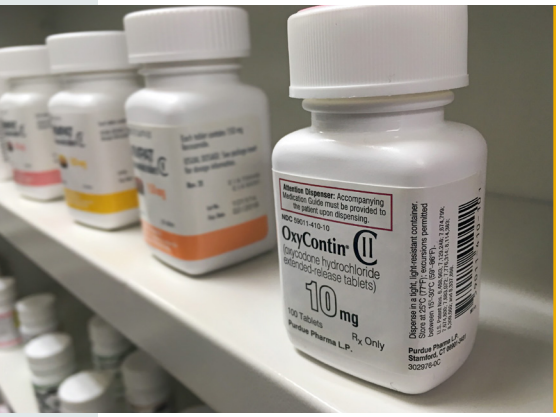
AMCHP
ASSOCIATION OF MATERNAL & CHILD HEALTH PROGRAMS

OPPORTUNITIES TO

Leverage Opioid Settlement Funding for State Maternal and Child Health Priorities

Introduction



When prescription opioids were introduced in the 1990s pharmaceutical manufacturers and distributors vigorously promoted the drugs, and falsely marketed these products as safe and non-addictive. The proliferation of prescription opioids set the stage for a national epidemic. Opioid use is now the main driver of overdose deaths in the United States; more than 80,000 deaths are linked to prescription and synthetic opioids in 2021. The prevalence of opioid use among women of childbearing age has also surged and overdose is now a leading underlying cause of pregnancy-related death.

Opioid use has also driven the rising rates of neonatal abstinence syndrome (NAS), which increased 82 percent between 2010 and 2017. Data from the 2020 Healthcare Cost and Utilization Project show that approximately 1 newborn is diagnosed with NAS every 24 minutes in the United States. Opioid dependence often leads to an increased length of hospital stay for newborns, at a significantly higher cost than for newborns who were not exposed to substances. On average, the length of stay for a newborn with NAS was nine days in 2020, compared to two days for non-substance-exposed newborns. In recent years, NAS has declined nationally, but the rate of prenatal substance exposure has increased. The data suggest that opioid use has led to a rise in polysubstance use, as other harmful substances become commonly used during pregnancy. Opioid use also has budgetary implications for state Medicaid agencies, which are often the primary payers for the care of opioid-exposed infants.

State child welfare systems also carry the burden of the opioid epidemic. Between 2011 and 2016, more than $2.8 billion in state child welfare spending was attributed to parental opioid misuse. Between 2000 to 2021, the percentage of children below the age of 1 in out-of-home care due to parental alcohol or drug abuse increased from approximately 28 percent to 54 percent. Moreover, in 2017, approximately 2 million children and adolescents were reported to have a parent with an opioid use disorder.

State public health departments are acutely aware of how opioid use affects their maternal and child health (MCH) populations. In 2023, 16[1] states and jurisdictions identified opioid use disorder or substance use disorders (SUDs) as an MCH priority in their Title V MCH Services Block Grant applications. Twenty-one[2] states and jurisdictions identified mental and behavioral health as an MCH priority. Nationally, most state MCH block grant applications acknowledge the harmful impact of substance use on children and families and the need for multidisciplinary approaches to address this crisis.

[1]Alaska, Federated States of Micronesia, Guam, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Nevada, New Hampshire, New Mexico, Northern Mariana Islands, Palau, South Dakota, Virginia, West Virginia

[2]American Samoa, Arkansas, Florida, Hawaii, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, Wisconsin

Background and Overview of the Opioid Settlements

Since 2014, local, tribal, and state governments have pursued legal action against pharmaceutical manufacturers, distributors, and retailers to recoup billions of state dollars spent to address the impact of widespread opioid use. To date, more than 3,000 state, local, and tribal governments have filed lawsuits against the opioid industry for the harm caused by their products.

