) To supplant current antiviolence against women community-based  
28 coalitions.

29 (B) To supplant pro bono public service time donated by national and local  
30 broadcasting networks for other public service campaigns.

31 (C) For partisan political purposes, or to express advocacy in support of or to  
32 defeat any clearly identified candidate, clearly identified ballot initiative, or  
33 clearly identified legislative or regulatory proposal.

34 (D) To fund advertising that features any elected officials, persons seeking  
35 elected office, cabinet level officials, or other Federal officials employed pursuant  
36 to schedule C of subpart C of title 5, Code of Federal Regulations.

37 (E) To fund advertising that does not contain a primary message intended to  
38 reduce or prevent violence against women.



1 (F) To fund advertising containing a primary message intended to promote  
2 support for the national media campaign or private sector contributions to the  
3 national media campaign.

4 (7) FINANCIAL AND PERFORMANCE ACCOUNTABILITY.—The Director shall cause to be  
5 performed—

6 (A) audits and reviews of costs of the national media campaign pursuant to  
7 section 4706 of title 41, United States Code; and

8 (B) an audit to determine whether the costs of the national media campaign are  
9 allowable under chapter 43 of title 41, United States Code.

10 (8) REPORT TO CONGRESS.—The Director shall submit on an annual basis a report to  
11 Congress that describes—

12 (A) the strategy of the national media campaign and whether specific objectives  
13 of the national media campaign were accomplished;

14 (B) steps taken to ensure that the national media campaign operates in an  
15 effective and efficient manner consistent with the overall strategy and focus of the  
16 national media campaign;

17 (C) plans to purchase advertising time and space;

18 (D) policies and practices implemented to ensure that Federal funds are used  
19 responsibly to purchase advertising time and space and eliminate the potential for  
20 waste, fraud, and abuse;

21 (E) all contracts entered into with a corporation, partnership, or individual  
22 working on behalf of the national media campaign;

23 (F) the results of any financial audit of the national media campaign;

24 (G) a description of any evidence used to develop the national media campaign;

25 (H) specific policies and steps implemented to ensure compliance with this  
26 subsection;

27 (I) a detailed accounting of the amount of funds obligated during the previous  
28 fiscal year for carrying out the national media campaign, including each recipient  
29 of funds, the purpose of each expenditure, the amount of each expenditure, any  
30 available outcome information, and any other information necessary to provide a  
31 complete accounting of the funds expended; and

32 (J) a review and evaluation of the effectiveness of the national media campaign  
33 strategy for the previous year.

34 (9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated  
35 to the Director to carry out this section \$5,000,000 for each of fiscal years 2020  
36 through 2029, to remain available until expended.

37 **SEC. 1413. TECHNICAL CORRECTION TO VICTIMS**  
38 **OF CRIME ACT.**



1 Section 1403(a)(1) of the Victims of Crime Act of 1984 (34 U.S.C. 20102(a)(1)) is  
2 amended by striking “paragraph (3)” and inserting “paragraph (4)”.

3 **SEC. 1414. ELIMINATING THE MARRIAGE DEFENSE**  
4 **TO STATUTORY RAPE.**

5 Section 2243(c) of title 18, United States Code, is amended—

6 (1) in paragraph (1), by striking “(1) In a” and inserting “In a”; and

7 (2) by striking paragraph (2).

8  
9 ~~\* 23 (c) Clerical Amendment.—The table of sections of chapter~~  
10 ~~88 of title 18, United States Code, is amended by inserting after~~  
11 ~~the item relating to section 1801 the following:~~

12 ~~“1802. Certain activities relating to intimate visual depictions.”.~~

13 **\*\* 32 SEC. 1410 1415. DEPUTY ASSISTANT ATTORNEY**  
14 **GENERAL ON CULTURALLY SPECIFIC COMMUNITIES**  
15 **WITHIN THE OFFICE OF JUSTICE PROGRAMS.**

16 (a) Establishment; Duties.—There shall be a Deputy Assistant Attorney General on  
17 Culturally Specific Communities within the Office of Justice Programs who shall, under  
18 the guidance and authority of the Director of the Office of Justice Programs—

19 (1) oversee the administration of grants related to culturally specific (as defined in  
20 section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)))  
21 services and contracts with culturally specific organizations;

22 (2) coordinate development of Federal policy, protocols, and guidelines on matters  
23 relating to domestic violence, dating violence, sexual assault, and stalking (as those  
24 terms are defined in section 40002(a) of the Violence Against Women Act of 1994 (34  
25 U.S.C. 12291(a)), in culturally specific communities;

26 **\*\* 33** (3) advise the Assistant Attorney General **of for** the Office of Justice Programs  
27 concerning policies, legislation, implementation of laws, and other issues relating to  
28 domestic violence, dating violence, sexual assault, and stalking in culturally specific  
29 communities;

30 **\*\* 34** (4) provide technical assistance, coordination, and support to other offices and  
31 bureaus in the Department of Justice to develop policy and to enforce Federal laws relating  
32 to domestic violence, dating violence, sexual assault, and stalking in culturally specific  
33 communities;

34 **\*\* 35** (5) ensure that appropriate technical assistance, developed and provided by entities  
35 having expertise in culturally specific **communities**, is made available to grantees and



1 potential grantees proposing to serve culturally specific communities; and

2 **\*\* 36** ~~“(6)(6)~~ ensure access to grants and technical assistance for culturally specific  
3 organizations and analyze the distribution of funding in order to identify barriers for  
4 culturally specific ~~organizations.”~~ **organizations.**

5 **(b) Qualifications.—The Deputy Assistant Attorney General on Culturally Specific**  
6 **Communities shall be an individual with—**

7 **(1) personal, lived, and work experience from a culturally specific community; and**

8 **(2) a demonstrated history of and expertise in addressing domestic violence or**  
9 **sexual assault in a nongovernmental agency.**

10 **(c) Initial Appointment.—Not later than 120 days after the date of enactment of this Act,**  
11 **the Director of the Office of Justice Programs shall appoint an individual as Deputy**  
12 **Assistant Attorney General on Culturally Specific Communities.**

13 **SEC. 1416** ~~SEC. 1414.~~ **TASK FORCE ON SEXUAL**  
14 **VIOLENCE IN EDUCATION.**

15 (a) Task Force on Sexual Violence in Education.—Not later than September 1, 2022, the  
16 Secretary of Education, the Secretary of Health and Human Services, and the Attorney General  
17 shall establish a joint interagency task force to be known as the “Task Force on Sexual Violence  
18 in Education” that shall—

19 (1) provide pertinent information to the Secretary of Education, **the** Attorney General,  
20 Congress, and the public with respect to campus sexual violence prevention, investigations,  
21 and responses, including the creation of consistent, public complaint processes for  
22 violations of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and  
23 section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f));

24 (2) provide recommendations to educational institutions for establishing sexual assault  
25 prevention and response teams;

26 (3) develop recommendations for educational institutions on providing survivor  
27 resources, including ~~healthcare~~ **health care**, sexual assault kits, sexual assault nurse  
28 examiners, culturally responsive and inclusive standards of care, trauma-informed services,  
29 and access to confidential advocacy and support services;

30 (4) develop recommendations in conjunction with student groups at greater statistical risk  
31 of perpetuating rape culture, such as fraternities and athletic departments, for best practices  
32 for responses **to** and prevention ~~with respect to~~ **of** sexual violence and dating violence for  
33 educational institutions, taking into consideration an institution’s size and resources;

34 (5) develop recommendations for educational institutions on sex education, as  
35 appropriate, training for school staff, and various equitable discipline models;

36 (6) develop recommendations on culturally responsive and inclusive approaches to  
37 supporting survivors, which include consideration of race, ethnicity, national origin,  
38 immigrant status, gender identity, sexual orientation, ability, disability, socio-economic  
39 status, exposure to trauma, and other compounding factors;



1 (7) solicit periodic input from a diverse group of survivors, trauma specialists, advocates  
2 from national, State, and local anti-sexual violence advocacy organizations, institutions of  
3 higher education, and other public stakeholders;

4 (8) assess the Department of Education's ability under section 902 of the Education  
5 Amendments of 1972 (20 U.S.C. 1682) to levy intermediate fines for noncompliance with  
6 title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the advisability  
7 of additional remedies for such noncompliance, in addition to the remedies already  
8 available under Federal law; and

9 (9) create a plan described in subsection (c).

10 (b) Personnel Details.—

11 (1) AUTHORITY TO DETAIL.—Notwithstanding any other provision of law, the head of a  
12 component of any Federal agency **that is funded for which appropriations are authorized**  
13 **under the Violence Against Women Act of 1994 (42(34 U.S.C. 13925 et seq.), or any**  
14 **amendments made by that Act,** may detail an officer or employee of such component to  
15 the Task Force on Sexual Violence in Education or to the Secretary of Education to assist  
16 the Task Force with the duties described in subsection (a), as jointly agreed to by the head  
17 of such component and the Task Force.

18 (2) **BASIS FOR TERMS OF** DETAIL.—A personnel detail made under paragraph (1) may be  
19 made—

20 (A) for a period of not more than 3 years; and

21 (B) on a reimbursable or nonreimbursable basis.

22 (c) Additional Plan.—Not later than 90 days after the date on which the Task Force on Sexual  
23 Violence in Education is established under subsection (a), the Task Force shall submit to  
24 Congress recommendations for recruiting, retaining, and training a highly-qualified workforce  
25 employed by the Department of Education to carry out investigation of complaints alleging a  
26 violation of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) or section  
27 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)), and enforcement of such title IX  
28 (20 U.S.C. 1681 et seq.) or such section 485(f) (20 U.S.C. 1092(f)), with respect to sexual  
29 violence in education. **Such plan, which** shall include—

30 (1) an assessment to identify **current** gaps or challenges **in** carrying out such investigation  
31 and enforcement, which may include surveying **the** current investigative workforce to  
32 solicit feedback on areas in need of improvement;

33 (2) an examination of issues of recruiting, retention, and the professional development of  
34 **such the current investigative** workforce, including the possibility of providing retention  
35 bonuses or other forms of compensation for the purpose of ensuring the Department of  
36 Education has the capacity, in both personnel and skills, needed to properly perform its  
37 mission and provide adequate oversight of educational institutions;

38 (3) an assessment of the benefits of outreach and training with both law enforcement  
39 agencies and educational institutions with respect to such workforce;

40 (4) an examination of best practices for making educational institutions aware of the most  
41 effective campus sexual violence prevention, investigation, and response practices and



1 identifying areas where more research should be conducted; and

2 (5) strategies for addressing such other matters as the Secretary of Education considers  
3 necessary to sexual violence prevention, investigation, and responses.

4 (d) Annual Report.—~~The Reporting.—The~~ Task Force on Sexual Violence in Education shall  
5 report submit to Congress on an annual basis, and make publicly available, a an annual report  
6 of its activities and any update of the plan required under subsection (c), including including—

7 (1) the number of complaints received regarding sexual violence (including violence on  
8 the basis of sexual orientation and gender identity), at educational institutions;

9 (2) the number of open investigations, of sexual violence at educational institutions;

10 (3) the number of such complaints that continued to resolution;;

11 (4) the number of such complaints resolved using informal resolution;;

12 (5) the average time to complete such an investigation;;

13 (6) the number of such investigations initiated based on complaints;; and

14 (7) the number of such investigations initiated by the Department of Education.

15 (e) Definitions.—In this section:

16 (1) ~~THE EDUCATIONAL INSTITUTION.—The~~ term “educational institution” includes an  
17 institution of higher education, an elementary school, or a secondary school.

18 (2) ~~THE ELEMENTARY SCHOOL; SECONDARY SCHOOL.—The~~ terms “elementary school”  
19 and “secondary school” have the meanings given the terms in section 9101 of the  
20 Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

21 (3) ~~THE INSTITUTION OF HIGHER EDUCATION.—The~~ term “institution of higher  
22 education” has the meaning given the term in section 102 of the Higher Education Act of  
23 1965 (20 U.S.C. 1002).

## 24 SEC. 1415. SURVIVORS’ BILL OF RIGHTS. 1417. BREE’S 25 LAW.

26 (a) Short Title.—This section may be cited as “Bree’s Law”.

27 (b) Teen Dating Violence Prevention.—Section 1708 of the Public Health Service Act (42  
28 U.S.C. 300u-7) is amended—

29 (1) by striking subsection (c) and inserting the following:

30 “(c) Certain Demonstration Projects.—

31 “(1) IN GENERAL.—In carrying out subsection (b)(3), the Secretary may make grants  
32 to carry out demonstration projects for the purpose of improving adolescent health,  
33 including—

34 “(A) projects to train health care providers in providing services to adolescents;  
35 and

36 “(B) projects to reduce the incidence of violence among adolescents,



1 particularly violence related to teen dating, which shall include projects to  
2 develop and implement educational program to increase abuse awareness and  
3 prevention.

4 “(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out  
5 paragraph (1), there are authorized to be appropriated \$10,000,000 for each of fiscal  
6 years 2022 through 2026.”; and

7 (2) by adding at the end the following:

8 “(g) Interagency Work Group.—

9 “(1) ESTABLISHMENT.—The Secretary shall establish the Federal Interagency Work  
10 Group on Teen Dating Violence (referred to in this section as the ‘Work Group’).

11 “(2) IN GENERAL.—

12 “(A) COMPOSITION.—Not later than 120 days after the date of enactment of  
13 Bree’s Law, the Secretary shall appoint representatives to the Work Group from  
14 the Administration for Children and Families, the Centers for Disease Control  
15 and Prevention, the Health Resources and Services Administration, the  
16 Department of Education, the Department of Justice, and other Federal agencies  
17 as determined appropriate by the Secretary.

18 “(B) CONSULTATION.—The Work Group shall consult with—

19 “(i) experts at the State, Tribal, and local levels with relevant backgrounds  
20 in reducing and preventing the incidence of teen dating violence;

21 “(ii) victims of teen dating violence; and

22 “(iii) family members of teens who were killed by a dating partner.

23 “(3) DUTIES.—The Work Group shall—

24 “(A) examine all Federal efforts directed towards reducing and preventing teen  
25 dating violence;

26 “(B) identify strategies, resources, and supports to improve State, Tribal, and  
27 local responses to the incidence of teen dating violence;

28 “(C) make recommendations to Congress for improving Federal programs and  
29 efforts and coordination across such programs and efforts to reduce and prevent  
30 teen dating violence; and

31 “(D) make recommendations for educating middle and high school students on  
32 teen dating violence.

33 “(4) ANNUAL REPORT TO SECRETARY.—The Work Group shall annually prepare and  
34 submit to the Secretary, the Committee on Health, Education, Labor, and Pensions of  
35 the Senate, and the Committee on Education and Labor of the House of  
36 Representatives, a report on the activities carried out by the Work Group under  
37 subsection (c), including recommendations to reduce and prevent teen dating  
38 violence.”.

39



1 ~~\* 29 (a) In General. — The Attorney General shall make grants to~~  
2 ~~States that have in place a law that provides to sexual assault~~  
3 ~~survivors the rights, at a minimum, under section 3772 of title~~  
4 ~~18, United States Code.~~

5  
6 ~~\* 30 (b) Grant Amount. — Subject to the availability of~~  
7 ~~appropriations, a grant to a State under this section shall be~~  
8 ~~equal to 10 percent of the average of the amount of funding of~~  
9 ~~the 3 most recent awards that the State received under part T of~~  
10 ~~title I of the Omnibus Crime Control and Safe Streets Act of~~  
11 ~~1968 (34 U.S.C. 10441 et seq.) (commonly referred to as the~~  
12 ~~“STOP Violence Against Women Formula Grant Program”).~~

13  
14 ~~\* 31 (c) Application. — A State seeking a grant under this section~~  
15 ~~shall submit an application to the Attorney General at such time,~~  
16 ~~in such manner, and containing such information as the Attorney~~  
17 ~~General may reasonably require, including information about the~~  
18 ~~law described in subsection (a).~~

19 ~~SEC. 1416. REPORT ON SEXUAL ASSAULT RESPONSE~~  
20 ~~TEAMS AT HOSPITALS.~~

21 ~~In order to be eligible for funds made available by the~~  
22 ~~Department of Justice under this Act or an amendment made by~~  
23 ~~this Act, a State or unit of local government shall submit to the~~  
24 ~~Attorney General a report, on an annual basis, which contains~~  
25 ~~the following:~~

26 ~~(1) The number of hospitals in the jurisdiction that have sexual~~  
27 ~~assault response teams (or their equivalent).~~

28 ~~(2) The average response time of each such team in responding~~



1 ~~to the needs, including the emotional needs, of rape and sexual~~  
2 ~~assault victims in the emergency room.~~

### 3 TITLE XV—CYBERCRIME ENFORCEMENT

#### 4 SEC. 1501. LOCAL LAW ENFORCEMENT GRANTS FOR 5 ENFORCEMENT OF CYBERCRIMES.

##### 6 (a) Definitions.—In this section:

7 **\*\* 37 (2) The(1) COMPUTER.—The** term “computer” includes a computer network and  
8 an interactive electronic device.

9 **(2) CYBERCRIME AGAINST INDIVIDUALS.—The term “cybercrime against**  
10 **individuals”—**

11 **(A) means a criminal offense applicable in the area under the jurisdiction of the**  
12 **relevant State, Indian Tribe, or unit of local government that involves the use of a**  
13 **computer to cause personal harm to an individual, such as the use of a computer**  
14 **to harass, threaten, stalk, extort, coerce, cause fear, intimidate, without consent**  
15 **distribute intimate images of, or violate the privacy of, an individual, except that**  
16 **use of a computer need not be an element of such an offense; and**

17 **\*\* 38 (B) the term** does not include the use of a computer to cause harm to a  
18 commercial entity, government agency, or non-natural person.

19 **(3) INDIAN TRIBE; STATE; TRIBAL GOVERNMENT; UNIT OF LOCAL GOVERNMENT.—The**  
20 **terms “Indian Tribe”, “State”, “Tribal government”, and “unit of local government”**  
21 **have the meanings given such terms in section 40002(a) of the Violence Against**  
22 **Women Act of 1994 (34 U.S.C. 12291(a)), as amended by this Act.**

23 **(b) Authorization of Grant Program.—Subject(a) In General.—Subject** to the availability  
24 of appropriations, the Attorney General shall award grants under this section to States, **Indian**  
25 **Tribes,** and units of local government for the prevention, enforcement, and prosecution of  
26 cybercrimes against individuals.

##### 27 **(b)(c) Application.—**

28 **(1) IN GENERAL.—To request a grant under this section, the chief executive officer of a**  
29 **State, Tribal government,** or unit of local government shall submit an application to the  
30 Attorney General **within not later than** 90 days after the date on which funds to carry out  
31 this section are appropriated for a fiscal year, in such form as the Attorney General may  
32 require.

33 **Such application shall include the following:**

34 **(2) CONTENTS.—An application submitted under paragraph (1) shall include the**  
35 **following:**

36 **(A)** A certification that Federal funds made available under this section will not be  
37 used to supplant State, **Tribal,** or local funds, but will be used to increase the amounts  
38 of such funds that would, in the absence of Federal funds, be made available for law



1 enforcement activities.

2 (B) An assurance that, not **fewer later** than 30 days before the application (or any  
3 amendment to the application) was submitted to the Attorney General, the application  
4 (or amendment) was submitted for review to the governing body of the State, **Tribe**, or  
5 unit of local government (or to an organization designated by that governing body).

6 (C) An assurance that, before the application (or any amendment to the application)  
7 was submitted to the Attorney General—

8 (i) the application (or amendment) was made public; and

9 (ii) an opportunity to comment on the application (or amendment) was  
10 provided to citizens and to neighborhood or community-based organizations, to  
11 the extent applicable law or established procedure makes such an opportunity  
12 available.

13 (D) An assurance that, for each fiscal year covered by an application, the applicant  
14 shall maintain and report such data, records, and information (programmatic and  
15 financial) as the Attorney General may reasonably require.

16 (E) A certification, made in a form acceptable to the Attorney General and executed  
17 by the chief executive officer of the applicant (or by another officer of the applicant, if  
18 qualified under regulations promulgated by the Attorney General), that—

19 (i) the programs to be funded by the grant meet all the requirements of this  
20 section;

21 (ii) all the information contained in the application is correct;

22 (iii) there has been appropriate coordination with affected agencies; and

23 (iv) the applicant will comply with all provisions of this section and all other  
24 applicable Federal laws.

25 (F) A certification that the State, **Tribe**, or in the case of a unit of local government,  
26 the State in which the unit of local government is located, has in effect criminal laws  
27 which prohibit cybercrimes against individuals.

28 (G) A certification that any equipment described in subsection ~~(e)(7)(d)(8)~~  
29 purchased using grant funds awarded under this section will be used primarily for  
30 investigations and forensic analysis of evidence in matters involving cybercrimes  
31 against individuals.

