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Plans of Safe Care for Infants

A timeline of this provision within the Child Abuse Prevention and Treatment Act (CAPTA)

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August 2, 2001

"CAPTA: Successes and Failures at Preventing Child Abuse and Neglect" Select Education Subcommittee of the Committee on Education and the Workforce hearing [1]

Congressman James Greenwood spoke of his experience as a child welfare caseworker. He noted that this direct experience aided in his understanding of the heightened risks associated with infants born to mothers who were addicted to drugs or alcohol. Greenwood cited the "predictability," from his own experiences, that after Medicaid was utilized to bring an infant into "good health," the infant impacted by prenatal drug and alcohol exposure would then be discharged from the hospital with the mother and the likelihood was that this infant "was not going to fare very well."

He spoke of his attempts, as a state legislator in Pennsylvania, to pass legislation "that would say when a child was born in a hospital with neonatal abstinence syndrome (NAS), the presence of a controlled substance, the mother was an alcoholic, fetal alcohol syndrome, that would in and of itself require the intervention of a caseworker at the hospital." In these situations, he had hoped to have the health care provider "mandated to report this, and that a caseworker would have to be brought in, to make a safe plan of care." He noted that these actions were not intended to stipulate that the child was abused or should be determined to be dependent by the courts. Instead it was an attempt to understand where the mother and infant were living (e.g., in a car, in an abandoned house) and whether the mother had access to and was participating in treatment.

He noted that his attempts never were successful, because questions would arise as to whether the effort and legislation were "anti-women" or would disproportionately affect minority populations.

Then Assistant Secretary for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) Wade Horn spoke of a willingness to work with Greenwood on this issue.

Throughout the hearing, Horn also addressed that a "primary driver" of child abuse and neglect is substance abuse. He cited how too often "we act as if there is this system for this problem and that system for another problem, and a third system for a

[1] http://www.gpo.gov/fdsys/pkg/CHRG-107hhrg80038/pdf/CHRG-107hhrg80038.pdf

third problem." He assured that he and then Secretary Thompson were very committed to "better coordination between those programs that deal with substance abuse…..particularly child abuse and neglect."

Congresswoman McCollum welcomed Horn's remarks and said she hoped to learn more about the federal government's role in substance abuse and mental health toward identifying "where the gap is." She asked for further understanding of the "shortcomings" in coordinating key services and programs not only at a federal level, but also within states, counties and the non-profit sector.

March 5, 2002 **H.R. 3839 (Keeping Children and Families safe Act of 2002) introduced**

April 11, 2002 **The Committee on Education and the Workforce favorably reported an amended H.R. 3829 and released Report 107-403[2].**

The Committee Report references that Congressman Greenwood offered an amendment in the Subcommittee to address concerns about "how to protect and deal with infants born and identified with fetal alcohol effects, fetal alcohol syndrome, neonatal intoxication or withdrawal syndrome, or neonatal physical or neurological harm resulting from prenatal drug exposure." It continues that the Congressman's experience as a former caseworker and state legislator has resulted in him spending "countless hours looking for ways to assure proper treatment for infants who have been harmed by alcohol and/or other drug exposure in utero."

The report references the 2001 subcommittee hearing in 2001 and the subsequent action on H.R. 3839 and the consistent effort of Congressman Greenwood "to require that states have some sort of reporting requirements to child protective services for when infants are born addicted to drugs or alcohol" and the importance of "requiring the child protective services agency to develop a safe plan of care for the infant." The report indicated that, at that time, "only 12 states and the District of Columbia have some form of specific reporting criteria and procedures related to drug-exposed infants."

The House Committee Report also cited a series in the Washington Post in the fall of 2001 (*'Protected' Children Died as Government Did Little*)[3] revealing that several infants "born addicted to drugs or alcohol in the District of Columbia who died from lack of care by the mother or supervision from the city's child protective services agency – even when the agency was aware of the child's and family's fragile condition."

The Washington Post series addressed the deaths of 11 "drug-exposed or medically frail newborns" that had died between 1993 and 2000.[4] It was noted that these infants "were released to parents whose troubles were well documented by hospitals and social workers." The series continued, "The babies got lost in a system where no one assumes direct responsibility for them. Vague legal definitions and poor communication among caregivers hamstring those who would like to help, according to a review of case files and dozens of interviews conducted by The Post."

