## SECTION 1439 – Substance Affected Infants

### I. Federal Policy: The Child Abuse Prevention and Treatment Act (CAPTA) and Comprehensive Addiction and Recovery Act of 2016 (CARA)

As amended in 2010, CAPTA set forth requirements for states to address the needs of substance affected infants. In 2016, the President signed CARA into law which further amended CAPTA requirements. These two laws require states to have policies and procedures in place to:

- Require health care providers involved in the delivery and care of infants born with and identified as being affected by substance abuse (not just abuse of illegal substances as was the requirement prior to this change), withdrawal symptoms resulting from prenatal substance exposure or a Fetal Alcohol Spectrum Disorder (FASD), to notify child protective services (CPS) of the occurrence.
- Ensure the safety and well-being of such infants following their release from the care of health care providers by developing a plan of safe care that addresses the health and substance use disorder treatment needs of both the infant **and** affected family or caregiver.
- Report in the National Child Abuse and Neglect Data System (NCANDS)
    - The number of infants identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder;
    - 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.
- Develop and implement monitoring systems regarding the implementation of Plans of Safe Care to determine whether and in what manner local entities are providing referrals to and delivery of appropriate services for the infant and affected family.

### II. North Carolina's Response to CAPTA

#### A. "Substance Affected Infant" Defined by North Carolina Department of Health and Human Services (DHHS)

CAPTA requires states to have policies and procedures requiring health care providers to notify the child protective services system if they are involved in the delivery of 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.

NC DHHS, along with its health care and substance use disorder treatment partners, have developed definitions for such infants under the guidance provided by the federal Administration for Children and Families (ACF) and the Substance Abuse and Mental Health Services Administration (SAMHSA).

In North Carolina, health care providers involved in the delivery and care of such infants must notify the county child welfare agency in the form of a report upon identification of the infant as "substance affected." A "substance affected infant" is an infant that meets one of the following NC DHHS definitions:

**Affected by Substance Abuse:**

1) The infant has a positive urine, meconium or cord segment drug screen with confirmatory testing in the context of other clinical concerns as identified by current evaluation and management standards.

   OR

2) The infant's mother has had a medical evaluation, including history and physical, or behavioral health assessment indicative of an active substance use disorder, during the pregnancy or at time of birth.

**Affected by Withdrawal Symptoms:**

The infant manifests clinically relevant drug or alcohol withdrawal.

**Affected by FASD:**

1) The infant is diagnosed with one of the following:

   - Fetal Alcohol Syndrome (FAS)
   - Partial FAS (PFAS)
   - Neurobehavioral Disorder associated with Prenatal Alcohol Exposure (NDPAE)
   - Alcohol-Related Birth Defects (ARBD)
   - Alcohol-Related Neurodevelopmental Disorder (ARND)[1]

   OR

[1] Hoyme, HE, Kalberg, WO, Elliot, AJ, et al. Updated Clinical Guidelines for Diagnosing Fetal Alcohol Spectrum Disorders. Pediatrics, Volume 138, number 2, August 2016

2) The infant has known prenatal alcohol exposure when there are clinical concerns for the infant per current evaluation and management standards.

As specified in CAPTA, the notification is to ensure that services are provided to the infant and caregiver, but it does not establish a definition under Federal law of what constitutes child abuse or neglect. Furthermore, the requirement for notification should not be construed to mean that prenatal substance use is intrinsically considered child maltreatment. Therefore, while the notification is required, not every report about a substance affected infant will result in a CPS assessment.

## B. Plan of Safe Care and Referral to Care Coordination for Children (CC4C)

CAPTA requires that every infant "born with and identified as being affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure or FASD" has a plan ensuring his/her safety following the release from the care of healthcare providers.

A Plan of Safe Care is required for all substance affected infants regardless of whether the circumstances constitute child maltreatment.

Therefore, a county child welfare agency must develop a Plan of Safe Care for each infant that is the subject of a "substance affected infant" report. To develop the Plan of Safe Care, the county child welfare agency must complete a CC4C referral form that includes a Plan of Safe Care. It must submit the referral to the local CC4C program.

