



Congress Steps Up Oversight of the Child Abuse Prevention and Treatment Act *Reuters' investigation about infants exposed prenatally to opioids triggers questions, actions*

March 23rd – Congress is stepping up its oversight into how states implement a key provision of the federal Child Abuse Prevention and Treatment Act (CAPTA). Woven into the existing CAPTA provision and the emerging efforts to improve CAPTA is leadership from Pennsylvania's Congressional delegation (past and present).

2003 CAPTA change led by then PA Congressman Greenwood

In 2003, Congress amended CAPTA to include language spearheaded by former Pennsylvania Congressman James Greenwood.

Greenwood, himself a former children and youth caseworker and state lawmaker, fought for the CAPTA provision reinforcing he was intent on ensuring that substance-exposed infants receive "interventions," including that "social workers can come in and meet with the mother and establish a safe plan of care."¹ As secured by Greenwood (with some update in 2010), CAPTA requires that the governors certify that their state "has in effect and is enforcing a state law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes:

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:

- illegal substance abuse; or
- withdrawal symptoms resulting from prenatal drug exposure, or
- a Fetal Alcohol Spectrum Disorder"

Health care providers involved in the delivery or care of such infants are instructed to notify the child protective services system. CAPTA stipulates, however, that such referral is not to be "construed to" be seen as establishing "a definition under Federal law of what constitutes child abuse or neglect; or require prosecution for any illegal action."

Upon this referral then a plan of safe care is to be developed for the infant.

An exploding epidemic of heroin and prescription opioid abuse along with a rising number of infants born and diagnosed with Neonatal Abstinence Syndrome (NAS), including more than 7,500 infants born onto Medicaid in Pennsylvania between 2010 and 2014, has turned attention toward this long neglected, yet critical, component of CAPTA.

¹ <http://www.gpo.gov/fdsys/pkg/CREC-2002-04-23/pdf/CREC-2002-04-23-pt1-PgH1502-5.pdf#page=1>

Of course credit is due to Reuters for the dramatic spotlight and growing sense of urgency that has materialized since its December 2015 investigative report - [Helpless and Hooked: the most vulnerable victims of America's opioid epidemic](#).

Senator Casey acts to “address the impact of the opioid epidemic on infants”

This month, the [United States Senate Committee on Health, Education, Labor and Pensions \(HELP\)](#) unanimously advanced the Plan of Safe Care Improvement Act (S. 2687).² [United States Senator Bob Casey, Jr. \(D-PA\)](#) introduced the bipartisan legislation, which is co-sponsored by HELP Chairman Lamar Alexander (R-TN). Senators Bennet (D-CO), Collins (R-ME), Hatch (R-UT), and Murray (D-WA) also have co-sponsored S. 2687.³

Casey emphasized that the legislation “will help states address the impact of the opioid epidemic on infants born to women struggling with substance abuse.”

The bill amends the Child Abuse Prevention and Treatment Act (CAPTA) specifically addressing the provisions related to state “policies and procedures” requiring development of a plan of safe care for substance exposed infants.⁴ If enacted, states would have to demonstrate that they have policies and procedures toward the development of a “multidisciplinary plan of safe care for the infant born and identified as being affected by substance abuse or withdrawal symptoms or Fetal Alcohol Spectrum Disorder (FASD).” States will also have to demonstrate how they monitor such plans to:

- “Ensure the safety and well-being of children;
- Address the health treatment, including mental health and substance use disorder treatment, needs of the child, and of the family or affected caregiver, involved; and
- Determine whether and to what extent local authorities are providing referrals to and delivery of appropriate services for the child and family.”

Annually states would also have to track and report on both the universe of infants identified as affected by substance abuse or withdraw symptoms or FASD and how many within this population then “got a plan of safe care.”

Casey’s legislation gives the Secretary of the Department of Health and Human Services (HHS) 90 days to “issue guidance” to states about the requirements of CAPTA and “best practices for the development and implementation of plans of safe care.” The Secretary is to develop this guidance with “input from all appropriate offices” within HHS. Specifically the legislation names the Administration for Children and Families (ACF), The Centers for Medicare and Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), the Substance Abuse and Mental Health Services (SAMHSA) and the National Institutes of Health (NIH). HHS must also gain insight from the Department of Education and make certain that any guidance is “consistent” with existing requirements of the Child Care and Development Block Grant (CCDBG) reauthorized in 2014.

