

County of Orange

**Independent Review of OCSD:
Compliance with Rights Afforded to
Incarcerated Persons by AB 732**

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Office of Independent Review
601 N. Ross St., 2nd Floor
Santa Ana, CA 92701

Robert P. Faigin, J.D., MPA
Executive Director

Rachael Melford, J.D.
Staff Attorney

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EXECUTIVE SUMMARY

The Board of Supervisors, through County ordinance, has established the Office of Independent Review (OIR) to review systemic issues involving the Orange County Sheriff's Department (OCSD), and to serve as an independent resource to ensure accountability.¹

Following the passage of AB 732 in September of 2020, the California Penal Code was amended to provide new requirements relating to the type, and accessibility, of healthcare for incarcerated persons in local detention facilities. Those amendments included, among other things, adding sanitary pads and tampons as materials necessary for personal hygiene, and requiring the provision of family planning materials and services to incarcerated persons. This review was requested of the previous staff of the Office of Independent Review. The genesis of this review was not as a result of complaints related to known issues within the OCSD. Instead, it appears that a lack of publicly available information regarding the implementation of AB 732 within the OCSD jails prompted requests to OIR for a review to determine whether the OCSD was complying with the newly enacted statutes. By June of 2022, the then existing staff of the OIR had left County service with minimal work completed on this project. In November of 2022, a new Executive Director joined the County, and, together with a recently hired staff attorney, began working on this project in earnest.

The focus of this review is to determine whether the OCSD is complying with the requirements of AB 732. A byproduct is the answer to the question of whether pregnant incarcerated persons housed in the OCSD jails are receiving adequate care during and after pregnancy.

What the OIR found during its review is that the OCSD and Correctional Health Services (CHS) have embraced many of the requirements set forth in the Penal Code.² This willingness to ensure that requirements are met can be seen in numerous ways. Since the enactment of AB 732 in 2021, the OCSD has updated many of its policies, procedures, and forms.³ CHS has automated systems in place to ensure that pregnant incarcerated persons are scheduled for appointments and receive necessary prenatal vitamins. They also have dedicated special "MOM" nurses to make regular contact with pregnant incarcerated persons. However, while the OCSD and CHS have done a good job of ensuring that they have practices, policies, and procedures in place, there is still some room for improvement in order to ensure that all incarcerated persons can avail themselves of the rights afforded by AB 732.

This report contains OIR's findings and recommendations concerning the OCSD's compliance with the rights afforded incarcerated persons through the passage of Assembly Bill 732.

¹ Section 1-2-225(a) of Codified Ordinances of Orange County.

² CHS is part of the Orange County Health Care Agency and provides care to all OCSD incarcerated persons on behalf of the elected Sheriff and his Department.

³ During this review, OIR was informed by OCSD that the California Department of Justice (DOJ) is currently conducting a statewide audit of AB732 compliance. As a result, OCSD was in the process of updating its policies in response to requests from the DOJ. Whenever possible, OIR used the most recent forms and information provided by the OCSD in conducting this review.

FACTUAL BACKGROUND

On September 30, 2020, the California Governor signed into law Assembly Bill 732, which amended Penal Code Sections 4023.5, 4023.6, 4028, and added Section 4023.8, effective January 1, 2021. Penal Code Section 4023.8 expands the quality of healthcare and accommodations afforded pregnant persons incarcerated in local jails. In addition, the amendments also provide for access to personal hygiene materials for menstruating incarcerated persons, as well as information, education, and services related to family planning, and access to abortion services. The new law also placed restrictions on the types of force that can be used on incarcerated persons known to be pregnant.

In August 2021, Robert Armenta, Jr., Senior Vice-President of Public Affairs for Planned Parenthood of Orange and San Bernardino Counties (PPOSBC) contacted members of the Orange County Board of Supervisors and the OIR to inquire about the OCSD's compliance with AB 732. In March of 2023, in preparation for this report, the OIR spoke again with Mr. Armenta.⁴ Mr. Armenta was asked about any specific concerns that may have prompted this review. Mr. Armenta indicated that when he spoke with various County Supervisors in 2021 about the new law, he was interested in learning about the county's compliance. Mr. Armenta indicated that he advised the previous OIR Executive Director, in 2021, that he did not have specific complaints as it related to compliance with AB 732. Based on this statement, Mr. Armenta was asked whether, in March of 2023, he was aware of any complaints related to compliance with AB 732 in the jail. Mr. Armenta responded by stating, "No specific complaints that we can cite."

In May of 2023, the OIR also spoke with Jon Dunn, President and CEO of PPOSBC. Mr. Dunn confirmed the information provided by Mr. Armenta, and added that the purpose for Planned Parenthood's contacting of the Board was to say "how can we help you be more compliant." Mr. Dunn indicated that if complaints had been made to Planned Parenthood, he would have been advised of them. Mr. Dunn indicated that he also has no knowledge of any specific complaints related to AB 732 and the OCSD's jails.

⁴ None of the current OIR members were employed with the County of Orange in 2021.

METHODOLOGY

The findings and recommendations contained in this document were derived from several different sources.

The OIR began by conducting a statutory review of AB 732 as well as a review of the subsequent amendments and additions to the Penal Code brought on by its enactment. The OIR also reviewed the bill analysis contained within AB 732's legislative history.

The OIR then began its review of the OCSD's compliance with AB 732 by examining OCSD policies and procedures to make sure that they reflect the current state of the law. Policies related to OCSD's Custody Operations are located within the Custody and Court Operations Manual (CCOM).⁵ The OIR also reviewed CHS policies and procedures focusing on areas related to pregnant incarcerated persons.

Next, the OIR submitted several requests for documents, related information, and observation to the OCSD. The requests consisted of numerous subparts and follow up requests. The OCSD responded by producing forms, handouts, records, and videos.

In addition to reviewing documents, the OIR also conducted a site visit of the Intake Release Center (IRC) and the Central Women's Jail (CWJ). During these visits, the OIR had the opportunity to observe various portions of the jails including the reception and intake areas, holding cells, modules, and housing units.

The OIR also had the opportunity to meet with, and ask questions of, both OCSD and CHS staff. The OCSD staff included both sworn and non-sworn command staff, as well as line staff and deputies assigned to classification. CHS staff included the Director of Nursing, the Supervising Comprehensive Care Nurse, an OBGYN physician, and various registered nurses including a maternal obstetric management (MOM) nurse and a release nurse.

The OIR then met and interviewed persons with a vested interest in the proper implementation of AB 732. These interviews included community members and incarcerated persons. The interviewed incarcerated persons were randomly chosen from three groups. The groups consisted of incarcerated persons that were not pregnant, incarcerated persons that were pregnant at the time of the interview, and post-partum incarcerated persons that had given birth prior to the interview but were remanded to the county jail at the time of their delivery.

Additional follow up requests for information were then sent to the OCSD as a result of the information provided during the site visits and interviews. In total, the OCSD provided the OIR over 250 files containing over 2000 pages of information to assist in the preparation of this report.

During this review, the OIR found the OCSD and CHS staff to be open and forthcoming with information and to be willing to explain practices and procedures.

⁵ The OCSD CCOM can be located at <https://ocsheriff.gov/about-ocsheriff/policies/sb-978>

OIR REVIEW AND FINDINGS

Penal Code Section 4023.5

As amended, the Penal Code now requires that an incarcerated person be allowed to continue to use materials necessary for personal hygiene related to menstruation and the reproductive system including sanitary pads and tampons at no cost to the incarcerated person, as well as birth control measures prescribed by a medical professional.⁶ The Penal Code further requires that *each and every* person be furnished with information and education concerning the availability of family planning services, and that such services be offered to *each and every* incarcerated person at least 60 days prior to their scheduled release.⁷ Additionally, upon request, any incarcerated person shall be furnished with the services of a licensed physician or other services “necessary to meet their family planning needs at the time of their release.”⁸

The Penal Code does not provide a definition of “family planning services.” The Welfare and Institutions Code, however, defines “family planning” as “the process of establishing objectives for the number and spacing of children, and selecting the means by which those objectives may be achieved.” The Welfare and Institutions Code goes on to state that “[f]amily planning services include, but are not limited to, preconception counseling, maternal and fetal health counseling, general reproductive health care, including diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability, medical family planning treatment and procedures, including supplies and follow up, and informational, counseling, and educational services.”⁹

Personal hygiene

Policies

OCSD policy, relating to the rights of incarcerated persons, addresses the personal hygiene measures as set forth in AB 732 by specifically stating that “[a]ny inmate shall, upon request, be allowed to continue to use materials necessary for (1) personal hygiene with respect to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and/or tampons at no cost to the inmate...”¹⁰

Interviews

According to CHS staff, incarcerated persons desiring personal hygiene products may request these items directly from jail deputies, or by submitting an inmate message slip. Upon receipt of a request from an incarcerated person for personal hygiene products, a floor Correctional Services Assistant (CSA) will distribute the requested items directly to the incarcerated person who made the request.

⁶ Penal Code § 4023.5(a).

⁷ Penal Code § 4023.5(b), (c).

⁸ Penal Code § 4023.5(c).

⁹ Welfare and Institutions Code § 14500.5(b)(1), and 24001(a)(1).

¹⁰ CCOM Section 1604.1(d).

To ensure compliance with the personal hygiene component of AB732 and OCS D policy, the OIR interviewed seven female incarcerated persons, two of which were postpartum. Three incarcerated persons, including one of the postpartum incarcerated persons, were incarcerated at the IRC. The other four incarcerated persons, including one postpartum incarcerated person, were incarcerated at the CWJ. All seven incarcerated persons were asked the following three questions related to personal hygiene:

- Have you requested sanitary pads or tampons while incarcerated?

Two incarcerated persons, housed at CWJ, indicated that they did not need to request personal hygiene items because they are brought daily. The CSA drops them off each morning at the dorm for the whole module. Neither incarcerated person expressed any concerns about receiving enough personal hygiene materials.

One of the incarcerated persons stated that she no longer had a need for personal hygiene materials.

The other four incarcerated persons stated that they had requested sanitary pads or tampons while incarcerated. Two of these incarcerated persons were housed at CWJ and two were housed at the IRC.

- How did you make this request(s)?

Both incarcerated persons housed at the IRC, and one incarcerated person housed at CWJ, requested personal hygiene materials directly from deputies. The fourth incarcerated person, housed at CWJ, made requests from a CSA and an inmate worker.

- Did you have any issues obtaining the materials requested?

Both incarcerated persons housed at the CWJ, and one incarcerated person housed at the IRC, indicated that they had some type of issue obtaining the materials requested.

Both incarcerated persons housed at the CWJ had concerns over the fact that there is no access to tampons at CWJ, however, they were available at Theo Lacy. The incarcerated persons indicated that sanitary pads are provided and are the only personal hygiene option at CWJ. Both incarcerated persons explained that incarcerated persons must frequently wash their underwear when menstruating due to not having a sufficient type or quantity of personal hygiene materials.

One incarcerated person from the CWJ and one incarcerated person from the IRC expressed concern that sometimes the supplies would arrive a little late. According to the incarcerated person who ordered from a deputy and was housed at CWJ, the supplies would always be received the same day, however, it could take as long as 12 hours from the time of the request to receive them. According

to the incarcerated person housed at the IRC, she felt that the male deputy that she requested items from was slow to provide them because it took him an hour to provide the supplies, while she normally receives them within minutes when requested from a female deputy.

Documents

The OIR also requested “[a]ny grievances and Department responses related to the ability of an incarcerated person to access sanitary pads and/or tampons at no cost.” The OCSD responded by indicating that they have “not received any grievances related to the ability of an incarcerated person’s access to sanitary pads and/or tampons at no cost.”

Findings

The OCSD’s policy mirrors the Penal Code. Each of the incarcerated persons that OIR interviewed, that used personal hygiene products, indicated that they were able to obtain some type of personal hygiene items. Incarcerated persons can receive personal hygiene products through either a daily delivery to the module or housing unit, or through a request made to deputies or other jail staff.

While the OCSD does provide personal hygiene materials under AB 732, a concern was raised by some incarcerated persons about only being able to obtain sanitary pads while housed at CWJ. The Penal Code states that a “person ... shall, upon request, be allowed to continue to use materials necessary for (1) personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads *and tampons*...” (Emphasis added).

Recommendation:

The OIR recommends that tampons be provided to female incarcerated persons who request them regardless of the facility where they are housed. According to Planned Parenthood, it is “common to use different things at different times during” a period.¹¹ The choice of personal hygiene materials is a very personal issue and should, to the extent possible, be determined by each incarcerated person. Physiological differences may also necessitate the use of one or more types of personal hygiene materials.

Birth control

Policies

OCSD custody policy addressing the rights of incarcerated persons relating to birth control measures mirrors the language set forth in the Penal Code. The policy specifically states that any person “shall, upon request, be allowed to continue to use materials necessary for ... birth

¹¹ <https://www.plannedparenthood.org/learn/health-and-wellness/menstruation/how-do-i-use-tampons-pads-and-menstrual-cups>

control measures as prescribed by a physician, nurse practitioner, certified nurse midwife or physician assistant.”¹²

CHS policies also address the provision of birth control. A CHS policy, entitled “Receiving Screening” states that during the intake interview, “CHS clinical staff will ask the arrestee questions...” including the “possibility of current pregnancy, if they are currently breastfeeding, and present use of birth control.”¹³

A separate CHS policy entitled “Reproductive Health Services,” states that each incarcerated person will be given notice of “their rights to and availability of birth control” by being provided with a Patient Health Information (PHI) sheet at intake.¹⁴ The PHI sheet states that “[r]esources for information on contraception is available to everyone in custody.”¹⁵ More specifically, the PHI sheet indicates that incarcerated persons “have the right to contraceptive services, including emergency contraception, based on medical need or potential risk of an unwanted pregnancy.”¹⁶

The CHS policy goes on to state that continuing contraception is available after intake screening.¹⁷ As part of that process, a CHS prescriber documents the name of the incarcerated person’s birth control medication, the date of the last dose, where the incarcerated person is in the pill cycle, the name of the prescribing practitioner, and obtains a signed “Release of Information” from the incarcerated person.¹⁸ Emergency contraception is also available when it is determined to be medically necessary, there is a risk of unwanted pregnancy due to sexual abuse, or the incarcerated person wants to reduce the chance of becoming pregnant after a recent sexual encounter.”¹⁹ Incarcerated persons have the option of “oral contraceptive pills or long-acting reversible contraceptives such as implants or IUDs” under the Reproductive Health Services policy.²⁰

Interviews

According to CHS staff, if an incarcerated person wants to use birth control, they submit a request on a pink slip that is received by CHS. The actual delivery of birth control is done by a licensed vocational nurse (LVN) who distributes it directly to the incarcerated person.

As part of this review, the OIR interviewed five random female incarcerated persons and two postpartum incarcerated persons. All seven incarcerated persons were asked the following question related to birth control:

¹² CCOM Section 1604.1(d).

¹³ CHS Policies and Procedures §6101(C)(1)(e) - Receiving Screening

¹⁴ CHS Policies and Procedures §6251(A)(1) - Reproductive Health Services

¹⁵ A copy of the Patient Health Information sheet is attached to the end of this report as an attachment.

¹⁶ See Patient Health Information sheet.

