
	OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN		
	COMMONWEALTH OF PENNSYLVANIA * DEPARTMENT OF PUBLIC WELFARE		
NUMBER: 3490-08-04	ISSUE DATE: October 1, 2008	EFFECTIVE DATE: May 8, 2007 and May 28, 2007	
SUBJECT: Implementation of New Reporting Requirements As Required by Act 146 of 2006 and Act 179 of 2006	BY:  Richard J. Gold Deputy Secretary for Children, Youth and Families		

SCOPE:

COUNTY CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
 COUNTY CHILDREN AND YOUTH ADVISORY COMMITTEES
 PRIVATE CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
 HUMAN SERVICES DIRECTORS
 COUNTY COMMISSIONERS
 PENNSYLVANIA CHILDREN AND YOUTH ADMINISTRATORS ASSOCIATION
 PENNSYLVANIA COUNCIL OF CHILDREN, YOUTH AND FAMILY SERVICES
 PENNSYLVANIA COMMUNITY PROVIDERS ASSOCIATION
 OTHER INTERESTED PARTIES

PURPOSE:

The purpose of this bulletin is to transmit to public and private children and youth agencies the new reporting requirements in accordance with Act 146 of 2006 and Act 179 of 2006 both of which amended 23 Pa. C.S., Chapter 63 (relating to the Child Protective Services Law) (CPSL).

**COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:
 Office of Children, Youth and Families Regional Offices**

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BACKGROUND:

The Federal Child Abuse Prevention and Treatment Act (CAPTA) is a federal law under which qualifying states may obtain grants for a variety of training and programs for the prevention, treatment and investigation of child abuse and neglect. Together with a stakeholder work group comprised of county children and youth agencies, private providers, families, child advocates, The Hospital and Healthsystem Association of Pennsylvania (HAP), the Juvenile Court Judges' Commission (JCJC), the Department of Health (DOH) and other Department of Public Welfare program offices, the Department spear-headed an initiative designed to address the affected concerns. To that end, on November 9, 2006, Governor Edward G. Rendell signed House Bill 2670, Printer's Number 4849 into law which became known as Act 146 of 2006 and was effective May 8, 2007 implementing Pennsylvania CAPTA compliance legislation. For the purpose of this bulletin, under CAPTA, health care providers involved in the delivery or care of an infant who is born and identified as being affected by illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure must immediately make a report to the appropriate county agency. The county agency in turn, must provide or arrange for appropriate services for the infant.

In addition, on November 29, 2006, Pennsylvania Governor Edward G. Rendell signed Senate Bill 1054, Printer's Number 2247 into law. This amendment to the CPSL, known as Act 179 of 2006, became effective May 28, 2007. While this Act included numerous amendments to the CPSL which will be discussed within this bulletin, the major change no longer requires a child to come before the mandated reporter in order for a report of suspected child abuse to be made, however the child must still be under the care, supervision, guidance or training of the mandated reporter or of an agency, institution, organization or other entity with which the reporter is affiliated. While this legislation did not change who is mandated to report, it opened the door for additional reports of suspected child abuse to be made, in that any incident that meets the definition of child abuse must be reported to ChildLine, which is the state-wide child abuse hotline, at (800) 932-0313, regardless of the relationship of the perpetrator to the child.

DISCUSSION:

Act 146 of 2006:

One aspect of Act 146 of 2006 addresses the needs of infants born affected by illegal substance abuse or having withdrawal symptoms resulting from prenatal drug exposure. Health care providers who are involved in the delivery or care of an affected infant are now required to immediately make a referral to the appropriate county agency when these situations arise. The changes are found at § 6386 (relating to mandatory reporting of infants born and identified as being affected by illegal substance abuse) within the CPSL. Although these situations are to be considered general protective service reports, not child abuse reports, the county agency is required to provide or arrange for appropriate services for the infant. Services for these situations are necessary to maintain safety of children and to assist families with overcoming substance abuse.

OCYF, through the assistance of the HAP, conducted a survey of acute care hospitals in Pennsylvania with one of the aspects being screening for illegal substances including:

- Whether or not hospitals screen all newborns for exposure to illegal substances;
- What criteria they use to determine which infants require screening;
- Whether or not they have a policy, procedure or process for referring infants to the county children and youth agency; and
- Where they refer specifically the mother and/or infant such as Children and Youth Services, ChildLine or Community Drug and Alcohol.

The results of the survey indicated that while very few hospitals screen all newborns, a majority of them have criteria which they use to determine which infants require screening, as well as policies and procedures in place for referrals to the county children and youth agency. These results lead to the conclusion that processes as required by CAPTA are already occurring informally. Statistics from the Pennsylvania Department of Health's Annual Hospital Questionnaire show that from July 1, 2006 – June 30, 2007, there were 3,288 live births in which the newborns were exposed to illegal substances before to birth.

