

CHILDREN AND FAMILIES

HEALTH

CHILD PROTECTION AND PERMANENCY

HEALTH SYSTEMS BRANCH

CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE PROGRAM

Substance Affected Infants

Proposed New Rules: N.J.A.C. 3A:26

Proposed Amendments: N.J.A.C. 8:43A-1.3 and 28.7 and 8:43G-1.2 and 2.13

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner, Department of

Children and Families, and

Cathleen D. Bennett, Commissioner, Department of Health, with the approval of the Health
Care Administration Board.

Authority: N.J.S.A. 9:3A-7f, 9:6-8.15, and 30:4C-4(h).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-142.

Submit written comments by October 20, 2017, to:

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Department of Children and Families

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The agency proposal follows:

Summary

The Department of Children and Families proposes new N.J.A.C. 3A:26, Substance Affected Infants, and the Department of Health proposes amendments to effectuate the proposed new rules by the Department of Children and Families.

As both Departments have provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The intent of these proposed new rules and amendments is to ensure New Jersey's compliance with the requirement in the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. §§ 5101 et seq.) that states have a system by which healthcare providers must report to child protective services all infants born and identified as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a fetal alcohol spectrum disorder.

The Department of Children and Families is proposing a new rules to specify the content and process by which hospitals and birthing centers shall make reports to the Division of Child Protection and Permanency of the birth of infants whose mother had a positive toxicology screen for a controlled substance or metabolite thereof during pregnancy or at the time of delivery; who have a positive toxicology screen for a controlled substance after birth that is reasonably attributable to maternal substance use during pregnancy; who display the effects of prenatal controlled substance exposure or symptoms of withdrawal resulting from prenatal controlled substance exposure; or who display the effects of a fetal alcohol spectrum disorder (FASD).

The provisions of this rulemaking would also specify that all reports received under it are to be treated as confidential records in accordance with N.J.S.A. 9:6-8.10a.

The Department of Health is proposing supportive amendments at N.J.A.C. 8:43A-28.7, Birth Centers, and 8:43G-2.13, Hospital Licensing Standards, to require that facilities subject to licensure under those two chapters implement policies requiring that reports of substance affected infants be made in accordance with the newly proposed N.J.A.C. 3A:26.

Social Impact

The Department anticipates a positive social impact of the proposed new rules and amendments, which will provide clear guidance to hospitals and birthing centers regarding obligations to report particular forms of harm to infants.

Economic Impact

The proposed new rules and amendments will not have a discernible economic impact on the facilities. Policies will need to be implemented requiring some additional reporting to the Division of Child Protection and Permanency, but it is not anticipated that such will result in any more than negligible costs to regulated facilities. Many facilities are believed to be making such reports in accordance with N.J.S.A. 9:6-8.10 already.

The Department received \$3,193,243 for Fiscal Year 2017 through the Federal Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101 et seq., under the CAPTA basic appropriation, CAPTA community-based appropriation, and the Children's Justice Act appropriation. These rules maintain the Department's compliance with 42 U.S.C. § 5106a(b)(2)(B)(ii) by requiring that health care providers notify the child protective services system of substance affected infants.

Federal Standards Statement

The Child Abuse Prevention and Treatment Act (42 U.S.C. §§ 5101 et seq.) requires that the health care provider must notify child protective services of infants born and identified as

affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a fetal alcohol spectrum disorder, and that states have systems in place for the facilitation of these reports. The proposed new rules and amendments would ensure New Jersey's compliance with this requirement.

Jobs Impact

The Division anticipates that the proposed new rules and amendments will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The proposed new rules and amendments have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Hospitals and birthing centers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the proposed new rules and amendments impose reporting, recordkeeping, and other compliance requirements on these agencies, a regulatory flexibility analysis is required.

These small businesses are not exempt from these requirements because they are necessary to protect the health, safety, and welfare of infants born substance affected. No capital expenditures are imposed by the proposed new rules and amendments.

Housing Affordability Impact Analysis

The proposed new rules and amendments have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules and amendments would evoke a change in the average costs associated with housing because the proposed new rules and amendments pertain to hospitals and birthing centers reporting the birth of substance affected infants to the Division of Child Protection and Permanency.