¹⁷ CHS Policies and Procedures §6251(D)(1) - Reproductive Health Services

¹⁸ CHS Policies and Procedures §6251(D)(1) - Reproductive Health Services

¹⁹ CHS Policies and Procedures §6251(D)(2) - Reproductive Health Services

²⁰ CHS Policies and Procedures §6251(D)(3) - Reproductive Health Services

- Have you requested to use birth control while incarcerated?

All five random female incarcerated persons indicated that they had not requested birth control.

Both postpartum incarcerated persons indicated that they had requested birth control after giving birth.

- How did you make this request?

Both postpartum incarcerated persons met with an OB doctor after returning to the jail.

- What type of birth control did you request?

One postpartum incarcerated person requested an IUD and the other requested an implant.

- Did you have any issues obtaining birth control?

Both postpartum incarcerated persons met with the OB doctor and discussed plans for obtaining specific types of birth control once it was medically appropriate.

Documents

The OIR also requested “[a]ny grievances and Department responses related to the ability of an incarcerated person to use birth control measures prescribed by a medical professional.” The OSCD located and provided one incarcerated person grievance related to the provision of birth control measures. The substance of the grievance was that the incarcerated person believed that they were not receiving the birth control pills in the right sequence. The OCSD responded to the grievance by directing the incarcerated person to communicate directly with health care personnel.

Findings

The OCSD’s policy mirrors the Penal Code. The OCSD has a process in place to enable female incarcerated persons to continue to use birth control measures while incarcerated. A procedure is also in place to facilitate delivery of certain birth control measures directly to the incarcerated person.

Family planning services

- a. Furnishing of information and education regarding availability of family planning services.*

Policies

According to CHS policy, “[u]pon intake, a “*Patient Health Information*” sheet will be signed by every patient that provides their rights to and availability of birth control and family planning services.”²¹ Additionally, CHS policy requires that signs “be posted where visible to all patients to inform them of their rights to family planning services under California Penal Code sections 4023.5, 4023.6 and 4028 and Senate Bill 1135.”²²

According to the OCSD, they provide all incarcerated persons with information, education, and support regarding family planning services in collaboration with the Orange County Health Care Agency (HCA) and CHS. Specifically, OCSD policy states that “[a]ll inmates shall be furnished by the county with information and education regarding the availability of family planning services.”²³ An informational handout entitled “Community Resources” is to be provided to all incarcerated persons and contains contact information for three different community resources and a list of family planning services including birth control, prevention and treatment of sexually transmitted infections, HIV testing and counseling, and cancer prevention.²⁴

CHS policy relating to reproductive health services states a PHI form will be signed by the patient. If the patient refuses to sign, the staff member who witnessed the refusal will write “Patient Refused to Sign” on the form and sign it. It is unclear whether this policy is meant to apply to all incarcerated persons or just female arrestees given the location of the verbiage within the reproductive health services section. However, according to staff interviewed during OIR’s tour, the practice of the OCSD is to provide the PHI form to all incarcerated persons during the intake process.

Site Visit

OIR staff toured the IRC where they had an opportunity to observe the booking triage area. The triage area is an outside area where arrestees wait to go into one of three booths to meet one on one with a nurse. Among other things, the nurse goes over the PHI form orally with the arrestee. According to information provided by OCSD and CHS staff during our tour, once the arrestee enters the IRC, they are then given a hard copy of the PHI form and sign it acknowledging receipt. The PHI form is then sent to be scanned into the CHS medical record system known as TechCare. OIR also observed the location where signing takes place and where the signed forms are placed following signature.

Documents

To confirm that incarcerated persons are being provided with family planning information, the OIR randomly selected 30 booking numbers of incarcerated persons, 15 male and 15 female, and submitted a request to the OCSD for any records that establish that the incarcerated persons were

²¹ CHS Policies and Procedures §6251(A)(1) - Reproductive Health Services

²² CHS Policies and Procedures §6251(D)(6) - Reproductive Health Services

²³ CCOM Section 1604.1(bb)

²⁴ A copy of the Community Resources document is attached to the end of this report as an attachment.

furnished with "information and education regarding the availability of family planning services."

i. Male incarcerated persons

The OCSD provided no records establishing that any of the 15 male incarcerated persons were provided with information and education regarding the availability of family planning services. As a result, the OIR asked the OCSD if they were "providing family planning information and education to male inmates[.]" The OCSD responded by indicating that CHS has not historically provided family planning information to male incarcerated persons. However, based on feedback from the California Department of Justice, CHS is in the process of converting the existing Female Inmate Information forms into Patient Health Information forms. Once printed, CHS indicated that the updated Patient Health Information form will be provided to all incarcerated persons (male and female).

ii. Female incarcerated persons

As it relates to the randomly selected 15 female incarcerated persons, the OCSD provided Female Inmate Information (FII) acknowledgements signed by 13 female incarcerated persons attesting to receiving a Family Planning/Community Resources Information Sheet.²⁵ The 14th female incarcerated person's FII form listed "uncoop" where her signature would normally have been located. The 15th female incarcerated person's records indicate that she was agitated and uncooperative at triage, cussing at staff, and refusing to answer questions. According to her booking records, the FII form was not explained or given to her.

The 13 female incarcerated persons who were cooperative were provided with family planning information as part of the intake process. Documentation was also provided for the two female incarcerated persons who did not have signed FII forms. The documents indicated that they were not co-operative and thus did not sign the forms.

The OCSD, through CHS, has a policy that requires the furnishing of information and education regarding availability of family planning services at receiving screening. The process provides for information related to family planning services to be provided using a Community Resources document in conjunction with the PHI form. The OIR was able to view the process by which the arrestee is verbally counseled by an intake nurse, as well as the area where the incarcerated person is uncuffed to allow them to sign the PHI form.

Interviews

To ensure compliance with the family planning services component of AB 732 and OCSD policy, OIR staff interviewed 11 female incarcerated persons housed at the IRC and CWJ. All 11 incarcerated persons were asked the following questions:

- Did you receive and sign a patient health information sheet during the booking process?

²⁵ The FII has since been renamed to the Patient Health Information (PHI) form.

Six incarcerated persons indicated that they received the PHI form. Three indicated that they did not receive a PHI form, and two indicated that they could not recall whether they received the PHI form.

The OIR subsequently requested records for the incarcerated persons who indicated that they did not receive, or could not recall receiving, a PHI form. The OCSD produced PHI forms for each of the five incarcerated persons. All five forms were signed by the each of the incarcerated persons who had indicated they did not receive or could not recall receiving them during our interviews.

- Did you receive the one-page community resources sheet?

Four incarcerated persons indicated that they received the community resources sheet. Six incarcerated persons indicated that they did not receive the community resources sheet, and one incarcerated person could not remember if she received it.

The OIR requested records for all the incarcerated persons that said that they did not receive, or could not recall receiving, the community resources sheet. The OCSD produced signed PHI forms for all seven incarcerated persons. The signed PHI forms attest that “I have received a copy of this information sheet along with a Family Planning Community Resources Information Sheet.”

Findings

The primary goal of this section of the Penal Code is to ensure that “each and every person” is provided with information and education regarding the availability of family planning services. At the time that OIR requested records related to the provision of family planning services, the OCSD was not providing this information to male incarcerated persons.

Analysis

The OCSD should ensure that males are also furnished with information related to family planning services. One way to accomplish this is to provide the PHI form and community resources sheet to all incarcerated persons regardless of gender.

Additionally, the intake procedure relating to a patient signing the PHI form appears to only be contained in CHS’s policy entitled Reproductive Health Services.²⁶ Since the PHI form is given during intake, it makes more sense to have the instructions contained within the receiving screening policy.

Recommendation:

Ensure that information and education regarding the availability of family planning services is provided to male incarcerated persons by providing the PHI form and community resources sheet to all incarcerated persons regardless of gender.

²⁶ CHS Policies and Procedures §6251(A) - Reproductive Health Services

Recommendation:

CHS Policy and Procedure §6101 entitled - Receiving Screening should be updated to include the following language to reflect that the PHI form should be given to all arrestees regardless of gender: “A Patient Health Information form will be signed by the patient. If the patient refuses to sign, “Patient Refused to Sign” will be indicated on the form and signed by the CHS clinical staff member who witnessed the refusal.”

Based on the records provided by OCSD it appears that both the PHI and community resources sheet are being provided to females who are cooperative during booking. However, this process allows for opportunities to miss providing community resource information to those arrestees who refuse to sign the PHI form, or who are so uncooperative that they are not given any paperwork at the time of booking. During OIR’s document review it was noted that a form was not explained or given to an incarcerated person because she was agitated and uncooperative at triage, cussing at staff, and refusing to answer questions. If the only mechanism by which an incarcerated person is being furnished with information and education regarding the availability of family planning services is by receiving the community resource form at booking, and they are uncooperative, there is a good chance that they will miss out on this information.

Recommendation:

To accomplish the goal of ensuring that each and every incarcerated person is aware of information and education regarding the availability of family planning services, the OCSD should consider pursuing other ways of furnishing this information to all persons confined within its facilities. These options might include posting the community resources sheet in areas where incarcerated persons congregate such as dayrooms and holding cells, or including the information in the orientation video that is played in the holding cells.

b. Offering of family planning services at least 60 days prior to release.

Policies

As it relates to the offering of family planning services at least 60 days prior to release, OCSD policy provides that “[f]amily planning services shall be offered to each inmate at least 60 days prior to a scheduled release date.”²⁷

Interviews

According to CHS staff, all incarcerated persons, regardless of whether they have a scheduled release date, are offered family planning services at triage by the intake nurses, and again at the time of their release by the release nurses. Additionally, staff indicated that family planning services can be requested at all points of contact including through the medical obstetrical management team (MOM) and via the use of a pink slip.

²⁷ CCOM Section 1604.1(cc)

To ensure compliance with the family planning component of AB 732 and OCSD policy, OIR staff interviewed 11 female incarcerated persons housed at the IRC and CWJ. All 11 incarcerated persons were asked the following questions:

- Did anyone from CHS offer family planning services such as birth control, treatment for infectious diseases, and cervical cancer to you?

Nine incarcerated persons indicated that they were offered family planning services while incarcerated. Two of the incarcerated persons indicated that they were not offered family planning services.

A review of one of the two incarcerated persons records indicated that she was not in custody for a period of at least 60 days.

The other incarcerated person was in custody for 70 days. However, she did not have a scheduled release date until 30 days before she was actually released.

- Have you requested family planning services at any time while you have been in custody?

Five incarcerated persons indicated that they requested family planning services, and six indicated that they had not.

- If yes, what services did you request?

One incarcerated person requested an abortion.

Two incarcerated persons requested birth control.

One incarcerated person requested a cervical cancer screening; and

One incarcerated person requested STI testing.

- Did you receive the services requested?

The incarcerated person that requested an abortion indicated that the abortion was scheduled and that she was transported to the appointment but changed her mind while at the facility.

The two incarcerated persons requesting birth control were both post-partum. They indicated that they each met with the OB/GYN doctor and discussed plans for obtaining specific types of birth control once it was medically appropriate.

The two incarcerated persons who requested screening and testing both indicated that they received the requested medical tests.

Documents

In November of 2022, the OIR requested “additional information regarding how OCSD is complying with the requirement that ‘all incarcerated persons be furnished with information and education concerning the availability of family planning services, and that such services be offered to all incarcerated persons at least 60 days prior to their scheduled release.’”

On December 22, 2022, the OIR sent an “Updated Narrow Information Request” seeking any records that establish that 14 incarcerated persons identified by booking number “were offered family planning services at least 60 days prior to their scheduled release date per the above Penal Code.” CHS responded by indicating that none of the identified 14 incarcerated persons had “been in jail for more than 60 days.” As a result, no documents were provided by CHS showing that the identified incarcerated persons were offered family planning services.

Findings

The California Penal Code requires that family planning services “be offered to each and every incarcerated person at least 60 days prior to a scheduled release date.”²⁸

Based on the OIR’s interviews with incarcerated persons, nine out of the 11 persons interviewed were offered family planning services. Under the Penal Code, the OCSJ is not required to offer family planning services when an incarcerated person is in custody for less than 60 days or if they have a scheduled release date that is less than 60 days away.

According to information provided to the OIR during its tour, a process is in place to make sure that all incarcerated persons regardless of release date are offered family planning services at intake and again at release.

While the OCSJ has a policy stating that family planning services shall be offered to all incarcerated persons at least 60 days prior to their scheduled release, they do not have a written procedure spelling out how this should be accomplished and by whom. Similarly, there is no policy that spells out how to document the offering of services in order to show that it has been accomplished.

Recommendation:

Amend OCSJ policy to set forth the actual procedure to be followed when offering the required family planning services to incarcerated persons at least 60 days prior to a scheduled release date.

Recommendation:

Establish a mechanism to document when family planning services are offered to incarcerated persons.

c. Request for services necessary to meet family planning needs at time of release.

Policies

OCSJ policy provides that “[u]pon request, any inmate shall be furnished by the county with the services of a licensed physician, or they shall be furnished by the county or by any other agency

²⁸ Penal Code § 4023.5(c).

which contracts with the county with services necessary to meet their family planning needs at the time of their release.”²⁹

Interviews

According to CHS staff, an incarcerated person may submit a pink slip to CHS requesting family planning services at any time during their incarceration. Incarcerated person requests for family planning services are documented in a progress note in TechCare.

During its tour of OCSD jail facilities, the OIR had the opportunity to speak with the release nurse regarding the process of providing family planning services at the time of release. The release nurse indicated that when an incarcerated person is being released, the release nurse reviews the incarcerated person’s medical chart to determine what family planning services are necessary to meet the incarcerated person’s needs and will provide the incarcerated person with the appropriate referrals in the form of a pamphlet. Incarcerated persons who have been prescribed family planning services, such as birth control, while incarcerated will be released with a short-term supply. If an incarcerated person has not requested family planning services prior to their release, the release nurse will provide them with appropriate referrals based upon the incarcerated person’s needs at the time of release.

According to the release nurse, incarcerated persons exit the jail through the lobby. The Orange County Social Services Agency has a booth set up in the lobby of the jail. The OIR interviewed an employee from the Social Services Agency who was staffing the booth. The employee indicated that released incarcerated persons can obtain information to address a variety of concerns including access to programs such as Medi-Cal, Cal-Fresh, and temporary cash aid through the Orange County funded General Relief program.

Documents

The OIR attempted to determine whether incarcerated persons who requested services necessary to meet their family planning needs, at the time of release, were furnished with services. As such, the OIR requested any documents or records establishing whether certain identified incarcerated persons “requested or were provided with family planning needs at the time of their release.”

The records provided by the OCSD did not indicate whether the identified incarcerated persons requested, or were furnished with, services at the time of their release. As a result, the OIR is unable to determine whether services were requested or provided that were necessary to meet an incarcerated person’s family planning needs at the time of their release.

A lack of documentation does not necessarily indicate that services were not properly provided. However, given that the obligation is on the County to provide these services upon request, it would be prudent to document a request to, and the services furnished by, the county or any other agency which contracts with the county.

²⁹ CCOM Section 1604.1(cc)

Recommendation:

CHS should consider updating the Release Summary to add a field to specifically notate whether an incarcerated person has requested, or received, family planning services at the time of their release.