Timeline: Opioid Settlement Litigation

2020

PURDUE PHARMA SETTLEMENT

The U.S. Justice Department brokered a multistate agreement with Purdue Pharma for the creation and marketing of OxyContin, resulting in a $6 billion settlement.[3]

2021

NATIONAL DISTRIBUTOR SETTLEMENT

Forty-six states reached agreements with opioid distributors McKesson, Cardinal Health, and AmerisourceBergen. Johnson & Johnson, a pharmaceutical manufacturer, was also included in this settlement. The total settlement was approximately $26 billion.

2022

NATIONAL RETAILER AND MANUFACTURER SETTLEMENT

Forty-six states reached agreements with CVS, Walgreens, and Walmart, Allergan, and Teva. The total settlement was approximately $19 billion.

Opioid Settlement Defendants

RETAILERS
CVS
Walgreens
Walmart

DISTRIBUTORS
McKesson
Cardinal Health
AmerisourceBergen

MANUFACTURERS
Purdue Pharma
Johnson & Johnson/Janssen
Allergan
Teva

Lawsuits by individual states, cities, counties, and tribes have also resulted in financial settlements.

[3]The Purdue Pharma agreement is now before the U.S. Supreme Court, pending a decision regarding the company's request for immunity from future civil litigation.

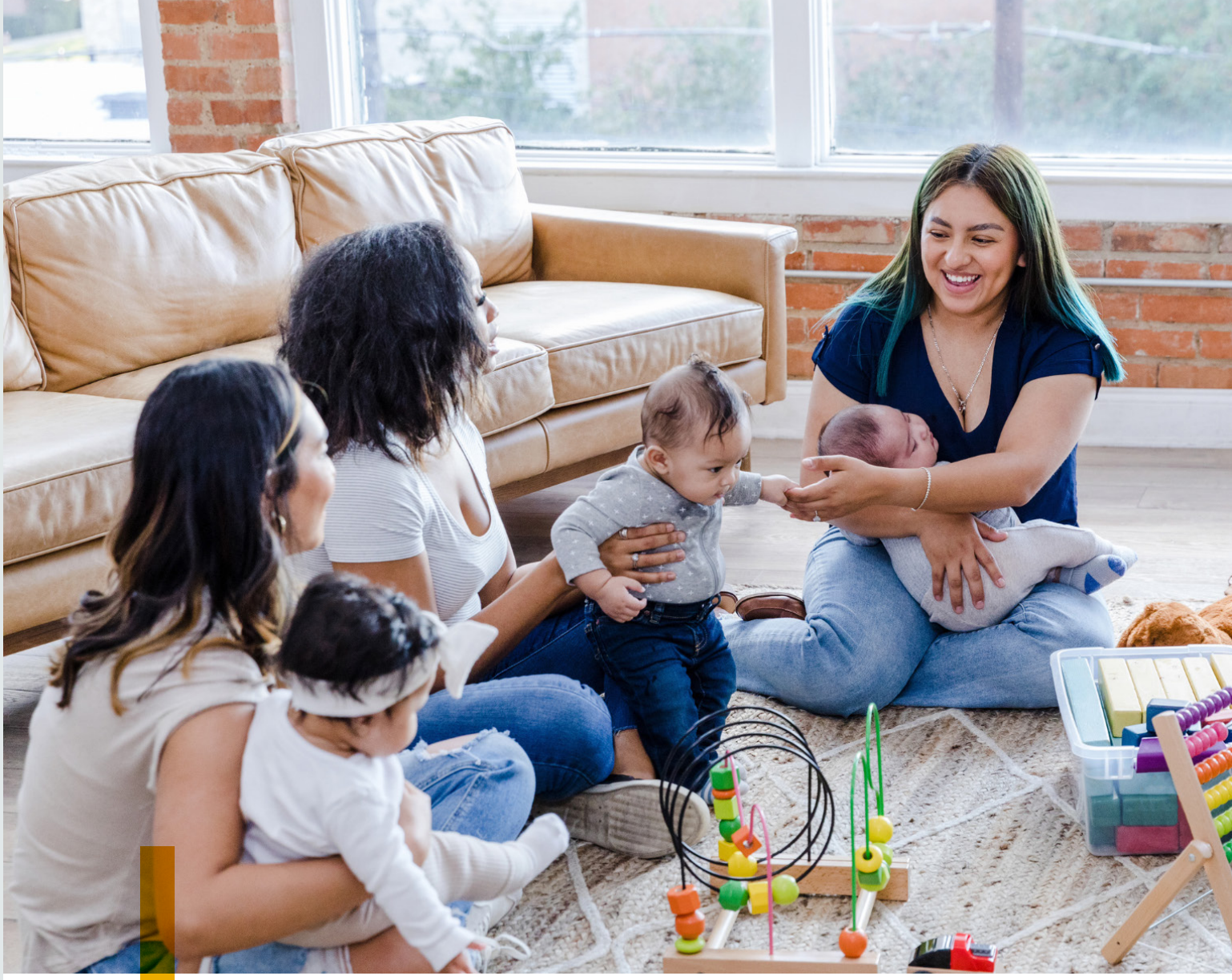
Use of Settlement Funds

The terms of the National Opioid Settlements stipulate that 85 percent of the funds must be used to address the opioid epidemic. This is referred to as "opioid abatement" or "opioid remediation." In addition to state governments, city and county governments also receive a share of the national settlement funds. The guidelines include suggestions for opioid remediation uses ("Exhibit E") as well as core strategies to support pregnant and postpartum women with SUD and infants with neonatal abstinence syndrome. Non-opioid remediation expenses are limited to 15 percent.

Opioid settlement funding uses vary by state, city, and county. North Carolina passed legislation to establish the Opioid Abatement Reserve in the state's Department of Health and Human Services. The department allocates 85 percent of their settlement funds to counties and municipalities, and the remaining 15 percent to the state. Alternatively, Louisiana has allocated 80 percent of their opioid settlement funds to local governments and 20 percent of its funds to local sheriffs' departments. Given the variability of efforts to remediate the opioid epidemic, 133 organizations across the country signed onto a roadmap for