Smart Growth Development Impact Analysis

The proposed new rules and amendments have no impact on smart growth and there is an extreme unlikelihood that the proposed new rules and amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules and amendments pertain to hospitals and birthing centers reporting the birth of substance affected infants to the Division of Child Protection and Permanency.

Full text of the proposal follows (additions indicated boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 26

SUBSTANCE AFFECTED INFANTS

SUBCHAPTER 1. REPORTS OF SUBSTANCE AFFECTED INFANTS

3A:26-1.1 Reports of substance affected infants

(a) **The Division of Child Protection and Permanency shall receive reports of substance affected infants from ambulatory care facilities licensed under N.J.A.C. 8:43A and hospitals licensed under N.J.A.C. 8:43G.**

(b) **Upon receipt of a report pursuant to (a) above, the Division shall first determine if such report is an allegation of child abuse or neglect pursuant to N.J.S.A. 9:6-1 et seq., and if a determination that a report is an allegation of child abuse or neglect, respond in accordance with applicable law, including N.J.A.C. 3A:10.**

(c) **For reports made pursuant to (a) above that are not determined to be allegations of child abuse or neglect, the Division shall take steps to provide services to substance**

affected infants and parents of substance affected infants on a voluntary basis for the purpose of ensuring that opportunity is given to implement a plan to ensure the safety of that infant.

(d) All reports made pursuant to this chapter shall be considered child abuse investigative records and treated as confidential pursuant to N.J.S.A. 9:6-8.10a.

3A:26-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Division” means the Division of Child Protection and Permanency in the Department of Children and Families.

“Substance affected infant” means an infant: whose mother had a positive toxicology screen for a controlled substance or metabolite thereof during pregnancy or at the time of delivery; who has a positive toxicology screen for a controlled substance after birth that is reasonably attributable to maternal substance use during pregnancy; who displays the effects of prenatal controlled substance exposure or symptoms of withdrawal resulting from prenatal controlled substance exposure; or who displays the effects of a fetal alcohol spectrum disorder (FASD).

3A:26-1.3 Content of reports

(a) Reports made pursuant to N.J.A.C. 3A:26-1.1 must include the following information:

- 1. The name of the substance affected infant, if known;**

2. **The names of the substance affected infant’s mother and father, if known;**
3. **The home address of the substance affected infant’s mother and father, if known;**
4. **Information on the types of substances affecting the substance affected infant, and any harm caused to the child as a result; and**
5. **Information on circumstances known to the reporter that would impact upon an evaluation of the situation, including, but not limited to, awareness of medications prescribed to the mother of the substance affected infant.**

CHAPTER 43A

MANUAL OF STANDARDS FOR LICENSING OF AMBULATORY CARE FACILITIES

8:43A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Substance affected infant” means the term as defined at N.J.A.C. 3A:26-1.2.

...

SUBCHAPTER 28. BIRTH CENTERS

8:43A-28.7 Additional policies and procedures

(a) - (d) (No change.)

(e) The birth center shall establish and implement written policies and procedures for the reporting of suspected child abuse or neglect to the Division of Child Protection and Permanency in compliance with N.J.S.A. 9:6-1 et seq.

(f) The birth center shall establish and implement written policies and procedures for the reporting of all substance affected infants to the Division of Child Protection and Permanency in accordance with N.J.A.C. 3A:26.

CHAPTER 43G

HOSPITAL LICENSING STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

8:43G-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Substance affected infant” means the term as defined at N.J.A.C. 3A:26-1.2.

...

SUBCHAPTER 2. LICENSURE PROCEDURE

8:43G-2.13 Child abuse and neglect **and substance affected infants**

(a) The facility shall establish and implement written policies and procedures, reviewed by the Department and revised as required by the Department, for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq., **and for reporting substance affected infants in accordance with N.J.A.C. 3A:26.**

(b) The facility shall have in effect written policies and procedures reviewed by the Department and revised as required by the Department to include, but not be limited to, the following:

1. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect on a 24-hour basis, recording the notification to the Division of [Youth and Family Services] **Child Protection and Permanency** on the medical record, and serving as a liaison between the facility and the Division of [Youth and Family Services] **Child Protection and Permanency**;

2. (No change.)

3. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis.

[Note: Copies of N.J.S.A. 9:6-1 et seq. can be obtained from the local district office of the Division of Youth and Family Services or from the Office of Program Support, Division of Youth and Family Services, Trenton, New Jersey 08625.]