During the screening process, a child welfare agency may share confidential information with public and private agencies that are providing or facilitating protective services. In order to comply with confidentiality laws and to ensure that a plan of safe care can be created for every infant, it is important that the CC4C referral be made during the screening of the report and prior to making a determination to screen in or screen out the report. The timing of the referral is critical because confidentiality laws will prohibit a child welfare agency from making the referral to CC4C if the report has already been screened out and child protective services are no longer being provided.

As is the current standard practice, any information that the child welfare agency obtains that is protected by federal regulations should not be disclosed absent a court order or proper client consent. See Chapter X: The Juvenile Court and Child Welfare section OBTAINING SUBSTANCE ABUSE RECORDS BY COURT ORDER for more information on 42 C.F.R. Part 2 regulations. Additionally, the name of the reporter must remain confidential.

The components of the Plan of Safe Care should reflect and address the needs of both the infant and the affected family or caregiver through the services

available with CC4C. The services include screening for referral to the North Carolina Infant Toddler Program (NC ITP) for early intervention services through the local Children's Developmental Services Agency (CDSA). CC4C will work with the family on a voluntary basis to implement the Plan of Safe Care.

C. **Intake and Screening of the Report**

A report that only alleges that an infant was exposed to substances prior to birth does not intrinsically meet the statutory definition of child abuse, neglect, or dependency. To determine whether a report about a substance affected infant should be accepted, the child welfare agency must examine the effect that the substance exposure has had on the infant and the infant's health and safety. Only reports that meet the statutory definition of child abuse, neglect or dependency can be accepted.

The county welfare child agency must refer to the Substance Affected Infant Screening Tool in Chapter VIII: Section 1407 - Structured Intake to screen for allegations of child maltreatment.

Reports of child maltreatment of substance affected infants must be accepted and a CPS Assessment initiated when the information gathered is consistent with any of the following:

- The infant has received one of the following diagnoses: Fetal Alcohol Syndrome (FAS), Partial FAS (PFAS), Neurobehavioral Disorder associated with Prenatal Alcohol Exposure (NDPAE), Alcohol-Related Birth Defects (ARBD) or Alcohol-Related Neurodevelopmental Disorder (ARND).

- The infant had a positive drug toxicology or is experiencing withdrawal symptoms. However, if it is known that the drug is a medication prescribed to the mother and is being used appropriately – per the prescribing provider – then the report should not be accepted on that basis alone. This includes medications prescribed for the treatment of opioid use disorders.

- The mother had a positive drug toxicology at the time of infant's birth **AND** she is demonstrating behaviors that impact her ability to provide care to the infant.

- The mother had a medical evaluation or behavioral health assessment that is indicative of an active substance use disorder

at the time of the infant's birth **AND** she is demonstrating behaviors that impact her ability to provide care to the infant.

- The mother had a positive drug toxicology at the time of the infant's birth **AND** a review of county child welfare agency history revealed a pattern of substantiations or findings of services needed or a particularly egregious finding that correlates with the allegations.

  However, a mother's prescribed and appropriate use of medications should not be coupled with county child welfare agency history to justify the acceptance of a report.

- The mother had a medical evaluation or behavioral health assessment that is indicative of an active substance use disorder at the time of the infant's birth **AND** a review of county child welfare agency history revealed a pattern of substantiations or findings of services needed or a particularly egregious finding that correlates with the allegations.

D. **Annual Data Report Requirements and Monitoring Systems**

The amended provisions of CAPTA also require that states report additional information through NCANDS and that states develop monitoring systems to ensure that appropriate referrals and services are being provided through the implementation of Plans of Safe Care.

To report the annual data requirements and to inform a monitoring system, county child welfare agencies must collect the following data:

- The number of substance affected infants for which the agency received notification from a healthcare provider;
- The number of infants and families for whom the agency developed a Plan of Safe Care;
- The number of infants the agency referred to the CC4C for appropriate services;
- The number of those infants who were accepted for CPS assessment; and
- The number of those infants who were not accepted for CPS assessment.

The North Carolina Division of Social Services (DSS) will collect this data monthly.

Additionally, a DHHS interagency collaborative will meet quarterly to review the data collected by DSS and CC4C, determine gaps and needs, develop a plan of intervention and provide technical assistance at the local level.