opioid settlement funds; this roadmap provides examples of "good" and "problematic" spending. The harms to people and society created by this epidemic require government and communities to put forth a more specialized, coordinated focus to confront the opioid epidemic. Funds from the opioid settlements present a promising opportunity to advance programs and policies to support families impacted by opioid use.

Lessons from the Tobacco Settlement

The massive opioid litigation settlement is not the first-time states successfully sued manufacturers of a highly addictive substance. In 1998, the attorneys general of 46 states, the District of Columbia, and five U.S. territories signed the Master Settlement Agreement with the four largest U.S. tobacco companies. The settlement resulted in more than $125 billion in payments to the states from 1999 to 2018. At the time, it was the largest civil litigation settlement in U.S. history. The money served as compensation for taxpayer funds spent on tobacco-related illness. The tobacco settlement money, however, had no spending requirements attached to it. Money was frequently used for purposes other than public health, such as filling state budget gaps and building schools and roads. Those involved in the tobacco settlement applaud the requirement that 85 percent of opioid settlement funds must be spent on abating the opioid epidemic. However, a complicating factor that did not exist with the states-only tobacco settlement is that opioid lawsuits proliferated. In addition to all 50 states, thousands of cities, counties, hospitals, and insurance companies have sued opioid manufacturers and distributors. This magnitude of lawsuits underscores the need for extensive coordination among all parties to ensure opioid settlement funding is directed to MCH and other high-need populations.



Four State Case Studies:

Opioid Settlement Spending on MCH Priorities

Qualitative interviews with senior MCH staff from state public health organizations in Washington, New Mexico, Colorado, and Michigan provided insight into the landscape of the opioid settlements in each state and the role of MCH agencies in decision-making regarding settlement fund allocations. Interviewees also offered examples of current and proposed programs that can be financed with settlement funding. Individual state-level guides for community advocates on how to use settlement funds supplemented these interviews.