32 ~~(e)(d)~~ Use of Funds.—Grants awarded under this section may **only** be used **only** for programs  
33 that provide—

34 (1) training for State, **Tribal**, or local law enforcement personnel relating to cybercrimes  
35 against individuals, including—

36 (A) training such personnel to identify and protect victims of cybercrimes against  
37 individuals;

38 (B) training such personnel to utilize Federal, State, **Tribal**, local, and other  
39 resources to assist victims of cybercrimes against individuals;



1 (C) training such personnel to identify and investigate cybercrimes against  
2 individuals;

3 (D) training such personnel to enforce and utilize the laws that prohibit cybercrimes  
4 against individuals;

5 (E) training such personnel to utilize technology to assist in the investigation of  
6 cybercrimes against individuals and enforcement of laws that prohibit such crimes; and

7 (F) the payment of overtime incurred as a result of such training;

8 (2) training for State, **Tribal**, or local prosecutors, judges, and judicial personnel, relating  
9 to cybercrimes against individuals, including—

10 (A) training such personnel to identify, investigate, prosecute, or adjudicate  
11 cybercrimes against individuals;

12 (B) training such personnel to utilize laws that prohibit cybercrimes against  
13 individuals;

14 (C) training such personnel to utilize Federal, State, **Tribal**, local, and other  
15 resources to assist victims of cybercrimes against individuals; and

16 (D) training such personnel to utilize technology to assist in the prosecution or  
17 adjudication of acts of cybercrimes against individuals, including the use of technology  
18 to protect victims of such crimes;

19 (3) training for State, **Tribal**, or local emergency dispatch personnel relating to  
20 cybercrimes against individuals, including—

21 (A) training such personnel to identify and protect victims of cybercrimes against  
22 individuals;

23 (B) training such personnel to utilize Federal, State, **Tribal**, local, and other  
24 resources to assist victims of cybercrimes against individuals;

25 (C) training such personnel to utilize technology to assist in the identification of and  
26 response to cybercrimes against individuals; and

27 (D) the payment of overtime incurred as a result of such training;

28 (4) assistance to State, **Tribal**, or local law enforcement agencies in enforcing laws that  
29 prohibit cybercrimes against individuals, including expenses incurred in performing  
30 enforcement operations, such as overtime payments;

31 (5) assistance to State, **Tribal**, or local law enforcement agencies in educating the public  
32 in order to prevent, deter, and identify violations of laws that prohibit cybercrimes against  
33 individuals;

34 (6) assistance to State, **Tribal, or local law enforcement agencies to support the**  
35 **placement of victim assistants to serve as liaisons between victims of cybercrimes**  
36 **against individuals and personnel of law enforcement agencies;**

37 (7) **assistance to State, Tribal,** or local law enforcement agencies to establish task forces  
38 that operate solely to conduct investigations, forensic analyses of evidence, and  
39 prosecutions in matters involving cybercrimes against individuals;



1 ~~(7)~~(8) assistance to State, Tribal, or local law enforcement agencies and prosecutors in  
2 acquiring computers, computer equipment, and other equipment necessary to conduct  
3 investigations and forensic analysis of evidence in matters involving cybercrimes against  
4 individuals, including expenses incurred in the training, maintenance, or acquisition of  
5 technical updates necessary for the use of such equipment for the duration of a reasonable  
6 period of use of such equipment;

7 ~~(8)~~(9) assistance in the facilitation and promotion of sharing, with State, Tribal, and local  
8 law enforcement officers agencies and prosecutors, of the expertise and information of  
9 Federal law enforcement agencies about the investigation, analysis, and prosecution of  
10 matters involving laws that prohibit cybercrimes against individuals, including the use of  
11 multijurisdictional task forces; or

12 ~~(9)~~(10) assistance to State, Tribal, and local law enforcement and prosecutors in  
13 processing interstate extradition requests for violations of laws involving cybercrimes  
14 against individuals, including expenses incurred in the extradition of an offender from one  
15 State to another.

16 ~~(d) Report~~(e) Reports to the Secretary.—On Attorney General.—On the date that is 1 year  
17 after the date on which a State, Indian Tribe, or unit of local government receives a grant under  
18 this section, and annually thereafter, the chief executive officer of such the State, Tribal  
19 government, or unit of local government shall submit to the Attorney General a report which  
20 contains—

21 (1) a summary of the activities carried out during the previous year with any grant  
22 received under this section by such State, Indian Tribe, or unit of local government;

23 (2) an evaluation of the results of such activities; and

24 (3) such other information as the Attorney General may reasonably require.

25 ~~(e) Report~~(f) Reports to Congress.—Not later than November 1 of each even-numbered fiscal  
26 year, the Attorney General shall submit to the Committee on the Judiciary of the House of  
27 Representatives and the Committee on the Judiciary of the Senate a report that contains a  
28 compilation of the information contained in the report reports submitted under subsection ~~(d)~~(e).

29 ~~(f)~~(g) Authorization of Appropriations.—

30 (1) IN GENERAL.—There are authorized to be appropriated to carry out this section  
31 \$20,000,000 for each of fiscal years 2022 through 2026.

32 (2) LIMITATION.—Of the amount made available under paragraph (1) in any fiscal year,  
33 not more than 5 percent may be used for evaluation, monitoring, technical assistance,  
34 salaries, and administrative expenses.

35 ~~(g) Definitions.—In this section:~~

36 ~~(1) The term “cybercrimes against individuals” means the~~  
37 ~~criminal offenses applicable in the relevant State or unit of local~~  
38 ~~government that involve the use of a computer to cause personal~~  
39 ~~harm to an individual, such as the use of a computer to harass,~~



1 ~~threaten, stalk, extort, coerce, cause fear, intimidate, without~~  
2 ~~consent distribute intimate images of, or violate the privacy of,~~  
3 ~~an individual, except that—~~

4 ~~(A) use of a computer need not be an element of such an~~  
5 ~~offense; and~~

6 ~~(B) such term does not include the use of a computer to cause~~  
7 ~~harm to a commercial entity, government agency, or any non-~~  
8 ~~natural persons.~~

9  
10 ~~\* 37 (2) The term “computer” includes a computer network and~~  
11 ~~an interactive electronic device.~~

## 12 SEC. 1502. NATIONAL RESOURCE CENTER GRANT.

### 13 (a) Definitions.—In this section:

14 (1) **CYBERCRIME AGAINST INDIVIDUALS.**—The term “cybercrime against individuals”  
15 has the meaning given such term in section 1501.

16 (2) **ELIGIBLE ENTITY.**—The term “eligible entity” means a nonprofit private  
17 organization that—

18 (A) **focuses on cybercrimes against individuals;**

19 **\*\* 39 (A)(B)** provides documentation to the Attorney General demonstrating  
20 experience working directly on issues of cybercrimes against individuals; and

21 (C) **includes on the organization’s advisory board representatives who—**

22 (i) **have a documented history of working directly on issues of cybercrimes**  
23 **against individuals;**

24 (ii) **have a history of working directly with victims of cybercrimes against**  
25 **individuals; and**

26 (iii) **are geographically and culturally diverse.**

27 (b) **Authorization of Grant Program.**—~~Subject(a) In General.~~—Subject to the availability  
28 of appropriations, the Attorney General shall award a grant under this section to an eligible entity  
29 for the purpose of the establishment and maintenance of a National Resource Center on  
30 Cybercrimes Against Individuals to provide resource information, training, and technical  
31 assistance to improve the capacity of individuals, organizations, governmental entities, and  
32 communities to prevent, enforce, and prosecute cybercrimes against individuals.

33 (c) **Application.**—



1 **(1) IN GENERAL.—**~~To (b) Application.—~~To request a grant under this section, an eligible  
2 entity shall submit an application to the Attorney General not later than 90 days after the  
3 date on which funds to carry out this section are appropriated for fiscal year 2022 in such  
4 form as the Attorney General may require.

5 ~~Such application shall include the following:~~**(2) CONTENTS.—An application submitted**  
6 **under paragraph (1) shall include the following:**

7 ~~(A)~~**(A)** An assurance that, for each fiscal year covered by ~~an~~ **the** application, the  
8 applicant ~~shall~~ **will** maintain and report such data, records, and information  
9 (programmatic and financial) as the Attorney General may reasonably require.

10 ~~(B)~~**(B)** A certification, made in a form acceptable to the Attorney General, that—

11 ~~(A)(i)~~**(i)** the programs funded by the grant meet all the requirements of this  
12 section;

13 ~~(B)(ii)~~**(ii)** all the information contained in the application is correct; and

14 ~~(C)(iii)~~**(iii)** the applicant will comply with all provisions of this section and all  
15 other applicable Federal laws.

16 ~~(e)(d)~~**(d)** Use of Funds.—The eligible entity awarded a grant under this section shall use such  
17 amounts for the establishment and maintenance of a National Resource Center on Cybercrimes  
18 Against Individuals, which shall—

19 (1) offer a comprehensive array of technical assistance and training resources to Federal,  
20 State, and local governmental agencies, community-based organizations, and other  
21 professionals and interested parties; related to cybercrimes against individuals, including  
22 programs and research related to victims;

23 (2) maintain a resource library which shall collect, prepare, analyze, and disseminate  
24 information and statistics related to—

25 (A) the incidence of cybercrimes against individuals;

26 (B) the enforcement; and prosecution of laws relating to cybercrimes against  
27 individuals; and

28 (C) the provision of supportive services and resources for victims, **including victims**  
29 **from underserved populations,** of cybercrimes against individuals; and

30 (3) conduct research related to—

31 (A) the causes of cybercrimes against individuals;

32 (B) the effect of cybercrimes against individuals on victims of such crimes; and

33 (C) model solutions to prevent or deter cybercrimes against individuals or to enforce  
34 the laws relating to cybercrimes against individuals.

35 ~~(d)(e)~~**(e)** Duration of Grant.—

36 (1) ~~IN GENERAL.—THE GENERAL.—~~**A** grant awarded under this section shall be awarded  
37 for a period of 5 years.

38 (2) **RENEWAL.—**A grant under this section may be renewed for additional 5-year periods



1 if the Attorney General determines that the funds made available to the recipient were used  
2 in a manner described in subsection ~~(e)~~(d), and if the recipient resubmits an application  
3 described in subsection ~~(b)~~(c) in such form, and at such time, as the Attorney General may  
4 reasonably require.

5 ~~(e)~~(f) Subgrants.—The eligible entity awarded a grant under this section may make subgrants  
6 to other nonprofit private organizations with relevant subject matter expertise in order to  
7 establish and maintain the National Resource Center on Cybercrimes Against Individuals in  
8 accordance with subsection ~~(e)~~.(d).

9 ~~(f) Report to the Secretary.~~—On ~~(g) Reports to the Attorney General.~~—On the date that is 1  
10 year after the date on which an eligible entity receives a grant under this section, and annually  
11 thereafter for the duration of the grant period, the entity shall submit to the Attorney General a  
12 report which contains—

13 (1) a summary of the activities carried out under the grant program during the previous  
14 year;

15 (2) an evaluation of the results of such activities; and

16 (3) such other information as the Attorney General may reasonably require.

17 ~~(g) Report~~(h) Reports to Congress.—Not later than November 1 of each even-numbered  
18 fiscal year, the Attorney General shall submit to the Committee on the Judiciary of the House of  
19 Representatives and the Committee on the Judiciary of the Senate a report that contains a  
20 compilation of the information contained in the ~~report~~ reports submitted under subsection ~~(d)~~(g).

21 ~~(h)~~(i) Authorization of Appropriations.—There are authorized to be appropriated to carry out  
22 this section \$4,000,000 for each of fiscal years 2022 through 2026.

23 ~~(i) Definitions.~~—In this section:

24 ~~(1) Cybercrimes against individuals.~~—The term “cybercrimes  
25 against individuals” has the meaning given such term in section  
26 1501(g).

27 ~~(2) Eligible entity.~~—The term “eligible entity” means a  
28 nonprofit private organization that focuses on cybercrimes  
29 against individuals and that—

30  
31 ~~\* 39 (A) provides documentation to the Attorney General~~  
32 ~~demonstrating experience working directly on issues of~~  
33 ~~cybercrimes against individuals; and~~

34 ~~(B) includes on the entity’s advisory board representatives who~~



1 ~~have a documented history of working directly on issues of~~  
2 ~~cybercrimes against individuals and who are geographically and~~  
3 ~~culturally diverse.~~

4 SEC. 1503. NATIONAL STRATEGY, CLASSIFICATION,  
5 AND REPORTING ON CYBERCRIME.

6 (a) Definitions.—In this section:

7 (1) COMPUTER.—The term “computer” includes a computer network and any interactive  
8 electronic device.

9 (2) CYBERCRIME AGAINST INDIVIDUALS.—The term “cybercrime against individuals” **has**  
10 **the meaning given the term in section 1501.** means a Federal, State, or local criminal  
11 offense that involves the use of a computer to cause personal harm to an individual, such as  
12 the use of a computer to harass, threaten, stalk, extort, coerce, cause fear, intimidate,  
13 without consent distribute intimate images of, or violate the privacy of, an individual,  
14 except that—

15 (A) use of a computer need not be an element of the offense; and

16  
17 ~~\* 38 (B) the term does not include the use of a computer to cause harm to a commercial entity,~~  
18 ~~government agency, or non-natural person.~~

19 (b) National Strategy.—The Attorney General shall develop a national strategy to—

20 (1) reduce the incidence of cybercrimes against individuals;

21 (2) coordinate investigations of cybercrimes against individuals by Federal law  
22 enforcement agencies; **and**

23  
24 (3) increase the number of Federal prosecutions of cybercrimes against individuals; **and**

25 **(4) develop an evaluation process that measures rates of cybercrime victimization**  
26 **and prosecutorial rates among Tribal and culturally specific communities.;**

27  
28 (c) Classification of Cybercrimes Against Individuals for Purposes of Crime Reports.—In  
29 accordance with the authority of the Attorney General under section 534 of title 28, United States  
30 Code, the Director of the Federal Bureau of Investigation shall—

31 (1) design and create within the Uniform Crime Reports a category for offenses that  
32 constitute cybercrimes against individuals;

33 (2) to the extent feasible, within the category established under paragraph (1), establish  
34 subcategories for each type of cybercrime against individuals that is an offense under  
35 Federal or State law;

36 (3) classify the category established under paragraph (1) as a Part I crime in the Uniform



1 Crime Reports; and

2 (4) classify each type of cybercrime against individuals that is an offense under Federal  
3 or State law as a Group A offense for the purpose of the National Incident-Based Reporting  
4 System.

5 (d) Annual Summary.—The Attorney General shall publish an annual summary of the  
6 information reported in the Uniform Crime Reports and the National Incident-Based Reporting  
7 System relating to cybercrimes against individuals, **including an evaluation of the**  
8 **implementation process for the national strategy developed under subsection (b) and**  
9 **outcome measurements on its impact on Tribal and culturally specific communities.**

## 10 TITLE XVI—KEEPING CHILDREN SAFE FROM FAMILY 11 VIOLENCE

### 12 SEC. 1601. SHORT TITLE.

13 This title may be cited as the “Keeping Children Safe From Family Violence Act” or  
14 “Kayden’s Law”.

### 15 SEC. 1602. FINDINGS.

16 Congress finds the following:

17 (1) Approximately **one 1** in 15 children **are is** exposed **each year** to domestic violence  
18 **each year.**

19 (2) Most child abuse is perpetrated in the family and by a parent. Intimate partner  
20 violence and child abuse overlap in the same families at rates **of between 30 to and 60**  
21 percent. A child’s risk of abuse increases after a perpetrator of intimate partner violence  
22 separates from **their a** domestic partner, even when the perpetrator **had has** not previously  
23 directly abused the child. Children who have witnessed intimate partner violence are  
24 approximately **four 4** times more likely to experience direct child maltreatment than  
25 children who have not witnessed intimate partner violence.

26 (3) More than 75 percent of child sexual abuse is perpetrated by a family member or a  
27 person known to the child. **U.S. Data of the** Department of Justice **data** shows that family  
28 members are **49 percent, or** almost half (**49 percent**), of the perpetrators of **crimes against**  
29 child sex assault victims **under age 6 younger than 6 years of age.**

30 (4) Research suggests a child’s exposure to a batterer is among the strongest indicators of  
31 risk of incest victimization. One study found **that** female children **whose with** fathers **were**  
32 **who are** batterers of **the mother were six and a half their mothers were 6.5** times more  
33 likely to experience father-daughter incest than female children who do not have **an** abusive  
34 **father fathers.**

35 (5) Child abuse is a major public health issue in the United States. Total lifetime financial  
36 costs associated with just 1 year of confirmed cases of child maltreatment, **including child**  
37 **physical abuse, sexual abuse, psychological abuse and neglect) results in \$124 billion, and**  
38 **neglect, result in \$124,000,000,000** in annual costs to the **U.S. economy of the United**  
39 **States, or approximately one 1** percent of the gross domestic product **of the United States.**



1 (6) Empirical research indicates that **courts regularly discount** allegations of child  
2 physical and sexual abuse ~~are regularly discounted by courts when~~ **when those allegations**  
3 **are** raised in child custody cases, ~~with fewer.~~ **Courts believed less** than ~~one-fourth\1/4\~~ of  
4 claims that a father has committed child physical or sexual abuse ~~believed; and where the.~~  
5 **With respect to cases in which an** allegedly abusive parent claimed the mother was  
6 ~~“alienating”~~ **“alienated”** the child, **courts believed** only 1 out of 51 claims of sexual  
7 molestation by a father ~~were believed.~~ Independent research indicates that child sexual  
8 abuse allegations are credible **between 50 to and** 70 percent of the time.

9 (7) Empirical research shows that alleged or known abusive parents are often granted  
10 custody or unprotected parenting time by courts. Approximately ~~one-third\1/3\~~ of parents  
11 alleged to have committed child abuse took primary custody from the protective parent  
12 reporting the abuse, placing children at ongoing risk.

13 (8) Researchers have documented nearly 800 ~~children murdered~~ **child murders** in the  
14 United States since 2008 **committed** by a divorcing or separating parent. More than 100 of  
15 these child murders are known to have occurred after a court ordered the child ~~into to have~~  
16 contact with the dangerous parent over the objection of a safe parent or caregiver.

17 (9) Scientifically unsound theories that treat ~~mothers’~~ **mothers’** abuse allegations **of mothers** as  
18 likely false attempts to undermine ~~the father~~ **fathers** are frequently applied in family court  
19 to minimize or deny ~~parents’ and children’s~~ reports of abuse **of parents and children.**  
20 Many experts who testify against abuse allegations lack expertise in the relevant type of  
21 alleged abuse, relying instead on unsound and unproven theories.

22 (10) Judges presiding over custody cases ~~with~~ **involving** allegations of child abuse, child  
23 sexual abuse, and domestic violence are rarely required to receive training on these subjects,  
24 ~~nor have~~ **and** most States **have not** established standards for such ~~trainings~~ **training.**

## 25 SEC. 1603. PURPOSES.

26 The purposes of this title are ~~to: to—~~

27 (1) increase the priority given to child safety in any ~~private State~~ **State court divorce,**  
28 **separation, visitation, paternity, child support, or family custody** court proceeding  
29 affecting ~~children’s care and custody~~ **the custody and care of children,** excluding child  
30 protective ~~and social service,~~ **abuse, or neglect proceedings and juvenile justice**  
31 proceedings;

32 (2) strengthen ~~courts’~~ **the** abilities ~~to~~ **of courts to—**

33 **(A)** recognize and adjudicate domestic violence and child abuse allegations based on  
34 valid, admissible evidence; and

35 ~~to~~ **(B)** enter orders ~~which~~ **that** protect and minimize the risk of harm to children ~~as~~  
36 ~~the first priority;~~ and

37 (3) ensure that professional personnel involved in cases containing **domestic violence or**  
38 **child** abuse allegations receive trauma-informed and culturally appropriate training on the  
39 dynamics, signs, and impact of domestic violence and child abuse, including child sexual  
40 abuse.



1 **SEC. 1604. DEFINITION OF COVERED FORMULA**  
2 **GRANT. INCREASED FUNDING FOR STOP GRANTS.**

3 The term “covered formula grant” means a grant under part T **Section 2007** of title I of the  
4 Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10441 et seq.) (commonly  
5 referred to as the “STOP Violence Against Women Formula Grant Program”). **10446** is  
6 **amended by adding at the end the following:**

7 **SEC. 1605. INCREASED FUNDING FOR FORMULA GRANTS AUTHORIZED. “(k)**  
8 **Grant Increases for States With Certain Child Custody Proceeding Laws and Standards.—**

9 **(a) In General.—The “(1) DEFINITIONS.—In this subsection:**

10 **“(A) CHILD CUSTODY PROCEEDING.—The term ‘child custody proceeding’—**

11 **“(i) means a private family court proceeding in State or local court that,**  
12 **with respect to a child, involves the care or custody of the child in a private**  
13 **divorce, separation, visitation, paternity, child support, or legal or physical**  
14 **custody proceeding; and**

15 **“(ii) does not include—**

16 **“(I) any child protective, abuse, or neglect proceeding;**

17 **“(II) a juvenile justice proceeding; or**

18 **“(III) any child placement proceeding in which a State, local, or**  
19 **Tribal government, a designee of such a government, or any contracted**  
20 **child welfare agency or child protective services agency of such a**  
21 **government is a party to the proceeding.**

22 **“(B) ELIGIBLE STATE.—The term ‘eligible State’ means a State that—**

23 **“(i) receives a grant under subsection (a); and**

24 **“(ii) has in effect—**

25 **“(I) each law described in paragraph (3);**

26 **“(II) the standards described in paragraph (4); and**

27 **“(III) the training program described in paragraph (5).**

28 **“(C) REUNIFICATION TREATMENT.—The term ‘reunification treatment’ means a**  
29 **treatment or therapy aimed at reuniting or reestablishing a relationship between**  
30 **a child and an estranged or rejected parent or other family member of the child.**

31 **“(2) INCREASE.—**

32 **“(A) IN GENERAL.—The Attorney General shall increase the amount provided to a**  
33 **State under the covered formula grants in accordance with this title if— of a grant**  
34 **awarded under subsection (a) to an eligible State that submits an application**  
35 **under paragraph (6) by an amount that is not more than 10 percent of the**  
36 **average of the total amount of funding provided to the State under subsection (a)**  
37 **under the 3 most recent awards to the State.**



1           (1) Evidence.—“(B) TERM OF INCREASE.—An increase of a grant under  
2           subparagraph (A) shall be for 1 fiscal year.