Penal Code Section 4023.6

The Penal Code provides all incarcerated persons with the right to summon a healthcare provider of their choice for the purposes of determining whether they are pregnant.³⁰ If an incarcerated person is found to be pregnant, they are entitled to “a determination of the extent of medical and surgical services needed and to the receipt of these services” from a healthcare provider of their choice.³¹ The rights provided by the Penal Code are required to be “posted in at least one conspicuous place to which all persons capable of becoming pregnant have access.”³²

Policies

OCSD custody policy relating to the rights of incarcerated persons addresses the right to summon and receive the services of a licensed medical provider by specifically stating that “[a]ny inmate shall have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife or physician assistant of their choice in order to determine whether they are pregnant. If the inmate is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. Any expenses for the services of a physician, nurse practitioner, certified nurse midwife or physician assistant whose services are not provided by Correctional Health Services will be the responsibility of the inmate.”³³

CHS policy also provides that patients are provided access to their choice of physicians.³⁴ The verbiage in the policy is similar to that set forth under the statute.³⁵ CHS provided OIR with an updated policy that states that once a female incarcerated person is housed, an RN shall discuss with the incarcerated person, whether she elects to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of her choice in order to determine whether she is pregnant and to receive services.³⁶

Interviews

According to CHS staff, an incarcerated person request to use a provider of their choice is documented in TechCare.

³⁰ Penal Code §4023.6(a).

³¹ Penal Code §4023.6(b).

³² Penal Code §4023.6(e).

³³ CCOM Section 1604.1(j) & 1604.6(a)(6).

³⁴ CHS Policies and Procedures §6251 (F) - Reproductive Health Services

³⁵ CHS Policies and Procedures §6251(F) - Reproductive Health Services

³⁶ CHS Policies and Procedures §6252 (D)(1) – Care of the Pregnant Patient

To ensure compliance with the provider of choice component of AB 732 and OCS D policy, OIR staff interviewed eleven female incarcerated persons, including four pregnant and two postpartum incarcerated persons. Each of the incarcerated persons were asked the following question:

- Did you request that your regular doctor conduct the pregnancy testing?

None of the interviewed incarcerated persons requested to use their provider of choice to determine whether they were pregnant.

The four pregnant and two postpartum incarcerated persons were asked the following questions:

- Did you request to use your regular physician for the purposes of prenatal care?

Four of the incarcerated persons did not request their provider of choice to provide medical services while incarcerated. One of the incarcerated persons ended the interview early and did not answer this question. The final incarcerated person requested to use their provider of choice for labor and delivery purposes.

The only incarcerated person who made a request explained that she received prenatal care at UCI and that she was 36 weeks pregnant when she was booked into the jail.

- If yes, how did you make this request and to whom?

The lone incarcerated person indicated that she made her request after going into labor, and while enroute to the hospital. The incarcerated person made her request to the transporting deputies and asked to be transported to UCI for the purposes of labor and delivery.

- If yes, was this request accommodated?

Due to the late nature of her request, the incarcerated person was transported to OC Global Orange, one of the hospitals routinely used by the jail. The incarcerated person explained that she did not request earlier because she did not know that she had the option of using her own provider.

After interviewing the incarcerated person who indicated that she did not know that she had the option of using her own provider, the OIR requested a copy of the incarcerated person's PHI form. The OCS D provided a dated PHI record signed by the incarcerated person that includes the notice that "In addition, you have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of your choice to determine whether you are pregnant."

Documents

In addition to interviewing incarcerated persons, the OIR requested “[a]ny grievances filed by pregnant inmates in 2022 related to AB 732 rights.” The OCSD responded by indicating that they did not have any grievances related to this topic.

Site Visit

To ensure that the “Rights of Inmates Regarding Pregnancy” notices were posted in a conspicuous place where female incarcerated persons have access, the OIR toured the IRC and CWJ, and observed the notices posted in each holding cell at the IRC and in the dayrooms in Module K and Module N. According to an OCSD commander, pregnant incarcerated persons are typically housed in Module N. During the OIR’s tour, OIR staff were able to see that two pregnant incarcerated persons were, in fact, housed in Module N. The pregnant incarcerated persons were easily identifiable given the fact that they were wearing pink jail issued pants and were sitting on bottom bunks.

Findings

Based upon interviews, and documents provided by the OCSD, there is no evidence to indicate that OCSD is not providing incarcerated persons with the right to summon a healthcare provider of their choice for the purposes of determining whether they are pregnant or the receipt of services if found to be pregnant.

Additionally, the Penal Code only requires that OCSD post a notice containing these rights in at least once conspicuous place to which all incarcerated persons capable of becoming pregnant have access. OCSD accomplishes this requirement by posting its notice entitled “Rights of Inmates Regarding Pregnancy” in every female housing unit dayroom as well as all holding areas at the IRC.

The OCSD goes further than the Penal Code requires by also providing a PHI form that clearly puts an incarcerated person on notice that they can summon a healthcare provider of their choice for the purposes of determining whether they are pregnant. However, noticeably absent from the language contained in the PHI form is verbiage that indicates that they may receive medical and surgical services from their provider *if* they are actually found to be pregnant.

While the PHI form does not contain this express language, the “Rights of Inmates Regarding Pregnancy” notice does state that “[i]f the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice.”³⁷

Recommendation:

In order to ensure that pregnant incarcerated persons receive a document that advises them of the full extent of their right to receive services from the provider of their choice, CHS should

³⁷ A copy of the Rights of Inmates Regarding Pregnancy document is attached to the end of this report as an attachment.

consider updating the language in the PHI form to include express verbiage that indicates that “[i]f the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice.”

Penal Code Section 4023.8

Section 4023.8 was added to the Penal Code in order to provide requirements for identifying incarcerated persons who may be pregnant or become pregnant, and to expand healthcare rights for incarcerated persons including reproductive healthcare counseling, comprehensive prenatal healthcare, appropriate nutrition, newborn care, medication assisted treatment for persons with prior opioid use, and referral to a social worker to assist with feeding and placement following birth.³⁸ This section also addresses appropriate housing assignment, postpartum work restrictions, privacy concerns during delivery, and limitations on restraints and shackling.³⁹

The rights provided in this section are contained in the OCS D notice entitled “Rights of Inmates Regarding Pregnancy.” According to OCS D staff, this notice is posted in every female housing unit dayroom as well as all holding areas at the IRC. The OIR toured the IRC and CWJ, and observed the “Rights of Inmates Regarding Pregnancy” notice posted in each holding cell at the IRC and in the dayrooms in Modules K and N.

Additionally, CHS policy states that all incarcerated persons are supposed to be provided with the PHI form which informs them of the availability of sexually transmitted infection screening, contraception, abortion, and lactation support.⁴⁰ If the patient refuses to sign, the staff member who witnessed the refusal will write “Patient Refused to Sign” on the form and sign it.⁴¹

Pregnancy Testing

According to the Penal Code, any incarcerated person identified during an intake health examination, or at any time during incarceration, as possibly pregnant or identified as capable of becoming pregnant, must be offered a pregnancy test within seventy-two hours of arrival at the jail.⁴² These tests are voluntary and are to be performed only by medical or nursing staff.⁴³ If an incarcerated person declines to take the test, they must be asked to sign a refusal form which shall be kept in their medical file.⁴⁴

³⁸ Penal Code § 4023.8.

³⁹ Penal Code § 4023.8.

⁴⁰ CHS Policies and Procedures §6251(A) - Reproductive Health Services

⁴¹ CHS Policies and Procedures §6251(A)(1)(a) - Reproductive Health Services

⁴² Penal Code §4023.8(a).

⁴³ Penal Code §4023.8(a).

⁴⁴ Penal Code §4023.8(a).

Policies

OCSD policy provides that “[p]regnancy testing is voluntary and is administered by medical personnel upon intake or within 72 hours of arrival at the jail, and upon request at any time during incarceration.”⁴⁵

According to the information provided by the OCSD regarding pregnancy testing, tests are offered to every female incarcerated person who is booked into their facility. CHS guidelines specifically state that “[a] urine specimen cup shall be given to the patient during intake to obtain a urine hCG.”⁴⁶ If for some reason a pregnancy test wasn’t conducted during intake, then according to CHS guidelines, an “RN calendar appointment shall be scheduled to obtain a urine pregnancy test once [a] patient is housed.”⁴⁷

OIR was also provided with two CHS policies that address pregnancy testing. The first policy states that a “[u]rine pregnancy test and UDS will be obtained on all female patients.”⁴⁸ The second policy states that “[u]pon intake or no later than 3 days from date of patient’s booking, a urine pregnancy test shall be offered to all women of childbearing age by medical or nursing personnel (and administered by medical or nursing personnel if patient voluntarily consents).”⁴⁹ The policy specifically states that those incarcerated persons over the age of 60 and no longer menstruating for one year, as well as those with a stated history of hysterectomy, are exempt from a urine pregnancy test.⁵⁰

The policy also describes the procedure for an incarcerated person who refuses to take a pregnancy test, stating that a “[f]orm or electronic informed refusal form will be completed whenever a patient refuses a voluntary pregnancy test. Patient shall be asked to sign the Form. The Form shall become part of the patient’s electronic health record.”⁵¹

Documents

To establish that pregnancy testing is occurring within the OCSD jails, the OIR examined records for the previously identified 15 random female incarcerated persons. Of the 15 random female incarcerated persons sampled, documentation established that 11 out of 15 were provided pregnancy tests.

⁴⁵ CCOM Section 1604.1(aa)

⁴⁶ CHS Guidelines: Tracking Pregnant Patients While In Custody

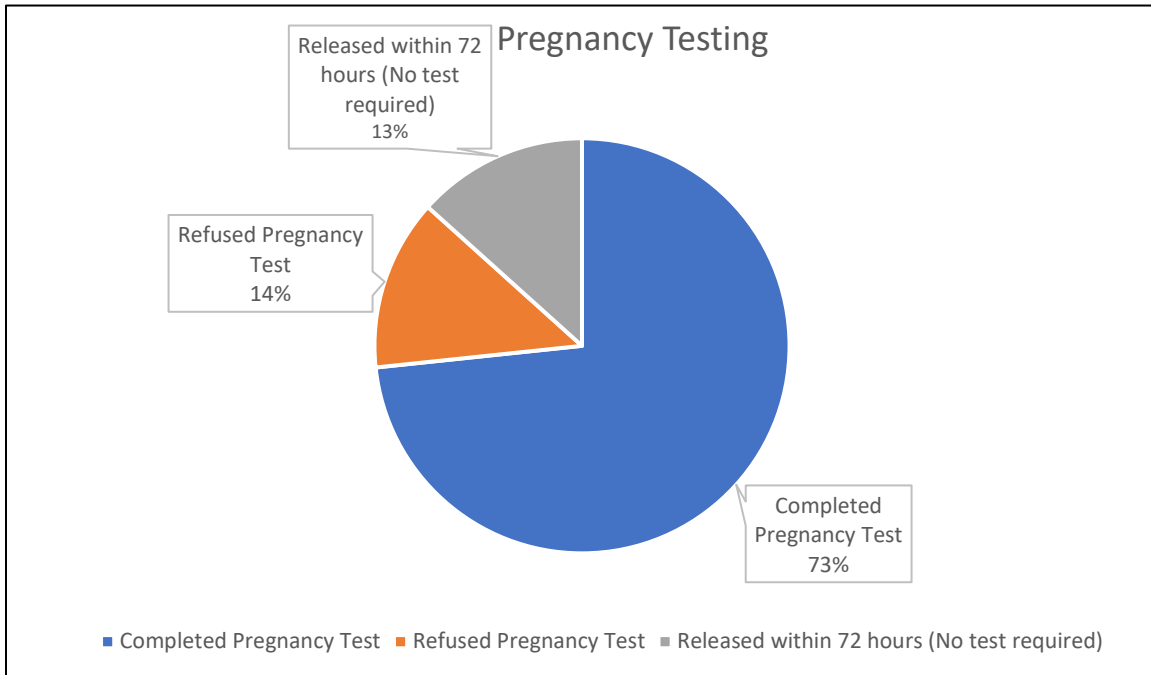
⁴⁷ CHS Guidelines: Tracking Pregnant Patients While In Custody

⁴⁸ CHS Policies and Procedures §6101(D)(1)(e) - Receiving Screening

⁴⁹ CHS Policies and Procedures §6251(B)(1) - Reproductive Health Services

⁵⁰ CHS Policies and Procedures §6251(B)(1)(a) - Reproductive Health Services

⁵¹ CHS Policies and Procedures §6251(B)(4) - Reproductive Health Services



Two incarcerated persons refused pregnancy testing. OCSD staff completed a “Refusal to Accept Treatment and Release of Liability” form for one of the two incarcerated persons, who refused to sign the form. The other incarcerated person who refused the pregnancy testing signed the refusal form, indicating that the reason for her refusal was that she was unable to urinate.

As it relates to the final two incarcerated persons, the OIR subsequently requested additional documentation reflecting that the last two female incarcerated persons “were provided with a pregnancy test, or documentation reflecting informed refusal of pregnancy testing.” CHS responding by providing documentation that both incarcerated persons were in for less than 48 hours, and as result no pregnancy tests were given.

Interviews

According to OCSD and CHS staff, all female incarcerated persons are screened at the triage area and provided a urine collection cup. Due to the lack of dedicated bathroom space for urine collection, incarcerated persons take the collection cup into the privacy area of a holding cell and provide a urine sample. The incarcerated person will then place the collection cup on a bench inside the holding cell and wait for CHS staff to retrieve it. CHS staff will conduct the urinalysis screening, and upon confirming that an incarcerated person is pregnant, jail staff will place a pink bracelet on them. The pink bracelet remains on the incarcerated person until they are provided with jail issued clothing, including pink pants.

OIR staff interviewed 11 female incarcerated persons related to pregnancy testing. All eleven female incarcerated persons were asked the following questions:

- Were you offered a pregnancy test when you arrived at the jail?

Nine of the incarcerated persons interviewed indicated that they were offered pregnancy testing during the booking process and prior to being housed.

- If not offered at booking, was a pregnancy test offered to you at some point during the period of your incarceration?

One of the two incarcerated persons, that indicated that she was not offered testing during the booking process, was approximately seven months pregnant upon her arrival at the jail. She indicated, however, that she was offered and provided pregnancy testing during her first OB/GYN appointment one to two weeks after being booked into the jail.

The second incarcerated person, that indicated that she was not offered testing during the booking process, stated that she informed the intake nurse that she is no longer menstruating and is not capable of getting pregnant.

After the interview OIR requested records to determine whether the second incarcerated person received a timely pregnancy test. According to the records received from the OCSD, the incarcerated person was booked on 11/19/2021, and received a negative pregnancy test on 11/22/2021.

- Did you provide a urine sample?

All 11 incarcerated persons interviewed indicated that they provided a urine sample.

Findings

As mentioned above, the Penal Code provides that a person “who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration shall be offered a pregnancy test upon intake or by request, within seventy-two hours of arrival at the jail.”⁵²

The OIR reviewed the booking records for the incarcerated persons that indicated that they were not offered testing during the booking process. The incarcerated person that was approximately seven months pregnant did not need to be tested at intake or within 72 hours of arrival at the jail because she was seen at Anaheim Global Medical Center to obtain medical clearance for pregnancy prior to booking. A physician conducted an ultrasound confirming the pregnancy prior to her arrival at the jail.

The second incarcerated person’s booking records showed that she was only 48 years old at the time of booking. Under the Penal Code, this incarcerated person was not required to be tested at intake or within 72 hours of arrival, because she indicated that she was no longer capable of

⁵² Penal Code § 4023.8(a).

becoming pregnant. However, under CHS policy related to pregnancy testing of incarcerated persons, only those incarcerated persons over the age of 60 and no longer menstruating for one year, as well as those with a stated history of hysterectomy are exempt from pregnancy testing. Based on the incarcerated person’s information, and CHS policy, she should have, and was, tested within 72 hours of her arrival at the jail.

