



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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EDMUND G. BROWN JR.
GOVERNOR

September 12, 2017

ALL COUNTY LETTER (ACL) NO. 17-92

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY CHIEF PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL INDEPENDENT LIVING PROGRAM COORDINATORS

SUBJECT: **COMPREHENSIVE ADDICTION RECOVERY ACT OF 2016
AMENDMENTS TO THE CHILD ABUSE PREVENTION AND
TREATMENT ACT**

REFERENCES: CHILD ABUSE PREVENTION AND TREATMENT ACT (CAPTA)
42 U.S.C. [5106a](#) (b)(2)(B)(iii); [Public Law 114-198](#), THE
COMPREHENSIVE ADDICTION AND RECOVERY ACT OF 2016
(CARA), PENAL CODE SECTION [11165.13](#), HEALTH AND
SAFETY CODE (HSC) SECTION [123605](#), MANUAL
OF POLICIES AND PROCEDURES (MPP) SECTION [31-100](#),
STRUCTURED DECISION MAKING ([SDM](#)) 3.0 POLICY AND
PROCEDURES MANUAL

The purpose of this ACL is to inform counties of the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) and the Comprehensive Addiction Recovery Act of 2016 (CARA), Public Law 114-198. This ACL also sets forth the existing statewide policies and procedures that counties must follow to meet these federal requirements.

BACKGROUND

Since 2003, CAPTA has required states to maintain policies and procedures addressing the needs of infants affected by illegal substance abuse, including appropriate referrals to child protective services agencies by healthcare providers, and the development of plans of safe care for such infants. In 2010, the provision was amended by Congress to also include infants affected by Fetal Alcohol Spectrum Disorder. On July 22, 2016, CARA was enacted to establish a comprehensive, coordinated strategy through enhanced federal grant programs to improve substance abuse prevention and education efforts (including both illegal and legal substances), while also promoting treatment and recovery. As amended by CARA, CAPTA now requires that:

- Statewide policies and procedures must address the needs of infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including both illegal and legal drugs (e.g., prescribed drugs).
 - This includes the requirement that health care providers involved in the delivery or care of such infants must notify the child protective services system when there are indications of maternal substance abuse, including legal drugs, and there are any other factors indicating risk to a child.
- Plans of safe care must be developed for infants born and identified as being affected by substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder, including both illegal and legal drugs.
- Plans of safe care developed for such infants must address the health and substance abuse treatment needs of the infant and affected family or caregiver.
- Plans of safe care must be monitored to determine whether, and in what manner, local entities are providing referrals to and delivery of appropriate services for the affected infant and affected family or caregiver.

Lastly, CARA requires reporting by states regarding infants affected by substance abuse in the National Child Abuse and Neglect Data System (NCANDS). Beginning with the Fiscal Year 2018 data submission, states must report, to the maximum extent practicable:

- The number of infants identified under subsection 106(b)(2)(B)(ii);
- The number of such infants for whom a plan of safe care was developed; and
- The number of such infants for whom a referral was made for appropriate services, including services for the affected family or caregiver.

DEFINITIONS

The federal Children's Bureau of the Administration for Children and Families (ACF) provided guidance to states regarding the changes to CAPTA under CARA through Program Instruction ACYF-CB-PI-17-02, issued on January 17, 2017. Because CAPTA does not define "infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure," the federal ACF has indicated that states have the flexibility to define this phrase, so long as the needs of infants born and identified as being affected by both legal and illegal substance abuse are addressed.

Consistent with existing California law, an "infant born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder" is defined, for CAPTA purposes, as an infant where substance exposure is indicated at birth, and subsequent assessment identifies indicators of risk that may affect the infant's health and safety.

When a safety plan and/or case plan is developed and implemented for an infant born and identified as being affected by substance abuse, that plan shall also act as the plan of safe care required by CAPTA/CARA.

Prenatal substance exposure may be demonstrated by a positive toxicology screen from the infant or mother at delivery, an infant showing signs of substance withdrawal, a Fetal Alcohol Spectrum Disorder diagnosis, or other credible information that there was prenatal substance abuse by the mother (e.g., self-admission, witnessed drug or alcohol abuse while pregnant). An indication of substance exposure at birth includes exposure to either illegal and/or legal substances, such as prescription opioids or other drugs. Such indication will trigger an assessment of needs and indicators of risk to the child's health and safety, as described below.

NEEDS ASSESSMENTS AND MANDATED REPORTS BY HEALTH CARE PROVIDERS OF INFANTS AFFECTED BY SUBSTANCE ABUSE

California health care professionals, including physicians, surgeons, residents, interns, licensed nurses, other persons licensed under Division 2 of the Business and Professions Code, and certified Emergency Medical Technicians or paramedics, are currently mandated reporters under Penal Code section 11165.7. Existing California law at Penal Code section 11165.13 requires that any indication of maternal substance abuse, including the abuse of illegal drugs, legal drugs, and alcohol, at the time of the delivery of an infant shall lead to an assessment of the needs of the mother and child pursuant to HSC section 123605.