3           (A) Experts.—The State has in place a law ensuring that, in a custody proceeding  
4           where“(C) RENEWAL.—An eligible State that receives an increase under  
5           subparagraph (A) may submit an application for renewal of the increase at such  
6           time, in such manner, and containing such information as the Attorney General  
7           may reasonably require.

8           “(D) LIMIT.—An eligible State may not receive an increase under  
9           subparagraph (A) for more than 4 fiscal years.

10          “(3) LAWS.—The laws described in this paragraph are the following:

11          “(A) A law that ensures that, with respect to a child custody proceeding in  
12          which a parent has been alleged to have committed domestic violence or child abuse,  
13          including child sexual abuse—

14                  “(i) expert evidence from a court-appointed or outside professional  
15                  relating to the alleged abuse may be admitted only if the professional  
16                  possesses demonstrated expertise and clinical experience in working with  
17                  victims of domestic violence or child abuse, including child sexual abuse,  
18                  evidence from court-appointed or outside professionals regarding the alleged  
19                  abuse may be admitted only when the professional possesses demonstrated  
20                  expertise and clinical, not solely forensic, experience in working with victims of  
21                  domestic violence or child abuse, including child sexual abuse; that is not solely  
22                  of a forensic nature; and

23                  (B) Non-experts.—The State has in place a law ensuring that, in a custody  
24                  proceeding where a parent has been alleged to have committed“(ii) in making a  
25                  finding regarding any allegation of domestic violence or child abuse, including  
26                  child sexual abuse, in addition to any other relevant admissible evidence,  
27                  evidence of past sexual or physical abuse committed by a party, including but not  
28                  limited to the accused parent shall be considered, including—

29                          “(I) any past or current protection from abuse orders, or restraining  
30                          orders against the accused parent;

31                          “(II) sexual violence abuse protection orders, arrests, or convictions, must  
32                          be considered in determining the truth of any allegations of family violence.

33          (2) Experts.—The State has in place uniform required standards of  
34          domestic violence and child abuse expertise and experience for all court-  
35          appointed neutral professional opinions related to abuse, trauma, and the  
36          behaviors of victims and perpetrators, which meet the criteria in paragraph  
37          (1)(A).

38          (3) Remedies for a child’s resistance to contact with a parent.—The State  
39          has in place a law ensuring that—

40                  (A) No removal of care from safe parent.—No child shall be removed  
41                  from the care of a competent protective, non- against the accused parent;



1                   “(III) arrests of the accused parent for domestic violence, sexual  
2                   violence, or child abuse; or

3                   “(IV) convictions of the accused parent for domestic violence, sexual  
4                   violence, or child abuse.

5                   “(B) A law that ensures that, during a child custody proceeding—

6                   “(i) a court may not, solely in order to improve a deficient relationship  
7                   with the other parent of a child, remove the child from a parent or litigating  
8                   party—

9                   “(I) who is competent, protective, and not physically or sexually  
10                  abusive parent or litigating party; and

11                  “(II) with whom the child is bonded or to whom the child is bonded or  
12                  attached, nor shall the child’s contact with such parent be restricted  
13                  attached;

14                  “(ii) a court may not, solely in order to improve a deficient relationship with  
15                  the other parent of a child, restrict contact between the child and a parent or  
16                  litigating party—

17                  “(I) who is competent, protective, and not physically or sexually  
18                  abusive; and

19                  “(II) with whom the child is bonded or to whom the child is attached;

20                  “(iii) a court may not order a reunification treatment, unless there is  
21                  generally accepted and scientifically valid;

22                  (B) Reunification treatment.— No “reunification treatment” may be ordered by  
23                  the court without scientifically valid and generally accepted proof of the safety,  
24                  effectiveness, and therapeutic value of the particular treatment, nor may any  
25                  treatment reunification treatment;

26                  “(iv) a court may not order a reunification treatment that is predicated on  
27                  cutting off a child from the parent to whom they are bonded or attached be  
28                  ordered; a parent with whom the child is bonded or to whom the child is  
29                  attached; and

30                  (C) Causes of child resistance.— Any order to remediate a child’s contact  
31                  resistance must address the resisted parent’s behaviors or contributions to the  
32                  child’s resistance first,“(v) any order to remediate the resistance of a child to  
33                  have contact with a parent primarily addresses the behavior of that parent or  
34                  the contributions of that parent to the resistance of the child before ordering  
35                  the preferred other parent of the child to take steps to potentially improve the  
36                  child’s relationship with the parent they resist. relationship of the child with the  
37                  parent with whom the child resists contact.

38                  (4) Training and education program.—

39                  (A) In general.— The State has in place an ongoing education and training program  
40                  for“(C) A law that requires judges and magistrates who hear child custody matters;



1 **proceedings** and **other** relevant court personnel **involved in child custody**  
2 **proceedings**, including guardians ad litem, best interest attorneys, counsel for children,  
3 custody evaluators, masters, and mediators, ~~focusing solely on domestic~~ **to**  
4 **complete, with respect to the training program described in paragraph (5)—**

5 **“(i) not less than 20 hours of initial training; and**

6 **“(ii) not less than 15 hours of ongoing training every 5 years.**

7 **“(4) UNIFORM REQUIRED STANDARDS.—The standards described in this paragraph**  
8 **are uniform required standards that—**

9 **“(A) apply to any neutral professional appointed by a court during a child**  
10 **custody proceeding to express an opinion relating to abuse, trauma, or the**  
11 **behaviors of victims and perpetrators of abuse and trauma; and**

12 **“(B) require that a professional described in subparagraph (A) possess**  
13 **demonstrated expertise and clinical experience in working with victims of**  
14 **domestic violence or child abuse, including child sexual abuse, that is not solely of**  
15 **a forensic nature.**

16 **“(5) TRAINING AND EDUCATION PROGRAM.—The training program described in this**  
17 **paragraph is an ongoing training and education program that—**

18 **“(A) focuses solely on domestic and sexual** violence and child abuse, including—

19 ~~(i)~~**“(i) child sexual abuse;**

20 ~~(ii)~~**“(ii) physical abuse;**

21 ~~(iii)~~**“(iii) emotional abuse;**

22 ~~(iv)~~**“(iv) coercive control;**

23 ~~(v)~~**“(v) implicit and explicit bias, including biases relating to parents with**  
24 **disabilities;**

25 ~~(vi)~~**“(vi) trauma;**

26 ~~(vii) long-~~**“(vii) long-** and short-term impacts of domestic violence and child  
27 abuse on children; and

28 ~~(viii)~~**“(viii) victim and perpetrator behaviors, behavior patterns and**  
29 **relationship dynamics within the cycle of violence;**

30 ~~(B) Providers.—Training must be provided by—~~**“(B) is provided by—**

31 ~~(i) professionals~~**“(i) a professional** with substantial experience in assisting  
32 survivors of domestic violence or child abuse, ~~such as~~ **including** a victim service  
33 provider ~~;~~ **and (as defined in section 40002 of the Violence Against Women Act**  
34 **of 1994 (34 U.S.C. 12291)); and**

35 ~~(ii) where possible, survivors~~**“(ii) if possible, a survivor** of domestic violence;  
36 or child physical or sexual abuse;

37 ~~(C) Evidence-based research.—~~

38 ~~(i) In general.—The education and training program in subparagraph (A) shall~~



1 rely“(C) relies on evidence-based and peer-reviewed research by recognized experts in  
2 the types of abuse designated under this section, described in subparagraph (A);

3 (ii) Exclusion.—The education and training program shall“(D) does not include  
4 theories, concepts, and or belief systems unsupported by valid, credible scientific  
5 research, the research described in subparagraph (C); and

6 (D) Objective of education and training program.—The education and training  
7 program shall be“(E) is designed to improve the ability of courts to to—

8 “(i) recognize and respond to child physical abuse, child sexual abuse,  
9 domestic violence, and trauma on in all family victims, particularly children; and

10 “(ii) make appropriate custody decisions that that—

11 “(I) prioritize child safety and well-being; and

12 shall be“(II) are culturally sensitive and appropriate for diverse  
13 communities.

14 (E) Training requirements.—Judges and all other personnel identified in subparagraph  
15 (A) must receive at least 60 hours of initial training on these identified topics, and at least  
16 20 hours of this ongoing training every 2 years.”(6) APPLICATION.—

17 (F) Custody evaluator requirements.—Prior to being appointed in a case, a custody  
18 evaluator shall, at a minimum, hold a Master’s degree in a relevant field and must have  
19 completed the training requirements of subparagraph (E).

20 (4) Legal representation.—The State shall notify parties of the importance of legal  
21 representation and shall direct the parties to appropriate resources.

22 (b) Grant Increase.—The amount of the increase provided to a State under the  
23 covered formula grant under this title shall be equal to not more than 10 percent of the  
24 average of the total amount of funding provided to the State under the covered formula  
25 grant under the 3 most recent awards to the State.

26 SEC. 1606. APPLICATION.

27 A State seeking a grant under this title“(A) IN GENERAL.—An eligible State  
28 desiring a grant increase under this subsection shall submit an application to the  
29 Attorney General at such time, in such manner, and containing such information as the  
30 Attorney General may reasonably require, including information regarding the law  
31 described in section 1605.

32 SEC. 1607. RULE OF CONSTRUCTION.

33 Nothing in this title shall be interpreted to discourage States from adopting  
34 additional provisions to increase safe outcomes for children; additional protective  
35 provisions are encouraged.

36 SEC. 1608. GRANT TERM.

37 (a) In General.—The term of a covered grant shall be for 1 year.

38 (b) Renewal.—A State that receives a covered grant may submit an application for a  
39 renewal of such grant at such time, in such manner, and containing such information as



1 the Attorney General may reasonably require.

2 (e) Limit.—A State shall not receive a covered grant for more than 4 years.“(B)  
3 CONTENTS.—An application submitted by an eligible State under subparagraph  
4 (A) shall include information relating to—

5 SEC. 1609. USES OF FUNDS.“(i) the laws described paragraph (3);

6 A“(ii) the standards described in paragraph (4); and

7 “(iii) the training program described in paragraph (5).

8 “(7) USE OF FUNDS.—An eligible State that receives an a grant increase under the  
9 covered formula grants under this title paragraph (2)(A) shall use the total amount of the  
10 increase for subgrants pursuant to section 2007(e)(4)(C) or (D) of title I of the Omnibus  
11 Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10446(e)(4)); the purposes  
12 described in subparagraph (C) or (D) of subsection (c)(4).

13 SEC. 1610. AUTHORIZATION OF APPROPRIATIONS.“(8) RULE OF  
14 CONSTRUCTION.—Nothing in this subsection shall be interpreted as discouraging  
15 States from adopting additional provisions to increase safe outcomes for children.  
16 Additional protective provisions are encouraged.

17 There is“(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be  
18 appropriated to carry out this title subsection \$5,000,000 for each of fiscal years 2022  
19 through 2026 2026.”.

## 20 SEC. ~~1614~~ 1605. SEXUAL ASSAULT SURVIVORS’ 21 RIGHTS.

22 Section 3772(a)(2) of title 18, United States Code, is amended—

23 (1) in subparagraph (B), by striking “; and” and inserting a semicolon;

24 (2) in subparagraph (C), by striking the period at the end and inserting “; and”; and

25 (3) by inserting adding at the end the following new subparagraph:

26 “(D) be informed of the status and location of a sexual assault evidence collection  
27 kit.”.

## 28 SEC. ~~1612~~ 1606. GRANTS TO STATE AND TRIBAL 29 COURTS TO IMPLEMENT PROTECTION ORDER PILOT 30 PROGRAMS.

31 Part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10461  
32 et seq.) is amended—

33 (1) by redesignating sections 2103, 2104, and 2105 as sections 2104, 2105, and 2106,  
34 respectively; and

35 (2) by inserting after section 2102 the following:

36 “SEC. 2103. GRANTS TO STATE AND TRIBAL COURTS



## 1 TO IMPLEMENT PROTECTION ORDER PILOT 2 PROGRAMS.

3 “(a) Definition of Eligible Entity.—In this section, the term ‘eligible entity’ means a State or  
4 Tribal court that is part of a multidisciplinary partnership that includes, to the extent  
5 practicable—

6 “(1) a State, Tribal, or local law enforcement agency;

7 “(2) a State, Tribal, or local ~~prosecutor-advocate group~~ **prosecutor’s office**;

8 “(3) a victim service provider or State or Tribal domestic violence coalition;

9 “(4) **a provider of culturally specific services**;

10 “(5) a nonprofit program or government agency with demonstrated experience in  
11 providing legal assistance or legal advice to victims of domestic violence and sexual  
12 assault;

13 ~~“(5)“(6)~~ the bar association of the applicable State or Indian Tribe;

14 ~~“(6)“(7)~~ the State or Tribal association of court clerks;

15 ~~“(7)“(8)~~ a State, Tribal, or local association of criminal defense attorneys;

16 ~~“(8)“(9)~~ not fewer than 2 individuals with expertise in the design and management of  
17 court case management systems and systems of integration;

18 ~~“(9)“(10)~~ not fewer than 2 State or Tribal court judges with experience in—

19 “(A) the field of domestic violence; and

20 “(B) issuing protective orders; and

21 ~~“(10)“(11)~~ a judge assigned to the criminal docket of the State or Tribal court.

22 “(b) Grants Authorized.—

23 “(1) IN GENERAL.—In addition to grants authorized under section 2101, the Attorney  
24 General shall make grants to eligible entities to carry out the activities described in  
25 subsection (c) of this section.

26 “(2) NUMBER.—The Attorney General may award not more than 10 grants under  
27 paragraph (1).

28 “(3) AMOUNT.—The amount of a grant awarded under paragraph (1) may be not more  
29 than \$1,500,000.

30 “(c) Mandatory Activities.—

31 “(1) IN GENERAL.—An eligible entity that receives a grant under this section shall use the  
32 grant funds, in consultation with the partners ~~required under~~ **of the eligible entity**  
33 **described in** subsection (a), to—

34 “(A) develop and implement a program for properly and legally serving protection  
35 orders through electronic communication methods to—

36 “(i) modernize the service process and make the process more effective and



- 1 efficient;
- 2 “(ii) provide for improved safety of victims; and
- 3 “(iii) make protection orders enforceable as quickly as possible;
- 4 “(B) develop best practices relating to the service of protection orders through
- 5 electronic communication methods;
- 6 “(C) ensure that the program developed under subparagraph (A) complies with due
- 7 process requirements and any other procedures required by law or by a court; and
- 8 “(D) implement any technology necessary to carry out the program developed under
- 9 subparagraph (A), such as technology to verify and track the receipt of a protection
- 10 order by the intended party.
- 11 “(2) TIMELINE.—An eligible entity that receives a grant under this section shall—
- 12 “(A) implement the program required under paragraph (1)(A) not later than 2 years
- 13 after **receiving the date on which the eligible entity receives** the grant; and
- 14 “(B) carry out the program **required under paragraph (1)(A)** for not fewer than 3
- 15 years.
- 16 “(d) Diversity of Recipients.—The Attorney General shall award grants under this section to
- 17 eligible entities in a variety of areas and situations, including—
- 18 “(1) a State court that serves a population of not fewer than 1,000,000 individuals;
- 19 “(2) a State court that—
- 20 “(A) serves a State that is among the 7 States with the lowest population density in
- 21 the United States; and
- 22 “(B) has a relatively low rate of successful service with respect to protection orders,
- 23 as determined by the Attorney General;
- 24 “(3) a State court that—
- 25 “(A) serves a State that is among the 7 States with the highest population density in
- 26 the United States; and
- 27 “(B) has a relatively low rate of successful service with respect to protection orders,
- 28 as determined by the Attorney General;
- 29 “(4) a court that uses an integrated, statewide case management system;
- 30 “(5) a court that uses a standalone case management system;
- 31 “(6) a Tribal court; and
- 32 “(7) a court that **primarily** serves a culturally specific and underserved population.
- 33 “(e) Application.—
- 34 “(1) IN GENERAL.—An eligible entity **desiring a grant under this section** shall submit
- 35 **an application** to the Attorney General **an application** that includes—
- 36 “(A) a description of the process that the eligible entity uses for service of protection



1 orders at the time of submission of the application;

2 “(B) to the extent practicable, statistics relating to protection orders during the 3  
3 calendar years preceding the date of submission of the application, including rates of—

4 “(i) successful service; and

5 “(ii) enforcement;

6 “(C) an initial list of the entities serving as the partners **required under of the**  
7 **eligible entity described in** subsection (a); and

8 “(D) any other information the Attorney General may reasonably require.

9 “(2) NO OTHER APPLICATION REQUIRED.—An eligible entity shall not be required to  
10 submit an application under section 2102 to receive a grant under this section.

11 “(f) **Technical Assistance.**—Notwithstanding section 40002(b)(11) of the Violence Against  
12 Women Act of 1994 (34 U.S.C. 12291(b)(11)), as applied under section 2106 of this part, not  
13 less than 5 percent and not more than 8 percent of the total amounts appropriated to carry out this  
14 section shall be available to the Attorney General for technical assistance relating to the purposes  
15 of this section.

16 “(g) Report to Attorney General.—

17 “(1) INITIAL REPORT.—Not later than 2 years after **receiving the date on which an**  
18 **eligible entity receives** a grant under this section, **an the** eligible entity shall submit to the  
19 Attorney General a report that details the plan of the **eligible** entity for implementation of  
20 the program under subsection (c).

21 “(2) SUBSEQUENT REPORTS.—

22 “(A) IN GENERAL.—Not later than 1 year after **implementing the the date on which**  
23 **an eligible entity implements a** program under subsection (c), and not later than 2  
24 years thereafter, **an the** eligible entity shall submit to the Attorney General a report that  
25 describes the program **implemented under subsection (c)**, including, with respect to—  
26 **to the program—**

27 “(i) **the** viability;

28 “(ii) **the** cost;

29 “(iii) service statistics;

30 “(iv) **the** challenges;

31 “(v) **an** analysis of the technology used to fulfill the goals of the program;

32 “(vi) **an** analysis of any legal or due process issues resulting from the electronic  
33 service method described in subsection (c)(1)(A); and

34 “(vii) best practices for implementing such a program in other similarly situated  
35 locations.

36 “(B) CONTENTS OF FINAL REPORT.—An eligible entity shall include in the second  
37 report submitted under subparagraph (A) recommendations for—

38 “(i) future nationwide implementation of the program implemented by the



1 eligible entity; and

2 “(ii) usage of electronic service, similar to the service used by the eligible  
3 entity, for other commonly used court orders, including with respect to viability  
4 and cost.

5 “(h)“(g) No Regulations or Guidelines Required.—Notwithstanding section 2105, the  
6 Attorney General shall not be required to publish regulations or guidelines implementing this  
7 section.

8 “(i)“(h) Authorization of Appropriations.—In addition to amounts otherwise made available  
9 to carry out this part, there is authorized to be appropriated to carry out this section \$10,000,000  
10 for fiscal years ~~2019~~ **2022** through ~~2024.~~ **2026.**”

## 11 SEC. ~~1613~~ **1607**. ONLINE SURVEY TOOL FOR CAMPUS 12 SAFETY.

13 (a) In General.—The Secretary of Education shall, in consultation with the Attorney General,  
14 **the** Director of the Centers for Disease Control, and **Prevention**, the Secretary **of the Department**  
15 of Health and Human Services, and experts in domestic violence, dating violence, sexual assault,  
16 sexual harassment, and stalking, shall develop, design, and make available through a secure and  
17 accessible online portal, a standardized online survey tool regarding **postsecondary** student  
18 experiences with domestic violence, dating violence, sexual assault, sexual harassment, and  
19 stalking.

20 (b) Development of Survey Tool.—In developing the survey tool required under subsection  
21 (a), the Secretary of Education shall—

22 (1) use best practices from peer-reviewed research measuring domestic violence, dating  
23 violence, sexual assault, sexual harassment, and stalking;

24 (2) consult with the higher education community, experts in survey research related to  
25 domestic violence, dating violence, sexual assault, sexual harassment, and stalking, and  
26 organizations engaged in the prevention of and response to, and advocacy on behalf of  
27 victims of, domestic violence, dating violence, sexual assault, sexual harassment, and  
28 stalking, **including victims from culturally specific populations**, regarding the  
29 development and design of such survey tool and the methodology for administration of such  
30 survey tool; and

31 (3) ensure that the survey tool is readily accessible to and usable by individuals with  
32 disabilities.

