

DCF Policy #86-010
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POLICY FOR REPORTS ALLEGING MEDICAL NEGLECT OF INFANTS WITH LIFE-THREATENING CONDITIONS

On April 15, 1985, the Department of Health and Human Services issued regulations pursuant to amendments to the Child Abuse and Prevention Treatment Act (Public Law 92-247, 42 U.C.S. 5101, et. seq.) requiring each state, as a condition of receiving federal funds available through the Act, to establish procedures within the state's child protective service system to respond to reports of "**medical neglect**" alleging that medically indicated treatment is being withheld from disabled infants with life-threatening conditions (45 CFR § 1340.15). These cases have come to be known as "Baby Doe" cases.

The intent of the regulations is to ensure that the child's right to medical treatment be protected. Department staff are not expected to make decisions about the care or treatment of a child or to "second guess reasonable medical judgment". The Department's responsibility is to ascertain whether any decision to withhold treatment for an "**infant**" is based on "**reasonable medical judgment**" consistent with the federal definition of "**withholding of medically indicated treatment**".

POLICY

It is the policy of the Department to receive and investigate reports of medical neglect which allege that medically indicated treatment is being withheld from a disabled infant with a life-threatening condition. The Department contacts each health care facility to obtain the name, title and telephone number of the individual designated by such facility for the purpose of the coordination, consultation and notification of activities to carry out the purpose of this policy. The Department annually recontacts each health care facility to obtain any changes in designation. Such reports are investigated in accordance with Department Regulations and Policy and the following special procedures. (See *Policy #86-015, Protective Intake Policy*)

PROCEDURES

1. **Screening.** Upon receipt of a report of alleged medical neglect, the Screener determines if the content of the report alleges that medically indicated treatment is being withheld from a disabled infant who has a life-threatening condition. If the Screener determines that the report does contain such an allegation, she/he immediately screens-in the report and informs the Supervisor.
2. **Assignment.** The Supervisor, in consultation with the Area Director/designee, immediately contacts the designated Regional manager to request the assignment of the investigation to a Social Worker designated to conduct this type of investigation. (This may be a Regional or Area staff person. Department nursing staff also may assist the Investigator in conducting the investigation.) The Regional

Office immediately informs the Office of the Deputy Commissioner for Field Operations of the receipt of the report. The Screener verbally relays the content of the report to the assigned Investigator and notifies the Investigator to view the report and screening information in FamilyNet.

3. **Contacting Hospital.** The Investigator immediately contacts the designated representative of the hospital where the reported child is located and informs her/him of the report. If the hospital representative determines that the reported infant is not at the hospital, the Investigator notes this in the report and the report is unsupported. If the representative confirms that the infant is at the hospital, the Investigator and hospital representative determine if it is more appropriate for the hospital representative or Investigator to notify the infant's parents of the Department's responsibility to conduct an investigation. The Investigator obtains the parents' signed consent to permit hospital personnel to discuss the medical status of their child with the Investigator and to permit the Investigator to review the infant's medical records.
4. **Reviewing Medical Treatment.** After obtaining the signed consent of the infant's parents, the Investigator determines from a review of the infant's medical record and an interview with the hospital representative the nature of the child's medical condition(s); the proposed treatment; how the infant's course of treatment was selected; if alternative treatment options were considered; if physicians other than the primary physician participated in the formulation of the treatment plan and/or second opinions from other specialists were obtained; if there was consensus among the treatment providers (nurses, physicians, etc.) with regard to the appropriateness of the treatment; and if the treatment decisions were reviewed by a hospital Infant Care Review Committee or comparable review body.

If, at any point in the course of the investigation, the Investigator encounters difficulties in gaining access to medical information (including a medical examination of the reported infant) or to the designated representative of the hospital, she/he immediately conferences the case with the Supervisor, Area or Regional Director and Department Attorney, if appropriate. The Deputy Commissioner is informed of the status of the case by the Regional Director. The Area or Regional Director attempts to resolve the situation with the hospital. If necessary, a Department Attorney initiates appropriate court action, to gain access to the hospital, medical information, or medical examination of the reported infant.

5. **Contacting Parents.** The Investigator, with the assistance of the hospital representative and/or a member of the hospital's social work staff, interviews the parents of the reported infant. The Investigator seeks to determine whether the parents were fully informed about their child's medical condition, the course of treatment being provided to their child, and the alternative treatments available for their child; whether the parents were afforded an opportunity to obtain a second medical opinion regarding the appropriateness of the course of treatment; and what was the decision made by the parents.
6. **Investigation Report.** In completing the report of the investigation and the investigation decision, the Investigator includes the following information:
 - Infant's Date of Birth

- Weight
 - Gestation Age (length of pregnancy)
 - Physical Condition
 - Anticipated Result of Treatment or Lack of Treatment
 - Diagnosis
 - Prognosis
 - Name of Current Attending Physician
 - Services/Treatment Currently Being Provided
 - Services/Treatment Being Withheld
 - Parental Participation in Decision-Making Regarding Treatment
 - Location of the Infant (hospital, unit, etc.)
 - Name of the Hospital Contact Person
7. **Investigation Disposition.** Upon completing the investigation, the Investigator immediately conferences the case with her/his Supervisor, the Area or Regional Director, and a Department Attorney, if appropriate. Medical consultation should be obtained at this time, if needed. If it is determined that the infant's parents were fully informed of and consented to the treatment being provided to their child and that this treatment is consistent with the definition of "medically indicated treatment", the report is unsupported and, if appropriate, the parents are informed of available Department services. If it is determined that the treatment is not consistent with the definition of "medically indicated treatment," the report is supported and a decision is made as to how to proceed with the case. The parents, the hospital and the mandated reporter are informed immediately of the Department's investigation decision. If necessary, a Department Attorney is contacted in order to seek temporary custody of the infant for the purpose of obtaining medically indicated treatment.

The Investigator notifies the Office of the Deputy Commissioner for Field Operations upon completion of the investigation so the completed report can be reviewed in FamilyNet.

DEFINITIONS

Infant

The term "infant" means an infant less than one year of age. . . [or] an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. [45 CFR § 1340.15(b)(3)(i)]

Medical Neglect

The term "medical neglect" means the failure to provide adequate medical care . . . [including but not limited to] the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. [45 CFR § 1340.15(b)(1)]

Reasonable Medical Judgment

The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved. [45 CFR § 1340.15(b)(3)(ii)]

Withholding of Medically Indicated Treatment

The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply: (i) The infant is chronically and irreversibly comatose; (ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant; or (iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. [45 CFR § 1340.15(b)(2)]