Based upon interviews, and documents provided by the OCSD, it appears that OCSD is providing pregnancy testing as required under the Penal Code and in compliance with its own policies and procedures.

Options Counseling

An incarcerated person who is confirmed to be pregnant following a test must be offered comprehensive and unbiased options counseling that includes information regarding prenatal healthcare, adoption, and abortion.⁵³ This counseling must be furnished by a licensed health care provider or counselor who has been provided with training in reproductive health care and shall be nondirective, unbiased, and noncoercive.⁵⁴

Policies

OCSD custody policy relating to the rights of incarcerated persons addresses the right to counseling by mirroring the language set forth in the Penal Code.⁵⁵

CHS policy states that pregnant patients are offered comprehensive “nondirective, unbiased, and noncoercive counseling by a CHS prescriber trained in reproductive health includ[ing] information about contraceptive choices, adoption, abortion, and prenatal health care.”⁵⁶

According to another CHS policy, arrangements for options counseling are made through a designated medical obstetrical management (MOM) team, CHS prescribers, and/or community agencies that serve pregnant, birthing, or lactating patients.⁵⁷ The CHS procedures for screening and assessments upon intake for pregnant incarcerated persons provide that pregnancy screening/(MOM) counseling appointments are scheduled for the next day.⁵⁸

Documents

To ensure compliance with options counseling requirements, the OIR requested the OCSD conduct a search to determine if any pregnant persons were in custody during the months of July 2021 and November 2022. The Sheriff’s Department identified 41 pregnant incarcerated persons. The OIR requested that the OCSD “provide records that document that each identified pregnant person was provided” options counseling.

⁵³ Penal Code § 4023.8(b).

⁵⁴ Penal Code § 4023.8(b).

⁵⁵ CCOM 1604.6(e).

⁵⁶ CHS Policies and Procedures §6251(D)(7)(a) & (E) - Reproductive Health Services

⁵⁷ CHS Policies and Procedures §6252(E)(1) - Care of the Pregnant Patient

⁵⁸ CHS Policies and Procedures §6252(B)(7)(a) – Care of the Pregnant Patient

The OIR reviewed the records provided by the OCSD. Some of the records indicated the desire of the incarcerated person as to their pregnancy. However, none of the records explicitly indicated that any of the identified incarcerated persons were offered or received options counseling. There was also no indication of who provided options counseling if it was given.

Interviews

According to CHS staff, options counseling is provided by a MOM team registered nurse who has received appropriate training in this area. A MOM team RN visits with each pregnant incarcerated person every Wednesday. The receipt of options counseling provided by the MOM team is supposed to be documented in the form of a progress note in the TechCare case management system.

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, to establish that options counseling is occurring within the jail setting as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Were your options regarding prenatal care, adoption, and abortion discussed with you?

All three pregnant incarcerated persons indicated that they were provided with such counseling.

Neither of the two postpartum incarcerated persons recall receiving options counseling.

After the interview, the OIR requested copies of the medical records for the two postpartum incarcerated persons who could not recall receiving options counseling. A review of their pregnancy records indicated their desire to continue with the pregnancy. One of the postpartum incarcerated person's records indicated that she was going to keep the baby, while the other postpartum incarcerated person's records showed that she had a discussion with a MOM nurse and that she was going to put the baby up for adoption.

- Who had this discussion with you?

Of the three incarcerated persons who indicated that they received options counseling, one stated that a registered nurse provided the counseling, one stated that an OB Doctor provided the counseling, and one incarcerated person was unsure who provided the counseling.

Findings

The Penal Code requires only that options counseling be offered to pregnant incarcerated persons; it does not mandate any sort of documentation. Failure to document is not necessarily evidence that counseling is not being offered or that it is not occurring.

Based upon the OIR interviews with the three pregnant incarcerated persons, it is clear that some options counseling is being provided. The OIR also saw evidence of weekly MOM visits recorded in patient health records. The extent to which options counseling is being offered or provided, however, cannot be determined due to the absence of detailed records. When the law requires an action, it is good practice to document that it has been completed.

In some instances, CHS did document the desires of the incarcerated person regarding their pregnancy. However, simply asking about the desire of the incarcerated person is wholly different than offering to have a licensed health care provider or counselor, with training in reproductive health care, provide comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion.

Recommendation:

CHS should update policy number 6251(D)(7) to require staff to document, in the patient health record, when options counseling is offered and, if provided, who provided it, and when.

Abortion

The Penal Code provides that a pregnant person who decides to have an abortion shall be referred to an authorized licensed medical professional.⁵⁹ If a pregnant incarcerated person decides to have an abortion, they must be offered all due medical care and accommodations until they are no longer pregnant.⁶⁰

Policies

CHS policy states that “[p]atients requesting an abortion will be scheduled for the next available OB prescriber sick call to determine eligibility pursuant to current laws. Clinical judgment is the sole province of the patient and responsible physician conducting the elective abortion. Non-medical jail staff do not have the authority or discretion to decide if a pregnant patient is eligible for an abortion.”⁶¹ Upon a patient’s request and eligibility, an Off-Site Request form will be completed and forwarded to CHS case management for timely scheduling of an abortion.⁶²

Documents

The OIR requested “any records, including, but not limited to, the "Off-Site Request form" that shows compliance” with the Penal Code, and CHS policy, concerning the scheduling of elective abortion appointments for the 41 identified pregnant incarcerated persons. CHS provided records that indicate that seven of the identified pregnant incarcerated persons requested therapeutic abortions and had them scheduled.

⁵⁹ Penal Code § 4023.8(c).

⁶⁰ Penal Code § 4023.8(c).

⁶¹ CHS Policies and Procedures §6252(K)(2)(b) – Care of the Pregnant Patient

⁶² CHS Policies and Procedures §6251(D)(7)(b) – Reproductive Health Services

A review of the records revealed that two of the incarcerated pregnant persons changed their minds and continued with the pregnancy, two were released prior to their appointments, and three completed the requested procedures.

The OIR also requested “[a]ny grievances filed by pregnant inmates in 2022 related to AB 732 rights.” The OCSD responded by indicating that they did not have any grievances related to this topic.

Interviews

According to CHS staff, a pregnant incarcerated person desiring an abortion will be scheduled to see the OB doctor, who will determine the gestational age and make a request for a therapeutic abortion when appropriate. Case management is notified and secures an appointment where the procedure is done. CHS currently contracts with a designated facility to provide therapeutic abortion services.

The OIR staff also interviewed six incarcerated persons, four pregnant and two postpartum, to establish that the OCSD is complying with its policies and AB 732, as it relates to abortions. The incarcerated persons were asked the following questions:

- Did you request to have an abortion?

Five of the incarcerated persons indicated that they did not request an abortion. One pregnant incarcerated person stated that she requested an abortion.

- Who did you make this request to?

The incarcerated person who requested the abortion made this request to a nurse.

- Was this request accommodated?

The incarcerated person who requested the abortion indicated that it was scheduled, and that she was transported to the appointment, but she changed her mind while at the facility.

Findings

Based on a review of health records for those incarcerated persons who requested therapeutic abortions, and incarcerated person interview responses, it appears that OCSD is providing the requested services in compliance with AB 732, and its own policies and procedures. A thorough review of the records provided showed that all seven pregnant incarcerated persons were scheduled for the requested procedures. Five of the seven pregnant incarcerated persons were scheduled to have the procedure occur within seven days of their request. The other two pregnant incarcerated persons were released within two days of their request.

Pregnancy Examinations

The Penal Code provides that a pregnant incarcerated person must be scheduled for a pregnancy examination with a qualified healthcare provider within seven days of arrival at the facility.⁶³

Policies

CHS procedures for screening and assessments upon intake of pregnant incarcerated persons state that they are to be given a priority appointment for the next available OB/GYN clinic, and that such appointments “shall not exceed seven days from confirmation of pregnancy.”⁶⁴

The policy also addresses obstetric prescriber exams for pregnant incarcerated persons stating, “[a] plan of care will be established following Guidelines for Perinatal Care by the American Academy of Pediatrics (AAP) and the American College of Obstetricians and Gynecologists (ACOG) Committee on Obstetric Practice, unless more frequent visits are indicated by a licensed provider.”⁶⁵

Documents

The OIR requested records evidencing that certain “inmates identified by booking number received pregnancy examinations within 7 days of arrival at the jail...” The OIR received and reviewed records of 41 pregnant incarcerated persons that were in custody during the months of July 2021 and November 2022. The records indicate that 21 of the 41 pregnant incarcerated persons received a pregnancy examination with a qualified healthcare provider within seven days of arriving at the facility. 16 of the 41 pregnant incarcerated persons were released within seven days of being booked into jail and were not required to be examined prior to release.

The first of the remaining four pregnant incarcerated persons was seen by the OB/GYN doctor nine days after arriving at the facility. When the OIR inquired as to “why she was not seen for a pregnancy examination within seven days of her arrival,” CHS responded that the patient was seen within seven business days.

Two of the remaining four pregnant incarcerated persons were seen by the OB/GYN doctor eight days after arriving at the facility. When the OIR inquired as to why the first pregnant incarcerated person was “not seen for a pregnancy examination within seven days of her arrival,” CHS responded that the patient was seen within seven business days. When the same question was asked regarding the third pregnant incarcerated person, CHS responded that the patient was seen on the sixth business day.

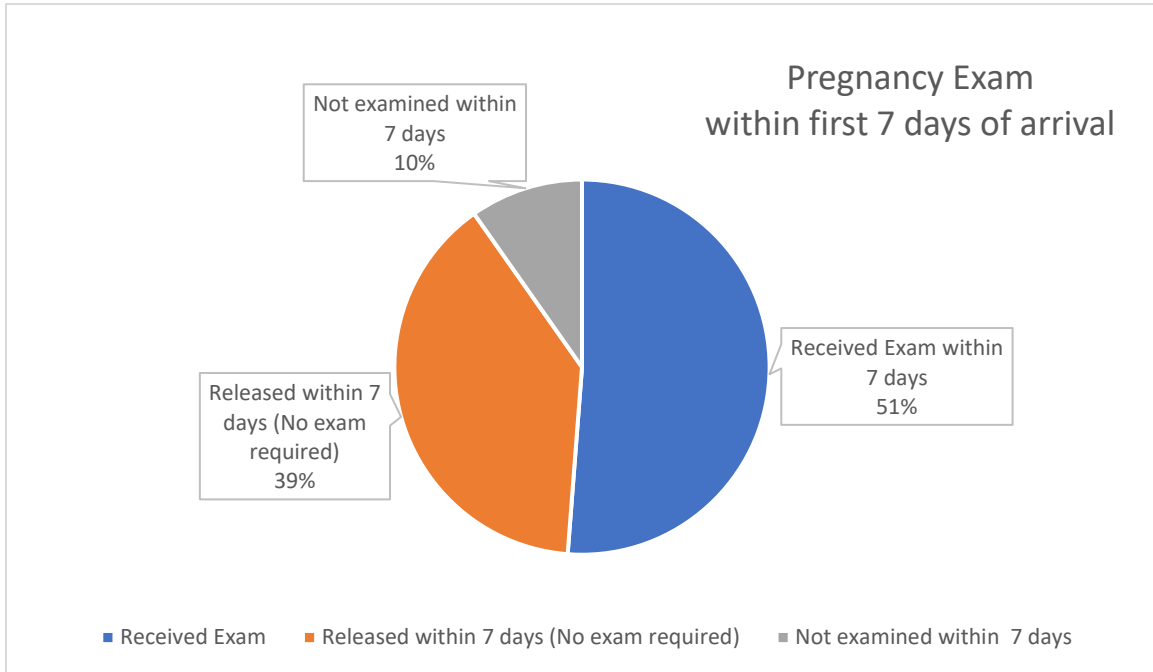
As it relates to the fourth pregnant incarcerated person, OIR was provided with records that indicated that the incarcerated person was booked on 10/28 and was not seen until her prenatal care visit on 11/21. The OIR reached out to CHS and asked “[w]hy she was not seen for a pregnancy examination within 7 days of her arrival?” CHS responded by indicating that the

⁶³ Penal Code § 4023.8(d).

⁶⁴ CHS Policies and Procedures §6252(B)(7)(b)(1) – Care of the Pregnant Patient

⁶⁵ CHS Policies and Procedures §6252(F)(3) – Care of the Pregnant Patient

incarcerated person was seen by a doctor on 11/4 (within 7 days of booking). However, no records were provided by CHS to support the information provided. As a result, the OIR is unable to verify the information provided.



Interviews

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, in order to establish that pregnancy examinations are occurring within the timeframe prescribed by AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Did you receive a pregnancy examination after arriving at the jail?

All five incarcerated persons indicated that they had received a pregnancy examination.

- When did you receive this examination?

Four of the five incarcerated persons indicated that they received pregnancy examinations within four days of arriving at the jail. The fifth incarcerated person indicated that she received a pregnancy examination one to two weeks following her arrival at the jail.

After the interview, the OIR requested copies of the medical records for the incarcerated person who indicated that she “received a pregnancy examination one to two weeks following her arrival at the jail.” Upon review of the incarcerated

person's records, it was determined that she received a pregnancy examination, including an ultrasound, at Anaheim Global Medical Center on the day of her arrest, prior to being cleared for jail. She was then seen for another OB pregnancy examination, including an ultrasound, at Anaheim Global Medical Center seven days later.

Findings

The Penal Code states that a person who is confirmed to be pregnant shall, within seven days of arriving at the jail, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse midwife, or physician assistant. A review of the legislative intent from the Senate Public Safety and Rules committees affirms that the intention of this provision of AB 732 is that a confirmed pregnant incarcerated person "have a pregnancy examination with a physician, nurse practitioner, midwife or physician within seven days of arrival at the jail..."

The OIR identified 10 percent of the random sampling of pregnant incarcerated persons as having not been examined within the timeframe required under CHS policy and the Penal Code. When the OIR inquired about the reasons for the delay in examinations, no reasons were providing, instead the OIR was informed that the examinations were performed within seven business days for three of the four pregnant incarcerated persons.

Neither the Penal Code nor CHS policy leave room for using business days instead of calendar days. Specifically, the Penal Code sets the criteria to be followed as "within seven days of arriving at the jail." Somewhat similarly, CHS' own policy also provides that appointments "shall not exceed seven days from confirmation of pregnancy."

The four pregnancies discussed above were all confirmed the same day that the pregnant incarcerated persons arrived at the jail. Two of the examinations occurred eight days from confirmation and one occurred nine days from confirmation.

Analysis

The exam that is to be performed under this section includes a determination of the gestational age of the pregnancy, the due date, a plan of care, and the ordering of prenatal labs and diagnostic studies. Given the importance of this examination on determining the plan of care for all incarcerated pregnant persons and the fact that CHS policy provides for a "PRIORITY" appointment for the next available OB/GYN clinic that shall not exceed seven days from confirmation of pregnancy, it should be the practice of the OCSA to make sure that all confirmed pregnant incarcerated persons have been examined within seven days of arrival at the jail.

Recommendation:

Update CHS policy section 6252(A)(8)(b)(1) to state "Appointments shall not exceed seven *calendar* days from confirmation of pregnancy."

Recommendation:

CHS should implement a random audit procedure to ensure that pregnant incarcerated persons are receiving pregnancy examinations within seven calendar days of confirmation of pregnancy.