33 (c) Elements.—

34 (1) IN GENERAL.—The survey tool developed pursuant to this **paragraph section** shall be  
35 fair and unbiased, **be** scientifically valid and reliable, **and** meet the highest standards of  
36 survey research, **and notify the participant that anonymized results of the survey may**  
37 **be published.**

38 (2) SURVEY QUESTIONS.—Survey questions included in the survey tool developed  
39 pursuant to this section shall—

40 (A) be designed to gather information on student experiences with domestic



1 violence, dating violence, sexual assault, sexual harassment, and stalking, including the  
2 experiences of victims of such incidents;

3 (B) use trauma-informed language to prevent ~~retraumatization; and re-~~  
4 ~~traumatization; and~~

5 ~~(C) include the following:(C) include—~~

6 ~~(i) Questions(i) questions~~ that give students the option to report their  
7 demographic information.;

8 ~~(ii) Questions questions~~ designed to determine the incidence and prevalence of  
9 domestic violence, dating violence, sexual assault, sexual harassment, and  
10 stalking.;

11 ~~(iii) Questions questions~~ regarding whether students know about institutional  
12 policies and procedures related to domestic violence, dating violence, sexual  
13 assault, sexual harassment, and stalking.;

14 ~~(iv) Questions questions~~ designed to determine, if victims reported domestic  
15 violence, dating violence, sexual assault, sexual harassment, or stalking—

16 (I) to whom the incident was reported and what response the victim may  
17 have received;

18 (II) whether the victim was informed of, or referred to, national, State,  
19 local, **Tribal**, or on-campus resources; and

20 (III) whether the entity to whom the victim reported the incident  
21 conducted an investigation and the duration and final resolution of such an  
22 investigation.;

23 ~~(v) Questions questions~~ regarding contextual factors, such as whether force,  
24 incapacitation, or coercion was involved.;

25 ~~(vi) Questions questions~~ to determine whether an accused individual was a  
26 student at the institution.;

27 ~~(vii) Questions questions~~ to determine whether a victim reported an incident to  
28 **Federal**, State, local, **Tribal**, or campus law enforcement.;

29 ~~(viii) Questions questions~~ to determine why the victim chose to report or not  
30 report an incident to the institution or State, local, or campus law enforcement.;

31 ~~(ix) Questions questions~~ to determine the impact of domestic violence, dating  
32 violence, sexual assault, sexual harassment, and stalking on the victim's  
33 education, including diminished grades, dropped classes, leaves of absence, and  
34 negative financial consequences (such as costs associated with loss in paid tuition  
35 due to leaves of absence, loss in scholarship awards due to diminished grades, ~~and~~  
36 ~~cost~~ **loss of foreign-student visas, and costs** associated with counseling, medical  
37 services, or housing changes).;

38 ~~(x) Questions questions~~ to determine the impact and effectiveness of  
39 prevention and awareness programs and complaints processes.;

40 ~~(xi) Questions questions~~ to determine attitudes toward sexual violence and



1 harassment, including the willingness of individuals to intervene as a bystander of  
2 to sex-based (including sexual orientation-based and gender identity-based), race-  
3 based, national origin-based, and disability-based discrimination, harassment,  
4 assault, domestic violence, dating violence, sexual assault, sexual harassment, and  
5 stalking; ~~and~~.

6 (xii) ~~Other~~ **other** questions, as determined by the Secretary of Education.

7 (3) ADDITIONAL ELEMENTS.—In addition to the standardized questions developed by the  
8 Secretary of Education under paragraph (2), ~~an institution subject to the review and~~  
9 **approval of the Secretary of Education, an institution of higher education** may request  
10 additional information from students that would increase the understanding of the institution  
11 of school climate factors unique to ~~their~~ **the** campuses **affiliated with the institution**.

12 (4) RESPONSES.—The responses to the survey questions described in paragraph (2)  
13 shall—

14 (A) be submitted confidentially;

15 (B) not be included in crime statistics; and

16 (C) in the case of such responses being included in a report, ~~shall~~ not include  
17 personally identifiable information.

18 (d) Administration of Survey.—

19 (1) FEDERAL ADMINISTRATION.—The Secretary of Education, in consultation with the  
20 Attorney General, ~~the~~ Director of the Centers for Disease Control, ~~and~~ **and Prevention,**  
21 **and the** Secretary ~~of the Department~~ of Health and Human Services, shall develop a  
22 mechanism by which institutions of higher education may, with respect to the survey tool  
23 developed pursuant to this section—

24 (A) administer such survey tool; and

25 (B) modify such survey tool to include additional elements or requirements, as  
26 determined by the institution, **subject to the review and approval of the Secretary of**  
27 **Education**.

28 (2) COSTS.—The Secretary of Education may not require an institution of higher  
29 education to pay to modify the survey tool in accordance with paragraph (1)(B).

30 (3) ACCESSIBILITY.—The Secretary of Education shall ensure that the survey tool is  
31 administered in such a way as to be readily accessible to and usable by individuals with  
32 disabilities.

33 (4) INSTITUTIONAL ADMINISTRATION.—Beginning not later than 1 year after the date on  
34 which the Secretary of Education makes available to institutions the mechanism described  
35 in paragraph (1), and every 2 years thereafter, each institution **of higher education that**  
36 **receives Federal educational assistance** shall administer the survey tool developed  
37 pursuant to this section.

38 (e) Completed Surveys.—The Secretary of Education shall require each institution  
39 ~~participating in any program under this title~~ **of higher education that administers the survey**  
40 **tool developed pursuant to this section** to ensure, to the maximum extent practicable, that an



1 adequate, random, and representative sample size of students (as determined by the Secretary)  
2 enrolled at the institution complete the survey tool developed pursuant to this section.

3 (f) ~~Report.—Beginning Report.—~~

4 **(1) IN GENERAL.—Beginning** not later than 2 years after the date of enactment of this  
5 Act, the Secretary of Education ~~shall shall—~~

6 **(A)** prepare a biennial report on the information gained from the standardized  
7 elements of the survey under this section and publish such report in an accessible  
8 format on the website of the Department ~~and of Education, including as part of any~~  
9 **online consumer tool offered or supported by the Department of Education that**  
10 **provides information to students regarding specific postsecondary educational**  
11 **institutions, such as the College Scorecard or any successor or similar tool; and**

12 **(B)** submit such report to Congress.

13 ~~The report—~~ **(2) INCLUSIONS AND EXCLUSIONS.—The report required to be prepared**  
14 **under paragraph (1)—**

15 **(A)** shall include campus-level data for each ~~school institution~~ and attributed by  
16 name of each campus in a manner that permits comparisons across ~~schools and~~  
17 ~~campuses;~~ **institutions and campuses; and**

18 **(B) shall not publish any individual survey responses.**

19 (g) Publication.—Each institution **of higher education** shall publish, in a manner that is  
20 readily accessible and usable by individuals, including individuals with disabilities—

21 (1) the campus-level results of the standardized elements of the survey under this section  
22 on the website of the institution and in the ~~annual security~~ **biennial** report required under  
23 subsection (f) for the campuses affiliated with the institution; and

24 (2) the campus-level results of the additional elements modifying the survey by the  
25 institution, if any, on the website of the institution.

26 ~~(h) Violation.—Upon a determination pursuant to section~~  
27 ~~487(c)(3)(B) of the Higher Education Act of 1965 (20 U.S.C.~~  
28 ~~1094(c)(3)(B)) that an institution of higher education has~~  
29 ~~violated or failed to carry out any provision under this section,~~  
30 ~~the Secretary of Education shall impose a civil penalty upon the~~  
31 ~~institution in the same amount and pursuant to the same~~  
32 ~~procedures as a civil penalty is imposed under section~~  
33 ~~487(c)(3)(B) of the Higher Education Act of 1965 (20 U.S.C.~~  
34 ~~1094(c)(3)(B)).~~

35 **SEC. 1614 SEC. 1608. STUDY ON CHILD CUSTODY IN**  
36 **DOMESTIC VIOLENCE CASES.**



1 The Attorney General, in consultation with the Secretary of Health and Human Services, shall  
2 conduct a study ~~investigating whether victims who raise evidence of domestic violence are more~~  
3 ~~likely to lose primary custody of children to an abusive partner or to the State, including— that~~  
4 ~~shall—~~

5 ~~(1)(1) provide~~ a review of State laws, regulations, and practices on how child neglect  
6 and custody situations are handled in domestic violence situations; and

7 ~~(2) include~~ a list of recommendations on how to restructure State laws, regulations, and  
8 practices to better protect victims of domestic violence and their children.

9 ~~TITLE XVII—PROTECTIONS FOR CERTAIN IMMIGRANT WOMEN~~

10 ~~SEC. 1701. PILOT PROGRAM TO PROVIDE ADDITIONAL PROTECTIONS.~~

11 ~~Notwithstanding any other provision of law, the Secretary of Homeland Security shall~~  
12 ~~publish an interim final rule establishing a 6-year pilot program allowing nonimmigrants~~  
13 ~~authorized for employment under section 106 of the Immigration and Nationality Act (8-~~  
14 ~~U.S.C. 1105a), and their children, to apply for lawful temporary status and travel~~  
15 ~~authorization independent of the principal nonimmigrants to which their current status is or~~  
16 ~~was tied. Such interim final rule shall be published and take effect not later than 180 days~~  
17 ~~after the date of the enactment of this Act.~~

18 ~~Passed the House of Representatives March 17, 2021.~~

19 ~~Attest:~~

20 ~~Clerk.~~

21 ~~117th CONGRESS~~

22 ~~1st Session~~

23 ~~H. R. 1620~~

24  
25 ~~AN ACT~~

26 ~~To reauthorize the Violence Against Women Act of 1994, and for other purposes.~~



Withheld pursuant to exemption

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of the Freedom of Information Act



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# **United Specialists for Patient Access: Promoting the Viability of Office-Based Specialists**

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**August [\_\_], 2021**



# United Specialists for Patient Access: Representing Office-Based Specialists Across the Spectrum

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# Call Attendees

- Dr. Fakorede, PAD Co-Chair, Association of Black Cardiologists
- Richard Knight, President, American Association of Kidney Patients
- Jason McKittrick, Principal, Liberty Partners Group



# Share of Physicians Working for a Hospital Increased from 29.0 Percent in 2012 to 39.8 Percent in 2020

Exhibit 7. Distribution of physicians by practice ownership structure <sup>1</sup>

	2012	2014	2016	2018	2020
<b>Wholly owned by physicians (private practice)</b>	60.1% <sup>a</sup>	56.8%	55.8%	54.0% <sup>a</sup>	49.1% <sup>a</sup>
<b>At least some hospital ownership</b>	23.4% <sup>b</sup>	25.6%	25.4%	26.7% <sup>a</sup>	30.5% <sup>a</sup>
Wholly owned by hospital	14.7%	15.6%	16.1%	16.3% <sup>a</sup>	20.1% <sup>a</sup>
Jointly owned by physicians and hospital	6.0% <sup>b</sup>	7.3% <sup>c</sup>	6.2%	6.8%	6.4%
Unknown whether wholly or jointly owned	2.6%	2.7%	3.1%	3.5%	3.9% <sup>a</sup>
<b>Direct hospital employee/contractor</b>	5.6% <sup>a</sup>	7.2%	7.4%	8.0% <sup>c</sup>	9.3% <sup>a</sup>
<b>Wholly owned by not-for-profit foundation</b>	6.5%	6.4%	6.7%	6.3% <sup>a</sup>	4.7% <sup>a</sup>
<b>Private equity</b>	n/a	n/a	n/a	n/a	4.4%
<b>Other <sup>2</sup></b>	4.4%	4.0%	4.7%	4.9% <sup>a</sup>	2.0% <sup>a</sup>
	100%	100%	100%	100%	100%
<b>N</b>	3466	3500	3500	3500	3500

Source: Author's analysis of AMA Physician Practice Benchmark Surveys.

Notes: <sup>1</sup> Significance tests are for changes within ownership structure category. 'a' is p<0.01, 'b' is p<0.05, and 'c' is p<0.10. <sup>2</sup> Indications in each column are for that year and the one following except in the 2020 column where they are for 2012 and 2020. <sup>2</sup> Other includes wholly owned by an HMO/MCO and fill-in responses.



# Questions for the Record SFC Hearing for Xavier Becerra, Nominee for HHS Secretary - February 24, 2021

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- Question. You have highlighted the settlement you secured with a large California hospital system related to the charge that it acquired hospitals and physician practices to unfairly increase market power and increase costs for consumers. The Medicare Payment Advisory Commission and other experts have determined that Medicare payment systems incentivize provider consolidation. Do you believe that some Medicare payment policies incent consolidation and increase costs for beneficiaries and the program?
- Answer: Thank you for this question. This has been a significant focus of my tenure as Attorney General, and if I am confirmed, I will continue to focus on preventing consolidation that increases prices on consumers and patients. Like President Biden, I believe that all Americans should be able to access affordable health care, and part of that is identifying solutions to hospital over-consolidation. I hope I have the opportunity to work with you to tackle this issue and pursue solutions that strengthen our federal programs and protect patients and consumers.



# Los Angeles Times

## California seeks more power to fight healthcare mergers

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- Article describes HHS Secretary Nominee Becerra's activities as California Atty. Gen.
- In 2018, Becerra joined a suit against Sutter Health which alleged Sutter, which has 24 hospitals and 34 surgery centers, had **spent years buying up practices and facilities.**
  - In 2010, about 25% of California physicians worked in a practice owned by a hospital. By 2016, more than 40% of doctors worked in hospital-owned practices.
- CA bill SB 977 would have given CA Att. Gen. ability to call a **“time out”** before a health system attempts to acquire a practice or facility.
- **“The biggest concern I have is the legislation will be killed by the industry,”** Becerra said. **“We’ll end up seeing overconsolidation because decent practices that got on the edge could not swim with sharks.”**
- **“The best way to prevent problems from occurring in a merger is just to prevent the merger altogether,”** said Jaime King, associate dean at UC Hastings College of the Law in San Francisco. **“It’s really hard to unwind a merger after you’ve already done it.”**

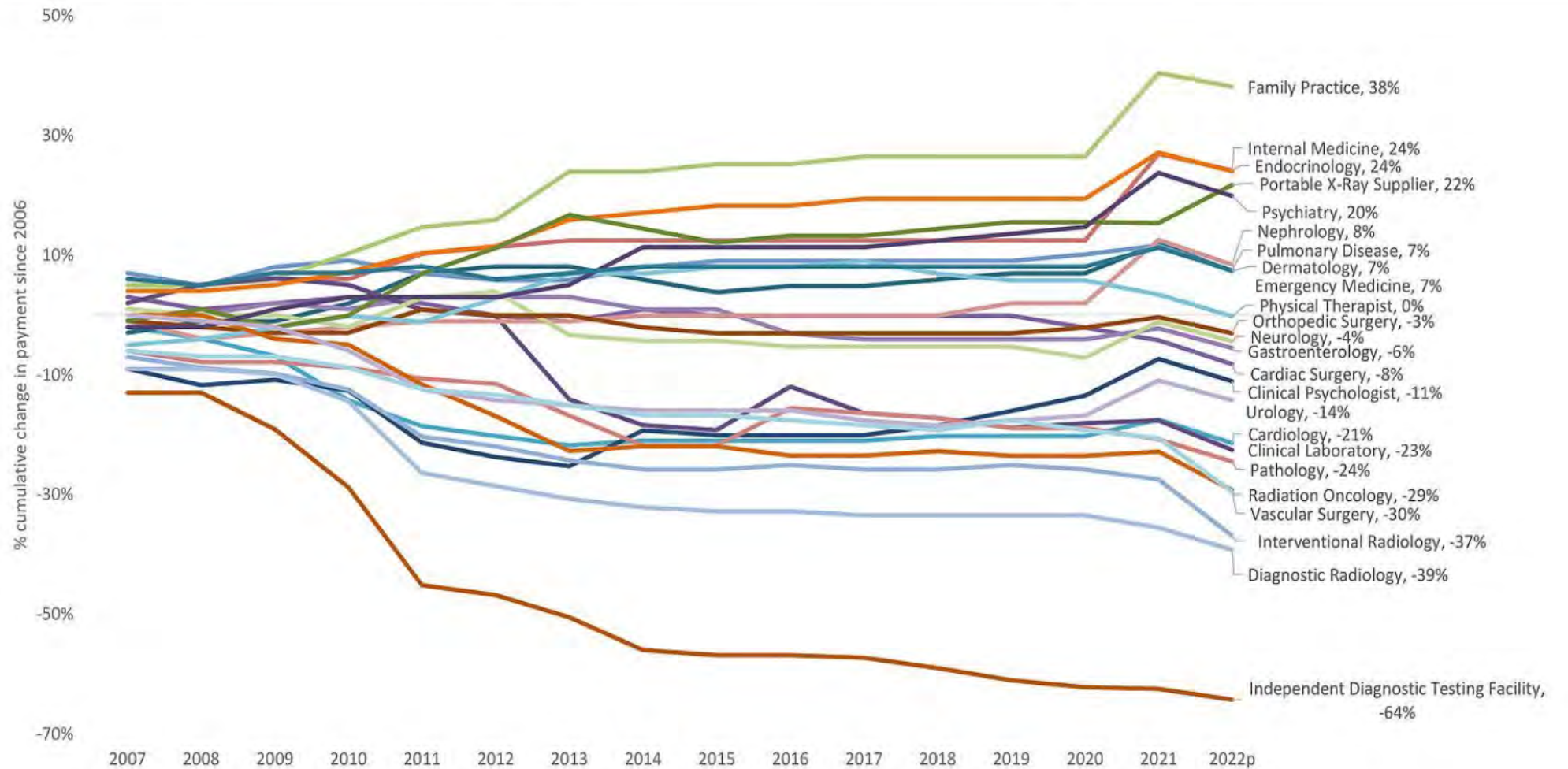
# Executive Order on Promoting Competition in the American Economy – July 9, 2022

- From the EO:
  - *Hospital consolidation has left many areas, especially rural communities, without good options for convenient and affordable healthcare service. Thanks to unchecked mergers, the ten largest healthcare systems now control a quarter of the market. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year, in the middle of a healthcare crisis. **Research shows that hospitals in consolidated markets charge far higher prices than hospitals in markets with several competitors.***
- While the EO directs DOJ and FTC to look at mergers and HHS to look at hospital price transparency and surprise billing, USPA believes there is a more fundamental catalyst driving hospital consolidation: **ongoing PFS cuts to office-based specialists.**



# Significant Specialty Variation in Estimated Payment Changes since 2006

**Ongoing PFS Cuts Strongly Correlate to Hospital Consolidation Trend\***



Source: HMA analysis 2007-2021 Medicare Physician Fee Schedule Final Rule Impact Tables, 2022 Medicare Physician Fee Schedule Proposed Rule Impact Table. 2021 and 2022 values adjusted for effects of Consolidated Appropriations Act of 2021, including the delayed effect of G2211 until 2024 which, if implemented as proposed, will reduce payments to many specialties that are already at zero percent or lower and increase payments to many specialties that are above zero percent.

**HEALTH MANAGEMENT ASSOCIATES**

\* Importantly, PFS Impact Tables aggregate total office-based impact (pro fee + tech fee) with facility-based pro fee and typically facility-based pro fees rise as office-based tech fees fall. In other words, the impact on office-based proceduralists since 2006 is even worse than what is reflected in the chart.

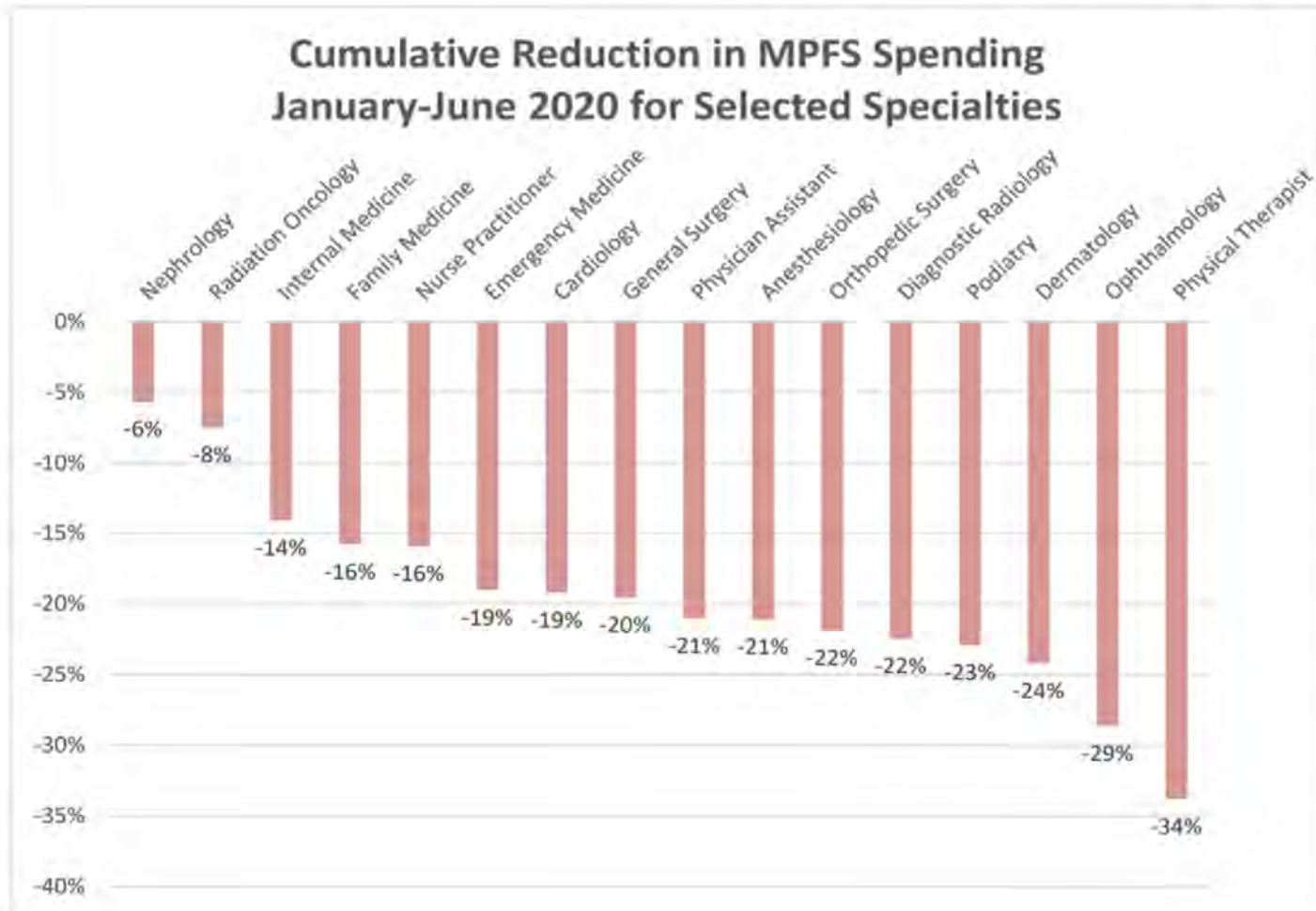
# Continued Cuts to Office-Based Specialists Are Likely to Cause Additional Consolidation

The additional reimbursement for a vertically integrated specialist is more than 3X the differential for primary care physicians

Specialty	Additional Reimbursement for a Physician if Vertically Integrated into a Hospital Relative to an Office
Cardiology	\$262,000
Gastroenterology	\$231,000
Diagnostic Radiology	\$162,000
Oncology	\$155,000
Average for All Specialties	\$114,000
Average for Primary Care	\$63,000
Average for Medical Specialties	\$178,000



# Hospital Consolidation Trend Exacerbated by COVID-19 Pandemic Impact



American Medical Association, *Changes in Medicare Physician Spending During the COVID-19 Pandemic*, Kurt Gillis, PhD, June 2021

“[A]cross regions, hospital ownership of [physician] practices grew between 6 percent and 11 percent” over the last two years. “The COVID-19 pandemic accelerated a long-term national trend of hospitals and corporate entities acquiring physician practices and employing physicians. “During the two-year period, these entities acquired 20,900 additional physician practices. Forty-eight thousand additional physicians left independent practice for employment by hospital systems or other corporate entities.”

