



# Office of Children and Family Services

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## Local Commissioners Memorandum

<b>Transmittal:</b>	17-OCFS-LCM-03
<b>To:</b>	Local District Commissioners of Social Services
<b>Issuing Division/Office:</b>	Child Welfare and Community Services
<b>Date:</b>	April 28, 2017
<b>Subject:</b>	<b>Amendments to the Federal Child Abuse Prevention and Treatment Act by the Federal Comprehensive Addiction and Recovery Act of 2016 and Corresponding State Requirements</b>
<b>Contact Person(s):</b>	See section IV. Contacts
<b>Attachments:</b>	None

### I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform local departments of social services (LDSSs) of the amendments made to the *Child Abuse Prevention and Treatment Act* (CAPTA) by the Comprehensive Addiction and Recovery Act of 2016 (CARA) [Public Law 114-198]. The amendments relate to the needs of infants born and identified as being affected by prenatal substance and alcohol exposure. This LCM also serves to remind LDSSs of the procedures already in place that constitute New York State's compliance with the CAPTA amendments.

### II. Background

Since CAPTA's initial passage in 1974, Congress has enacted several amendments related to infants with prenatal substance or alcohol exposure. They include the Keeping Children and Families Safe Act of 2003, the CAPTA Reauthorization Act of 2010 and, most recently, CARA, which was signed into law on July 22, 2016. This recent legislation aims to tackle the complex issues surrounding the nation's prescription drug and opioid epidemic, which is a serious public health issue. The enactment of CARA makes several

revisions to CAPTA. Although CAPTA's focus is child welfare, the recent amendments to CAPTA made by CARA emphasize a multi-agency approach to the problem of substance abuse, and clarify the elements of a plan of safe care. A growing body of evidence supports a collaborative approach amongst various agencies/providers, when responding to the challenges and complexities of dealing with substance use disorders.

New York State's 2017 Annual Progress and Services Report, submitted to the federal government on June 30, 2016, specifies the state laws, regulations, and procedures that place the state in compliance with CAPTA. The CAPTA State Plan submitted in June 2011 previously specified policies and procedures to address the needs of infants affected by illegal substance abuse or withdrawal symptoms resulting from prenatal exposure, or Fetal Alcohol Spectrum Disorder. These included appropriate referrals to child protective services and other appropriate services, and a requirement that health care providers involved in the delivery or care of such affected infants notify the child protective services system.

### III. Program Implications

New York State previously incorporated practices and procedures are in compliance with the recent amendments to CAPTA. OCFS is aware that LDSSs are already applying the standards set forth in statute regarding infants affected by prenatal substance and alcohol use. Therefore, the recent CAPTA amendments should have minimal impact on current casework practice in New York State. This release serves as a reminder of procedures and practices already in place, with emphasis on the importance of documenting a plan of safe care involving the affected infant and the family and/or caregiver.

The following are key highlights of the changes made to CAPTA per CARA:

- Removal of the term "illegal" in regard to substance abuse concerning the requirement that the state has in effect and is operating a statewide program that includes policies and procedures (including appropriate referrals to child protective service systems and or other appropriate services) to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery of care of such infants notify the child protective service system of the occurrence of such infants
- Requires the development of a plan of safe care to ensure the safety and well-being of an infant born and identified affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a Fetal Alcohol Spectrum Disorder following release from the care of health care providers, emphasizing that the plan must address the needs of both the infant **and** the affected family or caregiver
- Specifies that the states must report, to the maximum extent practical, on affected infants and the plans of safe care
- Requires states to develop and implement monitoring systems regarding the implementation of plans of safe care

To date, there is no CAPTA definition of a plan of safe care; however, for the purposes of this release, a plan of safe care must address the health and substance use disorder

treatment needs of the infant and the affected family or caregiver. The plan of safe care must address not only the immediate safety needs of the affected infant, but also the health and substance use disorder needs of the affected family or caregiver. A plan of safe care should also include referrals to appropriate services that support the affected infant and family or caregivers.<sup>1</sup>

The plan of safe care should be developed with the input from the parents and caregivers, as well as from other professionals, and agencies involved in serving the affected infant and family.

### **Notifications made to CPS:**

- Social Services Law requires that mandated reporters contact the Statewide Central Register of Child Abuse and Maltreatment (SCR) when they have reasonable cause to suspect child abuse/maltreatment.<sup>2</sup>
- Mandated reporters include health care providers involved in the delivery or care of infants who are affected by substance use disorder, withdrawal symptoms resulting from prenatal substance exposure, or Fetal Alcohol Spectrum Disorder.
- Based on the information provided by the reporter, the SCR determines if the statutory criteria for a child protective services (CPS) report are met. The SCR's screening procedures on substance abuse and the New York definition of neglect do not differentiate whether or not a substance is legal or illegal.<sup>3</sup>
- CPS reports that are accepted and registered by the SCR are transmitted to local department of social services CPS for investigation or alternative response addressing the allegation of "Parent's Drug or Alcohol Misuse."
- Following the receipt of the report, CPS decides if the report should be addressed through the investigative track or, where the CPS provides dual responses, as a family assessment response (FAR) case, pursuant to New York State statute and regulation.<sup>4</sup>