[2] http://www.gpo.gov/fdsys/pkg/CRPT-107hrpt403/pdf/CRPT-107hrpt403.pdf
[3] http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062901407.html
[4] http://www.washingtonpost.com/wp-dyn/content/article/2007/07/02/AR2007070200951.html?sid=ST2008092602295

The Post's reporting also included reference to the "frustration" of hospital employees who have routinely notified child protective services about these infants only to be told that CPS "cannot act on simply drug-exposed babies without any other concerns."

The series underscored the challenge: "Social workers, doctors and city lawyers disagree about how deeply the government should intervene in these cases. The debate pits those who believe that mothers and children should be separated only as a last resort against others who argue that the government needs to do more to protect children from unsafe homes."

Congressman Greenwood was able to insert an amendment during the Subcommittee process that was then "slightly" amended before the Full Committee sent the bill to the full House.[5]

"(ii) policies and procedures to address the needs of infants born and identified with fetal alcohol effects, fetal alcohol syndrome, neonatal intoxication or withdrawal syndrome, or neonatal physical or neurological harm resulting from prenatal drug exposure, including—
"(I) the 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 create a definition under Federal law of what constitutes child abuse and such notification shall not be construed to require prosecution for any illegal action; and
"(II) the development of a safe plan of care for the infant under which consideration may be given to providing the mother with health services (including mental health services), social services, parenting services, and substance abuse prevention and treatment counseling and to providing the infant with referral to the statewide early intervention program funded under part C of the Individuals with Disabilities Education Act for an evaluation for the need for services provided under part C of such Act;"

April 23, 2002 **H.R. 3839 passed the U.S. House of Representatives 411 to 5.**

During the debate on H.R. 3839[6], Congressman Hoekstra praised Congressman Greenwood "for his diligence in ensuring that infants born addicted to alcohol or drugs receive the necessary services the need."

Congressman George Miller noted the "expertise and commitment to the prevention of child abuse" exhibited by Greenwood.

Congressman Roemer spoke of the bill as being one of "balance" and "linkages" and "middle ground." Among the areas of "middle ground" was the amendment offered by Greenwood "to identify children that are born drug exposed and to get them the help they deserve."

Congressman Greenwood spoke of his bipartisan amendment saying he thought it tackled one of the "most critical area that needs treatment in the prevention of child abuse." He continued, "Today, children are born all over this country to mothers who have substance abuse problems. Their mothers are alcoholic or their mothers are drug addicts. These babies are born in hospitals, they are frequently underweight, and they are frequently frail. Much money and effort is devoted to bringing them to health. These children do not meet any definition of child abuse, and probably they

[5] http://www.gpo.gov/fdsys/pkg/BILLS-107hr3839rh/pdf/BILLS-107hr3839rh.pdf
[6] http://www.gpo.gov/fdsys/pkg/CREC-2002-04-23/pdf/CREC-2002-04-23-pt1-PgH1502-5.pdf#page=1

should not, but what happens is they are sent home from hospitals every day in this country and it is only a matter of time in so many instances until they return back to the hospital abused, bruised, beaten, and sometimes deceased. That is because we have not developed a system in this country to identify these children and intervene in their lives."

He reinforced his effort was aimed at ensuring that these infants receive "interventions," including that "social workers can come in and meet with the mother and establish a safe plan of care." In situations where the infant can safely go home with the child's mother it was envisioned that "they will have visiting nurses and hopefully substance abuse treatment and all of the rest." And in situations where the mother is "refusing or unable or unwilling to get help to protect her child, to mother properly, to parent properly, where the home situation is just too chaotic and too violent for the child to be safe, then there can be intervention and the child can be placed in foster care."

Congressman Tom Delay cited Greenwood's amendment as a "critical provision" requiring "states to develop policies and procedures to inform state child protective workers when an infant is born addicted to drugs." He noted that these infants are often premature and then struggle to thrive and have feeding problems. Without notice to the child protection system these infants are "in serious danger." He continued, "In far too many cases, addicted babies go home to die." He concluded, "The bill we will pass today sends a clear message to the States: Drug addicted newborns must be protected" as he cited "a troubling lack of attention" to existing state laws the "babies they are designed to protect."