*Avalere, Hospitals and Corporations Own Nearly Half of U.S. Physician Practices: Covid-19 Accelerated Ownership Trend, June 2021*

# Hospital Consolidation Trend Exacerbated by 2021 PFS Cuts

- 2021 PFS Rule increased payments starting in 2021 for E&M services (99202-99215), introduced an add-on code (HCPCS G2211) for complex care associated with E&M, and adjusted “E&M-like” services codes.
  - “Budget-neutrality” effect caused big cut to the conversion factor, huge redistribution in the PFS, and significant, negative impact on office-based specialists.
  - While CMS and the AMA spent significant resources getting E&M data just right, there was no analysis of second-order effects to a wide group of providers from huge cut to conversion factor.
- Cuts were so significant that H.R. 133 phased-in these cuts with the next round of cuts to occur on 1/1/2022 (3.75%) and the remaining cut to occur in 1/1/2024 (~3%).
  - **These remaining rounds of PFS cuts to the conversion factor should be stopped by Congress.**

Specialty	Impact of 2021 PFS
Radiology	-10%
Nurse Anes / Anes Asst	-10%
Chiropractor	-10%
Physical/Occupational Therapy	-9%
Pathology	-9%
Cardiac Surgery	-8%
Interventional Radiology	-8%
Anesthesiology	-8%
Nuclear Medicine	-8%
Thoracic Surgery	-8%
Critical Care	-7%
Plastic Surgery	-7%
Neurosurgery	-6%
Audiologist	-6%
General Surgery	-6%
Vascular Surgery	-6%
Emergency Medicine	-6%
Ophthalmology	-6%
Portable X-Ray Supplier	-6%
Radiation Oncology And Radiation Therapy Centers	-5%
Colon And Rectal Surgery	-5%
Independent Laboratory	-5%



# Hospital Consolidation Trend Will Be Exacerbated Still Further by 2022 PFS Cuts

- 2022 PFS Rule proposes to update “clinical labor data” in PE methodology, causing the total direct cost pool to go up 32% and the “direct adjustment factor” to decrease from 0.5916 to 0.4468.
  - “Budget-neutrality” effect causes big cut to direct adjustment factor, huge redistribution in the PFS, and significant, negative impact on office-based specialists.
  - While CMS spent significant resources on getting clinical labor data just right, there was no analysis of second-order effects to a wide group of providers from huge cut to direct adjustment factor.
- **USPA implores CMS not to proceed with the clinical labor data update at this time.**

Specialty	Impact of 2022 PFS
Peripheral Vascular Disease	-14%
Radiation Therapy Centers	-14%
Interventional Radiology	-13%
Vascular Surgery	-11%
Oral Surgery (Dentists)	-8%
Radiation Oncology	-8%
Medical Oncology	-6%
Clinical Laboratory	-6%
Hematology/oncology	-6%
Diagnostic Radiology	-6%
Nuclear Medicine	-5%
Allergy/Immunology	-5%
Cardiac Electrophysiology	-5%

# Second-Order Effects Resulting in a PFS Ever More Out of Touch With Actual Costs

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- **PFS Second-Order “Factors” Are Outweighing the Benefits of First-Order Updates to the PFS**
  - **2021 PFS.** Whether or not new E&M data was accurate, the corresponding indiscriminate cut of 10% to the “conversion factor” has huge second-order effects that are not being considered.
  - **2022 PFS.** Whether or not new clinical labor data is accurate, a corresponding indiscriminate cut of 24% to the “direct adjustment factor” will have huge second-order effects that are not being considered.
  - **2023 PFS.** Should CMS make significant changes to the “indirect practice expense” data in the 2023 PFS (as it is indicating it will), it will not analyze second-order effects from whatever factor it uses to budget-neutralize.
  - **Result.** The result is a PFS that is ever more out of touch with reality as “conversion factors,” “direct adjustment factors,” and other “factors” make the PFS less and less reflective of what it actually takes to provide services in the office.
- **What Is An Office-Based Provider To Do?**
  - Office-based providers can either (1) close their office, (2) join a hospital or (3) convert to an ASC. However, due to up-front costs, CON laws, business licensure, etc., setting up an ASC is impossible in many areas.
  - Service migration to a hospital or simply reducing access (and increasing patient drive times) often are the only options and *these conversations already are happening*.
- **We Ask that CMS Focus on Fundamental PFS Reform Concepts**
  - Rand has been providing CMS options on better ways to reimburse for PFS services and we believe concepts such as reimbursing the same for equipment, supplies, or clinical labor, regardless of site-of-service, have merit.
  - USPA believes the benefits of working with Congress and stakeholders on fundamental PFS reform far outweigh efforts to update clinical labor data, indirect practice expense data, etc. in a system badly in need of reform.



# **Second Order Effects**

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# HMA Review of the Medicare Physician Fee Schedule

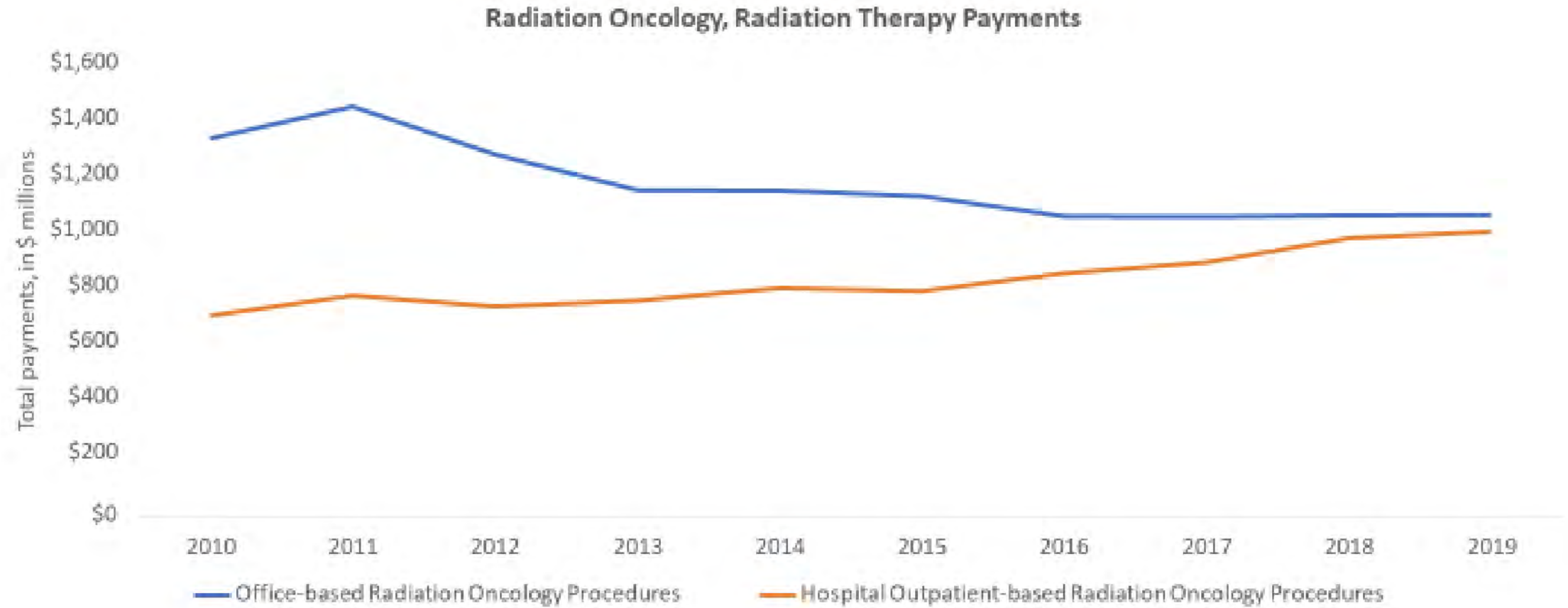
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- United Specialists for Patient Access (USPA) asked Health Management Associates (HMA) to explore the potential impact on total Medicare spending after the Centers for Medicare & Medicaid Services (CMS) lowered reimbursement in the non-hospital setting for key specialties
  - CMS applies a budget neutrality process when it increases or decreases payments to physicians, such that total payments under the Physician Fee Schedule (PFS) are not affected
  - This budget neutrality impact only considers the first-order effects, namely how payments would change assuming no effect on volume or site of care
- HMA evaluated 10 years of Medicare spending, exploring trends in payments to key specialties to determine if total Medicare costs were higher or lower after CMS changed reimbursement
  - We examined both price and volume effects
  - We included office (non-hospital) and hospital outpatient utilization and payments
- In some instances, we found total Medicare payments increased despite price reductions to certain specialties
  - For example, payment for non-hospital radiation oncology was reduced, resulting in services shifting to the hospital outpatient setting and increasing total Medicare payments by \$20 million
  - Likewise, after payments for imaging was reduced, evaluation & management (E&M) care by Cardiologists shifted from the non-hospital to outpatient hospital setting, increasing total payments by \$176 million
- In other instances, physicians stopped offering certain services in their own offices after cuts and instead sent the patient to a different non-hospital setting



# Reductions in Office-based Radiation Oncology Payments More Than Offset by Increases in Hospital-based Payments for Same Care

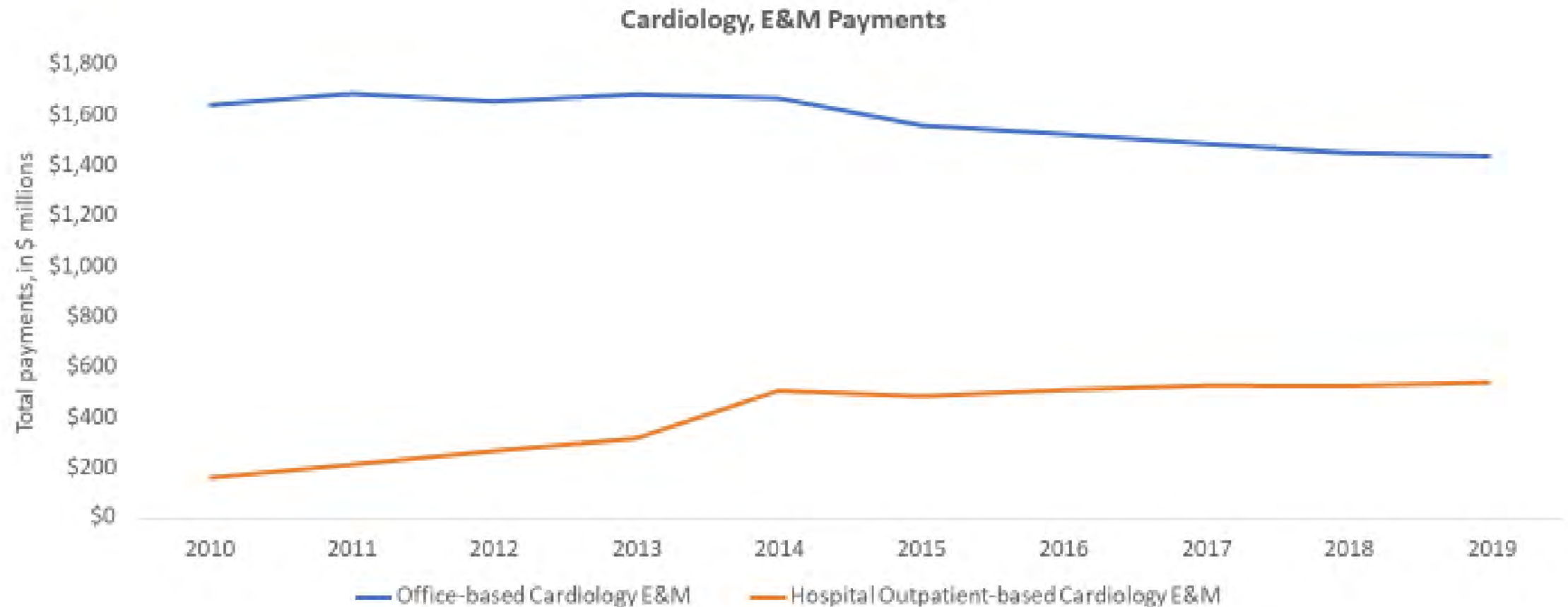
Payments for office-based radiation oncology procedures declined \$273 million between 2010 and 2019, while hospital-based radiation oncology increased \$296 million



Source: HMA analysis of 2010-2019 Physician/Supplier Procedure Summary (PSPS); limited to Berenson-Eggers Type of Service (BETO5) code P7A (Oncology- radiation therapy)

## Site of Care Shift for Cardiologists Significantly Increased E&M Costs

Payments for office-based E&M care by Cardiologists declined \$203 million between 2010 and 2019, while hospital-based E&M care increased \$379 million



Source: HMA analysis of 2010-2019 Physician/Supplier Procedure Summary (PSPS); limited to Berenson-Eggers Type of Service (BETOS) codes M1 (office visits, new or established patients)



# 2022 PFS Second Order Effect

## Dialysis Vascular Access

- The key dialysis vascular access code – 36902 – already was cut by 39% in 2017 causing more than 20% of centers to close. More information is available [here](#) on page 4.
- Cuts of roughly 20% to the dialysis vascular access repair family absolutely will cause additional centers to close and force patients either to the ASC or the hospital.
- Due to up-front costs, CON laws, business licensure, and other restrictions setting up an ASC difficult to impossible in many areas of the country, which means that a hospital will be the only option.
- ASPE’s [Advancing American Kidney Health](#), notes vascular access is critical to keeping dialysis patients *out* of the hospital.
- Health inequity studies in the areas of dialysis and dialysis vascular access are legion, but here are just a couple:
  - Racial/Ethnic Disparities Associated With Initial Hemodialysis Access <https://pubmed.ncbi.nlm.nih.gov/25923973/>.
  - Hemodialysis Disparities in African Americans: The Deeply Integrated Concept of Race in the Social Fabric of our Society <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5418094/>.
- Additional closure of office-based vascular access centers will have negative impacts on, and challenge the validity of, various kidney care models currently being rolled out by CMMI:
  - ETC – 21% cut to key PD catheter code (49418).
  - Kidney Care Choices (KCC) Models – Cut to key repair codes (e.g. 36902).

		2021 Final (post H.R. 133) Physician Fee Schedule		2022 Proposed Physician Fee Schedule	2022 Proposed Physician Fee Schedule	2022 Proposed RVU Difference	2022 Proposed Payment Difference
CF			34.89		33.58		
	Procedure Description	2021 Non-Facility Total RVU/Unit (Final)	2021 Non-Facility Total Payments (Final)	2022 Non-Facility Total RVU/Unit (Proposed)	2022 Non-Facility Total Payments (Proposed)	2022 Proposed vs 2021 Final	2022 Proposed vs 2021 Final
36901	Intro cath dialysis circuit	21.68	\$756	20	\$660	-9%	-13%
36902	Intro cath dialysis circuit	38.96	\$1,359	33	\$1,119	-15%	-18%
36903	Intro cath dialysis circuit	147.65	\$5,152	120	\$4,017	-19%	-22%
36904	Thrmbc/nfs dialysis circuit	57.25	\$1,998	50	\$1,672	-13%	-16%
36905	Thrmbc/nfs dialysis circuit	73.18	\$2,553	63	\$2,109	-14%	-17%
36906	Thrmbc/nfs dialysis circuit	185.01	\$6,456	150	\$5,033	-19%	-22%
36907	Balo angiop ctr dialysis seg	19.77	\$690	16	\$549	-17%	-20%
36908	Stent plmt ctr dialysis seg	54.39	\$1,898	44	\$1,480	-19%	-22%
36909	Dialysis circuit embolj	61.77	\$2,155	52	\$1,757	-15%	-18%
49418	Insertion of Tunneled Intraperitoneal Catheter	34	\$1,175	28	\$933	-17%	-21%

Susanne Rose from Miami, FL, said, “Vascular access centers for dialysis patients are a lifeline. These proposed cuts by CMS will mean patients like me will be cut off from non-hospital vascular access centers. Especially with COVID, I want to stay out of the hospital. My access center has taken care of my access since 2018 and I have not been to a hospital for access since then.”

Wallace Montgomery, a California resident, said, “As an African American patient on dialysis, I am already at a disadvantage. I am finally getting good care for my access at a local access center, and I feel much better. To learn that the proposed cuts for next year may cause my center to close is frustrating. Patients of color like me always get the short end of the stick in health care.”

# 2022 PFS Second Order Effect

## *Fibroid Embolization*

- 37243 is the primary code for uterine fibroid embolization.
- Uterine fibroids are diagnosed [roughly three times](#) more frequently in Black women and women of color than in white women of the same age.

	2021 Final (post H.R. 133) Physician Fee Schedule		2022 Proposed Physician Fee Schedule	2022 Proposed Physician Fee Schedule	2022 Proposed RVU Difference	2022 Proposed Payment Difference
CF		34.89		33.58		
	2021 Non-Facility Total RVU/Unit (Final)	2021 Non-Facility Total Payments (Final)	2022 Non-Facility Total RVU/Unit (Proposed)	2022 Non-Facility Total Payments (Proposed)	2022 Proposed vs 2021 Final	2022 Proposed vs 2021 Final
37243	284.68	\$9,933	234	\$7,844	-18%	-21%



# 2022 PFS Second Order Effect

## Radiation Oncology

- Cuts to radiation oncology in the PFS already have been 28% over the last decade (<https://www.uspaccess.org/the-issue>).
- According to a [2020 Cancer Disparities Progress Report](#) by the American Association for Cancer Research (AACR):
  - Black men are 111% more likely to die of prostate cancer than White men.
  - Black women are 39% more likely to die of breast cancer than White women.
- These cuts will have a negative impact on freestanding radiation therapy centers not in CMMI's Radiation Oncology APM and will impact the validity of the model.

		2021 Final Physician Fee Schedule (post H.R. 133)		2022 Proposed Physician Fee Schedule	2022 Proposed Physician Fee Schedule	RVU Difference	Payment Difference
HCPCS	Conversion factor Description	2021 Non-Facility Total RVU/Unit (Final)	2021 Non-Facility Total Payments (Final)	2022 Non-Facility Total RVU/Unit (Proposed)	2022 Non-Facility Total Payments (Proposed)	2022 Proposed vs 2021 Final	2022 Proposed vs 2021 Final
			34.89		33.58		
G6001	Echo guidance radiotherapy	4.49	\$157	4.93	\$166	10%	6%
G6002	Stereoscopic x-ray guidance	2.21	\$77	2.23	\$75	1%	-3%
G6003	Radiation treatment delivery	4.49	\$157	3.87	\$130	-14%	-17%
G6004	Radiation treatment delivery	4.15	\$145	3.50	\$118	-16%	-19%
G6005	Radiation treatment delivery	4.16	\$145	3.50	\$118	-16%	-19%
G6006	Radiation treatment delivery	4.14	\$144	3.48	\$117	-16%	-19%
G6007	Radiation treatment delivery	7.89	\$275	6.35	\$213	-20%	-23%
G6008	Radiation treatment delivery	5.74	\$200	4.82	\$162	-16%	-19%
G6009	Radiation treatment delivery	5.70	\$199	4.81	\$162	-16%	-19%
G6010	Radiation treatment delivery	5.69	\$199	4.82	\$162	-15%	-18%
G6011	Radiation treatment delivery	7.63	\$266	6.38	\$214	-16%	-20%
G6012	Radiation treatment delivery	7.78	\$271	6.37	\$214	-18%	-21%
G6013	Radiation treatment delivery	7.80	\$272	6.38	\$214	-18%	-21%
G6014	Radiation treatment delivery	7.77	\$271	6.35	\$213	-18%	-21%
G6015	Radiation tx delivery imrt	11.32	\$395	10.02	\$337	-11%	-15%

# 2022 PFS Second Order Effect

## Revascularization

- Nationally, the amputation rate among black Medicare beneficiaries is nearly [three times higher](#) than the rate among other beneficiaries.
- Revascularization is a critical intervention to either avert amputation or minimize amputation (e.g. lower leg vs. upper leg) when peripheral artery disease has advanced to critical limb ischemia (CLI).
- The issue is laid out in a 2020 ProPublica article: the [Black American Amputation Epidemic](#).
- Dr. Fakorede's office in the Mississippi delta likely will have to close giving local residents no option for revascularization services.