### **CPS FAR Requirements:**

- Social Services Law permits LDSSs, to establish a program, subject to OCFS review and approval, that implements a differential response system (commonly known as FAR) for reports of child abuse and maltreatment.<sup>5</sup> LDSSs with an approved FAR program can determine if a report meets the criteria established by both the state and the LDSS for assignment to FAR.
- Following the receipt of a report from the SCR, CPS should consider whether a FAR assignment for a report received involving substance abuse most effectively supports the safety of child(ren) named in the report and matches the family's needs.
- Consistent with good casework practice, CPS workers must develop a plan of safe care with input from the parents, and caregivers, as well as from

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<sup>1</sup> ACYF-CB-PI-17-02

<sup>2</sup> SSL § 413 (1) (a) and SSL § 415

<sup>3</sup> FCA §1012(f).

<sup>4</sup> SSL § 427-a;18 NYCRR 432.13 (c) (4)

<sup>5</sup> SSL § 427-a

other professionals and agencies involved in caring for the infant and family. When possible, communication about a plan of safe care should begin prior to an infant's discharge from the hospital.

- The case progress notes must include the details of the plan of safe care, identify any other professionals who were involved in the development of the plan, and what appropriate service referrals were made by either CPS or the other professionals involved with the family.

### **CPS Investigative Requirements:**

- Social Services Law requires that each CPS coordinate, provide, arrange, and monitor rehabilitative services for children and families.<sup>6</sup> CPS will often have a critical role in developing a plan of safe care. It is essential for caseworkers to begin a dialogue in the early stages of the investigative process with medical and/or treatment providers about the development of a plan of safe care.
- Consistent with good casework practice, CPS workers must develop a plan of safe care with input from the parents, and caregivers, as well as from other professionals and agencies involved in caring for the infant and family. When possible, communication about a plan of safe care should begin prior to an infant's discharge from the hospital.
- The case progress notes must include the details of the plan of safe care, identify any other professionals who were involved in the development of the plan, and what other appropriate service referrals were made by either CPS or the other professionals involved with the family.
- It is important for CPS to monitor the timeliness of and compliance of these services in order to promote the safety and well-being of the affected infant.

### **Supportive and Rehabilitative Services:**

- CPS must offer and/or make referrals for appropriate services, regardless of the assignment to the FAR or investigative track.
- Preventive Services include supportive and rehabilitative services that are provided to children and families in accordance to New York State regulations and Social Services Law.<sup>7</sup>
- Mandated and optional preventive services offered directly by the LDSS and/or through a purchase of service agreement are designed to prevent out-of-home placements. Supportive and rehabilitative services for children and adults include, but are not limited to the following:
  - Case management\*
  - Case planning\*
  - Child day care services\*
  - Homemaker services\*
  - Housekeeper/chore services
  - Family planning services
  - Home management services
  - Clinical services\*

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<sup>6</sup> SSL § 424 (13)

<sup>7</sup> 18 NYCRR Part 423 and SSL § 409-a

- Parent aide services\*
- Day services to children
- Parent training\*
- Transportation services\*
- Emergency cash or goods\*
- Emergency shelter \*
- Preventive housing services
- Intensive, home-based, family preservation services
- Outreach activities
- Respite care\*<sup>8</sup>

Referrals to other appropriate services may also include substance use disorder treatment services (outpatient/inpatient), home visiting, and early intervention.

#### **Documentation Requirements:**

- New York State regulations require the Uniform Case Record to include but not be limited to, the following documentation:<sup>9</sup>
  - Progress notes must include details of the services being provided to the affected infant and family or caregiver as part of the plan of safe care.
  - Family assessments
  - Service plans
  - Correspondence between the family and service agencies

#### **Monitoring:**

- OCFS will continue to access information from CONNECTIONS on infants with the following designated safety factors:
  - Child has a positive toxicology for legal or illegal drugs and/or alcohol
  - Caretaker(s) currently abuses alcohol, to the extent that it seriously affects his/her ability to supervise, protect or care for the child(ren)
  - Caretaker(s) currently abuses legal or illegal drugs, to the extent that it seriously affects his/her ability to supervise, protect or care for the child(ren)
- OCFS will also monitor case documentation on the development and implementation of the plans of safe care through the review of child protective services cases using the Ongoing Monitoring Assessment (OMA) process.
- Any further changes to the monitoring process of plans of safe care will be forthcoming.

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<sup>8</sup> \* Core preventative services: must be available to a child/youth and his/her family whom the district is required to serve pursuant to OCFS regulations 18 NYCRR Part 423, 18 NYCRR 430.9 and section 409-a (1) of the Social Services Law. Non-core services may be available to the extent set forth in the LDSS's comprehensive annual services plan.

<sup>9</sup> 18 NYCRR 428.3

#### IV. **Contacts**

Questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

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/s/ Laura M. Velez

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