WASHINGTON

Washington did not join the national opioid lawsuit and instead chose to sue pharmaceutical companies directly. In Washington, settlement funds are shared evenly between the state and participating local governments. Washington's efforts are directed by a Statewide Opioid and Overdose Response Plan (SOORP). The SOORP coordinates activities to mitigate against the opioid crisis and overdose deaths through a learning community that includes federal and state agencies, tribal governments, researchers, advocacy groups, local public health responders, health care providers, and people with lived experience. Washington's SOORP has an explicit goal of improving systems of care for pregnant and parenting women and their children impacted by opioid use. The state's MCH program and its partners have successfully influenced funding allocation decisions by directing settlement funds to MCH priorities. The priorities include:

- Developing lactation and substance use guidance for health care professionals and a website on pregnant and parenting recovery services.
- Holding a statewide summit for over 300 people on perinatal SUDs.
- Conducting a University of Washington ECHO (Extension for Community Health Care Outcomes) training series, to build local providers' capacity to manage patients with substance use and mental health disorders in their own communities.
- Providing community-based doula and prenatal care programs to strengthen access to SUD treatment services, particularly in rural communities (Celebrating Families and full spectrum doula care).
- Conducting training on implementation of the Alliance for Innovation on Maternal Mental Health bundles.

Future priorities for Washington include increasing access to recovery housing/transitional housing; creating an integrated referral process for plans of safe care for newborns; supporting hospitals on how to bill for the Eat, Sleep, Console model [legislation-approved daily reimbursement for newborns with Medicaid coverage]; supporting hospitals in expanding inpatient care for individuals with opioid use disorder at the point of delivery with withdrawal management and supportive medication-assisted treatment oversight.

NEW MEXICO

New Mexico participates in the national settlement, and funds are split between local governments (55 percent) and the state (45 percent). The New Mexico Opioid Allocation Agreement ("Exhibit E" and "Schedule B") includes provisions for MCH populations.

New Mexico has identified opportunities to prioritize MCH and will expand the use of medication to treat opioid use disorder in public health offices throughout the state. The public health offices will offer pregnancy and postpartum services or make referrals to an appropriate provider for additional care. Additionally, funds will be used to support parent(s) and caregivers with a lock box or bag to store medications for newborns who have a plan of safe care.

The state also has allocated $1 million for hospitals to help implement state guidelines on plans of safe care. Additional behavioral health priorities for New Mexico's settlement funding include improving housing and homelessness services, increasing access to care in justice settings, and collaborating with Indigenous communities.

COLORADO

A participant in the national settlement, Colorado allocates 60 percent of its funding to regional councils, 20 percent to participating local governments, 10 percent to infrastructure projects, and 10 percent to the state. MCH priorities are described in the Colorado Opioids Settlement Memorandum of Understanding ("MOU"). The MOU approves use of settlement funds for evidence-informed treatment, training for providers on how to work with families impacted by SUDs, prevention and treatment of NAS, and child care services for parents attending SUD treatment. These priorities are also reflected in the state's Opioid Crisis Response Plan, which prioritizes treatment programs and strategies for MCH populations.

MCH advocacy organizations in Colorado have been particularly influential in settlement decision-making. Illuminate Colorado is a nonprofit organization committed to strengthening families, organizations, and communities to prevent child maltreatment and is the convener of a multidisciplinary coalition focused on perinatal substance use, SuPPoRT Colorado. The organization has emphasized the need to prioritize opioid settlement funding for MCH programming at the local and state levels. Through SuPPoRT Colorado, Illuminate convened diverse partner organizations and people with lived experience to jointly develop a recommendations document describing opportunities for opioid settlement funds to improve care for children and families impacted by perinatal substance use. Key recommendations include peer-led support services; timely, coordinated access to social services; family-based treatment, recovery and housing support; child care assistance for recovery services; and capacity building for integrated maternal and behavioral health care.

