David A. Hansell, Commissioner Dr. Dave A. Chokshi, Commissioner

Reporting and Planning Requirements for Newborns Prenatally Exposed to Substances and Their Caregivers

This guidance is intended to clarify what the federal Child Abuse Prevention and Treatment Act (CAPTA) does and does not require healthcare providers to do when they encounter a newborn who was exposed to substances in utero, and to provide clarification of when notification to the Statewide Central Register of Child Abuse and Maltreatment (SCR) is required.

Infants who show signs or symptoms of being substance-affected

CAPTA outlines requirements only for cases in which an infant shows physiological signs or symptoms of having been affected by a substance while in utero. If a newborn shows physiological signs of: 1) documented withdrawal symptoms; 2) neonatal abstinence syndrome (NAS); or 3) fetal alcohol spectrum disorder (FASD), they are considered "substance affected" under CAPTA and require a Plan of Safe Care as detailed below,[1] and notification of the occurrence to the child protective services (CPS) system.[2] The type of notification to the CPS system is explained below.

Infants who are not born substance-affected

If a medical provider or other mandated reporter learns—through a toxicology test, prenatal care records, discussions with the patient, or in any other manner—that the newborn may have been exposed to substances in utero, but the newborn does not show physiological signs of that exposure, CAPTA does not apply.

A positive toxicology result for a parent or a newborn, by itself, does not constitute reasonable suspicion of child abuse or maltreatment, and thus does not necessitate a report to the SCR. The mother should be screened for substance use disorder and, if a substance use disorder is identified, a Plan of Safe Care should be developed and monitored by the medical provider or healthcare team. Similarly, a maternal history of

[1] See 17-OCFS-LCM-03, *Amendments to the Federal Child Abuse Prevention and Treatment Act by the Federal Comprehensive Addiction and Recovery Act of 2016 and Corresponding State Requirements* for more information, available at this link.

[2] The Child Abuse Prevention and Treatment Act (CAPTA) with amendments made by the *Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act* or the *SUPPORT for Patients and Communities Act*, Public Law (P.L.) 115-271, enacted October 24, 2018: "policies and procedures (including appropriate referrals to child protection service systems and for 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 or care of such infants notify the child protective services system of the occurrence of such condition of such infants,"

past drug use or disclosure of current drug use is not sufficient, by itself, to warrant a report to the SCR.

Considerations in Reporting to the Statewide Central Register

As mandated reporters, health care providers are required to report cases to the SCR when they have reasonable cause to suspect, based on rational observations, professional training, and experience, that the parent or other person legally responsible for a child has abused or maltreated the child.[3]

Providers should be trained to be aware of their own biases and assumptions in making a determination about whether to make a report to the SCR.[4] Factors that correspond to conditions of poverty, immigration status, race, ethnicity, or family composition are not cause to contact the SCR. Similarly, a lack of supplies or perceived readiness to bring home a baby do not by themselves constitute reasonable suspicion of abuse or maltreatment. Instead of considering these factors as sufficient to call the SCR, the provider should work with the family and service providers to obtain needed supplies and support. Similarly, limited, late, or minimal prenatal care is not grounds, by itself, for reasonable suspicion of abuse or maltreatment. Rather, avoidance of prenatal care may indicate a fear that their substance use will impact the care they receive or lead to removal of the child. When substance use is destigmatized and substance use disorder is approached and addressed as a medical condition, it can foster trust that may make patients more willing to seek both substance use disorder treatment and pre/postnatal care.

In assessing for possible child abuse or maltreatment, the healthcare team should evaluate factors such as the family's known medical or treatment history, including whether the substance use had been previously disclosed or planned for with a medical

[3] A maltreated child includes a child "defined as a neglected child by the family court act, or … who has had serious physical injury inflicted upon him or her by other than accidental means." NYS Social Services Law § 412(2). New York State defines a neglected child as a child "whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care…" Family Court Act § 1012(f); NYS Social Services Law § 371(4-a)(i). "'Person legally responsible' includes the child's custodian, guardian, or any other person responsible for the child's care at the relevant time." Family Court Act § 1012(g).

[4] Appropriate reports to the SCR must include a related concern or suspicion of a safety risk to the child, wherein the reporter has "reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent or other person legally responsible comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child" (NYS SSL § 413(1)). ACS is obligated to open a case, either by initiating an investigation or Family Assessment Response (FAR), whenever the SCR accepts a report and transmits it to ACS. In all child protective cases, including those with substance misuse allegations, CPS are responsible for assessing child safety and a family's service needs on a case-by-case basis, looking at actual or potential harm to a child and the parent's capacity to care for the child.

or substance use disorder treatment provider, if appropriate; the family's presentation; the newborn's physical condition and follow-up treatment needs as well as the provider's assessment of the family's ability to appropriately meet those needs; and, as appropriate, the well-being of the family's other children known to the provider.

