2021 Council Resolution 47: Family and Medical Leave - SECOND RESOLVED

Council Action: **NOT ADOPTED**

Board Action: **NOT APPLICABLE**

Status: **Completed**

SUBMITTED BY: Megan J Dougherty, MD, FACEP
Iowa Chapter ACEP
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Purpose:

1) Advocate for paid family leave, including but not limited to supporting the American Medical Association's effort to study the effects of Family Medical Leave Act expansion including paid parental leave (AMA Policy H-405.954);

2) Conduct an environmental survey and develop a paper on best practices regarding maternity, paternity, and family leave for emergency physicians; and

3) Develop a policy statement in support of paid family leave outside of the language in ACEP's "Family and Medical Leave" policy statement revised in 2019.

Fiscal Impact:

Budgeted committee and staff resources. Unbudgeted and unknown costs for conducting an environmental survey. The cost will be based on the resources needed.

Background:

WHEREAS, the ACEP Council in 2017 adopted a resolution for ACEP to create a policy on paid parental leave and a white paper addressing different ways to pay for paid parental leave, but instead the ACEP "Family and Medical Leave" policy statement was revised and no language in regards to paid parental leave was included and an information paper has not been produced1; and

WHEREAS, The United States is one of six out of 193 countries in the United Nations that does not mandate paid maternity leave2 and 50 countries provide six months or more of paid leave3; and

WHEREAS, 40% of American workers do not meet the requirements for 12 weeks of unpaid leave provided by the Family Medical Leave Act (FMLA) because they have not worked 1,250 hours in the past year or they do not work for an employer with more than 50 employees4; and

WHEREAS, Only 12% of workers in the private sector get paid maternity leave through their employers5; and

WHEREAS, 23% of surveyed women reported taking 2 weeks or less of maternity leave because they could not afford more6,7; and

WHEREAS, Women with 12 weeks of paid leave are more likely to breastfeed for six months,8 women with 12 weeks or more of paid maternity leave have lower rates of post – partum depression,9 and paid maternity leave is associated with lower infant mortality rates;10 and

WHEREAS, Fathers that take paternity leave have higher satisfaction with parenting,11 are more engaged in the care of their children nine months after birth,12,13,14 children with engaged fathers have fewer behavioral and mental health problems,15 and longer paternity leave with fathers caring for young children is associated with higher cognitive test scores14,16; and

WHEREAS, Some academic emergency medicine programs provide paid maternity and paternity leave of differing number of weeks or days; and

WHEREAS, A few private emergency medicine practice groups have developed innovative ways to help with paid maternity and paternity leave that should be shared with other groups; and

WHEREAS, Despite the Equal Pay Act of 1963 prohibiting discrimination on account of sex, there is still an approximately $20,000 wage gap between men and women in medicine even when adjusted for factors that may impact compensation; and

WHEREAS, Offering only paid maternity and not paternity leave may increase the wage gap; and

WHEREAS, Unlike previous generations, most family caregivers today work at a paying job in addition to caring for ill family members16; and

WHEREAS, If employed caregivers lack the supports and protections needed to manage their dual responsibilities, some make changes to their work life including giving up work entirely, reducing work hours, or taking a less demanding job17; and

WHEREAS, Although paid family leave is primarily directed at helping workers balance caregiving responsibilities, effects extend to the workers' financial security and labor force attachment, health (of caregivers and receivers) and productivity related to turnover and absenteeism18; therefore be it

RESOLVED, That ACEP advocate for paid family leave, including but not limited to supporting the American Medical Association's effort to study the effects of Family Medical Leave Act expansion including paid parental leave (AMA Policy H-405.954); and be it further

RESOLVED, That ACEP conduct an environmental survey and develop a paper on best practices regarding maternity, paternity, and family leave for emergency physicians; and be it further

RESOLVED, That ACEP develop a policy statement in support of paid family leave outside of the language in ACEP's "Family and Medical Leave" policy statement revised in 2019.

This resolution requests ACEP to advocate for paid family leave, including but not limited to supporting the American Medical Association's effort to study the effects of Family Medical Leave Act expansion including paid parental leave (AMA Policy H-405.954); conduct an environmental survey and develop a paper on best practices regarding maternity, paternity, and family leave for emergency physicians; and develop a policy statement in support of paid family leave outside of the language in ACEP's "Family and Medical Leave" policy statement revised in 2019.