		2021 Final PFS (post H.R. 133)		2022 Proposed PFS		2022 Proposed RVU Difference	2022 Proposed Payment Difference
CF		34.8931		33.5848			
	Procedure Description	2021 Non-Facility Total RVU/Unit (Final)	2021 Non-Facility Total Payments (Final)	2022 Non-Facility Total RVU/Unit (Proposed)	2022 Non-Facility Total Payments (Proposed)	2022 Proposed vs 2021 Final	2022 Proposed vs 2021 Final
37220	Iliac revasc	83.83	\$2,925	69	\$2,318	-18%	-21%
37221	Iliac revasc w/stent	108.70	\$3,793	88	\$2,957	-19%	-22%
37222	Iliac revasc add-on	20.68	\$722	17	\$577	-17%	-20%
37223	Iliac revasc w/stent add-on	49.23	\$1,718	40	\$1,339	-19%	-22%
37224	Fem/popl revas w/tla	99.12	\$3,459	81	\$2,708	-19%	-22%
37225	Fem/popl revas w/ather	314.02	\$10,957	254	\$8,543	-19%	-22%
37226	Fem/popl revasc w/stent	285.70	\$9,969	231	\$7,772	-19%	-22%
37227	Fem/popl revasc stnt & ather	402.50	\$14,044	326	\$10,949	-19%	-22%
37228	Tib/per revasc w/tla	141.95	\$4,953	114	\$3,828	-20%	-23%
37229	Tib/per revasc w/ather	315.86	\$11,021	256	\$8,593	-19%	-22%
37230	Tib/per revasc w/stent	300.50	\$10,485	242	\$8,129	-19%	-22%
37231	Tib/per revasc stent & ather	403.82	\$14,091	327	\$10,986	-19%	-22%
37232	Tib/per revasc add-on	28.34	\$989	23	\$765	-20%	-23%
37233	Tibper revasc w/ather add-on	34.97	\$1,220	29	\$971	-17%	-20%
37234	Revasc opn/prq tib/pero stent	118.41	\$4,132	97	\$3,270	-18%	-21%
37235	Tib/per revasc stnt & ather	125.83	\$4,391	105	\$3,522	-17%	-20%
37236	Open/perq place stent 1st	95.08	\$3,318	77	\$2,587	-19%	-22%
37237	Open/perq place stent ea add	48.47	\$1,691	39	\$1,319	-19%	-22%
37238	Open/perq place stent same	113.98	\$3,977	93	\$3,129	-18%	-21%
37239	Open/perq place stent ea add	57.04	\$1,990	46	\$1,540	-20%	-23%



# 2022 PFS Second Order Effect

## *Venous Ulcer*

- 36475 is the primary code for radiofrequency ablation.
- Studies [show](#) Black patients present with more advanced venous insufficiency than White patients.

		2021 Final PFS (post H.R. 133)		2022 Proposed PFS		2022 Proposed RVU Difference	2022 Proposed Payment Difference
CF		34,8931		33,5848			
	Procedure Description	2021 Non-Facility Total RVU/Unit (Final)	2021 Non-Facility Total Payments (Final)	2022 Non-Facility Total RVU/Unit (Proposed)	2022 Non-Facility Total Payments (Proposed)	2022 Proposed vs 2021 Final	2022 Proposed vs 2021 Final
36475	Endovenous rf 1st vein	37.76	\$1,318	30	\$1,016	-20%	-23%

# 2022 PFS Second Order Effect: COVID-19 Pandemic

- Reducing access to office-based care during a pandemic is a key second-order negative outcome that isn't considered by indiscriminate cuts of 10% to the “conversion factor” (2021 PFS) and 24% to the “direct adjustment factor” (2022 PFS).
- Both the 2021 PFS conversion factor cut and the 2022 PFS direct adjustment factor cut cause dramatic reductions in reimbursement to office-based specialists.
- In a health crisis such as the COVID-19 Pandemic, it's critical that hospitals focus on our sickest pandemic patients.
- However, many other issues such as cancer, dialysis vascular access for ESRD patients, cardiac patients with symptoms, the need for physical therapy, etc. still must be addressed.<sup>12</sup>
- Office-based care provides a critical site-of-service outside of the hospital to deal with non-COVID cases so hospitals can focus on a resurging pandemic.
- Hospitals in two states where COVID-19 is surging have begun to delay elective surgeries again.<sup>3</sup>

<sup>1</sup> See, for example, the March 2020 CMS “[Adult Elective Surgery and Procedures Recommendations](#),” which listed several “do not postpone” procedures such as most cancers, cardiac patients with symptoms, limb threatening vascular surgery, etc.

<sup>2</sup> See also August 2020 CMS “[Key Components for Continued COVID-19 Management for Dialysis Facilities](#),” which effectively lists dialysis vascular access as a “do not postpone” procedure.

<sup>3</sup> Becker's ASC Review, [Elective surgeries delayed at Florida, Louisiana hospitals amid COVID-19 surges](#), 26 July 2021



# There is a Health Equity Aspect to Shutting Down Office-Based Care in a Pandemic

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- **Patients**

- African Americans, who represent 13% of the US population, account for 26% of COVID-19 cases and have a mortality rate that is 2.4 times the rate for white individuals.<sup>1</sup>
- African Americans are overrepresented in hospital admissions relative to other racial groups.<sup>2</sup>

- **Providers**

- Oliver Brooks, MD, President of the National Medical Association noted:
  - There is concern “about the solo and small group practitioners” because “on the news we hear so much about hospitals, clinics, health centers and governmental agencies,” said Dr. Brooks. However, “you hear very little related to the solo and small group practitioners and the African American communities.”
  - “Solo and small group practitioners ... don’t have large cash reserves in which they can wait three months to get money coming from the federal government.”<sup>3</sup>

<sup>1</sup>Journal of the American Medical Association, Policy Solutions for Reversing the Color-blind Public Health Response to COVID-19 in the US, 4 June 2020

<sup>2</sup>HHS Initiatives to Address the Disparate Impact of COVID-19 on African Americans and Other Racial and Ethnic Minorities

<sup>3</sup>American Medical Association, How COVID-19 is affecting physicians of color across the country, 14 April 2020

# **PFS Cuts Based In Part on MedPAC-Promoted Policy of Cutting Specialists to Pay for Primary Care**

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# Concerns with SullivanCotter Survey

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- MedPAC has cited the SullivanCotter Survey to support BN primary care increases / specialty decreases:
  - MedPAC: MedPAC has a longstanding concern that the MPFS and the nature of fee-for-service (FFS) payment has contributed to an undervaluing of primary care and an overvaluing of specialty care.<sup>1</sup>
  - MedPAC: One approach to rebalance the fee schedule toward ambulatory E&M services is to increase payment rates for these services and to maintain budget neutrality by reducing payment rates for other services (e.g., procedures, imaging, and tests).<sup>2</sup>
- A review of the data behind the SullivanCotter survey, however, reveals several areas of concern, including:
  - BN-funded increases to primary care redistributes money away from *lower-paid* providers, like PT.
  - There is no indication of what appropriate physician compensation or volume differentials *should* be.
  - Independent practices are *not* a significant source of data.

<sup>1</sup> Urban Institute and SullivanCotter, Analysis of Physician Compensation, January 2019. Retrieved at:

[http://www.medpac.gov/docs/default-source/contractor-reports/jan19\\_medpac\\_disparities\\_physiciancompensationreport\\_cvr\\_contractor\\_sec.pdf](http://www.medpac.gov/docs/default-source/contractor-reports/jan19_medpac_disparities_physiciancompensationreport_cvr_contractor_sec.pdf)

<sup>2</sup> MedPAC, Rebalancing Medicare's physician fee schedule toward ambulatory evaluation and management services, June 2018. Retrieved at:

[http://www.medpac.gov/docs/default-source/reports/jun18\\_ch3\\_medpacreport\\_sec.pdf?sfvrsn=0](http://www.medpac.gov/docs/default-source/reports/jun18_ch3_medpacreport_sec.pdf?sfvrsn=0)

# BN-funded increases to primary care redistributes money away from *lower-paid* providers, like PT

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- SullivanCotter report:<sup>1</sup>
  - “Primary care physicians have the lowest median compensation” at \$241,687.<sup>2</sup>
- But physical therapy median compensation is \$89,440.<sup>3</sup>
- In other words, the 2021 PFS cut PT providers by 9% to pay for primary care physicians, who already are paid 171% more than physical therapists.

<sup>1</sup> Urban Institute and SullivanCotter, Analysis of Physician Compensation, January 2019. Retrieved at:

[http://www.medpac.gov/docs/default-source/contractor-reports/jan19\\_medpac\\_disparities\\_physiciancompensationreport\\_cvr\\_contractor\\_sec.pdf](http://www.medpac.gov/docs/default-source/contractor-reports/jan19_medpac_disparities_physiciancompensationreport_cvr_contractor_sec.pdf)

<sup>2</sup> This report finds that total median cash compensation is higher for all other specialty groups relative to primary care in 2017.

<sup>3</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Physical Therapists. Retrieved at:

<https://www.bls.gov/ooh/healthcare/physical-therapists.htm>



# SullivanCotter data does not reflect what appropriate physician compensation differentials *should* be

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- SullivanCotter Report:<sup>1</sup>
  - “[S]pecialty differentials indicate high median compensation relative to primary care driven by differentials in total cash compensation [TCC].”<sup>2</sup>
- But the SullivanCotter report also notes:
  - “Per hour compensation differences are supposed to reflect differences in practice expenses” in the Physician Fee Schedule.
  - TCC includes significant payments that flow *outside* PFS RVUs, such as:
    - (1) facility-based technical payments in the IPPS and OPPS fee schedules (which MedPAC acknowledges often are paid at higher rates than the office) and
    - (2) Part B drugs (which are not paid on the basis of RVUs).

<sup>1</sup> Urban Institute and SullivanCotter, Analysis of Physician Compensation, January 2019. Retrieved at:

[http://www.medpac.gov/docs/default-source/contractor-reports/jan19\\_medpac\\_disparities\\_physiciancompensationreport\\_cvr\\_contractor\\_sec.pdf](http://www.medpac.gov/docs/default-source/contractor-reports/jan19_medpac_disparities_physiciancompensationreport_cvr_contractor_sec.pdf)

<sup>2</sup> Total cash compensation includes base salary, incentive compensation, and other cash compensation (e.g. honoraria, longevity bonuses, retention bonuses, profit-sharing, sign-on bonuses, long-term incentive payments).

<sup>3</sup> SullivanCotter implies in its Total Cash Compensation (TCC) analysis that, because some specialties are able to generate higher TCC, all non-primary care providers in the PFS should be reduced to pay more for primary care.

# SullivanCotter data does not reflect what appropriate volume differentials *should* be

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- The SullivanCotter report notes:
  - [R]adiologists' median total compensation and work RVUs are almost double those of primary care specialists while radiologists' compensation per work RVU is close to that of primary care specialists—suggesting that *radiologists' relatively high compensation is driven in part by their ability to generate a high volume of work RVUs.*
- But higher relative volume in and of itself does not indicate inappropriateness and could represent the inherent differences in the nature of the service (e.g. between radiology and primary care).
- Moreover, the SullivanCotter report notes:
  - “Participants [in the survey] consist of large health systems, hospitals and medical groups. *While participation is open to independent practices, they are not a significant source of data.*”<sup>1</sup>

<sup>1</sup> Urban Institute and SullivanCotter, Analysis of Physician Compensation, January 2019, page 4. Retrieved at: [http://www.medpac.gov/docs/default-source/contractor-reports/jan19\\_medpac\\_disparities\\_physiciancompensationreport\\_cvr\\_contractor\\_sec.pdf](http://www.medpac.gov/docs/default-source/contractor-reports/jan19_medpac_disparities_physiciancompensationreport_cvr_contractor_sec.pdf)



# Takeaway from USPA March 2021 Meeting with MedPAC

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- USPA explored with MedPAC not *whether* there are differentials in practice expense or volume within the PFS (MedPAC admits *there should be differences*), but rather:
  - What are *appropriate* practice expense differentials within the PFS?
    - MedPAC: “We don’t know.”
  - What are *appropriate* volume differentials within the PFS?
    - MedPAC: “We don’t know.”
  - Can such differentials reasonably be determined?
    - MedPAC: “No.”
  - Were you aware that 9% cuts to lower reimbursed PT fund higher reimbursed primary care?
    - MedPAC: “We were not aware. That sounds like ‘collateral damage.’”
- **USPA Takeaways:**
  - **2021 PFS cuts to office-based specialists were a mistake and need to be stopped going forward.**
  - **There are more appropriate mechanisms than the PFS BN mechanism to address concerns regarding primary care reimbursement (e.g. add-on payments not subject to MPFS BN).**

# Reimbursement Volatility for Office-Based Specialists Make Them Vulnerable

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- **Viability of Office-Based Specialists is Critical as Setting for Centers of Excellence**
  - While MedPAC’s March 2020 report finds “**it is not clear that vertical integration in general improves outcomes,**” there *is* evidence that **office-based specialists can provide superior outcomes** if they specialize on a more discrete set of services.<sup>1</sup>
- Unlike a typical hospital, however, **office-based specialists are not broadly diversified *because they focus on a discrete set of services.***<sup>2</sup>
  - This means office-based specialists cannot offset significant reimbursement cuts through budget neutral increases elsewhere in the MPFS and makes them vulnerable to consolidation.

<sup>1</sup> See for example the superior outcomes in office-based vascular access centers. *El-Gamil, Audrey et al., What is the best setting for receiving dialysis vascular access repair and maintenance services?, September 2, 2017.*

<sup>2</sup> Specialists in an ASC also cannot offset significant cuts when volatility occurs through changes in APC placement or broad APC restructuring.



# **MedPAC's Concerns Regarding Health Consolidation Reveal a Blind Spot Relating to Ongoing PFS Cuts**

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# MedPAC March 2020 Report: Hospital-Physician Integration

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- Cuts to Office-Based Specialists May Be Causing Consolidation
  - MedPAC: “[W]e find that **federal policies do create incentives for physician–hospital integration.**”
- Cuts to Office-Based Specialists May Be Causing Site-of-Service Migration
  - MedPAC: “Researchers have documented increasing levels of hospital–physician integration over a long period of time.
  - A survey cited in the MedPAC report found, between 2012 and 2018, percent of hospital-employed physicians increased > 70% and percent of hospital-owned practices increased > 120%<sup>1</sup>
- Consolidation / Site-of-Service Migration May Be Causing Higher Prices
  - MedPAC: “The literature suggests that the net results of increases in hospital–physician integration have been **higher physician prices, higher spending for commercial payers, and higher spending for Medicare.**”
  - MedPAC: “[G]rowth in **hospital–physician integration leads to higher total spending because prices increase without countervailing efficiencies.**”

<sup>1</sup> Physicians Advocacy Institute, *Updated Physician Practice Acquisition Study: National and Regional Changes in Physician Employment 2012-2018*, February 2019



# MedPAC March 2020 Report: Hospital-Physician Integration

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- MedPAC has focused on **chemo administration, echocardiography, cardiac imaging, and office visits**
  - MedPAC: “The integration of hospitals and physician practices has substantially shifted the billing from the PFS to the OPPS for four service categories: *chemotherapy administration, echocardiography, cardiac imaging, and office visits.*”
  - MedPAC: “From 2012 to 2018, the **billing of these services under the PFS decreased (substantially in some categories) and increased under the OPPS.**”
  - MedPAC: “Over this period, the volume of OPPS clinic visits increased by 37 percent and chemotherapy administration by 53 percent. At the same time, the volume of physician visits in freestanding offices decreased by 2.0 percent, and chemotherapy administration by 16.6 percent.”
- USPA believes many other office-based specialties and subspecialties have been subject to such reimbursement pressures which has made them vulnerable to service migration.

**Other Options to Promote Transparency  
and Review of Second Order Effects in the  
Medicare Physician Fee Schedule**

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# Proposed Policies to Promote Stability in the Medicare Physician Fee Schedule

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- **1. PFS Impact Transparency**
  - The PFS Impact Table is inadequate in providing useful information to Congress and stakeholders about the PFS regulation's impact to specialties.
- **2. Robust Analysis and Reporting on Second Order Effects *Before* Implementing Significant Cuts**
  - The PFS Impact Table only examines first order effects of a cut to a specialty in a single year.
  - It takes significant time and resources for Congress and stakeholders to understand the potential negative impact of significant cuts, including:
    - Impact on center closures, Medicare beneficiary access to services, and drive times
    - Impact on Medicare beneficiary site-of-service migration and out-of-pocket liabilities
    - Impact on Medicare utilization of higher cost services (e.g. opioids instead of physical therapy)
    - Impact on Total Medicare and health sector costs
  - Significant cuts to the office can cause *higher* Medicare spending.
    - Therefore, it is incumbent upon CMS to take great care to listen to stakeholders and report to Congress before significant cuts are finalized.

# Proposed Policy 1: Specialty Impact Transparency

- PFS Specialty Impact Table aggregates provider reimbursement for of office-based (prof+tech fees) and facility-based (prof fees).
  - Proposal: PFS Specialty Impact Table should disaggregate effects of reimbursement changes by setting, including the office, HOPD, and ASC
- Because facility-based technical fees flow through OPSS / ASC fee schedules, the PF Specialty Impact Table is distorted further
  - Proposal: PFS Specialty Impact Table should show effects of OPSS and ASC technical fees for apples-to-apples comparison to the office
- PFS Specialty Impact Table does not include all subspecialties
  - Proposal: PFS Specialty Impact Table should show all subspecialties
- CMS does not identify key codes driving significant cuts to a specialty or subspeciality
  - In cases of a specialty swing of more than [X]%, CMS should explain which code(s) are responsible for the swing

TABLE 106: CY 2021 PFS Estimated Impact on Total Allowed Charges by Specialty

(A) Specialty	(B) Allowed Charges (mil)	(C) Impact of Work RVU Changes	(D) Impact of PE RVU Changes	(E) Impact of MP RVU Changes	(F) Combined Impact
OPHTHALMOLOGY	\$5,343	-4%	-2%	0%	-6%
OPTOMETRY	\$1,359	-2%	-2%	0%	-4%
ORAL/MAXILLOFACIAL SURGERY	\$79	-2%	-2%	0%	-4%
ORTHOPEDIC SURGERY	\$3,812	-3%	-1%	0%	-4%
OTHER	\$48	-3%	-2%	0%	-5%
OTOLARNGOLOGY	\$1,271	4%	3%	0%	7%
PATHOLOGY	\$1,265	-5%	-4%	0%	-9%
PEDIATRICS	\$67	4%	2%	0%	6%
PHYSICAL MEDICINE	\$1,164	-3%	0%	0%	-3%
PHYSICAL/OCCUPATIONAL THERAPY	\$4,973	-4%	-4%	0%	-9%
PHYSICIAN ASSISTANT	\$2,901	5%	2%	0%	8%
PLASTIC SURGERY	\$382	-4%	-3%	0%	-7%
PODIATRY	\$2,133	-1%	0%	0%	-1%
PORTABLE X-RAY SUPPLIER	\$95	-2%	-4%	0%	-6%
PSYCHIATRY	\$1,112	4%	3%	0%	7%
PULMONARY DISEASE	\$1,654	0%	0%	0%	1%
RADIATION ONCOLOGY AND RADIATION THERAPY CENTERS	\$1,809	-3%	-3%	0%	-5%
RADIOLOGY	\$5,275	-6%	-4%	0%	-10%
RHEUMATOLOGY	\$548	10%	5%	1%	15%
THORACIC SURGERY	\$352	-5%	-2%	0%	-8%
UROLOGY	\$1,810	4%	4%	0%	8%
VASCULAR SURGERY	\$1,293	-2%	-4%	0%	-6%
<b>TOTAL</b>	<b>\$97,008</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>



# Proposed Policy 2: Robust Analysis and Reporting on Second Order Effects Before Implementing Significant Cuts

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- **SUSPENSION OF SIGNIFICANT CODE REDUCTIONS IN ORDER TO CONSULT WITH STAKEHOLDERS**
  - The Secretary should suspend the implementation of significant specific code reductions (i.e. more than [X] percent) for no less than [X] year(s) and consult with relevant eligible professional organizations and other stakeholders to assess the impact of such code reductions.
- **REPORT TO CONGRESS**
  - For a year in which the Secretary identifies cuts of [X] percent or more, the Secretary shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on its findings. Such report shall include a list of stakeholders with whom the Secretary consulted and in what capacity.
- **NON-IMPLEMENTATION OF SPECIFIC CODE REDUCTIONS UPON FINDINGS OF SIGNIFICANT DISRUPTION TO MEDICARE SERVICES**
  - The Secretary should not implement reimbursement reductions to specific codes if the Secretary determines such reductions will cause significant disruption to practitioner services, beneficiary access or liabilities, service migration, increase in higher cost services, or total costs in the Medicare program or overall healthcare system.