What Should Be Included in a Plan of Safe Care?

Plans of Safe Care can vary significantly depending on the family's circumstances and the medical team's diagnosis and assessment of both the parent or caregiver and the newborn. In all cases, the Plan of Safe Care must address the safety and well-being of the infant and the needs of the affected family member or caregiver following release from the care of health care providers. The Plan of Safe Care should be developed collaboratively with the parent or caregiver and should include a plan for safe sleeping arrangements of the infant upon their discharge from the hospital. Other requirements vary according to the family's circumstances:

***Prenatally-identified substance use*:** if a pregnant person discloses substance use during the prenatal period, the health care provider should screen them for substance use disorder and develop a Plan of Safe Care that includes referrals to treatment, if appropriate. The SCR will not accept reports concerning a child in utero. If needed, available substance use disorder treatment including crisis/detox, residential treatment, or outpatient care can be found on the NYS OASAS Treatment Availability Dashboard: www.FindAddictionTreatment.ny.gov. Unless the infant is born substance-affected, no notifications about the Plan of Safe Care are required.

***Newborn is substance-affected*:** When a newborn is born physiologically affected by a substance (as defined on the first page of this guidance), a Plan of Safe Care must address the safety and well-being of both the newborn and the affected parent or caregiver, including any substance use disorder needs of the parent or caregiver following release from the care of the healthcare facility. If the newborn was affected by a medication that is part of an approved treatment plan for the mother, or if the medical provider is aware that the mother is involved in substance use disorder treatment and is following the treatment plan in place, then the medical provider can work directly with the parent(s) or caregivers of the newborn on this Plan of Safe Care and make any necessary referrals of the family while discharge planning without making a report to the SCR. If the newborn was physiologically affected by a substance that was not part of an approved treatment plan, and the mother is not following a treatment plan, then a report should be made to the SCR.

The Office of Children and Family Services (OCFS) must be notified of the existence of any Plan of Safe Care and the occurrence of any birth where the newborn is identified as substance-affected. If there is CPS involvement, then CPS will notify OCFS of the Plan of Safe Care; if there is no CPS involvement, then the healthcare team must send notification to OCFS. Such notifications may be electronically submitted using OCFS form OCFS-2197, *Child Abuse Prevention Treatment Act*

Notification Form to the Office of Children and Family Services, to the designated notification mailbox ocfs.sm.SafeCareNotifications@ocfs.ny.gov. The form does not include any patient identifiers and satisfies the CAPTA notification requirement.

OCFS-2197 (04/2018)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

CHILD ABUSE PREVENTION TREATMENT ACT (CAPTA) NOTIFICATION FORM TO THE OFFICE OF CHILDREN AND FAMILY SERVICES (OCFS)

Scan and send to mailbox: ocfs.sm.SafeCareNotifications@ocfs.ny.gov
Please do not include patient identifiers

Please check the box next to the following criteria, if applicable:

- ☐ Mother is engaged in addiction treatment and is taking medication as prescribed or administered by a health care provider as part of a Medication Assisted Treatment (MAT) regimen*
- ☐ Mother was treated with opioids for chronic pain by a provider during her pregnancy and took/is taking medication as prescribed*
- ☐ Mother is taking benzodiazepines as prescribed by a health care provider*
- ☐ A newborn has withdrawal symptoms, or is diagnosed with Neonatal Abstinence Syndrome (NAS), due To intrauterine exposure to a prescription medication regimen being taken as directed by a health care provider.

Please check if any of the following are applicable:

- ☐ Plan of Safe Care was completed and will be provided to infant's Primary Care Physician (PCP) for ongoing monitoring
- ☐ Mother was actively participating in Addiction Treatment prior to delivery as verified by provider.
  Name of Program: _____
- ☐ Mother was in residential treatment program prior to delivery and will be returning post discharge.
- ☐ Mother was actively participating in services prior to delivery as verified by provider (e.g. counseling, parenting classes). Services _____
- ☐ Additional referrals were made for services at the time of delivery for the infant and affected family or caregivers

* *Information has been verified with mother's health care provider and/or treatment program.*

Number of infants for whom this form is completed (if multiple births complete one notification but record the number of infants) _____

Unique hospital identifier: _____

Contact person/Phone number: _____

Hospital fax number: ( ) -