Currently, federal law does not require employers to provide paid family or parental leave. The Family and Medical Leave Act (FMLA) entitles eligible workers to take job-protected, unpaid leave of up to 12 weeks for the birth of a child or to care for a child within one year of birth. Those eligible for this protection are workers with at least 1,250 hours of service during the previous 12 months at an employer with at least 50 employees. Many states and some major cities have enacted laws that expand on the FMLA protections, most typically by increasing the length of leave allowed and/or expanding coverage to a larger number of employees. Several states have also implemented paid parental leave programs. Typically funded by employee payroll taxes, these state programs mandate paid coverage of various lengths and amounts. For example, a New York law provides maximum leave benefit of 50% of an employee's weekly wage for up to eight weeks. Several cities also have mandatory paid parental leave programs for private employers. In 2016, San Francisco became the first major U.S. city to mandate fully paid parental leave, requiring employers with 20 or more employees to offer six weeks paid time off for new mothers and fathers.

Increasingly, private employers have voluntarily initiated or expanded paid parental leave programs, including several hospitals. New York Presbyterian Hospital expanded its leave policy to provide six to eight weeks of paid disability leave for the birth mother and an additional six weeks paid parental leave. Children's National Health

System provides six to eight weeks paid maternity leave and two weeks paid paternity leave.

Several studies have concluded that extended paid maternity leave results in improved physical and mental health for the mother as well as health and developmental improvements for the child. While proponents claim the programs also improve worker morale, loyalty, and productivity, opponents raise concerns about the increase in taxation required to fund such programs and potential unintended consequences, such as employers becoming less likely to hire women due to concerns of higher costs and loss of productivity if new mothers can take extended periods of paid leave. On April 28, 2021, President Biden announced his support for paid family medical leave though his American Families Plan. The plan calls for the creation a national comprehensive paid family and medical leave program that will bring America in line with competitor nations that offer paid leave programs.

ACEP first adopted a policy statement on "Parental Leave of Absence" in 1990. The current version of the policy statement, revised and approved by the Board of Directors in 2019 and now entitled "Family and Medical Leave," states:

- The health and integrity of working physicians' relationships with parents, children, and family are essential to the physicians' well-being. The ability to respond to family needs promotes work satisfaction and career longevity which, in turn, contributes to higher quality patient care.
- The leaders of physician groups and residency programs, as well as employers, should support these policies actively by informing physicians of their availability and making such leave available without undue delay or administrative burden.
- Emergency physician groups, employers, and emergency medicine residency programs should have written policies that support family leaves of absence. These policies should take into consideration what can be done to support the individual financially, if needed, during the leave of absence. These policies should also apply to a personal serious physical and mental illness, both parents for the birth or adoption of a child, the care of a seriously ill family member, and situations involving either the safety or cohesion of the family.
- Mothers, or primary caregivers of biological or adoptive children, should expect at least twelve weeks without work around the time of their child's birth or adoption; the other parent should expect four weeks at the minimum.
- Flexible work schedules for parents before and after welcoming a new child should be made available whenever possible without disrupting the availability the availability of patient care.

AMA policy entitled "Parental Leave" (H-405.954) states:

"1. Our AMA encourages the study of the health implications among patients if the United States were to modify one or more of the following aspects of the Family and Medical Leave Act (FMLA): a reduction in the number of employees from 50 employees; an increase in the number of covered weeks from 12 weeks; and creating a new benefit of paid parental leave.

2. Our AMA will study the effects of FMLA expansion on physicians in varied practice environments."

AMA has an additional relevant policy, entitled "Paid Sick Leave" (H-440.823), which states:

"Our AMA: (1) recognizes the public health benefits of paid sick leave and other discretionary paid time off; (2) supports employer policies that allow employees to accrue paid time off and to use such time to care for themselves or a family member; and (3) supports employer policies that provide employees with unpaid sick days to use to care for themselves or a family member where providing paid leave is overly burdensome."

At the 2017 Annual Meeting of the House of Delegates (HOD), Resolution 416-A-17 was referred. Introduced by the New England Delegation and the Minority Affairs Section, Resolution 416-A-17 asked that the American Medical Association (AMA) advocate for: (1) improved social and economic support for paid family leave to care for newborns, infants and young children; and (2) federal tax incentives to support early child care and unpaid child care by extended family members. Board of Trustees Report 27 was submitted to the HOD at the 2018 Annual Meeting and referred back to the Board for further study.