# Jeff Olivet

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## Purpose

For more than 25 years, I have worked as a writer, speaker, teacher, researcher, and activist to combat homelessness, poverty, and racial inequity, and to advance best practices across sectors. Through my career as a street outreach worker, case manager, coalition builder, consultant, CEO of the Center for Social Innovation (now C4 Innovations), founder of jo consulting and co-founder of Racial Equity Partners, I have developed a diverse set of knowledge, skills, and networks I use to do my part in ending some of our society's most entrenched social ill—structural racism, homelessness, and lack of access to health care.

## Education

BA in English and French with a minor in Creative Writing, University of Alabama, 1993, Phi Beta Kappa  
MA in English, Boston College, 1996

## Work

2020-present Co-Founder, Racial Equity Partners, Cambridge, MA/Washington, DC  
2018-present Founder, jo consulting, Cambridge, MA/Washington, DC  
2010-2018 President/Chief Executive Officer, Center for Social Innovation (now C4 Innovations), Needham, MA  
2006-2010 Principal/Director of Training/Project Director of SAMHSA's Homelessness Resource Center, Center for Social Innovation (now C4 Innovations), Needham, MA  
2004-2009 Health and Social Policy Consultant  
Coleman Associates, New York, NY  
Health Imperatives, New Bedford, MA  
National Center on Family Homelessness, Newton, MA  
National Health Care for the Homeless Council, Nashville, TN  
Other local and national organizations  
2003-2004 Founder and Director, The Justice Project, Albuquerque, NM  
1998-2003 Family Case Manager, Albuquerque Health Care for the Homeless, Albuquerque, NM  
1998-2001 English Instructor, Central New Mexico Community College, Albuquerque, NM  
1996-1998 Shelter Assistant/Supportive Housing Coordinator, St. Martin's Hospitality Center (now Hopeworks), Albuquerque, NM  
1995-1996 Teaching Fellow, English Department, Boston College, Chestnut Hill, MA

## Board Membership and Other Activities

2021-present Member, HUD Race and Ethnicity Data Workgroup  
2021-present Senior Advisor, Bring America Home Now Campaign  
2019-present Co-Chair, Antiracism Research and Data Workgroup, a subcommittee of that National Racial Equity Workgroup on Homelessness and Housing  
2018-present Founding Steering Committee Member, National Racial Equity and Homelessness Workgroup on Homelessness and Housing  
2016-2018 Governing Board Member, National Health Care for the Homeless Council  
2015-2018 Board Member, Young People in Recovery  
2015-2016 Participant, NIH Commercialization Accelerator Program  
2014-present Board Member, Bolder Healthcare Solutions  
2010-2018 Motivational Interviewing Network of Trainers (MINT)



## Talks and Presentations

I have delivered hundreds of keynote addresses, presentations, workshops, and trainings, including:

- National Institutes of Health Dissemination and Implementation Conference
- National Institute of Mental Health Director's Innovation Speakers Series
- White House Briefing on Ending Youth Homelessness
- National Alliance to End Homelessness
- National Behavioral Health Council
- National Health Care for the Homeless Council
- National Summit on Racial Equity and Homelessness
- International Street Medicine Symposium
- Housing First Partners Conference
- Numerous local, statewide, and regional convenings and conferences annually

## Recent Research

Experiences of Homelessness among Hispanic Youth and Young Adults (2020-present)

Supporting Partnerships for Anti-Racist Communities (SPARC) (2016-2018)

CSC OnDemand: An Online Learning Platform for Implementing Coordinated Specialty Care (NIMH 1R44MH111283-01, 2016-present)

OnTrack>An Online Role-Playing Game (NIMH 2R44MH105013-02, 2014-2019)

Motivational Interviewing Simulator: An Experiential Online Tool (NIMH 2R44MH092951, 2014-2018)

Social Skills Coach: An innovative multi-platform device to address social impairments among individuals with schizophrenia (NIMH 1R43MH113424-01, 2017-2018)

Child Assessment Tool for Resource-Limited Settings (NICHD 1R44HD088291-01, 2016-2018)

Project Amp: Amplifying Our Futures (Hilton Foundation Grant 20140226, 2015-2017)

## Recent Publications

Olivet, J., Wilkey, C., Richard, M., Dones, M., et al. (2021). Racial Inequities in Homelessness: Findings from the SPARC Study. *Annals of the American Academy of Political and Social Science* 693.

Richard, M., Edwards, E., Whitehead, D.H., Gilchrist, K.S., & Olivet, J., (2021). The State of Eviction Prevention in Alexandria, Virginia: A Community Assessment. *Racial Equity Partners and Alexandria Eviction Prevention Partnership*. Pending publication.

Olivet, J., Anderson, J., Daly, B., Richard, M. & Whitehead, D.H. (2021). Racial Equity and Homelessness in Massachusetts: An Assessment of the Statewide Emergency Assistance System for Homeless Families. *Racial Equity Partners and Homes for Families*. Pending publication.

Olivet, J., & Whitehead, D.H. (2020). Race and Homelessness in Maricopa County, Arizona: Examining the Intersections. *Racial Equity Partners and Maricopa Association of Governments*.

Olivet, J., Cannon, R., Wilkey, C., Moore, N. (2020). Race and Homelessness in Santa Clara County (CA). *Destination Home and C4 Innovations*. Available at: <https://destinationhomesv.org/wp-content/uploads/2021/01/Race-Homelessness-DH.pdf>

Aronson, M., Olivet, J., & Bradley, J. (2019). Under the Radar: An Assessment of Youth and Young Adult Homelessness in Hampden County, Massachusetts. Available at [www.undertheradarspringfield.org](http://www.undertheradarspringfield.org).

Olivet, J., Aronson, M., & Bradley, J. (2019). "I'm Still a Human": An Assessment of Youth and Young Adult Homelessness in the Three County Continuum of Care (Franklin, Hampshire, and Berkshire Counties, Massachusetts).

Olivet, J., Beit-Arie, M., & Joseph, L. (2019). Race and Homelessness in Montgomery County, Pennsylvania. Part 1: Initial Findings and Part 2: National Scan. Prepared for Your Way Home and HealthSpark Foundation by SPARC, an initiative of C4 Innovations. Available at <https://yourwayhome.org/equity>.

Olivet, J., Dones, M., & Richard, M. (2019). Racism, Homelessness, and Mental Health, in Racism and Psychiatry: Contemporary Issues and Interventions. Ed. by Medlock, M., and Shtasel, D. Springer Publications.

Olivet, J., Dones, M., Richard, M., et al. (2018). Supporting Partnerships for Anti-Racist Communities: Phase One Study Findings. Center for Social Innovation.

### **Selected Tools, Products, and Curricula**

*Racial Equity in Practice: Small Group Learning to Apply Racial Equity Principles* (2021). Racial Equity Partners.

*Going Deeper on Racial Equity: A Training Curriculum* (2021). Racial Equity Partners.

*Racial Equity and Homelessness: A Training Curriculum* (2020). Racial Equity Partners.

*Motivational Interviewing Simulator: An experiential Online Training Tool* (2018). Center for Social Innovation, Needham, Massachusetts.

*Critical Time Intervention: Online Advanced Skills Course* (2014). Center for Social Innovation, in partnership with Hunter College Silberman School of Social Work.

*Changing the Conversation: An interactive tool to build motivational interviewing skills* (2013) [available on iTunes]. Center for Social Innovation.

*Homelessness Knowledge at Work: A 12-unit online curriculum for homeless service providers* (2010). Center for Social Innovation.

*Core Skills for Homeless Service Providers: A Training Curriculum* (2008). Center for Social Innovation.

*Motivational Interviewing for Homeless Service Providers: A Training Curriculum* (2008). Health Care of Southeastern Massachusetts.

*Shelter Health: A Curriculum for Emergency Service Workers Working in Shelters after Hurricane Katrina* (2005). National Health Care for the Homeless Council.

### **Skills**

Leadership and Management | Strategic Planning | Policy Analysis | Organizational Development | Leadership Coaching | Public Speaking | Training | Curriculum Development | Proposal Writing | Creative Technologies for Online Training and Dissemination | Mixed Methods Research | Partnerships

### **Subject Matter Expertise**

Homelessness | Housing | Racial Equity | Mental Health and Trauma | Substance Use | Prevention and Early Intervention | HIV | Online Learning and Adult Learning Theory | Health Care Improvement

### **Other Activities**

In addition to my work to combat racism and end homelessness, I am a musician, avid traveler, and recovering little league baseball and girls' softball coach.



**From:** Sibori, Gabriela (HHS/ASPA) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=73A324BC75DD4A2EAB4D0F3145FC2DC4-SIBORI, GAB <Gabriela.Sibori@hhs.gov>

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**Subject:** Coverage Roundup: Press Mentions, 4.28.22

**Date:** 2022/04/28 18:08:22

**Priority:** Normal

**Type:** Note

Hi Secretary, press mentions are below!

### Hearing on the FY23 HHS Budget

#### **POLITICO Pulse:** [The warring emergencies in America](#)

"It's important as secretary of HHS to have a plan if, in fact, Title 42 is lifted," E&C health subcommittee Chair Anna Eshoo (D-Calif.) said. "You have a responsibility to plan ... so that there is not any public health disaster relative to those at the border." Then there's climate change vs. everything else. Subcommittee ranking member Brett Guthrie (R-Ky.) said the 174-page budget proposal "mentions climate change more than fentanyl," evidence of an increasingly "politicized" health department. That's not quite a fair yardstick — HHS is asking for \$3 million to start its climate change office and \$110 million to study climate change's impact, compared to \$11.4 billion to combat the addiction crisis — but it shows the partisan tension over the Biden administration's priorities, let alone the definition of a health emergency. "Do you intend to declare the climate a public health emergency?" Utah Republican John Curtis asked Becerra after pointing out that it would receive more funding than nutrition research in the proposed budget. "I think most people recognize that climate change has already become an emergency," Becerra answered.

#### **POLITICO Playbook:** [Inside Biden's WHCA dinner speech](#)

HHS Secretary XAVIER BECERRA will testify before the Ways and Means Committee at 10:30 a.m.

#### **Bloomberg Government:** [HEALTH CARE BRIEFING: Covid Aid Spat Risks Future Pandemic Drugs](#)



Eshoo Pledges ARPA-H Independence From NIH: A debate over where a new biomedical accelerator agency should sit within the federal government isn't over, as a top health lawmaker said she'll keep working to keep the new office outside of the NIH. "Congress authorizes. Congress appropriates," Rep. Anna Eshoo (D-Calif.), chair of the House Energy and Commerce Health Subcommittee, said at a hearing on the Health and Human Services Department's budget request. Eshoo said that HHS Secretary Xavier Becerra "has his view. I don't agree with it. So I will present authorizing legislation." She was referring to Becerra's announcement last month that he plans to set up the Advanced Research Projects Agency for Health, or ARPA-H, within the National Institutes of Health. The ARPA-H director would report to Becerra instead of the NIH director under the plan. Eshoo, who leads the health subcommittee, told Bloomberg Government after the hearing that she doesn't have a date on when she plans to advance her ARPA-H authorizing bill. "It will be in the near future," she said.

### **FDA / Dr. Califf Coverage**

#### **Associated Press: [FDA to issue plan banning menthol in cigarettes, cigars](#)**

The U.S. government on Thursday will lay out its long-awaited plan to ban menthol cigarettes and flavored cigars, which have taken a disproportionate toll on Black smokers and other minorities. Food and Drug Administration Commissioner Robert Califf previewed the announcement in congressional testimony, saying the proposal would reduce disease and death by helping current smokers quit and stopping younger people from starting. Menthol accounts for more than a third of cigarettes sold in the U.S, and the mint flavor is overwhelmingly favored by Black smokers and young people. The FDA has attempted several times to get rid of menthol but faced pushback from Big Tobacco, members of Congress and competing political interests under both Democratic and Republican administrations.

**Reprints by:** [PBS Newshour](#), [NBC News](#), [FOX News](#), [ABC News](#), [Tampa Bay](#), [STAT News](#), [PBS Chicago](#), [Translated to Spanish by Telemundo](#), [The Griot](#)

#### **NPR: [The FDA is proposing a ban on menthol cigarettes](#)**

The agency says the proposal has the potential to significantly reduce disease and death from tobacco by "reducing youth experimentation and addiction." "The proposed rules would help prevent children from becoming the next generation of smokers and help adult smokers quit," Health and Human Services Secretary Xavier Becerra said in a [statement](#). "Additionally, the proposed rules represent an important step to advance health equity by significantly reducing tobacco-related health disparities." The proposed standards are based in "clear science and evidence" that establish the addictive nature and harm of the flavored products, the agency said. The proposal builds on the Family Smoking Prevention and Tobacco Control Act, which banned cigarette flavors — aside from tobacco and menthol — in 2009.

#### **CNN: [FDA proposes ban on menthol cigarettes and flavored cigars](#)**

[More than half](#) of kids who smoke use menthol cigarettes, [according to the CDC](#). A survey of adults who smoke found that the majority started with menthols. Other [studies](#) said kids who smoked menthol cigarettes were more likely to become regular smokers than occasional smokers. "The proposed rules would help prevent children from becoming the next generation of smokers and help adult smokers quit," Health and Human Services Secretary Xavier Becerra said in a statement Thursday. "Additionally, the proposed rules represent an important step to advance health equity by significantly reducing tobacco-related health disparities."

#### **Bloomberg Law: [Moderna Kids Vaccine Review Will Be Unaffected by Pfizer Timing](#)**



If authorized, the vaccines would offer for the first time Covid-19 vaccines for the youngest age group. Parents of young kids have been [pushing the FDA to clear Moderna's vaccine](#). "We're going to look at it as quickly as we possibly can, while making sure that we do it right," Califf said. But the FDA commissioner, who's a prolific clinical trialist, was reluctant to offer a more specific timeline, noting that unexpected events occur frequently in the clinical trial process. "It's not good for people to expect the timeline when we don't really know. So as soon as we know something, we'll let you know," he said. Califf noted that he was very involved in the pediatric rules that required clinical trials in children. "It's really important for people to understand that as a child goes from birth to 5 years, a lot changes," he said. "Sometimes the results are different in children, and we just won't know that until we see the data."

**Bloomberg Law: [Opioid Makers Could Face Higher Bar if FDA Gets New Powers](#)**

"Opioids don't work like other drugs, and I think that's something that I would like to see happen," Robert M. Califf, commissioner of the Food and Drug Administration, told a Senate Appropriations Committee panel. Califf's proposal would toughen standards for drugmakers seeking to sell new opioids, and it's one of several moves the U.S. drug regulator is considering to curb one of the nation's most pressing public health challenges. The FDA can't act on its own, however. Congress would have to give the FDA the power to impose such a requirement. "Right now, the FDA doesn't have legal authority when it comes to a new drug application to require that it provides superiority to drugs that are already on the market. The legal comparative standard is compared to a placebo or nothing," Califf said. A National Academies [report](#) published in 2017, which Califf requested during his first tour as commissioner, highlighted this limitation in the FDA's ability to evaluate new drug applications.

**AXIOS: [FDA proposes ban on menthol cigarettes](#)**

The FDA said that issuing this rule would "reduce the appeal of cigars ... and decrease the likelihood of experimentation, development of nicotine dependence, and progression to regular use." **What they're saying:** "The proposed rules would help prevent children from becoming the next generation of smokers and help adult smokers quit," said Health and Human Services Secretary Xavier Becerra. "Additionally, the proposed rules represent an important step to advance health equity by significantly reducing tobacco-related health disparities."

**Voice of America: [US Plan to Ban Menthol Tobacco Products Moves Forward](#)**

"The proposed rules would help prevent children from becoming the next generation of smokers and help adult smokers quit," said Health and Human Services Secretary Xavier Becerra. Advocates for banning menthol tobacco products have long said they disproportionately impact African Americans, among whom they're popular. It is estimated that 85% of African American smokers use menthol products.

**Reuters: [U.S. FDA pushes ahead with move to ban menthol cigarettes](#)**

The proposal, which comes a year after the agency announced the plan, still needs to be finalized and can take years to implement as it is likely to face stiff opposition from the tobacco industry. "The proposed rules would help prevent children from becoming the next generation of smokers and help adult smokers quit," said Health and Human Services Secretary Xavier Becerra. For decades, menthol cigarettes have been in the crosshairs of anti-smoking groups who have argued that they contribute to disproportionate health burdens on Black communities and play a role in luring young people into smoking.

**Reprint by: [The Guardian](#)**



**The Hill:** [FDA proposes ban on menthol in cigarettes, cigars](#)

“The proposed rules would help prevent children from becoming the next generation of smokers and help adult smokers quit,” Health and Human Services Secretary Xavier Becerra said in a statement. “Additionally, the proposed rules represent an important step to advance health equity by significantly reducing tobacco-related health disparities,” he continued. However, the ban’s critics argue that it will result in the illegal selling of the cigarettes, stretching law enforcement thin. Various civil rights figures, including the Rev. Al Sharpton and attorney Ben Crump, have warned that it could result in negative interactions between police and the Black community. Black and Hispanic smokers tend to prefer menthol cigarettes to other types.

**POLITICO Playbook:** [Inside Biden’s WHCA dinner speech](#)

THE SENATE is in. Testifying before Appropriations subcommittees today: FDA Commissioner ROBERT CALIFF at 10 a.m. and Transportation Secretary PETE BUTTIGIEG at 10:30 a.m.

**Bloomberg:** [Moderna Applies for U.S. Clearance of Covid Shot for Young Kids](#)

The highly anticipated application comes just over a month after Moderna said a large trial showed two low doses of its vaccine produced powerful immune responses in young kids. Even though its effectiveness against omicron-related infections is modest, the application will put tremendous pressure on the Food and Drug Administration to quickly make a decision on whether to authorize it. Similar submissions for clearance are underway with regulators outside the U.S., Moderna said Thursday in a statement. Meanwhile, Moderna has also initiated a submission for authorization of its vaccine for use in kids ages 6 to 11. While the vaccine from partners Pfizer Inc. and BioNTech SE is authorized for kids 5 and up in the U.S., there is no Covid vaccine those under 5, much to the consternation of many parents. More than 900 doctors sent a letter Wednesday to FDA Commissioner Robert Califf asking for quick review of a vaccine for young children.

**The Washington Post:** [In a milestone, FDA proposes ban on menthol cigarettes and flavored cigars](#)

The FDA also proposed prohibiting flavors in cigars, including in small ones called cigarillos that are popular among teenagers. The proposed bans were announced by FDA commissioner Robert M. Califf in an appearance at a congressional subcommittee. He told the panel the agency had determined “that these actions are appropriate for the protection of public health” and would improve the health and “reduce the mortality risk of current smokers of menthol cigarettes or flavored cigars by substantially decreasing their consumption and increasing the likelihood of cessation.”

**Bloomberg Law:** [Long-Awaited Menthol Ban in Cigarettes, Cigars Proposed by FDA](#)

The Food and Drug Administration plans to issue new product standards targeting menthol and other flavored tobacco products. These products can make smoking harder to quit, especially among youth, and are disproportionately used by Black Americans and other minority groups. “FDA will issue two proposed tobacco standards. One prohibiting menthol as a characterizing flavor in cigarettes, and another prohibiting characterizing flavors other than tobacco in cigars,” FDA Commissioner Robert Califf said Thursday at a hearing. The first proposed rule ([RIN 0910-A160](#)) would prohibit tobacco manufacturers and retailers from making, distributing, and selling cigarettes containing menthol as a flavor. The second ([RIN 0910-A128](#)) would ban all characterizing flavors, including menthol, in cigars. The FDA has said that it would not impose penalties on individual consumers who possess or use menthol-containing products, while still ensuring that no new unlawful cigarette or cigar products are added to the market.

**The New York Times:** [F.D.A. Moves to Ban Sales of Menthol Cigarettes](#)



The proposed ban “would, among other things, improve the health and reduce the mortality risk of current smokers of menthol cigarettes or flavored cigars by substantially decreasing their consumption and increasing the likelihood of cessation,” the F.D.A. commissioner, Dr. Robert Califf, told a Senate committee Thursday. Menthol is a chemical derived from the mint plant that can also be made in a lab. It is included in cigarettes to make smoking less harsh, providing a cooling sensation in the throat. Public health experts say menthol cigarettes have been heavily marketed to Black people, to devastating effect: African American [men have the highest](#) rates of lung cancer in America, according to the Centers for Disease Control and Prevention.

**CQ Roll Call: [FDA proposes ban on menthol cigarettes, flavored cigars](#)**

The proposal is the latest move to tighten restrictions on the tobacco industry. In January 2020, Congress raised the eligibility age to buy tobacco products from 18 to 21. The FDA is also beginning to regulate vaping products with synthetic nicotine after a loophole was closed in the 2022 omnibus. FDA Commissioner Robert Califf on Thursday said the agency should have control of the synthetic nicotine market by mid-May, but underscored the importance of Congress greenlighting \$100 million in user fees from the vaping industry to help fund the new efforts. “Because we still got a lot of work to do,” he testified to the Senate Agriculture Appropriations Subcommittee. “Two million, at least two million teenagers are currently vaping. Knowing what we know about nicotine addiction, it’s safe to assume the majority of those are already seriously addicted to nicotine.”