Earlier in March, Senator Casey outreached to the Government Accountability Office (GAO) to request that they aid Congress in understanding the degree to which states have been able to comply (or not) with the existing CAPTA provisions about the referral of substance-exposed infants to child protection agencies (specified in federal law that this is not a child abuse report) and the plan of safe care provisions.

² <http://www.help.senate.gov/hearings/s-2680-s1455-s2256-s480-and-s2687>

³ <https://www.congress.gov/bill/114th-congress/senate-bill/2687/cosponsors>

⁴ <https://www.congress.gov/bill/114th-congress/senate-bill/2687>

Casey said that his legislation is required to respond to “a sad and tragic reality” facing America further noting that “every 19 minutes a child is born dependent to opioids.” He reminded his colleagues that since 2003 CAPTA has had a provision requiring a plan of safe care for substance-exposed infants (a provision secured by retired Pennsylvania Congressman James Greenwood). He noted that this CAPTA provision “unfortunately hasn’t worked out really well.”

Casey spotlighted the investigative work of Reuters ([Helpless and Hooked: the most vulnerable victims of America’s opioid epidemic](#)) released in December 2015. Casey said the Reuters investigation “highlighted in detail” that the CAPTA provision is “failing to protect vulnerable babies.” He continued, “We must insist on greater accountability and clarity in the law and help states protect these vulnerable infants.”

Pennsylvania advocates responded to the Reuters Investigation urging the PA Congressional delegation to initiate “Congressional action and oversight.” Read the call to action at <http://www.c4cj.org/files/ToomeyPlansofSafeCareltr.pdf>.

Senator Casey concluded his remarks at the March 16th HELP Committee markup with a pitch to have any policies advanced by Congress occur alongside of correlating funding. “In addition to these policy changes we must assure we are providing sufficient funds to support states in this effort and we should examine carefully what resources are needed.”

U.S. House Committee joined by Barletta and Thompson strive “to strengthen efforts to prevent and respond to child abuse and neglect”

Meanwhile the United States House of Representatives has also been increasing its oversight of CAPTA culminating in the introduction of the Improving Safe Care for the Prevention of Infant Abuse and Neglect Act (H.R.4843) on March 23rd.

Pennsylvania Congressman Lou Barletta sponsored the legislation and, upon its introduction, said “We see the damage of substance abuse across all segments of our society, but perhaps the most tragic cases involve newborns who enter the world defenseless against the addiction they were born with.”

Leading up to the introduction of H.R. 4843, On March 15th, [Health and Human Services \(HHS\) Secretary Sylvia Mathews Burwell](#) testified before the U.S. House of Representatives Committee on Education and the Workforce addressing HHS’ responsibilities and policies. Pennsylvania Congressmen [Lou Barletta](#) and [Glenn “GT” Thompson](#) serve on the Committee with oversight of CAPTA.

[Chairman John Kline \(R-MN\)](#) opened the hearing reflecting on the scope of the work and impact of HHS. “From welfare and health care to early childhood development and support services for older Americans, the policies your department oversees affect the lives of millions of Americans.”⁵ The Chairman turned his attention early to CAPTA citing it as the federal law that “provides states with resources to improve their child protective services systems – if they make a number of assurances concerning their child welfare policies.”

He then reiterated concerns he raised earlier this year in a letter to Burwell. In that letter the Chairman joined by the Chair of the Subcommittee on Early Childhood, Elementary and Secondary Education set forth five specific questions they wanted answered.⁶ Policy makers were hoping to understand the review process undertaken by HHS when states submit their CAPTA plans and then what, if any, process HHS takes to ensure that states are “meeting the basic requirements of CAPTA.”