Although county agencies and health care providers may go beyond the requirements of the law by working together to develop policies to address situations where infants are born affected by abuse of legally prescribed medication, including but not limited to Vicodin and Oxycontin, these situations are not considered a mandated report. Additionally, health care professionals are not required to report a mother who is in a methadone maintenance program for heroin use and delivers a child affected by methadone or another medication provided within these programs as this is an appropriate form of substance abuse treatment.

Act 179 of 2006:

Persons Required To Report Suspected Child Abuse:

Previously, a mandated reporter was required to make a report of suspected child abuse when, in the course of their employment, occupation or practice of their profession, a child came before them who they suspected was a victim of child abuse. Act 179 removed the requirement that a child must come before the mandated reporter in order for a report of suspected child abuse to be made. Mandated reporters are now obligated to report suspected child abuse when, in the course of their employment, occupation, or practice of their profession they have reasonable cause to suspect that a child under the care, supervision, guidance, or training of that person or of an agency, institution, organization, or other entity with which that person is affiliated is a victim of child abuse, regardless of whether the child came before them. For example, a parent or even an alleged perpetrator may provide information to a mandated reporter that leads them to suspect a child is a victim of child abuse. If that child is under the care, supervision, guidance, or training of that person or of an agency, institution, organization, or other entity with which that person is affiliated, then the report must be made. Conversely, if the child was not under the care, supervision, guidance, or

training of the mandated reporter then it not required that a report is to be made. However, anyone is permitted to make a report if they are concerned about the safety and well-being of a child whether it is mandated to be reported or not. All reports of suspected child abuse will continue to be made to ChildLine.

Persons who employ, supervise, guide or train an individual required to make a report of suspected child abuse can now be criminally charged with endangering welfare of children in accordance with § 4304 of Title 18 of the Pennsylvania Consolidated Statutes if they interfere with the making of a mandated report. A person can be charged with a misdemeanor of the first degree if they commit this offense or a felony of the third degree if there is a course of conduct leading to committing this offense.

Reporting Of Suspected Child Abuse Committed By Persons Not Defined As Perpetrators Under the CPSL:

Previously when an individual did not meet the definition of a perpetrator under the CPSL, persons were not required to make a report of suspected child abuse. Additionally, Act 179 requires reports to be made to ChildLine regarding incidents that meet the definition of child abuse regardless of the relationship of the perpetrator to the alleged child victim. The definition of perpetrator did not change and therefore county agencies will not see an increase in the number of reports they investigate as a result of this amendment. As a result, ChildLine will see an increase in the number of calls it receives and the number of referrals that are transmitted to law enforcement agencies.

Under Act 179, ChildLine is required to immediately transmit information to the appropriate authorities, including the district attorney, the district attorney's designee or other law enforcement official in accordance with county protocols when the report cannot be investigated under the auspices of the CPSL, but that there might be a need for criminal investigation. Title 55, Pa. Code, § 3490.32 (g) (relating to ChildLine reporting to the county agency) currently requires ChildLine to transmit the information received in a complaint that does not suggest suspected child abuse, but does suggest a need for social services or other services or investigation.

Penalties For Failure To Report Or Refer Suspected Child Abuse:

Previously, the penalty for failing to report was a summary offense for the first violation and a misdemeanor of the third degree for the second or subsequent violations. Act 179 now makes it a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for any subsequent violations. The penalties for failing to report have also been expanded to include any person who fails to make a referral to the appropriate authorities. The maximum penalty for a misdemeanor of the third degree is a fine of \$2,500 and/or a sentence of one year in jail. The maximum penalty for a misdemeanor of the second degree is a fine of \$5,000 and/or a sentence of two years in jail.

Exceptions To Reporting Suspected Child Abuse:

Confidential communications to clergy are currently exempt from the mandatory reporting requirement and Act 179 expanded the exception for reporting to include confidential communications made to an attorney.

Protection For Individuals Who Make Suspected Child Abuse Reports:

Act 179 of 2006 also added civil and criminal liability protection for any individual who makes a report of suspected child abuse in good faith, whether or not they are mandated to report. Prior to the implementation of Act 179, only those individuals that met the definition of a mandated reporter were protected from civil and criminal liability when making a report in good faith. These protections will continue to apply to individuals who cooperate with an investigation, testify in a proceeding arising out of an instance of suspected child abuse, take photographs or remove or take protective custody of a child pursuant to § 6315 of the CPSL (relating to taking child into protective custody). Immunity from liability is also provided to any official or employee of a county agency who refers a report of suspected abuse to law enforcement authorities or provides services under the CPSL.