Prenatal Care Visits

The Penal Code provides that pregnant incarcerated persons must be scheduled for prenatal care visits in accordance with American Academy of Pediatrics (AAP) and American College of Obstetricians and Gynecologists medical standards, unless more frequent visits are required by the medical professional providing care.⁶⁶ The AAP medical standards for perinatal care visits provide that the first visit should occur during the first trimester of pregnancy which is typically 12 to 14 weeks. In an uncomplicated pregnancy, the patient should be examined by the health care provider every 4 weeks during the first 28 weeks of gestation, every 2 weeks until 36 weeks of gestation, and weekly thereafter.⁶⁷

Documents

The OIR requested records evidencing that certain “inmates identified by booking number received prenatal care visits every 4 weeks during the first 28 weeks of gestation, every 2 weeks until 36 weeks of gestation, and weekly thereafter.” There were 41 pregnant incarcerated persons that were in custody during the months of July 2021 and November 2022.

A review of the provided records established that 16 pregnant incarcerated persons were released within seven days of being booked into custody and would not have needed to receive prenatal care visits. Another 13 pregnant incarcerated persons were within the first 28 weeks of gestation and were released prior to being required to receive a four-week prenatal check. Three incarcerated persons terminated their pregnancy prior to the requirement of a four-week prenatal check.

Of the nine remaining pregnant incarcerated persons, seven were required to receive prenatal care visits every 4 weeks. All seven incarcerated persons received their prenatal care visits within the prescribed time frame.

Three of the seven incarcerated persons were also required to have prenatal care visits every two weeks. Two of the three incarcerated persons received prenatal care every two weeks as required, and eventually weekly as required. The third incarcerated person, whose every four-week checks were all timely, received a late prenatal care visit after she reached 28 weeks. Her second two-week prenatal care visit was timely.

The final two of the nine incarcerated persons came into custody having already reached 28 weeks of gestation and required prenatal visits every 2 weeks. The first incarcerated person received her prenatal care visits within the prescribed time frame. The second incarcerated person’s first prenatal care visit was late; however, the remaining three two-week visits were timely.

⁶⁶ Penal Code § 4023.8(e).

⁶⁷ American Academy of Pediatrics, The American College of Obstetrics and Gynecologists. *Guidelines for Perinatal Care*. 8th ed. Elk Grove Village, IL. Sept. 2017. Chapter 6 Antepartum Care.

Interviews

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, in order to establish that the timing and frequency of prenatal care visits is occurring in accordance with AB 732. The incarcerated persons were asked the following questions:

- Did you see an OB/GYN after your initial examination? How often?

The first incarcerated person indicated that she had been incarcerated for approximately four weeks at the time of the interview and had not yet seen the OB doctor for a follow up appointment, although she stated that her follow-up appointment was scheduled. According to this incarcerated person, her pregnancy was considered uncomplicated.

Based on a review of this incarcerated person's records, she was within the first 28 weeks of gestation, and should receive a prenatal care visit every four weeks. Subsequent records provided by OCSO showed that she received a prenatal care visit within four weeks of arriving at jail.

The second incarcerated person indicated that she had not yet seen the OB doctor for a follow-up prenatal care visit. At the time of the interview, this incarcerated person had been incarcerated for less than three weeks, and her pregnant state had been known for approximately four days.

Based on a review of this incarcerated person's records, she was within the first 28 weeks of gestation, and should receive a prenatal care visit every four weeks. Records provided by OCSO showed that the incarcerated person received her OB initial visit on the day that she tested positive for being pregnant. The incarcerated person was subsequently released less than two weeks after her initial OB visit.

The third incarcerated person indicated that she had received her prenatal visits within the appropriate time frame.

Both postpartum incarcerated persons were at least 36 weeks pregnant upon booking at the jail and received a prenatal care visit weekly. One postpartum incarcerated person was housed in the medical unit at the IRC and a nurse saw her daily checking for fetal heart tones. She went into labor on the fifth day of her incarceration. The other postpartum incarcerated person was seen at the hospital, due to false labor, one week after her arrival at the jail. She went into labor the following week.

Findings

A review of records provided for the 41 pregnant incarcerated persons revealed that 32 (78%) either left custody or terminated their pregnancy prior to requiring a four-week prenatal care visit. The other nine incarcerated persons (22%) were in custody long enough to receive at least a four-week prenatal care visit.

Analysis

While the OCSD did a good job of ensuring that all four-week prenatal care visits occurred timely, a concern arose as it relates to providing two week checks to the five incarcerated persons when they were between 28 and 36 weeks pregnant. Only three of the five incarcerated persons received all of their prenatal care visits every two weeks, as set forth under the standards.

The OIR inquired as to why the other two incarcerated persons were “not seen by a physician, nurse practitioner, certified nurse midwife, or physician assistant for a prenatal care visit” within the required timeframes. CHS confirmed that the previous records provided to OIR were accurate but did not provide an explanation for why one of the incarcerated persons did not have prenatal care visits for almost six weeks.

As it relates to the other incarcerated person, CHS indicated, without providing records, that this incarcerated person was seen on 11/4 which would have made her prenatal appointment on 11/21 within the appropriate timeframe. The OIR was unable to confirm the information provided.

Recommendation:

CHS should make sure that it is utilizing a random audit procedure that ensures that all prenatal care visits are conducted in accordance with American Academy of Pediatrics (AAP) and American College of Obstetricians and Gynecologists medical standards.

Vitamins

The Penal Code provides that incarcerated pregnant persons are to be provided with access to daily prenatal vitamins.⁶⁸

Policies

The OIR requested that the OCSD provide “[a]ll policies, procedures, and written directives regarding the requirement that pregnant incarcerated persons receive daily prenatal vitamins....”

CHS policy states that “upon confirmation of pregnancy, CHS clinical staff shall enter prenatal orders into the patient’s health record.”⁶⁹ The CHS Medical Director has approved initial prenatal orders to include a 90-day supply of prenatal vitamins.⁷⁰ CHS nursing procedures direct staff to “[o]rder prenatal vitamins, one tablet q hs x 90 days and renew as needed in the patient’s health record while patient is in custody.”⁷¹

Documents

The OIR requested medication administration records for pregnant incarcerated persons that were in OCSD custody during the months of July 2021 and November 2022. The electronic medication administration records (EMARs) were provided for all 41 incarcerated persons. A

⁶⁸ Penal Code § 4023.8(f).

⁶⁹ CHS Policies and Procedures §6252(C)(1) – Care of the Pregnant Patient

⁷⁰ CHS Policies and Procedures §6252(C)(1)(b) – Care of the Pregnant Patient

⁷¹ CHS Standardized Procedures for Registered Nurses 6.B II(C)(8)

review of the provided records revealed that prenatal vitamins were ordered for all 41. Eight of the 41 incarcerated persons did not actually receive the prenatal vitamins while in custody, however these eight incarcerated persons were in custody for less than 34 hours.

Interviews

According to CHS staff, the process of ordering prenatal vitamins for an incarcerated person with a confirmed pregnancy begins at the triage stage of the booking process. Upon receipt of a urinalysis result confirming pregnancy, a booking nurse enters orders for prenatal vitamins into TechCare.

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, in order to establish that pregnant incarcerated persons were actually receiving their daily prenatal vitamins as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Since becoming aware of your pregnancy, have you received prenatal vitamins while in the jail?

All five incarcerated persons indicated that they did receive prenatal vitamins.

- How often are you receiving prenatal vitamins?

All five incarcerated persons indicated that they received prenatal vitamins on a daily basis. Two incarcerated persons reported receiving them daily from a nurse who comes to each cell to distribute the vitamins, while three reported receiving a weekly package containing seven vitamins.

Findings

Based on interviews and a review of records, it appears that the OCSD has a system in place that accurately ensures that all pregnant incarcerated persons receive prenatal vitamins on a daily basis, in accordance with medical standards of care.

Assessment of Infectious Diseases

Incarcerated pregnant persons are to be provided with newborn care as it relates to the assessment and diagnosis of infectious diseases capable of transmission from birthing person to child.⁷²

The California Department of Public Health recommends that the following screenings be completed at the first prenatal visit regardless of gestational age:

- HIV
- Syphilis
- Chlamydia

⁷² Penal Code § 4023.8(f).

- Gonorrhea
- Hepatitis B surface antigen (HBsAg)
- Hepatitis C (HCV) antibody with reflex HCV RNA viral load if HCV antibody positive

Policies

The CHS Medical Director has approved initial prenatal orders to include prenatal labs, including testing for Syphilis, HIV, Hepatitis B and C, Varicella, and Rubella.⁷³ CHS policy states that, “upon confirmation of pregnancy, CHS clinical staff shall enter prenatal orders into the patient’s health record.”⁷⁴

Documents

The OIR reviewed records for all 41 identified pregnant incarcerated persons. A review of the records indicated that screenings for infectious diseases were conducted for 27 of the 41 pregnant incarcerated persons.

10 of the 41 incarcerated persons’ records did not contain infectious disease screening records. Those 10 incarcerated persons were released within seven days of booking. Because the prescribed timeframe under AB 732 for a pregnancy examination is within seven days of arrival at the jail, and the Department of Public Health recommends screenings for infectious diseases to be conducted at the first prenatal appointment, the lack of records for those incarcerated persons released within seven days does not demonstrate a failure in compliance with the Penal Code.

Records for the remaining four incarcerated persons reflect that they refused infectious disease screening.

Interviews

According to CHS staff, when a pregnant incarcerated person is transported to the hospital for the purposes of giving birth, a CHS staff member will notify hospital staff of any infectious diseases that the mother has, so that hospital staff may treat the mother accordingly to prevent transmission to the child.

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, to establish that pregnant incarcerated persons were provided with treatment for infectious diseases capable of transmission during birth as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- While in jail have you been diagnosed with any infectious diseases such as HIV, Hepatitis B or C, Chicken Pox, or Rubella?

Four of the incarcerated persons indicated that they had not been diagnosed with an infectious disease. One pregnant incarcerated person indicated that she had been diagnosed as HIV positive.

⁷³ CHS Policies and Procedures §6252(C)(1)(c) – Care of the Pregnant Patient

⁷⁴ CHS Policies and Procedures §6252(C)(1) – Care of the Pregnant Patient

- If yes, did you receive treatment for it?

The pregnant incarcerated person diagnosed as HIV positive indicated that she was receiving HIV medication while incarcerated.

Findings

Based upon interviews, and documents provided by the OCSD, it appears that the OCSD is providing access to diagnosis, care and treatment for infectious diseases that may be transmitted from a birthing person to the birthing person's infant.

Housing Locations

The Penal Code provides for a number of precautions related to housing assignments. Specifically, incarcerated pregnant persons who are housed in multitier units are to be assigned to the lower tier and lower bunk.⁷⁵

Policies

OCSD custody policies related to both pregnant incarcerated person rights and the screening process address proper housing of incarcerated pregnant persons by requiring that “[p]regnant incarcerated persons housed in multitier housing units shall be assigned lower bunk and lower tier housing.”⁷⁶

According to CHS procedures regarding screening and assessment upon intake, “[f]or pregnant patients, a CHS Checklist (J112) form shall be completed and sent to security staff indicating “pregnant”, “low bunk/low tier”, and “medical expedite.”⁷⁷ The form is provided to OCSD classification deputies, scanned into the incarcerated person's patient health record, and emailed to the CHS case management team.⁷⁸

Documents

To ensure compliance with housing requirements, the OIR requested housing records for all identified pregnant incarcerated persons that were in OCSD custody during the months of July 2021 and November 2022, and received records for 41 incarcerated persons. Eight incarcerated persons were booked and released the same day and were not assigned housing locations. 33 of the 41 pregnant incarcerated persons were assigned housing locations.

⁷⁵ Penal Code § 4023.8(g).

⁷⁶ CCOM Sections 1604.6(f), 2108.1(h)

⁷⁷ CHS Standardized Procedures for Registered Nurses 6.B(C)(7)

⁷⁸ CHS Policies and Procedures §6252(B)(9)(a)-(b) – Care of the Pregnant Patient

i. Lower tier

29 of the 33 were housed on a lower tier for the duration of their incarceration while pregnant. The remaining four incarcerated persons were housed on an upper tier briefly and re-housed on a lower tier the same day.

ii. Lower bunk

25 of the 33 incarcerated persons that were placed in housing, were assigned to a lower bunk for the duration of their incarceration while pregnant.

Seven incarcerated persons were briefly assigned to a top bunk. Five of the seven incarcerated persons were reassigned to a lower bunk the same day, while the other two were reassigned to a lower bunk the following day.

The final incarcerated person was initially assigned to a lower bunk for her first eleven days of incarceration. She was subsequently reassigned to a top bunk for two weeks.

The OIR reached out to the OCSD and asked why the pregnant incarcerated person was assigned to a top bunk for two weeks. The OCSD responded that the pregnant incarcerated person was inadvertently assigned to a top bunk following a renovation where the top and bottom bunk numbers were reversed. However, they indicated that even though she was assigned to a top bunk there was no other incarcerated person assigned to the lower bunk. OCSD performed a video review and was able to confirm that she was in fact occupying the bottom bunk, and not her assigned top bunk, until she was reassigned in the jail management system to a bottom bunk.

Site Visit

OIR staff toured the IRC, specifically Module N which houses pregnant incarcerated persons and observed two pregnant incarcerated persons. Both pregnant incarcerated persons were located in cells on the lower tier and sitting on bottom bunks.

Interviews

The OIR met with OCSD's Population Management Unit (PMU) to understand housing assignments and locations within OCSD's facilities. According to deputies from the PMU, classification deputies receive the J-112 form from CHS staff and will house all pregnant incarcerated persons on a lower tier and assign them to bottom bunks. In addition, all PMU deputies receive a daily auto-generated email from TechCare identifying every pregnant incarcerated person that is currently housed in each facility. Upon receiving this daily email notification, PMU deputies ensure that each identified pregnant incarcerated person is wearing pink jail issued pants, housed on a lower tier, and assigned a low bunk.

OIR staff also interviewed six incarcerated persons, four pregnant and two postpartum, to establish that pregnant incarcerated persons were housed as set forth in AB 732 and OCSD policy. All incarcerated persons were asked the following questions:

- Where have you been housed since arriving at the jail?

All six incarcerated persons indicated that they were currently housed on a lower tier and assigned to the bottom bunk.

- At any point have you been assigned to the upper tier of any housing module?

Five of the incarcerated persons indicated that at no time during the period of their incarceration were they housed on an upper tier.

One of the pregnant incarcerated persons explained that she was initially housed on an upper tier prior to her pregnancy being confirmed. This incarcerated person was tested upon her arrival at the jail, however, her test results did not indicate that she was pregnant at that time. This incarcerated person was re-tested approximately six weeks after her arrival at the jail and the pregnancy was confirmed at that time. She indicated that she was reassigned to a lower tier within one hour of receiving the positive pregnancy test results.

- At any point have you been assigned to the top bunk?

None of the incarcerated persons indicated that they were assigned to a top bunk at any time during their incarceration.

Findings

OCSD policy regarding the housing of pregnant incarcerated persons mirrors the Penal Code. CHS has procedures in place to notify PMU deputies when a pregnant incarcerated person is going to be housed. A review of documents provided by OCSD, as well as interviews conducted by OIR, establishes that all the pregnant incarcerated persons are housed on the lower tier on the same day that they are housed. As it relates to lower bunks, all but one of the pregnant incarcerated persons were assigned to a lower bunk within 24 hours of being housed.