⁵ <http://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=400402>

⁶ http://edworkforce.house.gov/uploadedfiles/01-15-16_hhs_capta_letter.pdf

In that January letter, Kline wrote to Burwell that states “are making these assurances without putting the necessary policies in place. Yet, not a single state is being denied federal funds.” He also stipulated that the “current system is failing some of our country’s most vulnerable children and families, and something has to change.”

On March 15th Kline kept up the pressure on HHS and Burwell. That exchange is captured below⁷:

Chairman John Kline (R-MN): We are concerned about the recent Reuters investigation about the abuse and neglect of children born into families battling addiction. There is a law CAPTA that falls under your jurisdiction. We sent a letter and the department responded. Clearly, it seems to me, we still have a problem out there. Congress has taken steps to streamline the application process, but the application still goes through the Children’s Bureau at the Department of HHS where they review states applications and sign off that it is adequate before federal funds are dispersed. I know you have looked at this do you feel that within the law the department is doing everything it can to ensure states are upholding the law or is there more that could or should be done.

Health and Human Services Secretary Sylvia Mathews Burwell: When these issues were raised in Reuters articles we have gone and followed up on the examples that were raised. And right now the state of South Carolina is being put on a performance improvement plan, specific actions are being taken because we have found there is wrongdoing. That is when things are brought to our attention. As part of this process of review we have also put in place a different process to review what the states are saying, when they say they have a plan in this next year’s round we will be asking for more details of those plans. So we can understand that the states actually have something that is a workable plan. We have taken steps where we understand something is wrong and then get in front of it by making sure we do a different process with regard to review of the plan. It will be an important part of the Administration of Children and Families (ACF) as we review their budget.

Kline: That is a change to the practice.

Burwell: It is a change.

Kline: We will be watching with interest. It does seem to us that there needed to be a way for the department to confirm that the states are doing what they are supposed to be doing without waiting for someone to come and complain.

Burwell: Which is why we have taken that step to do it in a more proactive fashion with the proposal so we will look forward to the Committee’s support for ACF as part of the budget process so we can enforce and do what the Committee is rightfully raising.

Burwell’s reference to South Carolina invites a return to the Reuters investigative work – [Helpless and Hooked: the most vulnerable victims of America’s opioid epidemic](#).⁸ Reuters’ reporter Duff Wilson pursued the fact that some states have enacted state laws that outline specific situations where a health care provider is not required to make a report to a child protection agency toward the development of a plan of safe care.⁹

⁷ https://www.youtube.com/watch?v=_cSheeTeUpY

⁸ <http://www.reuters.com/investigates/special-report/baby-opioids/>

⁹ As social services stand back, a mother and her baby fall ‘through the canyon into hell’ by Duff Wilson, Reuters published December 7, 2015. Retrieved at <http://www.reuters.com/investigates/special-report/baby-opioids/>.

Wilson reported on the death of a 6-month-old infant born in 2011. The infant, according to Wilson, “spent two weeks suffering through withdrawal, a result of the methadone Frazier took during pregnancy to control an addiction to prescription painkillers.” Hospital personnel reported the infant to child protection officials. Reuters reported that the county child protection agency in South Carolina receiving the report informed the hospital social worker the agency “will not be following up with the infant.” Wilson explained the reason behind the lack of action on the report was linked to South Carolina having “a state law that conflicts with the federal provisions. It says that child protection authorities don’t have to investigate cases of drug-dependent newborns if their mothers were using drugs prescribed by a doctor. Frazier had a prescription for methadone.”¹⁰ The infant died when she was 6-months-old after her mother “mistakenly” gave her a “lethal dose of methadone.”¹¹

In 2015, Pennsylvania enacted a state law similar to South Carolina’s practice. PA law now waives the CAPTA reporting and plan of safe care provisions for certain substance-exposed infants (see the chart below, the bolded text reflects the 2015 law change).