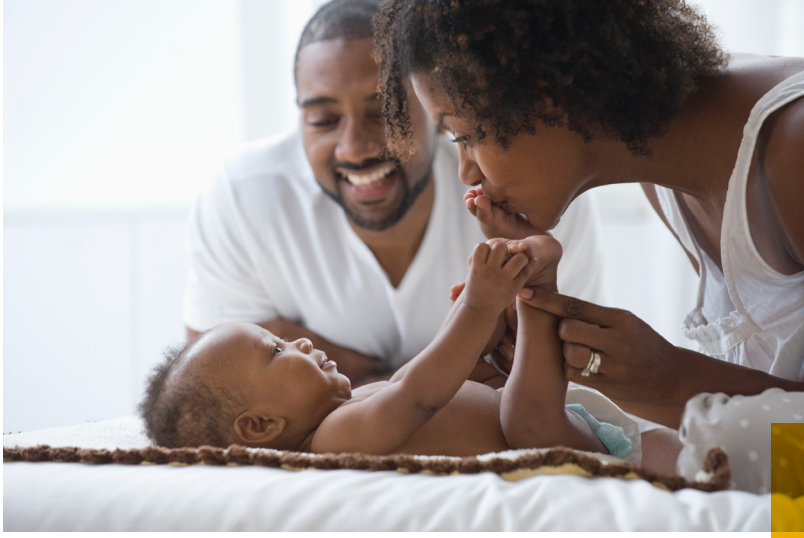
MICHIGAN

As a participant in the national settlement, Michigan has allocated 50 percent of funds to the state and 50 percent to local governments. Michigan has used a data-driven approach to distributing opioid settlement funds. The state uses the Michigan Substance Use Vulnerability Index to identify high-need communities across the state and guide settlement decision-making. In 2022, Michigan developed a broad opioids strategy focused on prevention, treatment, harm reduction, and recovery. The strategy also focuses on pregnancy and parenting and aims to increase screenings for SUD in prenatal care and improve care for pregnant people with SUD and infants with NAS. The MCH agency actively participates in opioid settlement decision-making by advocating for needs identified by Michigan's regional Perinatal Quality Collaboratives.

Michigan has expanded two existing MCH projects using opioid settlement funds: the High Touch, High Tech (HT2) program and the rooming-in approach. HT2 is an electronic screening tool available via an application that screens pregnant people for mental health and substance-use related risks.

Rooming-in supports substance-exposed infants in birthing hospitals, allowing birthing individuals/caregivers and babies to lodge in the same room after birth. Opioid settlement funds have been distributed to birthing hospitals to support minor hospital room renovations and to train staff to support rooming-in. Additional priorities for Michigan's MCH agency include increasing access to recovery housing that supports entire families, training on stigma and bias, and connections to recovery resources and providers in the prenatal period.

Recommendations for MCH Advocates



As states and jurisdictions continue to distribute opioid settlement funds over the next 18 years, MCH professionals should consider these opportunities to influence decision-making and ensure funding benefits MCH priorities. In this light, the authors offer the following recommendations:

- Understand your state's approach: know where the funding is flowing and who is making settlement spending decisions.
- Ensure the agency or board responsible for distributing your state or jurisdiction's opioid settlement funds has representatives from the MCH field and offer your MCH subject matter expertise in the decision-making process.
- Identify local funding priorities for perinatal behavioral health.
    - In collaboration with your organizational partners and people with lived experience, use a community-driven approach to learn about pressing MCH needs. Involve local health departments, regional substance use coalitions, perinatal quality collaboratives, local hospital systems, and other partners.
    - Leverage a data-driven approach by identifying high-need communities where a disproportionate number of families are impacted by SUDs and/or gaps in prevention, treatment, harm reduction, and recovery resources, taking care to consider people who are geographically isolated and economically or medically vulnerable.