Prohibited Uses of Force

The Penal Code mandates that “[i]ncarcerated pregnant persons shall not be tased, pepper sprayed, or exposed to other chemical weapons.”⁷⁹

Policies

The OCSD custody policy related to pregnant incarcerated person rights incorporated the Penal Code by mandating that “[p]regnant inmates shall not be tased, pepper sprayed, or exposed to other chemical weapons.”⁸⁰ OCSD’s use of force policy contains identical language regarding prohibited types of force, and also includes the procedures for identifying pregnant incarcerated

⁷⁹ Penal Code § 4023.8(h).

⁸⁰ CCOM Sections 1604.6(g), 1800.1(h)

persons stating that “[i]nmates medically confirmed to be pregnant will be issued pink pants and are required to wear them while in custody. Deputies may rely on the inmate’s clothing to determine whether an inmate is pregnant.”⁸¹ OCSD policy 309 entitled “Electronic Control Device (ECD)” and OCSD policy 384 entitled “Less Lethal” contain the same language.⁸²

Site Visit

OIR staff toured the IRC, specifically Module N which houses pregnant incarcerated persons, and observed two pregnant incarcerated persons. Both pregnant incarcerated persons were seen wearing pink jail issued pants.

Documents

To ensure compliance with OCSD policy, the OIR requested “[a]ll use of force reports and related records regarding the use of an electronic control device and/or a chemical agent such as Oleoresin Capsicum on a pregnant incarcerated person from January 1, 2021, to present.” The OCSD responded to the request by indicating that “[a]fter a thorough review of the Use of Force database, we were unable to locate any Use of Force incidents regarding the use of electronic control device and/or chemical agents on any incarcerated pregnant persons.”

Interviews

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, in order to establish that they were not subject to prohibited uses of force as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Since learning of your pregnancy, have you been pepper sprayed while in jail?

All five incarcerated persons indicated that they have not pepper sprayed at any time during their incarceration.

- Since learning of your pregnancy, have you been tased while in jail?

All five incarcerated persons indicated that they have not been tased at any time during their incarceration.

Findings

Based on interviews and a review of Department policies, it appears that the OCSD has a system in place to ensure that pregnant incarcerated persons are not tased, pepper sprayed, or exposed to other chemical weapons.

⁸¹ OCSD Policy 300.4.6 - Pregnant Inmates

⁸² OCSD Policy 309.5 - Use of the Electronic Control Device; OCSD Policy 384.2 - User Requirements

Medication Assisted Treatment

Incarcerated pregnant persons who have used opioids prior to incarceration or who are currently receiving methadone treatment must be offered medication assisted treatment and provided information on the risks of withdrawal.⁸³

Policies

The OIR asked the OCS D for “[a]ll policies, procedures, or written directives regarding the requirement that pregnant incarcerated persons who used opioids prior to incarceration or are current recipients of methadone treatment are offered medication-assisted treatment (MAT) and provided with information concerning the risks of withdrawal.”

The OCS D responded by providing a copy of a notice entitled “Rights of Inmates Regarding Pregnancy.” The OCS D notice restates the verbiage in the Penal Code regarding opioids and medication assisted treatment.

The OCS D also provided a CHS policy related to receiving screening. That policy states that as part of the receiving screening process, staff will conduct an interview and ask the arrestee questions regarding his/her medical and mental health. Specifically, CHS clinical staff will ask the arrestee questions that will include whether the arrestee is receiving Medication Assisted Treatment (MAT-i.e. methadone, buprenorphine, naltrexone), and if so, the name of the clinic where the arrestee is receiving treatment, and the “dosage, last dose, length of treatment and whether on detoxification or maintenance treatment.”⁸⁴

Another CHS policy relating to methadone maintenance provides that “[a]ll new bookings are screened and questioned regarding current participation in a Methadone program. Patients responding affirmatively to receiving Methadone are immediately referred to the medical triage team to verify program participation through a Western Pacific Methadone liaison.”⁸⁵ All suspected and confirmed pregnant opiate users are referred to the CHS triage prescriber, or on-call prescriber if there is no prescriber on-site, for an individualized treatment plan to avoid withdrawal during pregnancy.⁸⁶

Interviews

According to CHS staff, an RN discusses MAT with each incarcerated person during the triage process conducted at the dock area. Each incarcerated person is provided with a Patient Health Information sheet which contains information about MAT and withdrawal risks. Intake nurses are provided with a checklist of questions to ask all new bookings. The first question on the list concerns MAT and opioid use. Incarcerated persons who receive MAT while incarcerated are provided with a one-week supply of buprenorphine upon release.

⁸³ Penal Code § 4023.8(i).

⁸⁴ CHS Policies and Procedures §6101(C)(1)(h) - Receiving Screening

⁸⁵ CHS Policies and Procedures §6302(A)(1) – Methadone Maintenance

⁸⁶ CHS Policies and Procedures §6302(C)(1) – Methadone Maintenance

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, to establish that pregnant incarcerated persons are being provided with MAT as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Did the nurse at receiving ask you if you were taking opioids or receiving methadone treatment?

Four incarcerated persons indicated that the intake nurse asked them about prior opioid use and the receipt of methadone treatment. One incarcerated person indicated that she could not remember if the intake nurse asked this question. However, she did recall telling the intake nurse that she had not been using any type of drugs prior to her arrival at the jail.

After the interview, the OIR requested copies of the medical records for the incarcerated person who stated that she could not recall if the intake nurse asked about taking opioids or receiving methadone. A review of her receiving screening records indicated that she answered no to both the opioid and methadone questions.

- If you responded yes, were you offered MAT?

Two incarcerated persons indicated that they informed the intake nurse that they had been using opioids prior to their arrival at the jail and were offered MAT.

- What drug did you receive as part of MAT?

Both incarcerated persons indicated that they received Subutex (buprenorphine).

Documents

The OIR requested that CHS identify the pregnant incarcerated persons who were incarcerated during July of 2021 or November of 2022 and receiving MAT. The OIR also requested that CHS provide the associated MAT records for each identified incarcerated person. CHS identified 16 pregnant incarcerated persons that were flagged as possibly receiving MAT while incarcerated.

OIR reviewed the documents provided and learned that 12 of the identified pregnant incarcerated persons received medication assisted treatment during the identified timeframe.

Four of the pregnant incarcerated persons did not receive medication assisted treatment while in custody during the identified timeframe. Two of those pregnant incarcerated persons were in custody for less than 48 hours. The remaining two incarcerated persons answered no to all of the substance abuse related questions and that they were not currently receiving medication assisted treatment from a clinic.

As part of this review, the OIR had the opportunity to review the receiving screening record that is created during the intake process. The receiving screening record contains a section entitled “Substance Abuse and Alcohol Screening.” This section documents the questions asked at intake and the responses given by the incarcerated person. Relevant questions include the following:

Are you currently using any drugs by injection?

Are you currently using any of the following street drugs?

Do you use opiate pain relieving prescription medications just for the feeling, more than prescribed, or that were not prescribed for you?

When did you last use?

Are you receiving methadone from a clinic?

Are you currently receiving buprenorphine (Subutex) prescribed by a doctor?

Findings

The OCSD has processes in place to ensure that arrestees are properly screened at intake for the use of opioids prior to incarceration and whether they are currently receiving methadone treatment. Additionally, if an incarcerated person responds affirmatively, CHS has policies that provide that suspected and confirmed pregnant opiate users are referred to the CHS triage prescriber, or on-call prescriber if there is no prescriber on-site, for an individualized treatment plan to avoid withdrawal during pregnancy.

Based on a review of the records provided by OCSD, and interviews conducted by OIR, the OIR was able to establish that the intake questions are being asked, and that when an arrestee indicates that they are using an opiate or currently receiving MAT, that they are referred to the medical triage team for evaluation as to the appropriateness of medication assisted treatment. Records reviewed by OIR showed that 75 percent of the incarcerated persons identified by CHS were in custody long enough to receive medication while incarcerated. Two of the incarcerated persons were released before being able to receive MAT. The third incarcerated person denied substance abuse.

Community-Based Programs

Following birth, an eligible incarcerated pregnant person must be provided with “notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons.”⁸⁷

Policies

The OIR was provided with CHS policy 6252, which states in pertinent part:

“Patients who deliver at contracted hospitals receive community resources including WIC applications through hospital staff. MOM team/release nurses provide educational/community resource packets and refer patients to The Perinatal Assessment and Coordination Team (PACT).

⁸⁷ Penal Code § 4023.8(j).

PACT provides notice of, access to, and written application for community-based programs that provide services to pregnant, birthing, or lactating incarcerated patients who were released prior to giving birth. While in custody, a PACT Public Health Nurse (PHN) aids in linkage of mother/baby community services to prenatal patients during onsite weekly visits.”⁸⁸

Documents

To confirm compliance with the Penal Code, the OIR requested any log or other record used to document that each eligible incarcerated person, or incarcerated person who gave birth during the months of July 2021 and November 2022, was provided with the required information and written applications.

The OCS D responded to the request with a memo from CHS Records which explained the procedure for providing eligible incarcerated persons with information and applications for community-based programs. According to the memo, a public health nurse sees each incarcerated pregnant person in the jail and provides written information about the home visitation program, as well as resources for housing, food, insurance, and the WIC program.

The OIR was informed that OCS D identified two incarcerated pregnant persons who were in custody during the months of July 2021 and/or November 2022 who also gave birth while incarcerated. The OIR was provided with patient-specific records documenting that a public health nurse met with one of the two identified incarcerated persons and provided information related to housing, Medi-Cal, OCLinks and WIC. No information was provided to establish that the other incarcerated person was provided with notice of, access to, and written application for, community-based programs.

Additionally, the OCS D was unable to provide information to substantiate that “[p]atients who deliver at contracted hospitals” actually received community resources.

Interviews

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, to establish whether pregnant incarcerated persons are provided with notice of, access to, and written application for, community-based programs as set forth in AB 732 and OCS D policy. The incarcerated persons were asked the following questions:

- Have you seen a MOM nurse during your pregnancy? How often?

None of the pregnant incarcerated persons who answered the questions recalled meeting with a MOM nurse.

A review of the incarcerated persons’ records revealed that all five of the incarcerated persons met with a MOM nurse at least once.

⁸⁸ CHS Policies and Procedures §6252(E)(1)(a)-(c)

- Were you provided with educational or community resource packets?

Two of the pregnant incarcerated persons indicated that they received information about available community resources. One of the two specifically indicated that she met with a nurse who provided her with information about housing, medical insurance, and the WIC program. She stated that she did not receive written applications for any of these programs.

After the interviews, the OIR advised OCSO that one of the incarcerated persons stated that she did not receive written applications for any of the community-based programs and asked them to provide records documenting that she was provided with written applications for community-based programs.

CHS responded by providing progress notes for the identified incarcerated person that indicated that on four separate occasions that the Public Health Nurse “provided written information on housing, Medical, OC links, and WIC information and referrals.” However, CHS did not provide records indicating whether written applications were included in the information provided.

Both post-partum and one pregnant incarcerated person indicated that they did not receive community resources information.

After the interviews, the OIR requested copies of records relating to community-based programs for the incarcerated persons who indicated that they did not receive the community resource information. A review of those records indicated that one of the post-partum incarcerated persons met with a PACT nurse and received written community resource information and phone numbers for OC housing, food, and the WIC program.

The records for the second post-partum incarcerated person showed that she received community resource information at her initial OB visit and that she was provided with contact information for the American Academy of Pediatrics and La Leche League upon her discharge from the hospital following birth.

The records for the pregnant incarcerated person revealed that she signed the PHI form indicating that she received a copy of the “Family Planning/Community Resources Information sheet.” After it was determined that she was pregnant, her records indicate that she received a pregnancy education booklet at her OB sick call with information related to family planning, birth control, and community services. Case management records also indicated that she received Community and MAT resource information upon release.

- Were you referred to or seen by a PACT Public Health Nurse?

Both post-partum incarcerated persons indicated that they met with a PACT nurse, two incarcerated persons indicated that they had not met with a PACT nurse, and one incarcerated person could not recall if she had met with a PACT nurse.

A review of CHS records indicated that the incarcerated person who stated that she “could not recall if she had met with a PACT nurse” did in fact meet with a PACT nurse.

Records also showed that one of the two incarcerated persons who indicated that she “had not met with a PACT nurse” did in fact meet with a PACT nurse. The other incarcerated person that indicated that she “had not met with a PACT nurse” met with a MOM nurse and was released within two weeks of her pregnancy being confirmed.

- Did the PACT nurse provide you with information, access to, and applications for community-based programs?

Of the two post-partum incarcerated persons who said that they had been seen by a PACT Nurse, one stated that she signed the paperwork necessary to enroll in the home visitation program. Other than the paperwork for the home visitation program, this incarcerated person did not recall receiving any other information or applications.

The other postpartum incarcerated person indicated that she met with the PACT nurse but declined to participate in the home visitation program and did not submit the necessary paperwork. This incarcerated person indicated that she was not provided with any information or applications regarding community-based programs.

After the interviews, the OIR advised OCSD that both of the post-partum incarcerated persons stated that they did not receive written applications for any of the community-based programs and asked them to provide records documenting that they were provided with written applications for community-based programs. No records were provided to show that written applications were included in the community resource information that was provided to the two post-partum incarcerated persons.

Findings

The Penal Code places the obligation to provide an eligible incarcerated pregnant person with notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons on the Sheriff.

After a review of records, and conducting incarcerated person interviews, it is clear that OCSD is providing information related to community-based programs through incarcerated person contact with its MOM nurses and Public Health Nurses.

However, the OIR was unable to determine, based upon Department responses, whether incarcerated persons are being provided with applications in addition to information related to the programs themselves.

Recommendation:

CHS should ensure that all incarcerated pregnant persons are provided with written applications for community-based programs in addition to the information provided by the MOM and Public Health Nurses.

Social Worker Referral

Every incarcerated pregnant person must also be referred to a social worker who will discuss the options for feeding, care, and placement of the child after birth, including the benefits of lactation. The social worker is to assist with access to the phone to facilitate, and oversee, placement of the newborn.⁸⁹

Interviews

According to CHS staff, the CHS case management team is responsible for facilitating placement. The case management team consists of the PACT Nurse (Registered Nurse), Mom champions (Registered Nurse), and behavioral health clinicians who are social workers and licensed marriage and family therapists. The case management team meets with all pregnant incarcerated persons. These visits are documented in Techcare.

OIR staff also interviewed five incarcerated persons, three pregnant and two postpartum, to establish that pregnant incarcerated persons are referred to a social worker as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Were you referred to a social worker to discuss breastfeeding/lactation and who will provide care for your newborn if you are still in jail?

The three pregnant incarcerated persons indicated that they had not met with a social worker to discuss lactation and newborn care.

One of the three incarcerated persons, who was approximately seven months pregnant at the time of the interview, indicated that she expressed her desire, to medical staff at the jail, for her sister to care for her newborn following birth. According to the incarcerated person, the jail staff told her that any necessary paperwork would be provided by the hospital social worker. The incarcerated

⁸⁹ Penal Code § 4023.8 (k).

person was provided with access to the phone in order to make arrangements with her sister for the care of her newborn.

After the interviews, the OIR requested copies of the medical records for the incarcerated persons who stated that they had not met with a social worker to discuss lactation and newborn care. After reviewing the records of two of the pregnant incarcerated persons, the OIR was unable to locate any records that conflicted with their assertion that they had not met with a social worker to discuss lactation and newborn care.