**PR Newswire: [FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death](#)**

"The authority to adopt tobacco product standards is one of the most powerful tools Congress gave the FDA and the actions we are proposing can help significantly reduce youth initiation and increase the chances that current smokers quit. It is clear that these efforts will help save lives," said FDA Commissioner Robert M. Califf, M.D. "Through the rulemaking process, there's an important opportunity for the public to make their voices heard and help shape the FDA's ongoing efforts to improve public health."

**Forbes: [FDA Proposes Ban On Menthol Cigarettes And Flavored Cigars](#)**

Food and Drug Administration Commissioner Robert Califf told a Senate committee on Thursday the ban would reduce mortality risk for current smokers of menthol cigarettes or flavored cigars by “substantially decreasing their consumption and increasing the likelihood of cessation.” The ban—which could take at least a year to go into effect—is expected to have the largest impact on Black smokers, the majority of whom smoke menthol cigarettes and whom the tobacco industry has targeted aggressively in marketing the products, [according](#) to the Centers for Disease Control and Prevention.

**Broader Coverage**

**The Hill: [Morning Report — Biden, Congress mull mounting economic woes](#)**

The Department of Health and Human Services this morning announced that more than 257 million Americans have received at least one dose of a COVID-19 vaccine, 100 million received a booster dose and of those, two-thirds are over the age of 65. “We’ve also closed the glaring gap in vaccine rates we usually see for communities often left behind. It has paid dividends to surge resources, including tests and treatments, to our hardest-hit and highest-risk communities,” HHS Secretary Xavier Becerra said in a statement accompanying a new [department video](#).



**The Hill:** [What a Republican-led healthy future looks like](#)

The Department of Health and Human Services Secretary [Xavier Becerra](#) is finally testifying before Congress this week. Republicans are eager to deliver him an important message: Americans' health care is personal, and Democrats' one-size-fits-all, "Washington knows best" approach is doing little to promote a healthier future for our country. We have proposals to help all Americans live better, healthier, and longer lives by guaranteeing access to new cures, transformational medical innovations, and lowering out-of-pocket spending on drugs.

**FOX News:** [Secretary Becerra, congressman spar over HHS 'anti-racism' policy](#)

Health and Human Services Secretary Xavier Becerra denied the existence of racial-preference weights in the HHS, calling reports of his own physician fee schedule "misinformation." Testifying before the House Energy and Commerce Health Subcommittee Wednesday, Becerra denied the HHS has a policy offering financial incentives to doctors to implement an "anti-racism" plan. "You are secretary of CMS. Is there a physician fee schedule that came out that has any content of weighted measures for anti-racism?" Rep. Jason Smith of Missouri [asked](#). "There is a fee schedule that takes into account that we have great disparity in this country in accessing health care and moving towards a system that will make sure anyone has equal access to the care that they are entitled to," Becerra responded, pushing back on Smith's assessment.

**Healthcare Finance News:** [Final rule requires insurers to standardize plan options in the ACA marketplace](#)

"The Affordable Care Act has successfully expanded coverage and provided hundreds of health plans for consumers to choose from," said HHS Secretary Xavier Becerra. "By including new standardized plan options on HealthCare.gov, we are making it even easier for consumers to compare quality and value across healthcare plans." "The recent open enrollment period demonstrated the demand for high-quality, affordable health coverage. These steps increase the value of healthcare coverage on HealthCare.gov and further strengthen the health insurance marketplace," said CMS Administrator Chiquita Brooks-LaSure.

**CFR On the Record (Podcast):** [A Conversation With Secretary Xavier Becerra](#)

Secretary of Health and Human Services Xavier Becerra discusses the agency's global footprint, including how COVID-19 exposed systemic disparities in healthcare at home and abroad, plans to prepare for future pandemics, and efforts to restore global partnerships.

—Gaby

**Sender:** Sibori, Gabriela (HHS/ASPA) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=73A324BC75DD4A2EAB4D0F3145FC2DC4-SIBORI, GAB <Gabriela.Sibori@hhs.gov>

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# Racial Disparities in Maternal Health

U.S. Commission on Civil Rights  
2021 Statutory Enforcement Report

Issued pursuant to 42 U.S.C. § 1975a(c)



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**The Commission seeks to examine the federal role in preventing negative pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S. and eliminating racial disparities in these health outcomes.**

**The Commission's examination will include an assessment of the following HHS programs. The questions listed below concern the following programs (page numbers indicate where program is discussed in the attached report draft):**

- Medicaid (administered by Centers for Medicare & Medicaid Services) pp. 86-90
- Public Health Service Act Title X Family Planning (administered by the Office of Population Affairs) pp. 116-117
- Maternal, Infant, and Early Child Home Visiting Program (MIECHV) (administered by the Health Resources & Services Administration – Maternal & Child Health Bureau) pp. 90-93
- Alliance for Innovation on Maternal Health (AIM) – Community Care Initiative (administered by the Health Resources & Services Administration – Maternal & Child Health Bureau) pp. 93-97
- State Maternal Health Innovation Program (State MHI) (administered by HHS – Health Resources & Services Administration – Maternal & Child Health Bureau) pp. 110-111
- Supporting Maternal Health Innovation Program (Supporting MHI) (administered by HHS – Health Resources & Services Administration – Maternal & Child Health Bureau) pp. 112-113
- Title V Maternal and Child Health Services Block Grant Program (administered by HHS – Health Resources & Services Administration – Maternal & Child Health Bureau) pp. 113-116
- Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM) Program (administered by CDC – Division of Reproductive Health) pp. 98-103
- Pregnancy Mortality Surveillance System (administered by CDC – Division of Reproductive Health) pp. 16-19; 31-32; 101-103
- Levels of Care Assessment Tool (LOCATe) (administered by CDC – Division of Reproductive Health) pp. 117-118
- National Child & Maternal Health Education Program (NCMHEP) (administered by NIH - Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD)) pp. 97-98

Please respond to the below questions for each of the programs identified above.

1. What is the allocated budget/actual program expenditures targeted at preventing negative pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?

2. What is the allocated budget/actual program expenditures targeted at addressing and/or eliminating racial disparities in pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?
3. Does the program conduct research or provide funding for research concerning (negative) pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?
4. Does the program administer grants for any purpose related to improve pregnancy-related/associated health-outcomes, reduce the rate of pregnancy-related/associated deaths among women in the U.S., or eliminate racial disparities in maternal health outcomes and pregnancy-related/associated deaths among women in the U.S.
  - a. For programs that administer grants, how do the various programs monitor or measure the progress of awarded grants?

**The Commission's examination will also include an assessment of the following programs, entities, and legislation that play a role in building formalized partnerships in which HHS oversees or participates:**

- HHS' State Partnership Initiative to Address Health Disparities (SPI) (grant program administered by the Office of Minority Health) p. 119
- Maternal Mortality Review Committees (MMRCs) (The Centers for Disease Control administers the Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM) grant program that funds MMRCs) pp. 98-103
- Preventing Maternal Deaths Act (aims to establish and support existing MMRCs) pp. 83-86; 103

1. What relevant state, local, or private partnerships exist with any HHS office/division/department/administration that play a role in preventing negative pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S. and eliminating racial disparities in these health outcomes?
  - a. What are the objectives of these partnerships?
2. How do these partnerships serve to eliminate racial disparities in pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?
3. Which state partnerships have been most successful? What are some of their successes? Are there established metrics to measure their success or performance?
4. What previous gap in legislation has the Preventing Maternal Deaths Act filled (if any)? Has the implementation of the Preventing Maternal Deaths Act been successful? What challenges have there been to its implementation? Is further legislation needed to reduce disparities in maternal health outcomes?
5. What recommendations or best practices do these state partnerships offer for improving maternal health outcomes and prevent pregnancy-related/associated deaths and eliminating racial disparities in pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?

6. National Healthy Start Association was awarded the sole grant of \$1.8 million for five years to support the Alliance for Innovation on Maternal Health program. What is the status of this grant? How does HHS measure this grant recipient's performance?
7. The Healthy Start program was appropriated \$125.5 million in 2020. In addition, the program received an additional \$12 million in appropriations in 2019 to help support a new initiative to reduce maternal mortality by hiring clinical service providers to provide well-woman services, maternity care, and other clinical maternal health services to clients at program sites. What is the status of this program? How does HHS measure this program's performance?
8. HHS announced in September 2019 that it planned to award \$18.7 million to the State MHI program. What is the status of this award? How does HHS measure this program's performance?

**DATE:** February 21, 2020

**TO:** Alex Azar, Secretary  
U.S. Department of Health and Human Services

Robert R. Redfield, MD, Director  
Centers for Disease Control and Prevention

Seema Verma, Administrator  
Centers for Medicare & Medicaid Services

Thomas J. Engels, Administrator  
Michael D. Warren, MD, MPH, FAAP, Associate Administrator,  
Maternal and Child Health Bureau  
Health Resources & Services Administration

Dr. Francis S. Collins, M.D., Ph.D., Director  
National Institute of Health

Diana W. Bianchi, M.D., Director  
Eunice Kennedy Shriver National Institute of Child Health and  
Human Development

RADM Felicia Collins  
Deputy Assistant Secretary for Minority Health and Director of the  
Office of Minority Health

**FROM:** Mauro A. Morales, Staff Director  
Maureen E. Rudolph, General Counsel  
U.S. Commission on Civil Rights

**SUBJECT:** Interrogatories and Document Requests in Support of the U.S.  
Commission on Civil Rights' Examination of Racial Disparities in  
Maternal Health

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Congress has tasked the United States Commission on Civil Rights (the "Commission") with investigating allegations of discrimination. The Commission is authorized to "study and collect information relating to," and "make appraisals of the law and policies of the Federal Government with respect to . . . discrimination or denials of equal protections of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin[.]" See 42 U.S.C. § 1975a(a)(2)(A)-(B).

Under this authority, the Commission is conducting a study to evaluate racial disparities in maternal health care. More specifically, the Commission seeks to examine the federal role in preventing, reducing, or eliminating racial/ethnic disparities in negative pregnancy-



related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.

Pursuant to 42 U.S.C. § 1975a(e)(4) and § 1975b(e), the Commission, through its General Counsel, Maureen E. Rudolph, requests that Secretary Azar, U.S. Department of Health and Human Services, answer fully, in writing and under oath, each of the following Interrogatories and respond to each of the following Document Requests.

We request that the Secretary serve a copy of the answers and objections, if any, along with the requested documents on the counsel for the Commission within thirty days after service, at the offices of the U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C., 20425. Please respond by March 23, 2020.

Please be advised that the Commission may quote from your responses in the report it publishes about this topic.

Based on our initial research, it appears numerous offices within HHS are looking at racial disparities in maternal health care. The Commission's examination will include an assessment of the following HHS programs:

- Medicaid (administered by Centers for Medicare & Medicaid Services)
- Maternal, Infant, and Early Child Home Visiting Program (MIECHV) (administered by the Health Resources & Services Administration – Maternal & Child Health Bureau)
- Alliance for Innovation on Maternal Health (AIM) – Community Care Initiative (administered by the Health Resources & Services Administration – Maternal & Child Health Bureau)
- National Child & Maternal Health Education Program (NCMHEP) (administered by NIH - Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD))
- Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM) Program (administered by CDC – Division of Reproductive Health)

Additional programs evaluated may include:

- Title X Family Planning (administered by the Office of Population Affairs)
- State Maternal Health Innovation Program (State MHI) (administered by HHS – Health Resources & Services Administration – Maternal & Child Health Bureau)
- Supporting Maternal Health Innovation Program (Supporting MHI) (administered by HHS – Health Resources & Services Administration – Maternal & Child Health Bureau)
- Title V Maternal and Child Health Services Block Grant Program (administered by HHS – Health Resources & Services Administration – Maternal & Child Health Bureau)

- Pregnancy Mortality Surveillance System (administered by CDC – Division of Reproductive Health)
- Levels of Care Assessment Tool (LOCATe) (administered by CDC – Division of Reproductive Health)

We are also interested in learning about the following federal, state, local, and private partnerships:

- HHS' State Partnership Initiative to Address Health Disparities (SPI) (grant program administered by the Office of Minority Health)
- Maternal Mortality Review Committees (MMRCs) (The Centers for Disease Control administers the Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM) grant program that funds MMRCs)
- Preventing Maternal Deaths Act (aims to establish and support existing MMRCs)

Many of the following questions below may be relevant to many or all programs and should be considered by each department, administration, bureau, institute, division, or center unless otherwise specified. We have also provided subheadings and questions directed to specific programs.

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## INSTRUCTIONS AND DEFINITIONS

1. These interrogatories request information available to the Secretary and his employees, agents, representative, and attorneys. If information is subject to attorney-client privilege or contains Privacy Act information, please mark it accordingly. Please produce the unredacted documents. We will consult before releasing any materials marked as subject to the attorney-client privilege or Privacy Act.
2. The scope of these requests is for fiscal years 2010-2020, if applicable.
3. The United States Commission on Civil Rights is referred to herein as the "U.S. Commission on Civil Rights," or the "Commission."
4. The U.S. Department of Health and Human Services is referred to herein as "HHS."
5. The Secretary should state the basis for any objection to answering any interrogatory. If the Secretary objects to a part of an interrogatory, please furnish information requested by the interrogatory that is not included within that partial objection.
6. These interrogatories are continuing in nature, and to the extent that the Secretary acquires new information on or before March 26, 2021, please supplement the response.
7. The word "document" or "documents" or words of like or similar import means, and includes correspondence; memoranda; data; telexes; letters; books; charts; diagrams; still photographs; moving pictures; tapes; records; empirical studies; graphs; index cards; inventories; handwritten notes; telegrams; calendars; diary entries; studies; working papers; tabulations; data sheets; reports; index catalogues; typewritten notes; printed notes; contracts; memoranda of understanding; computer printouts; and electronic mail.
8. If any document responsive to this request was, but is no longer, in your possession, custody, or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody, and control and state its present location and custodian, if known.
9. If for any request there are no responsive documents in your possession, custody, or control, state whether documents that would have been responsive were destroyed or mislaid, and if so, the circumstances under which they were destroyed or mislaid.
10. For any document response for production but withheld pursuant to a claim of privilege, please identify:
  - a. The author's name and title or position
  - b. The recipient's name and title or position

- c. All persons receiving copies of the document
  - d. The number of pages of the document
  - e. The state of the document
  - f. The subject matter of the document; and the basis for the claimed privilege.
11. In lieu of providing a written response to an interrogatory, you may produce a document that fully responds to the interrogatory. Should the document not fully respond to the interrogatory, please state so in your written response and also provide the additional information needed to fully respond or the grounds for withholding such information, as specified in these instructions.
- 12.

## INTERROGATORIES

**General (for all departments, administrations, bureaus, institutes, divisions, or centers if relevant, unless otherwise specified)**

### Legal Authorities and Mission of Program

1. Does this program serve to prevent negative pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?
  - a. Does the program have established metrics to measure success or performance?
  - b. If so, what are successes and challenges this program has seen in its efforts to improve pregnancy-related/associated health outcomes and reduce the rate of pregnancy-related/associated deaths among women in the U.S.?
  - c. What are the successes and challenges this program has seen in its efforts to reduce related racial disparities?
  
2. What is the objective of the Preventing Maternal Deaths Act of 2018 as it applies to your program? What previous gaps in legislation has the Preventing Maternal Deaths Act filled (if any)? From the agency perspective, what are the policy goals of the Act? What steps have been taken to implement the provisions of the Act thus far? How do you prioritize the implementation of the Act's provisions?
  - a. What laws or regulations (other than the Preventing Maternal Deaths Act of 2018) direct or guide HHS in addressing the issue of pregnancy-related/associated health outcomes?
  - b. What (if any) additional legal authorities would assist in preventing, reducing, or eliminating negative pregnancy-related/associated health outcomes?
  - c. What (if any) additional legal authorities would assist in preventing, reducing and eliminating any racial/ethnic disparities in negative pregnancy related/associated health outcomes?
  
3. What is the allocated budget/actual program expenditures targeted at addressing and/or eliminating racial/ethnic disparities in pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?
  - a. How does this compare to the overall program budget?

### Data Collection

4. Does this program collect and report data on pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S., or does any other program collect such data?
  - a. What is the name of the data collection?
    - i. How can this data be accessed?
  - b. How is the data collected (i.e., from what sources, by which methods and for how long)?



- c. Is there a uniform set of terms used for collecting data?
  - i. For example, how do you define pregnancy-related deaths? Pregnancy-associated deaths? Negative health outcomes associated with pregnancy?
  - ii. Are pre-existing conditions taken into account? What are considered pre-existing conditions?
- d. How is this data disaggregated by race or ethnicity? Please list the classifications.
- e. What is the current pregnancy-related/associated death rate of women in the U.S.?
  - i. As disaggregated based on race/ethnicity?
  - ii. Are deaths increasing or decreasing? For whom, as disaggregated based on race and ethnicity?
- f. What types of (negative) pregnancy-related/associated health outcomes are tracked by this data? Please list.
  - i. Which of these negative outcomes are most prevalent for women in the U.S.?
  - ii. How do current pregnancy-related/associated health outcomes differ based on race/ethnicity? What are the differences?
    - 1. If there are differences based on race/ethnicity, are these differences increasing or decreasing?
  - iii. Are there other factors tracked by the data that may also explain health outcomes (age, social determinants, prenatal, post-natal care, access to doctors and/or high-risk specialists, etc.)?
  - iv. Does your data track past and ongoing historical data about segregation or other systemic disparities in access to maternal health care?
  - v. Is data tracked at the community (rather than individual) level? If yes, at what level (by hospital or other district)?
    - 1. What trends do the data show?
  - vi. Is this data disaggregated geographically? If so, by state? City? County? Other geographical division?
    - 1. What geographical areas show the highest rates of negative pregnancy-related/associated health outcomes and/or deaths of women in the U.S.?

### **Access to Health Care**

- 5. What is the rate of prenatal and post-natal care for pregnant women, broken down by race and ethnicity?
- 6. What is the rate of high-risk pregnancies, broken down by race and ethnicity? And access to specialist doctors?
- 7. Are there any differences for women receiving pregnancy health care in urban versus rural and/or other geographic locations, broken down by race and ethnicity?

8. Are there other differences in access to health care for pregnant women, broken down by race/ethnicity?

**Education, Outreach, Technical Assistance, and Training**

9. Does the program conduct education and outreach (education campaigns about programs to raise awareness amongst the public; inform the public how to get help; etc.) on racial/ethnic disparities in maternal health outcomes and pregnancy-related/associated deaths of women in the U.S.?
- Do you use any alternate definitions of education and outreach or alternate terminology to describe these tasks within the context of this program?
  - Is there a target racial/ethnic population(s) for this education/outreach? If so, which population(s)?
  - Is there a target audience or demographic (i.e., community advocates, non-profits, the general public, etc.)?
10. Does the program provide technical assistance (i.e. providing targeted, systematic, and collaborative assistance to an entity in order to help preform a task or deliver a service) for health care practitioners or other medical personnel on racial/ethnic disparities in maternal health outcomes and pregnancy-related/associated deaths of women in the U.S.?
- If so, how often and to whom?
  - Describe the assistance provided and whether racial/ethnic bias is addressed.

**Research and Grants on Racial/Ethnic Disparities in Pregnancy-Related Health Outcomes**

11. Does the program conduct research or provide funding for research concerning racial/ethnic disparities in pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S.?
- If so, what does this research show about racial/ethnic disparities in pregnancy-related health outcomes? Please provide the research, key findings and/or recommendations.
  - Is there any additional research that may not have been designed to capture information about racial/ethnic disparities but does contain such information? If so, please provide the research, key findings and recommendations.
  - Is there any research that identifies racial or ethnic bias on the part of health care practitioners in providing care for pregnant women? If so, please provide the research, key findings, and recommendations.
12. Does the program administer grants to prevent, reduce, or eliminate racial/ethnic disparities in maternal health outcomes and pregnancy-related/associated deaths among women in the U.S.?
- If so, how much funding has been awarded? What entities/projects have been funded? What are the results?

### **Efficiency of Program Efforts**

13. Have any evaluations by an internal or external entity examined the efficiency of this program?
  - a. What metrics were used to conduct this program evaluation?
  - b. What were some key findings and/or recommendations from these evaluations, relating to the program's work to address pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S. and/or racial/ethnic disparities in pregnancy-related/associated health outcomes and pregnancy-related/associated deaths of women in the U.S. (if any)?
  - c. Were there findings that the evaluation determined should be prioritized?
  - d. How has the program implemented any of the recommendations?

### **Other Programs**

14. What other programs does HHS administer (directly or indirectly) that are aimed at addressing pregnancy-related/associated health outcomes and/or racial/ethnic disparities in pregnancy-related/associated health outcomes?
  - a. Were there any such programs formerly in existence, but now inoperative or shut down?
  - b. How, if at all, have these programs been expanded, restructured, or downsized?

### **Medicaid**

15. What portion(s) of pregnancy, and what specific pregnancy-related services, are covered by Medicaid? What efforts does Medicaid take in order to monitor or ensure maternal health after childbirth? Please provide a list of services and how often care is provided.
16. What, if any, changes have been made to the Medicaid program within the past 10 years to address maternal health?
17. Are there any programs or initiatives (other than those listed here), administered by CMS, that specifically address racial /ethnic disparities in maternal health among Medicaid patients?
18. Are there racial or ethnic disparities between pregnant women who are Medicaid recipients and those who are not?
  - a. If yes, what are they and what trends emerge?
  - b. If yes, has Medicaid taken any steps to provide culturally competent services for impacted women and communities? If so, please describe these efforts and the results.

### **MIECHV**