January 7, 2003 **H.R. 14 (Keeping Children and Families Safe Act of 2003) introduced**

The 108th Congress convened in January 2003. Congressman Peter Hoekstra reintroduced the legislation, including the Greenwood language about a Safe Plan of Care for infants is introduced.[7]

February 11, 2003 **S. 342 (Keeping Children and Families Safe Act of 2003) introduced**

As introduced, S. 342 linked CAPTA eligibility to a state having "policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure." It also required the development of a plan of safe care for the infant "born and identified as being affected by illegal substance abuse or withdrawal symptoms.''

March 4, 2003 **Senate Committee on Health, Education, Labor and Pensions advanced S. 342 to the full Senate and released report 108-12.[8]**

In its report (108-12), the Senate HELP Committee noted the legislation being advanced included a "requirement" that states "have in place policies and procedures (including appropriate referrals to CPS systems and for other appropriate services) to address the needs of infants born and identified with illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure."

The Committee noted that it "believes" that any infant "who is experiencing symptoms or showing signs of addiction to or withdrawal from drugs should, at a

[7] http://www.gpo.gov/fdsys/pkg/BILLS-108hr14ih/pdf/BILLS-108hr14ih.pdf
[8] http://www.gpo.gov/fdsys/pkg/CRPT-108srpt12/pdf/CRPT-108srpt12.pdf

minimum, receive prompt and appropriate medical care and a referral to child protective services for further investigation and intervention, where warranted."

The Committee addressed that it "felt constrained" in how best to address "prenatal exposure to alcohol" in the legislation because "of limited ability to detect and diagnose it at birth." It concluded, however, "The committee remains concerned about the effects of alcohol on infants and possible later diagnosis of fetal alcohol syndrome."

March 6, 2003 **U.S. Committee on Education and the Workforce advanced H.R. 14 to the full House and released Report 108-26**[9]

The Committee's report assured that the Greenwood language, as adopted by the U.S. House of Representatives in 2002, was included in H.R. 14. The Report underscored the goal of the included language "is to identify infants at risk of child abuse and neglect so appropriate services can be delivered to the infant and mother to provide for the safety of the child" and that it "only requires states to have policies and procedures in place to address a plan of safe care for the infant."

March 26, 2003 **U.S. House debates and advances H.R. 14**

During the debate, Congressman Greenwood's efforts are acknowledged by Congressman Hoekstra. Greenwood's "diligence for ensuring the infants born addicted to alcohol or drugs receive necessary service" is cited by Hoekstra.[10]

Congressman Greenwood talks about prevention during his floor remarks. He spoke of the "precursors to child abuse" and opportunities to "intervene before" child abuse occurs with many experts underscoring "that substance abuse is a great predictor of child abuse." He addressed that the opportunity for intervention "is best found when a child is born." He continued, "When a child is born in a hospital and it suffers from fetal alcohol syndrome, if it is clear that the mother is addicted to drugs because either she is showing the signs or the child is in neonatal abstinence syndrome, which means they are coming off of drugs at the time of birth, if we can see the systemic presence of a substance, a controlled substance in a child, if it has done neurological damage to a child, we know right there and then at that moment of birth of this child that if something does not happen there is an extraordinarily high chance that that child, after its neurological conditions, its physiological conditions are healed in the hospital, will then return home to a situation in which it is incredibly likely to be abused."

He acknowledged that, as the law stood, there was "no legal way to intervene." He discussed attempts, on a state and federal level, to address the issue and the challenges that arise. Addressing the situation as a "child abuse case" proves "problematic, because we do not want to necessarily prosecute the woman for child abuse because she has a substance abuse problem." The Congressman continued that this approach may well also serve to "drive her away" from medical care and delivering the baby in a hospital.

Greenwood further outlined his vision and intention with his language noting that a call from a medical official to the child protection system invites an "opportunity to get help." He saw this opportunity as one to engage both mother and father discussing the opportunity "to receive nursing care at your home, in-home nurses" or

[9] http://www.gpo.gov/fdsys/pkg/CRPT-108hrpt26/pdf/CRPT-108hrpt26.pdf

[10] http://www.gpo.gov/fdsys/pkg/CREC-2003-03-26/pdf/CREC-2003-03-26-pt1-PgH2345-2.pdf#page=1

for the parent(s) "to get treatment" for drug abuse. He continued that in this moment of time professionals can work with the parent(s) to "bring to bear a whole host of intervention services" so that the child is not put at-risk. If the parent(s) did refuse services then such refusal might prove a "trigger for the caseworkers to take that case to court and seek custody of the child and provide protective custody."[11]

April 3, 2003 **Conference Committee appointed to resolve the House and Senate differences on Keeping Children and Families Safe Act of 2003**

May 22, 2003 **Conferees filed a Conference Report on S. 342 (108-150).** [12]

Conferees agreed to include the following language in the final S. 342:
''(ii) policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, 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 establish a definition under Federal law of what constitutes child abuse; or require prosecution for any illegal action."