At the 2019 Annual Meeting of the HOD, the following recommendations were adopted in lieu of Resolution 416-A-17 and the remainder of the report filed.

1. That our AMA reaffirm Policy H-440.823, which recognizes the public health benefits of paid sick leave and other discretionary paid time off, and supports employer policies that allow employees to accrue paid

time off and to use such time to care for themselves or a family member.
2. That our AMA encourage employers to offer and/or expand paid parental leave policies.
3. That our AMA encourage state medical associations to work with their state legislatures to establish and promote paid parental leave policies.
4. That our AMA advocate for improved social and economic support for paid family leave to care for newborns, infants and young children.
5. That our AMA advocate for federal tax incentives to support early child care and unpaid child care by extended family members.

The Council and the Board of Directors adopted Amended Resolution 36(17) Maternity & Paternity Leave. The resolution directed ACEP to advocate for paid parental leave for emergency physicians, develop an information paper on best practices regarding paid parental leave for emergency physicians, and provide a report to the 2018 Council. The resolution was assigned to the Well-Being Committee. The committee had already been assigned an objective to review the policy statement "Family Leave of Absence" as part of the policy sunset review process.

The committee submitted proposed revisions to the "Family Leave of Absence" policy statement to the Board in September 2018. The revisions included tenets of Amended Resolution 36(17). The Board postponed discussion to the January 30-31, 2019, meeting. At their January 2019 meeting, the Board expressed concerns about the impact on small groups, as well as the difficulty in addressing all practice settings, and suggested that the policy be aspirational and not punitive to groups that cannot meet all aspects of the policy. It was also noted that independent contractors should be addressed in the policy statement.

The Board discussed an updated draft of the "Family Leave of Absence" policy statement in April 2019. The Board recommended that the policy statement remain succinct and that additional information be included in a Policy Resource & Education Paper (PREP) instead of an information paper as requested in Amended Resolution 36(17). A PREP is an adjunct to a policy statement and is intended to provide additional background, clarification, education and/or implementation assistance. A PREP may include references, bibliographies, discussion papers, practice applications, and "how to" information. Additionally, a PREP is subject to the Policy Sunset Review Process along with the policy statement so that the information remains relevant. (Information Papers are not subject to the Policy Sunset Review process.) This has been an ongoing objective for the committee.

In June 2021, a representative from SAEM's Academy of Women in Academic Emergency Medicine (AWAEM), who is also a member of ACEP's Well-Being Committee, approached ACEP about appointing representatives to assist in the development of a document on "Best Practices for Parental Leave for Emergency Physicians." ACEP's president and president-elect discussed the request and approved modifying the Well-Being Committee's objective to work with AWAEM on this document. The committee co-chairs were also informed of this decision. This document will present recommendations for both academic and community emergency medicine. The committee anticipates completion of the paper by the end of 2021.

Stragegic Plan Reference:

Goal 1 – Improve the Delivery System for Acute Care

- Objective A – Promote/advocate for efficient, sustainable, and fulfilling clinical practice environments.
- Tactic 6 – Identify the factors that promote a "well" workplace.

Goal 2 – Enhance Membership Value and Member Engagement

- Objective A – Improve the practice environment and member well-being.
- Tactic 2 – Update and promote resources on wellness burnout, practice environment improvement, resilience, and work/life balance for members in all stages of their career.

Prior Council Action:

Amended Resolution 36(17) Maternity & Paternity Leave adopted. Directed ACEP to advocate for paid parental leave for emergency physicians, develop an information paper on best practices regarding paid parental leave for emergency physicians, and provide a report to the 2018 Council.

Amended Resolution 44(88) Perinatal Leave for Emergency Physicians adopted. The resolution called for the College to develop educational guidelines for emergency physicians regarding maternal/paternal/adoption leave and associated issues for emergency physicians and emergency medicine residents.

Prior Board Action:

June 2019, approved the revised policy statement "Family and Medical Leave" with the current title; reaffirmed 2012; revised and approved October 2006, September 1999, and April 1994 titled "Family Leave of Absence;" originally approved June 1990 titled "Parental Leave of Absence."

April 2019, provided comments for addition revisions to the revised policy, "Family Leave of Absence."