## III. Substance Affected Infants and the Child Welfare Intervention

### A. Medication Assisted Treatment (MAT)

The use of MAT to treat opioid use disorders is considered the recommended best practice and must be treated as such. No county child welfare agency shall discourage the use of MAT by a parent or caretaker through its assessment and case planning activities unless otherwise recommended by a substance use disorder treatment professional.

Abrupt discontinuation of opioid use during pregnancy can result in premature labor, fetal distress and miscarriage. Additionally, pregnant women who stop using opioids and subsequently relapse are at a greater risk of overdose and death. There is also increased risk of harm to the fetus. Because Neonatal Abstinence Syndrome (NAS) – the common term used to represent the symptoms associated with opioid withdrawal in newborns – is treatable, MAT is typically recommended by treatment providers over abstinence or withdrawal.

To counter misinformation about prescription opioid use the International Drug Policy Consortium issued the following statement in 2013:

"Newborn babies are NOT born 'addicted' and referring to newborns with NAS as 'addicted' is inaccurate, incorrect, and highly stigmatizing. Portraying NAS babies as 'victims' results in the vilification of their mothers, who are then viewed as perpetrators, and further perpetuates the criminalization of addiction. Using pejorative labels…places these children at substantial risk of stigma and discrimination and can lead to inappropriate child welfare interventions. NAS is treatable and has not been associated with long-term adverse consequences. *Mischaracterizing MAT as harmful and unethical contradicts the efficacy of MAT and discourages the appropriate and federally recommended treatment for opioid use disorders."*

### B. Filing of a Juvenile Petition

A CPS Assessment involving a substance affected infant does not warrant an automatic filing of a juvenile petition with a request for nonsecure custody to ensure safety. Under no circumstances should a county child welfare agency remove an infant without first assessing risk and safety. The county child welfare agency must continue to make reasonable efforts to protect the infant in his or her own home and prevent placement as required by law and policy.

### C. Using the Plan of Safe Care During the Child Welfare Intervention

While the safety agreement and Plan of Safe Care are not intended to be duplicative interventions, they will likely address many of the same processes and issues. The major difference, however, is that the Plan of Safe Care should go beyond immediate safety factors to address the affected caretaker's need for substance use and/or mental health treatment and the health and developmental needs of the affected infant. Additionally, it should identify the services and supports the caretaker needs to strengthen his or her capacity to nurture and care for the infant.

CC4C will implement the Plan of Safe Care with the family on a voluntary basis. However, that does not negate the role the child welfare worker has in supporting the family, while also assessing risk and safety. CC4C must be contacted as a collateral during the assessment. The child welfare worker must continue to follow the policy outlined in Section 1408 –Investigative and Family Assessments regarding the requirements of an assessment and safety planning.

All components of the Plan of Safe Care may not have been met at the time of case decision; however, the child welfare worker should have assisted the family in addressing the identified needs, with emphasis on those connected to the infant's safety and well-being. Should the case require CPS In Home Services or Child Placement Services, family service agreements must reflect components of the Plan of Safe Care should they remain relevant to child safety and well-being.

## D. Additional Requirements for Cases Involving Substance Affected Infants

### 1) Safe Sleeping Arrangements

Due to the increased risk associated with sleep related infant death for substance affected infants, the child welfare worker must encourage the family to arrange for safe and separate sleeping arrangements for the infant. This must be documented on the DSS-5010 (https://www2.ncdhhs.gov/info/olm/forms/dss/DSS-5010-ia.pdf) and in a Temporary Parental Safety Agreement when appropriate.

For information regarding sleep related infant deaths and recommendations to reduce the risk of occurrence, please refer to The American Academy of Pediatrics policy statement at http://pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf.

### 2) Referral to Early Intervention Services

Part C of the Individuals with Disabilities Education Act (IDEA) requires that a child under the age of 3 who is identified as "being affected by illegal

substance abuse, or withdrawal symptoms resulting from prenatal drug exposure" be referred for early intervention services.

In North Carolina, children who are identified as substance affected infants must be screened for referral to the North Carolina Infant Toddler Program (ITP) through the local Children's Developmental Services Agency (CDSA) for early intervention services.

Refer to the North Carolina Family Assessment of Strengths and Needs (DSS-5229) S6 - Child Characteristics to screen a child for referral to a CDSA.