As it relates to the incarcerated person who was seven months pregnant, the OIR was able to find records that corroborated the statements that she provided during the interview. The pregnant incarcerated person's records contained three entries both dated the same date. One record stated that the "Patient was seen by day room while escorting UCI medical student to meet with pregnant females. Pt requesting info as to how she can give custody of her baby to her sister when it's born. Consulted with SNRN, appt has been scheduled for Medical Case management." Another entry indicated that "Pt requesting info – give custody of baby to sister" A third later entry stated "Pls notify pt that hospital social services will give her info regarding custody arrangements of the newborn." The following day, the pregnant incarcerated person was seen by an RN who notated in her record that "Patient was been by cell door, education provided regarding: At time of delivery Hospital social services will arrange all paperwork for her to render custody of child to her sister."

Both postpartum incarcerated persons stated that they had met with a social worker.

- If yes, when did you meet with the social worker?

Both postpartum incarcerated persons indicated that they met with a social worker at the hospital following delivery.

- Where did this meeting take place?

Both postpartum incarcerated persons indicated that the social worker met with them in their hospital rooms.

Documents

To ensure compliance with the above provisions, the OIR requested records to document that each identified pregnant person in custody during the months of July 2021 and November 2022 was referred to a social worker.

In response to this request, the OIR was provided with a memo from the CHS Records Team stating, "...per CHS Case Management, these arrangements are made by hospital social worker. OC Jail does not play a part on newborn placement." The OIR was not provided with any patient-specific records documenting social worker referrals.

Analysis

Two of the biggest challenges facing a pregnant incarcerated person are placement and feeding of their child after birth. The rights set forth in the Penal Code are meant to alleviate the concern brought on through uncertainty by allowing incarcerated persons the opportunity to work with a social worker during pregnancy to make informed arrangements for their child.

Findings

The Penal Code places the obligation to refer each incarcerated pregnant person to a social worker on the Sheriff. Instead, it appears that the OCSD is relying on the hospital to provide the services and assistance of a social worker after the child is born. However, the provision of a social worker prior to birth is important to allow the incarcerated person and those caring for the child to have time to make adequate arrangements for feeding and placement of the newborn in advance of delivery.

Recommendation:

Absent an extraordinary circumstance, the OCSD should ensure that a social worker meets with all pregnant incarcerated persons prior to their being transported to the hospital for delivery in order to allow them a sufficient amount of time to discuss options and make arrangements for the feeding, care, and placement of their child after birth.

Restraints & Shackling

The Penal Code requires that a pregnant incarcerated person be transported to a hospital outside of the jail for purposes of childbirth, and that the transport be in the least restrictive way possible.⁹⁰ It also prohibits the shackling of the incarcerated pregnant person to anyone else during transport.⁹¹

Policies

OCSD custody policy relating to security restraints mandates that “[a]n inmate known to be pregnant, or in recovery after delivery, shall not be restrained by the use of leg restraints, waist restraints, or handcuffs behind the body.”⁹² Additionally, the OCSD custody policy on transportation of incarcerated persons refers deputies to CCOM policy 1800.1(d) to obtain more “information about the restrictions and use of restraints on pregnant inmates.”⁹³

The OCSD notice entitled “Rights of Inmates Regarding Pregnancy” also addresses the prohibition against shackling during transport and includes verbatim language of the amended statute.

⁹⁰ Penal Code § 4023.8 (l).

⁹¹ Penal Code § 4023.8 (l).

⁹² CCOM Section 1800.1 (d).

⁹³ CCOM Section 9000.2 (a)(4), and (j).

Video

The OIR requested jail surveillance footage reflecting the transport of two identified pregnant incarcerated persons who gave birth while in custody. The OIR received video footage related to the incarcerated person who was transported to the hospital for the purpose of giving birth in November of 2022. The video footage depicts the pregnant incarcerated person being escorted from her cell to a department vehicle. The incarcerated person was handcuffed with her hands in front of her waist. No other restraints were used.

According to the OCSD, video footage depicting transport for the pregnant incarcerated person in custody during July of 2021 was no longer available.

Interviews

OIR staff interviewed five incarcerated persons, three pregnant and two postpartum, to establish compliance with the restraints and shackling provisions as set forth in AB 732 and OCSD policy. The incarcerated persons were asked the following questions:

- Since learning of your pregnancy, have you ever been shackled to another incarcerated person during transport within the jail, to another facility, court, or to a medical facility?

All five incarcerated persons indicated that they have never been shackled to another incarcerated person during transport.

- Since learning of your pregnancy, have you ever been handcuffed with your hands behind your back?

All five incarcerated persons indicated that they have never been handcuffed with their hands behind their back.

The two postpartum incarcerated persons were also asked the following questions:

- How were you restrained while you were transported to the hospital for delivery?

Both postpartum incarcerated persons indicated that they were restrained with handcuffs in front during transport to the hospital.

- How were you restrained during labor and delivery?

Both postpartum incarcerated persons indicated that upon arrival at the hospital their handcuffs were removed and that they were not restrained during labor and delivery.

Documents

The OIR also requested “[a]ny grievances filed by pregnant inmates in 2022 related to AB 732 rights.” The OCSD responded by indicating that they did not have any grievances related to this topic.

Findings

Based on a review of information provided by the OCSD, and pregnant incarcerated person interviews, it appears that OCSD is complying with the requirements related to restraints and shackling under AB 732, as well as its own policies and procedures.

Support Person & Privacy During Delivery

The Penal Code confers the right to have a support person present during labor, childbirth, and the postpartum hospital stay.⁹⁴

The Penal Code also mandates that the incarcerated pregnant person be given the maximum level of privacy possible during the labor and delivery process, requiring that if there is a guard present, they must be stationed outside of the room unless there are extraordinary circumstances. If it is determined that removal of the officer is medically necessary, the officer will be removed.⁹⁵

Policies

As it relates to having or electing a support person, the OCSD custody policies relating to pregnant incarcerated person rights and special visits for incarcerated persons mirror the Penal Code by stating that “[a] pregnant inmate may elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. The support person may be an approved visitor or the jail’s staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care.”⁹⁶

As it relates to privacy during delivery, the OCSD custody policy regarding pregnant incarcerated person rights continues to mirror the Penal Code by stating that “[a] pregnant inmate in labor and delivery shall be given the maximum level of privacy possible during the labor and delivery process. If a deputy is present, they shall be stationed outside the room rather than in the room absent extraordinary circumstances. If a deputy must be present in the room, the deputy shall stand in a place that grants as much privacy as possible during labor and delivery. The deputy shall be removed from the room if a professional who is currently responsible for the medical care of a pregnant inmate during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of the deputy is medically necessary.”⁹⁷

⁹⁴ Penal Code § 4023.8 (m).

⁹⁵ Penal Code § 4023.8 (o).

⁹⁶ CCOM Sections 1604.6(h), 1902.6(d).

⁹⁷ CCOM Sections 1604.6(i).

Interviews

According to CHS staff, the CHS case management team facilitates the election of a support person to be present during delivery.

OIR staff interviewed five incarcerated persons, three pregnant and two postpartum, to establish compliance with the support person provisions as set forth in AB 732 and OCSD policy. The three pregnant incarcerated persons were asked the following questions:

- Have you decided who you would like as your support person during delivery?

One incarcerated person had not yet decided who she wanted to elect as a support person. The other two incarcerated persons had both identified a support person.

- Did you communicate this desire to any jail or medical staff? If yes, with whom?

Both incarcerated persons who had identified a support person communicated their desires to medical staff at the jail. One incarcerated person, who was approximately seven months pregnant at the time of the interview, explained that the OB doctor at the jail provided her with the paperwork she needed to elect a support person. She was provided with a code to give to her support person and explained that the support person would be instructed to enter this code into an online form, which would be submitted to OCSD, in order to begin the process for obtaining approval as a support person.

The two postpartum incarcerated persons were asked the following questions concerning the election and attendance of a support person:

- Did you have a support person during labor and delivery?

Both postpartum incarcerated persons indicated that they did not have a support person of their choosing present during labor and delivery.

- How did you decide who the support person was and how did you communicate with the support person prior to delivery?

One of the postpartum incarcerated persons stated that no one discussed a support person with her.

The second postpartum incarcerated person had not yet identified a support person when she was booked into the jail. Medical staff provided her with the paperwork needed to designate a support person and start the process for jail visitors attending a birth at the hospital, however, this incarcerated person went into labor five days after her arrival at the jail and she had not yet submitted the paperwork.

The OIR reviewed the records of the incarcerated person that stated that no one discussed a support person with her and learned that she was 36 weeks pregnant when she arrived at the jail. The incarcerated person was in custody two weeks before she delivered. The records establish that on two separate occasions a nurse met with the incarcerated person and discussed the election of a support person. On the first occasion, the incarcerated person indicated that she did not yet know who she wanted to elect as a support person. At the second meeting, the incarcerated person told the nurse that she did not need a support person. The records also show that she was provided with information about OCSD's clearance procedures for a support person.

The two postpartum incarcerated persons were also asked the following question concerning privacy during delivery:

- Where was the deputy during the labor and delivery process?

Both incarcerated persons indicated that the jail deputies were inside their hospital rooms during labor. One incarcerated person indicated that the jail deputy asked her if she would like her to be in the room with her during labor and delivery and that she told the deputy that she wanted her to be present in the room with her. This incarcerated person explained that the deputy held her hand and provided her with support during the labor and delivery process. The incarcerated person stated that she had a good birthing experience despite her being incarcerated.

The second incarcerated person indicated that there were two jail deputies present at different times during her labor and delivery due to the duration of her labor coinciding with a shift change among jail staff. This incarcerated person stated that the first deputy was inside the hospital room during labor. She indicated that the second deputy was also inside the hospital room during labor. However, she indicated that medical staff asked this deputy to leave the room when the incarcerated person was receiving the epidural, and that the deputy remained outside the hospital room for the remainder of her labor and delivery.

Documents

The OIR requested “[a]ny grievances filed by pregnant inmates in 2022 related to AB 732 rights.” The OCSD responded by indicating that they did not have any grievances related to this topic.

Findings

Based on a review of information provided by the OCSD, and pregnant incarcerated person interviews, it appears that OCSD is complying with Penal Code requirements related to privacy during delivery.

As it relates to support persons, the Department clearly has a process in place to allow incarcerated persons to identify a support person and enable that person to become an approved visitor. Additionally, both the Penal Code and Department policy also allow a member of jail staff to serve as a support person if they are “designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care.” Department policy, however, fails to indicate which jail staff are designated to act as a support person.

Recommendation:

OCSD should update CCOM sections 1604.6(h) and 1902.6(d) to identify those employees that are designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care.

Postpartum Care

Under the Penal Code, postpartum incarcerated persons are to receive a postpartum examination performed by a healthcare professional within one week following childbirth, and as needed for up to twelve weeks.⁹⁸ The healthcare professional shall determine if after twelve weeks, the incarcerated person may be cleared for regular work, or whether additional medical restrictions are warranted.⁹⁹

Policies

CHS Policy requires clinical triage staff to review all hospital discharge orders upon a patient’s return from the hospital following birth, and to initiate all postpartum care appointments.¹⁰⁰ According to the policy, the “[f]requency of postpartum follow-up appointments will be individualized and determined by the OB/GYN prescriber. Postpartum appointments may continue as needed up to 12 weeks postpartum.”¹⁰¹

Documents

To ensure compliance with the requirements for postpartum care, the OIR asked the OCSD to identify pregnant incarcerated persons who were in custody during the months of July 2021 and November 2022, and who gave birth while incarcerated. The OIR requested records to “document that each identified pregnant person who was postpartum was provided a postpartum examination within one week from childbirth and as needed for up to 12 weeks.”

The OCSD identified two incarcerated pregnant persons who were in custody during the months of July 2021 and/or November 2022 who also gave birth while incarcerated. The OIR was provided with hospital discharge records and HCA records documenting the date each incarcerated pregnant person gave birth and their follow-up postpartum care appointments. According to the provided patient health records, both incarcerated pregnant persons who gave birth while in custody received a postpartum examination within one week from childbirth.

⁹⁸ Penal Code § 4023.8(p).

⁹⁹ Penal Code § 4023.8(p).

¹⁰⁰ CHS Policies and Procedures §6252(N)(1)

¹⁰¹ CHS Policies and Procedures §6252(N)(3)(a)

Interviews

OIR staff also interviewed two postpartum incarcerated persons to ensure compliance with the postpartum care provisions of AB 732 and OCSD policy. Both incarcerated persons were asked the following questions:

- Did you have a postpartum examination after giving birth?

Both postpartum incarcerated persons indicated that they received postpartum examinations following birth.

- How long after?

One postpartum incarcerated person stated that she received a postpartum examination two days after she returned to the jail following her hospital stay for the purposes of childbirth. Based upon this postpartum incarcerated person's self-reported delivery date, her postpartum examination occurred five days following childbirth.

The second postpartum incarcerated person indicated that her postpartum examination took place the day after she returned to the jail from the hospital. Based upon this postpartum incarcerated person's self-reported delivery date, her postpartum examination occurred three days following childbirth.

- How many follow up appointments did you have after the initial postpartum examination?

The first postpartum incarcerated person indicated that she had a follow up appointment scheduled for the following week, which would be nine days following her first postpartum examination.

The second postpartum incarcerated person stated that she had one follow up appointment six days following childbirth, and that she had a second follow up appointment scheduled for the week following the interview, which would be 1 day shy of four weeks post-childbirth.

Findings

Based on a review of information provided by the OCSD, and postpartum incarcerated person interviews, it appears that OCSD is complying with Penal Code requirements related to postpartum care.

Penal Code Section 4028

The Penal Code was also amended to add language prohibiting placing conditions or restrictions on an incarcerated person seeking an abortion, such as gestational limits inconsistent with state law, unreasonably delaying access, or requiring court-ordered transport.¹⁰²

The law also requires posting of the right of an incarcerated person to determine their eligibility for an abortion in “at least one conspicuous place to which all incarcerated persons capable of becoming pregnant have access.”¹⁰³

Interviews

According to OCSD staff, a notice entitled “Rights of Inmates Regarding Pregnancy” addresses an incarcerated person’s right to determine their eligibility for an abortion and is posted in every female housing unit dayroom, as well as inside the holding cell at the Intake and Release Center.

Site Visit

In order to ensure that the notices were posted in a conspicuous place where female incarcerated persons have access, the OIR toured the IRC and CWJ and observed the “Rights of Inmates Regarding Pregnancy” notice posted in all IRC holding cells and dayrooms in Modules K and N.

Documents

CHS provided records that indicate that seven identified pregnant incarcerated persons requested therapeutic abortions and had them scheduled. A review of the records revealed that two of the pregnant incarcerated persons changed their minds and continued with the pregnancy, two were released prior to their appointments, and three completed the requested procedures.

The OIR also requested “[a]ny grievances filed by pregnant incarcerated persons in 2022 related to AB 732 rights.” The OCSD responded by indicating that they did not have any grievances related to this topic.

Findings

Based on a review of information provided by the OCSD, interviews, and site visits, it appears that OCSD is complying with Penal Code §4028.

¹⁰² Penal Code § 4028(a).

¹⁰³ Penal Code § 4028(c).