- Elevate the voices of people with lived experiences so that decision-makers hear recommendations and priorities directly from families impacted by SUDs, especially those from under-resourced communities.
- Promote the use of settlement funds to support the full continuum of perinatal SUD services, including prevention, treatment, recovery, and harm reduction.
- Promote perinatal SUD clinical best practices and opioid settlement spending recommendations.
- Promote the well-being of families by advocating for opioid settlement investments in holistic supports, such as family-friendly recovery housing, case management, transportation, child care, employment assistance, support groups, and peer counselors.

Conclusion

The national opioid settlements represent an acknowledgement of the harm caused by the opioid industry and illustrate the importance of accountability. Settlement funds provide a means to significantly invest in public health resources to mitigate the impact of SUD and improve outcomes for families impacted by the opioid epidemic. State MCH programs are recognized for their subject matter expertise in this area and can be influential advocates for comprehensive, evidence-based programs, policies, and strategies that support families affected by perinatal substance use disorder.

Resources

Opioid Settlement Background Information

- National Association of County and City Health Officials (NACCHO): A Quick "How-To" Guide for Understanding Opioid Settlements State-to-State
- Vital Strategies: Opioid Settlement Funds: State-Level Guides for Community Advocates
- *JAMA Pediatrics*: Opioid Litigation and Maternal-Child Health—Investing in the Future

Opioid Settlement Spending Guidelines & Recommendations

- Final Distributor Settlement Agreement: Exhibit E: List of Opioid Remediation Uses
- Voices Of Community Activists & Leaders (VOCAL-NY): A Roadmap for Opioid Settlement Funds: Supporting Communities & Ending the Overdose Crisis
- Johns Hopkins Bloomberg School of Public Health: Primer on Spending Funds from the Opioid Litigation: A Guide for State and Local Decision Makers
- Open Society Action Fund: Call to Action on Opioid Settlement Funds
- Partnership to End Addiction: Evidence Based Strategies for Abatement of Harms from the Opioid Epidemic
- Illuminate Colorado: Setting up a Framework for Dedicating Opioid Settlement Funds to Children and Families Impacted by Perinatal Substance Use
- First Focus on Children: Recommendations for Prioritizing Children in Opioid Settlement Funding
- The Center for Popular Democracy: Housing as Harm Reduction: A Toolkit for Advocating for Affordable Housing Using Opioid Settlement Funding

Opioid Settlement Tracking Resources

- Christine Minhee, J.D.: Opioid Settlement Tracker
- KFF Health News: Payback: Tracking the Opioid Settlement Cash
- The National Academy for State Health Policy (NASHP): State Approaches for Distribution of National Opioid Settlement Funding
- NPR: Here's Who Controls the $50 Billion Opioid Settlement Funds in Each State
- Fletcher Group Rural Center of Excellence on SUD Recovery: State Map of Philanthropic Foundations and Opioid Settlement Funds

Opioid Settlement Spending Examples

- Association Of State and Territorial Health Officials (ASTHO): States Using Settlement Fund Legislation to Enhance Response to the Opioid Crisis
- The National Academy for State Health Policy (NASHP): An Early Look at State Opioid Settlement Spending Decisions
- The National Academy for State Health Policy (NASHP): How Kansas and Colorado Use Opioid Settlement Funds to Promote Evidence-Based Practices in Prevention, Treatment, and Recovery

Opioid Settlement Spending Equity Considerations

- National Association of County and City Health Officials (NACCHO): Equity Considerations for Local Health Departments on Opioid Settlement Funds
- The National Academy for State Health Policy (NASHP): Engaging with People with Lived Experience in Opioid Settlement Decision-Making

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About AMCHP

The Association of Maternal & Child Health Programs (AMCHP) is a national resource, partner, and advocate for state public health leaders and others working to improve the health of women, children, youth, and families, including those with special health care needs. AMCHP's members come from the highest levels of state government and include directors of maternal and child health programs, directors of programs for children with special health care needs, and other public health leaders who work with and support state maternal and child health programs.

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