January 2019, provided comments for additional revisions to the revised policy "Family Leave of Absence."

October 2018, postponed discussion of the revised "Family Leave of Absence" policy statement to the January 30-31, 2019, Board of Directors meeting.

September 2018, postponed discussion of the revised "Family Leave of Absence" policy statement to the October 4, 2018, Board of Directors meeting.

Amended Resolution 36(17) Maternity & Paternity Leave adopted.

September 1988, Resolution 44(88) adopted.

Council Action:

Reference Committee C recommended that the first resolved of Resolution 47(21) be adopted, the second resolved not be adopted, and the third resolved be referred to the Board of Directors.

The Council adopted the first resolved of Resolution 47(21), did not adopt the second resolved, and referred the third resolved to the Board of Directors on October 24, 2021.

Testimony:

Asynchronous testimony was mixed. Proponents supported adoption of the first resolved, but the second resolved is currently being addressed. Testimony opposed to the resolution expressed concern for physicians in small practices and rural communities, for whom the second resolved would be challenging and put undue burden smaller employers. Live testimony was supportive of the first resolved. However, testimony was not supportive of the second Resolved because it is being currently addressed. The Reference Committee noted that there is currently an ongoing multiorganizational workgroup which includes EMRA developing an information paper regarding this topic and agree that it would be inappropriate to make a decision without the final version of this paper. Because of the ongoing work related to fully understanding family medical leave and the impact it would have on emergency medicine practice, the Reference Committee views it as premature to begin a new policy statement before the study is complete and is therefore referring the third Resolved to the Board of Directors.

Board Action:

The Board adopted the first resolved of Resolution 47(21) on October 28, 2021.

References:

1ACEP Family and Medical Leave Policy Statement Revised June 2019.

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4Dept of Labor. FMLA is Working. https://www.dol.gov/whd/fmla/survey/FMLA_Survey_factsheet.pdf

5Dept of Labor Factsheet: Paid Family and Medical Leave.
https://www.dol.gov/wb/paidleave/PDF/PaidLeave.pdf

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http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/

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8 Mirkovic, K *et al.* Paid Maternity Leave and Breastfeeding Outcomes. Birth. Vol 43, Issue 3, September 2016, 233-239.

9 Dagher, R *et al.* Maternity Leave Duration and Postpartum Physical Health: Implications for Leave Policies. Journal of Health Politics, Policy and Law, Vol. 39, No. 2, April 2014.

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12Lenna Nepomnyaschy and Jane Waldfogel. 2007. "Paternity Leave and Fathers' Involvement with Their Young Children: Evidence from the American Ecls–B." Community, Work & Family 10(4): 427-453.

13Maria Del Carmen Huerta, et al. 2013. "Fathers' Leave, Fathers' Involvement and Child Development: Are They Related? Evidence from Four OECD Countries." OECD Social, Employment and Migration Working Papers, No. 140, retrieved from http://www.oecd-ilibrary.org/social-issues-migration-health/fathers-leave-fathers-involvement-and-child-development_5k4dlw9w6czq-en (last visited June 17. 2015).

14Sakiko Tanaka and Jane Waldfogel. 2007. "Effects of Parental Leave and Work Hours on Fathers' Involvement With Their Babies: Evidence from the Millennium Cohort Study." Community, Work and Family 10 (4): 409-426.

15Huerta, et al (2013); Nepomnyaschy and Waldfogel (2007); Anna Sarkadi, et al. 2008. "Fathers Involvement and Children's Developmental Outcomes: A Systematic Review of Longitudinal Studies." Acta Pediatrica 97: 153 -158; Erini Flouri and Ann Buchanan. 2002. "The Role of Father Involvement in Children's Later Mental Health." Journal of Adolescence 26: 63-78.

16Dept. of Labor Policy Brief, "Why Parental Leave for Fathers Is So Important for Working Families," June 16, 2016. https://www.dol.gov/asp/policy-development/PaternityBrief.pdf

17 Feinberg LF. Paid Family Leave: An Emerging Benefit for Employed Family Caregivers of Older Adults. *Journal of the American Geriatrics Society*. 2019; 67(7):1336-1341.

18Wolff JL, Drabo EF, Van Houtven CH. Beyond Parental Leave: Paid Family Leave for an Aging America. *Journal of the American Geriatrics Society*. 2019; 67(7): 1322-1324.

Implementation Action:

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