CONCLUSION

AB 732 took effect in January of 2021. Since that time, the OCSD, and CHS have worked to implement its provisions. The OIR has made 15 recommendations. These recommendations are meant to improve upon the good work that these agencies are doing, and most importantly to help ensure that pregnant incarcerated persons have every opportunity to avail themselves of the rights afforded under AB 732.

Many of OCSD's custodial policies have been updated, and all reflect the current state of the law in California as it relates to the rights of pregnant incarcerated persons. Those custodial policies are available to members of the public on the Sheriff's website.

During the preparation of this report, OIR saw firsthand the value of documentation when it came to reviewing the statements of incarcerated persons who indicated that they either did not receive something that they should have, or that they couldn't recall whether they received what they were supposed to have been given. The OIR is cognizant that the OCSD and CHS collect and maintain an overwhelming amount of information related to a large incarcerated population. The OIR had the opportunity to review some of those documents while creating this report. A few of OIR's recommendations ask the OCSD and CHS to document additional information. The reasoning behind the documentation recommendations is to ensure that the obligations set forth under AB 732 are accomplished and to allow a supervisor the ability to easily determine compliance.

The OIR's review showed that the OCSD and CHS are generally complying with their obligations under AB 732. However, there were times where we found that not every person in our sample survey received what they were supposed to receive, or that they received it when they were supposed to receive it. The information obtained by the OIR seems to indicate that these failures were not systemic failures, but rather single isolated human errors. As a result, the OIR believes that CHS could benefit from a robust auditing system to ensure that required services are being timely provided, and if not, that those at fault are put on notice and provided necessary support to avoid the errors in the future.

Finally, the OIR would be remiss if it did not recognize the hard work of the staff who not only facilitated OIR's ability to complete this report, but who, more importantly, work with pregnant incarcerated persons every day. During our tours and conversations, OCSD and CHS staff showed enthusiasm for the work that they do, and the people that they care for. They were proud of the outside of the box accomplishments that they have made to provide the best service for a pregnant incarcerated person in an unfortunate situation. These accomplishments include things like MOM nurses who meet with pregnant incarcerated persons on a weekly basis, pink pants to readily identify pregnant incarcerated persons, and a daily email notification system to notify the population management unit of the housing location of all pregnant incarcerated persons.

RECOMMENDATIONS

Recommendation: Personal hygiene

The OIR recommends that tampons be provided to female incarcerated persons who request them regardless of the facility where they are housed. According to Planned Parenthood, it is “common to use different things at different times during” a period.¹⁰⁴ The choice of personal hygiene materials is a very personal issue and should, to the extent possible, be determined by each incarcerated person. Physiological differences may also necessitate the use of one or more types of personal hygiene materials.

Recommendation: Family planning services

Ensure that information and education regarding the availability of family planning services is provided to male incarcerated persons by providing the PHI form and community resources sheet to all incarcerated persons regardless of gender.

Recommendation: Family planning services

CHS Policy and Procedure §6101 entitled - Receiving Screening should be updated to include the following language to reflect that the PHI form should be given to all arrestees regardless of gender: “A Patient Health Information form will be signed by the patient. If the patient refuses to sign, “Patient Refused to Sign” will be indicated on the form and signed by the CHS clinical staff member who witnessed the refusal.”

Recommendation: Family planning services

To accomplish the goal of ensuring that each and every incarcerated person is aware of information and education regarding the availability of family planning services, the OCS D should consider pursuing other ways of furnishing this information to all persons confined within its facilities. These options might include posting the community resources sheet in areas where incarcerated persons congregate such as dayrooms and holding cells, or including the information in the orientation video that is played in the holding cells.

Recommendation: Family planning services

Amend OCS D policy to set forth the actual procedure to be followed when offering the required family planning services to incarcerated persons at least 60 days prior to a scheduled release date.

¹⁰⁴ <https://www.plannedparenthood.org/learn/health-and-wellness/menstruation/how-do-i-use-tampons-pads-and-menstrual-cups>

Recommendation: Family planning services

Establish a mechanism to document when family planning services are offered to incarcerated persons.

Recommendation: Family planning services

CHS should consider updating the Release Summary to add a field to specifically notate whether an incarcerated person has requested, or received, family planning services at the time of their release.

Recommendation: Healthcare provider of choice

In order to ensure that pregnant incarcerated persons receive a document that advises them of the full extent of their right to receive services from the provider of their choice, CHS should consider updating the language in the PHI form to include express verbiage that indicates that “[i]f the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice.”

Recommendation: Options counseling

CHS should update policy number 6251(D)(7) to require staff to document, in the patient health record, when options counseling is offered and, if provided, who provided it, and when.

Recommendation: Pregnancy examinations

Update CHS policy section 6252(A)(8)(b)(1) to state “Appointments shall not exceed seven calendar days from confirmation of pregnancy.”

Recommendation: Pregnancy examinations

CHS should implement a random audit procedure to ensure that pregnant incarcerated persons are receiving pregnancy examinations within seven calendar days of confirmation of pregnancy.

Recommendation: Prenatal care visits

CHS should make sure that it is utilizing a random audit procedure that ensures that all prenatal care visits are conducted in accordance with American Academy of Pediatrics (AAP) and American College of Obstetricians and Gynecologists medical standards.

Recommendation: Community-based programs

CHS should ensure that all incarcerated pregnant persons are provided with written applications for community-based programs in addition to the information provided by the MOM and Public Health Nurses.

Recommendation: Social worker referral

Absent an extraordinary circumstance, the OCSD should ensure that a social worker meets with all pregnant incarcerated persons prior to their being transported to a hospital for delivery in order to allow them a sufficient amount of time to discuss options and make arrangements for the feeding, care, and placement of their child after birth.

Recommendation: Support person & privacy during delivery

OCSD should update CCOM sections 1604.6(h) and 1902.6(d) to identify those employees that are designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care.

ATTACHMENTS



PATIENT HEALTH INFORMATION

- Information pertaining to drug/alcohol testing conducted by Correctional Health Services (CHS) shall be considered confidential and will not be released unless CHS receives your written consent or CHS is mandated by the courts to release results per California law.
- CHS provides screening and opt out testing for HIV, hepatitis C, and sexually transmitted infections, as well as referrals to treatment and prevention programs.
- Resources for information on contraception is available to everyone in custody.
- CHS does not perform or authorize sterilization procedures as a method of birth control.
- CHS provides reproductive services to all inmates free of charge.

In addition, you have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of your choice to determine whether you are pregnant. Costs related to services provided by your private physician, nurse practitioner, certified midwife, or physician assistant will be your financial responsibility. You may inquire directly with Sheriff's Department on arranging transportation to private physician/surgeon appointments.

- Patients identified as possibly pregnant or capable of becoming pregnant during the receiving screening interview or at any time during incarceration and a request is made, shall be offered a pregnancy test within 72 hours.
 - *Pregnancy tests are voluntary, not mandatory and may only be administered by medical or nursing personnel.*
 - *Patients who decline a pregnancy test shall be asked to sign a refusal form. The refusal form shall become part of their health record.*
- You have the right to contraceptive services, including emergency contraception, based on medical need or potential risk of an unwanted pregnancy.
- If you think you are pregnant, notify a triage staff member for additional accommodations.
 - If found pregnant, and you desire to terminate your pregnancy, you shall be permitted to determine your eligibility pursuant to law, and if eligible, you shall be permitted to terminate your pregnancy.
 - Patients who are confirmed pregnant upon booking are scheduled for a pregnancy examination within 7 days with a CHS Prescriber.
- CHS provides a voluntary lactation program for breastfeeding females. Provisions are made to allow use of a breast pump, appropriate storage of breast milk, and pick-up/transfer of expressed milk to the infant/toddler's caregiver(s). Admittance to the program may be denied only if, in the professional medical opinion of a CHS prescriber it will not be possible to provide milk that is safe for an infant's consumption while maintaining the health of the mother.

If you have any questions, please submit a Health Message Slip (HMS) to speak with CHS health care staff. By signing below, I acknowledge I have received a copy of this information sheet along with a Family Planning Community Resources Information Sheet.

Patient Signature

Date

Patient Printed Name (Last, First, MI)

Date of Birth

Booking #/OCN#

Patient refused to sign; witnessed by: _____

Community Resources

| | |
|---|---|
| <p>Living Healthy Orange County Programs for You and Your Family</p> | <p>California's Every Woman Counts Program</p> |
| <p>Call for an appointment 1 (800) 914-4887 Monday–Friday 8 a.m.-5 p.m.</p> <p>TDD Services: 1 (800) 801-7100</p> | <p>Call 1 (800) 511-2300 Monday-Friday 8:30 a.m.-5 p.m.</p> <p>Or visit: http://dhcs.ca.gov/EveryWomanCounts</p> |
| <p>1725 W. 17th Street, Santa Ana, CA 92706</p> | <p>When you qualify for the Every Woman Counts Program you will be referred to a participating clinic in your neighborhood.</p> |
| <p><u>Family PACT a Family Planning Program:</u></p> <p><i>For men and women of all ages who live in California, have a low-income, or do not have insurance that can be used for family planning. Services available include confidential family visits for birth control counseling and methods that may include:</i></p> <ul style="list-style-type: none"> • Emergency contraceptive pills • Birth control methods: implant, intrauterine devices, ring, patch, pills, diaphragm & cap, condoms for men & women, spermicides & sponge • Sterilization for women and men • Prevention and treatment of sexually transmitted infections • HIV testing and counseling • Limited breast and pelvic exams <p>To find a family PACT provider call: 1 (800) 942-1054 or visit: www.FamilyPACT.org</p> <p>For referrals and other County Health Care Agency resources call: 1 (800) 564-8448</p> | <p><u>Every Woman Counts (EWC)</u></p> <p><i>For women who live in California, meet age requirements, have no or limited health insurance, have health insurance with a co-payment or deductible you cannot afford, have low household income may be eligible for free tests to check for breast and cervical cancer. Tests include:</i></p> <ul style="list-style-type: none"> • Clinical breast exams • Mammograms • Pelvic exams • Pap tests <p>The mission of the EWC is to save lives by preventing and reducing the devastating effects of cancer for Californians through education, early detection, diagnosis and treatment.</p> |

Form Approved 1-5-17



Rights of Inmates Regarding Pregnancy (Penal Code §§ 4023.6, 4023.8, 4028)

- Any incarcerated person in any local detention facility shall have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. The superintendent of the facility may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate the determination.
- If the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. Any expenses occasioned by the services of a physician, nurse practitioner, certified nurse midwife, or physician assistant whose services are not provided by the facility shall be borne by the incarcerated person.
- A person incarcerated in a county jail who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration shall be offered a pregnancy test upon intake or by request, within seventy-two hours of arrival at the jail. Pregnancy tests shall be voluntary and not mandatory, and may only be administered by medical or nursing personnel. An incarcerated person who declines a pregnancy test shall be asked to sign an "Informed Refusal of Pregnancy Test" form that shall become part of their medical file.
- An incarcerated person with a positive pregnancy test result shall be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. This counseling shall be furnished by a licensed health care provider or counselor who has been provided with training in reproductive health care and shall be nondirective, unbiased, and noncoercive. Jail staff shall not urge, force, or otherwise influence a pregnant person's decision.
- A jail shall not confer authority or discretion to nonmedical jail staff to decide if a pregnant person is eligible for an abortion. If a pregnant person decides to have an abortion, that person shall be offered, but not forced to accept, all due medical care and accommodations until they are no longer pregnant. A pregnant person who decides to have an abortion shall be referred to a licensed professional specified in subdivision (b) of Section 2253 of Business and Professions Code.
- A person incarcerated in a county jail who is confirmed to be pregnant shall, within seven days of arriving at the jail, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse midwife, or physician assistant. The examination shall include all of the following:
 - (1) A determination of the gestational age of the pregnancy and the estimated due date.
 - (2) A plan of care, including referrals for specialty and other services to evaluate for the presence of chronic medical conditions or infectious diseases, and to use health and social status of the incarcerated person to improve quality of care, isolation practices, level of activities, and bed assignments, and to inform appropriate specialists in relationship to gestational age and social and clinical needs, and to guide use of personal protective equipment and additional counseling for prevention and control of infectious diseases, if needed.
 - (3) The ordering of prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions.
- Incarcerated pregnant persons shall be scheduled for prenatal care visits in accordance with medical standards outlined in the most current edition of Guidelines for Perinatal Care developed by the American Academy of Pediatrics (AAP) and the American College of Obstetricians and Gynecologists (ACOG) Committee on Obstetric Practice, unless more frequent visits are indicated by the physician, nurse practitioner, certified nurse midwife, or physician assistant.
- Incarcerated pregnant persons shall be provided access to both of the following:
 - (1) Prenatal vitamins, to be taken on a daily basis, in accordance with medical standards of care.



(2) Newborn care that includes access to appropriate assessment, diagnosis, care, and treatment for infectious diseases that may be transmitted from a birthing person to the birthing person's infant, such as HIV or syphilis.

- Incarcerated pregnant persons housed in a multitier housing unit shall be assigned lower bunk and lower tier housing.
- Incarcerated pregnant persons shall not be tased, pepper sprayed, or exposed to other chemical weapons.
- Incarcerated pregnant persons who have used opioids prior to incarceration, either by admission or written documentation by a probation officer, or who are currently receiving methadone treatment, shall be offered medication assisted treatment with methadone or buprenorphine, pursuant to Section 11222 of the Health and Safety Code, and shall be provided information on the risks of withdrawal.
- An eligible incarcerated pregnant person or person who gives birth after incarceration in the jail shall be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons.
- Each incarcerated pregnant person shall be referred to a social worker who shall do all of the following:

(1) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation.

(2) Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement.

(3) Oversee the placement of the newborn child.

- An incarcerated pregnant person shall be temporarily taken to a hospital outside the jail for giving childbirth and shall be transported in the least restrictive way possible and in accordance with Section 3407. An incarcerated pregnant person shall not be shackled to anyone else during transport. An incarcerated pregnant person in labor or presumed to be in labor shall be treated as an emergency and shall be transported to the outside facility, accompanied by jail staff.
- An incarcerated pregnant person may elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. The support person may be an approved visitor or the jail's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care.
- All pregnant and postpartum incarcerated persons shall receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases.
- An incarcerated pregnant person in labor and delivery shall be given the maximum level of privacy possible during the labor and delivery process. If a guard is present, they shall be stationed outside the room rather than in the room absent extraordinary circumstances. If a guard must be present in the room, the guard shall stand in a place that grants as much privacy as possible during labor and delivery. A guard shall be removed from the room if a professional who is currently responsible for the medical care of a pregnant incarcerated person during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of the guard is medically necessary.
- Upon return to jail, the physician, nurse practitioner, certified nurse midwife, or physician assistant shall provide a postpartum examination within one week from childbirth and as needed for up to 12 weeks postpartum, and shall determine whether the incarcerated person may be cleared for full duty or if medical restrictions are warranted. Postpartum individuals shall be given at least 12 weeks of recovery after any childbirth before they are required to resume normal activity.
- A condition or restriction upon the obtaining of an abortion by a person detained in any local detention facility, pursuant to the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall not be imposed. Impermissible restrictions include, but are not limited to, imposing gestational limits inconsistent with state law, unreasonably delaying access to the procedure, or requiring court-ordered transportation. Persons found to be pregnant and desiring abortions shall be permitted to determine their eligibility for an abortion pursuant to state and federal law, and if determined to be eligible, shall be permitted to obtain an abortion, after providing informed consent.