<p style="text-align: center;">Federal Law¹² <i>Child Abuse Prevention and Treatment Act (CAPTA)</i></p>	<p style="text-align: center;">Pennsylvania Law¹³ <i>(Enacted in 2006 updated by Acts 4 of 2014 and 15 of 2015)</i></p>
<p>The Governor must certify that the state “has in effect and is enforcing a state law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes:”</p> <p>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:</p> <ul style="list-style-type: none"> • illegal substance abuse; or • withdrawal symptoms resulting from prenatal drug exposure, or • a Fetal Alcohol Spectrum Disorder <p>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 in such infants, except that such notification shall not be construed to—</p> <ul style="list-style-type: none"> • establish a definition under Federal law of what constitutes child abuse or neglect; or • require prosecution for any illegal action; <p>(iii) the development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder;</p>	<p>§ 6386. Mandatory reporting of children under one year of age.</p> <p>(a) When report to be made.--A health care provider shall immediately make a report or cause a report to be made to the appropriate county agency if the provider is involved in the delivery or care of a child under one year of age who is born and identified as being affected by any of the following:</p> <p>(1) Illegal substance abuse by the child's mother.</p> <p>(2) Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:</p> <ul style="list-style-type: none"> A. under the care of a prescribing medical professional; and B. in compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional. <p>(3) A Fetal Alcohol Spectrum Disorder.</p>

¹⁰ Ibid.

¹¹ Ibid.

¹² 42 U.S. Code § 5106(b)(2)(B)(ii) and (iii) - Grants to States for child abuse or neglect prevention and treatment programs

¹³ <http://www.legis.state.pa.us/WU01/LI/LI/CT/PDF/23/23.PDF>

The July 2015 Pennsylvania law change (affecting #2 above)¹⁴ placed into statute the provisions of a 2007 Bulletin issued by the Office of Children, Youth and Families within the Pennsylvania Department of Human Services (DHS). With the 2015 state law change then, health care providers are not required to make a report if the infant's prenatal drug exposure results from the mother taking a legally prescribed drug that the mother used, as directed, to by a medical professional.

This 2015 amendment carried forward the intent from the 2007 Bulletin that stated: "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."

Featured in the December Reuters investigative reporting was the 2014 death of 6-week-old Brayden Cummings in Carbon County, Pennsylvania. His mother, just 20 years old and an individual well known to many systems (e.g., child welfare, courts, probation, health care, drug treatment), is now in prison serving time for the death of her only child. Brayden died in the Congressional District represented by Barletta.

Reuters investigative piece also examined how Pennsylvania has responded to CAPTA, including the 2015 amendment of state law waiving the reporting requirement and development of a plan of safe care for certain substance-exposed infants. After reviewing Pennsylvania law and talking to health care providers, Reuters' Duff Wilson wrote, "Pennsylvania's safety net for the babies of the opioid epidemic is now weaker than it was when Brayden Cummings died."

In a March 7th letter to Chairman Kline, HHS' Assistant Secretary for Legislation, Jim Esquea, wrote that HHS agreed with the Chairman and Committee members that "child protection services and child welfare agencies must serve the best interests of all vulnerable children and mothers." The Assistant Secretary reminded that states qualify for a share of CAPTA formula funds (\$25.3 million in fiscal year 2015) by submitting a state plan to HHS signed by the Governor in each state who "certifies through a signed assurance accompanying the statement plan that the state meets all of the CAPTA requirements, including having in place over 50 specific child welfare policies and practices." If HHS is "notified about a deficiency" identifying that a state plan (and assurances) do not line up with policies and practices, then HHS can require the state "to take corrective action through a Program Improvement Plan within a specified timeframe."

HHS' March 7th letter indicates that beyond South Carolina, HHS has become aware of "concerns that some states' practices may not be in compliance with their state plans." HHS had decided to require then that "all state child welfare agencies provide full descriptions of their policies, practices and procedures related to their plans of safe care for substance-exposed infants within their 2016 Annual Progress and Service Reports (ASPRs)," which are due in June 2016.

HHS indicates that "targeted technical assistance" will be offered to states with "higher than average increases in parental substance abuse rates over the course of the last 5 years."

Finally, HHS concludes that they welcome opportunities to work with Congress "to identify ongoing investments that will provide treatment and other family strengthening services for mothers and infants affected by substance addiction."

¹⁴ House Bill 1276 was signed by Governor Tom Wolf on July 1, 2015 becoming Act 15 of 2015 retrieved at <http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2015&sInd=0&body=H&type=B&bn=1276>