Since 1991, counties have been required to establish local protocols between county health departments, county welfare departments, and all public and private hospitals in the county regarding the application and use of an assessment of needs of, and a referral for, a substance exposed infant to a county welfare department pursuant to Penal Code section 11165.13. Unlike prior provisions under CAPTA, existing California law already includes both legal and illegal substance abuse, and did not limit such assessments or reports only to illegal drugs. Counties should continue utilizing their existing protocols and needs assessments for infants exposed at birth to either illegal or legal substances.

A health practitioner or a medical social worker, prior to the infant's release from the hospital, must perform the assessment of needs under HSC section 123605. The purpose of the assessment is to identify needed services for the mother, child, or family, and the level of risk to the newborn upon release to the home. The assessment will identify the level of services and intervention necessary, and may include a referral to the county welfare department for child welfare services.

While under Penal Code section 11165.13, a positive toxicology screen at the time of delivery is not in and of itself a sufficient basis for a mandated report, if following the assessment there are other factors present indicating risk to the child, a report shall be made by the health care provider to the county child welfare agency. Other indicators of risk to the infant's health and safety that may be identified upon further assessment, include, but are not limited to:

- Special medical and/or physical problems of the infant
- Special care needs of the infant
- Infant's experience of withdrawal symptoms
- Parent's lack of prenatal care
- Parent's history of drug/alcohol use
- Parent's history of drug/alcohol treatment
- Parent's awareness of impact of drug/alcohol use on the child
- Parent's emotional and mental functioning and stability
- Parent's responsiveness to the infant, bonding/attachment, and parenting skills
- Parent's preparedness to care for the infant (e.g., adequate baby supplies)
- Parent's history of abuse or neglect of other children
- Parent's history of family violence
- Parent's involvement in criminal activity or criminal activity in the household
- Lack of a family support system
- Unsafe home environment conditions

Upon receipt of a mandated report from a health care provider, the county child welfare agency must then respond in accordance with the appropriate protocols and

assessments required by state regulations set forth in Division 31-100 of the Child Welfare Manual of Policies and Procedures.

DEVELOPMENT AND MONITORING OF PLANS OF SAFE CARE

When investigating a referral, the county child welfare agency must assess and identify any safety threats to the child, including any safety threat posed by the parent's substance abuse. The case worker must document such safety threats when completing the statewide safety assessment tools. This also includes completion of a risk assessment.

If the case worker determines the caregiver has the protective capacity to mitigate such safety threats and/or risks with appropriate services while keeping the child in the home or placement, the case worker shall develop a safety plan as described in MPP section 31-002(s)(2) to permit the child to remain in the home with specific, timely actions that mitigate the identified safety threats. Further guidance regarding safety plan development will soon be released. If the safety threats are not mitigated during the investigation period and the referral is promoted to a case, or if the child must be removed from the home, a case plan shall be developed in accordance with Welfare and Institutions Code Section 16501.1 and MPP Division 31 regulations.

Consistent with the existing requirements of safety plans and case plans, the case worker shall clearly identify and document in these plans the effect(s) of the substance abuse, withdrawal symptoms, and/or Fetal Alcohol Spectrum Disorder, as well as the specific action steps necessary to assist maintaining children in their homes or, if appropriate, to promote family reunification. These action steps must address the immediate safety needs of the affected infant, the ongoing treatment needs of the infant, and the health and substance abuse treatment needs of the affected family member or caregiver. The action steps shall include referrals to, and delivery of, services that are appropriate for the infant and the affected family member or caregiver.

Pursuant to guidance that will soon be released, the case worker must also monitor the safety plan or case plan to ensure appropriate implementation, and that the specific action steps are completed. The monitoring should include all steps necessary to assure the safety of the infant. This includes assuring that the family or caregiver is receiving the treatment and appropriate services required by the plan. The information regarding this monitoring, and execution of the specific action steps, shall be documented and recorded in the Child Welfare Services/Case Management System (CWS/CMS) for information and reporting purposes.

DATA COLLECTION FOR NCANDS REPORTING

On May 12, 2017, the ACF published in the Federal Register changes to collect additional CARA-related information through new fields in the NCANDS agency and child data files submitted by states from information contained within each state's Comprehensive Child Welfare Information System (CCWIS). The California Department of Social Services will release further instructions to counties describing any new data fields in the CWS/CMS that will be used to meet the federal NCANDS reporting requirements under CARA.

CONCLUSION

Whenever an infant is affected by substance abuse, that infant needs to receive proper care and treatment to protect their safety. Also, for the infant to live in a safe environment, it is necessary that the family and/or caregiver receive appropriate services to address the issues which impact the child's safety. This is true whether the substance is illegal drugs, legal drugs, and/or alcohol. When utilizing a safety plan or case plan, counties must monitor the appropriate services to the infant, family, and/or caregiver to assure the health and safety of the infant affected by substance abuse.

For further questions regarding this ACL, please contact the Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division