Also included was a requirement that state eligibility for CAPTA be linked to "the development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms."

The Report of the Conferees noted that the U.S. House and Senate had taken different approaches to these infants.

The House included infants "born with fetal alcohol effects, fetal alcohol syndrome, neonatal intoxication or withdrawal syndrome, or neonatal physical or neurological harm resulting from prenatal drug exposure." The House also required notification to child protective services and permitted "consideration of providing the mother with additional services, and providing the infant with referral to IDEA, Part C services for evaluation."

The Senate, meanwhile, limited required procedures for infants "born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure."

Ultimately the Senate's approach was generally adopted with some "modification" in that health care providers "involved in the delivery or care of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms notify child protective services of the occurrence of such condition in such infants."

June 17, 2003 **U.S. House of Representatives agreed to the Conference Report 421 to 3.**

June 19, 2003 **U.S. Senate agreed to the Conference Report by unanimous consent.**

June 25, 2003 **S. 342 became Public Law No: 108-36.**

[11] http://www.gpo.gov/fdsys/pkg/CREC-2003-03-26/pdf/CREC-2003-03-26-pt1-PgH2345-2.pdf#page=1
[12] http://www.gpo.gov/fdsys/pkg/CRPT-108hrpt150/pdf/CRPT-108hrpt150.pdf

December 20, 2010 **S.3817 (CAPTA Reauthorization Act of 2010) becomes PL No: 111-320.**[13]
CAPTA reauthorization in 2010 amended the earlier provisions about infants born "affected by illegal substance or withdrawal symptoms resulting from prenatal drug exposure" to also now include "or a Fetal Alcohol Spectrum Disorder." The existing CAPTA provisions around a Plan of Safe Care for the infant were also amended to include infants affected by Fetal Alcohol Spectrum Disorder.

August 2011 **National stakeholders meet and unveil "Points of Agreement" related to the 2010 CAPTA provisions**
Identified as among the areas of most concern to the group was "the referral of drug or alcohol-affected newborns to child welfare agencies, with alcohol exposure and a reference to Fetal Alcohol Spectrum Disorders (FASD) included for the first time."

The group offered a number of recommendations including:

- "We urge HHS (including SAMHSA, MCHB, ACF and others) and the US Department of Education to work together to provide financial incentives and formal guidance in the form of a Program Instruction to states to enhance effective implementation of these requirements, including development of a model for the Plan of Safe Care that states are required by the CAPTA legislation to develop in every referred case.
- We recommend that states provide evidence-based training to personnel across multiple domains, agencies, and disciplines to educate them on issues related to prenatal alcohol exposure and the diagnosis of fetal alcohol syndrome and the broad spectrum of associated disorders that fall within FASD. Recognizing that there are no guidelines for diagnosing Alcohol Related Neurodevelopmental Disorder (ARND) within the newborn or early infancy period, we urge the development of such guidelines.
- Following birth, we urge developmentally appropriate screening of all newborns, infants and young children. This screening should take place as a component of primary care, ideally as part of a medical home. For infants and children in foster care, this should be consistent with the Fostering Connection's Act's promotion of the medical home concept. Such screening should also be coordinated with other screening requirements, including EPSDT and Early Head Start.
- We urge states to implement policies, including full utilization of Medicaid reimbursement, that ensure pregnant women receive information about the harm of alcohol use in pregnancy and that provide for universal screening of pregnant women utilizing evidence-based instruments and priority access to substance abuse treatment for pregnant and parenting women. Insurance carriers should be urged to include prenatal substance use education and counseling as a covered benefit in all prenatal packages."

[13] http://thomas.loc.gov/cgi-bin/bdquery/z?d111:S.3817