

	Department of Human Services CHILDREN, ADULTS & FAMILIES	NUMBER: I-B.2.2.2 OAR: 413-020-0600 thru 0650
	CLIENT SERVICES INDEX	SECTION: B. Case Management
	ISSUED BY: Office of Safety and Permanency for Children FINAL: 1-02-96	SUBSECTION: 2. Eligibility for Services 2. Assessment
SUBJECT: 2. Investigation of Suspected Medical Neglect – OAR		

REFERENCES:

PL98-457

PURPOSE

413-020-0600 (1) The purpose of these rules is to comply with Public Law 98-457, which requires that procedures be established within Oregon’s Child Protective Services (hereafter referred to as CPS) program to respond to reports of suspected medical neglect, including reports of withholding medically indicated treatment for disabled infants with life-threatening conditions. The regulations indicate that the focus of the State Office for Services to Children and Families’ CPS work will be, “as it is in responding to other reports of child abuse and neglect, to protect the child and assist the family.” Hospitals are encouraged to form review committees to assist with medical and ethical dilemmas arising in the care of disabled infants with life-threatening conditions.

Due to the sensitive nature of these cases and the specialized skills required to complete the investigations, the State Office for Services to Children and Families (hereafter referred to as SOSCF) will designate a SOSCF staff person in each of the three cities having tertiary care centers (Portland, Eugene, and Medford) to be a specialist in Medical Neglect investigations. These Medical Neglect Investigators, along with the CPS program manager, will be available to provide telephone consultation and investigations or reports alleging medical neglect of handicapped infants with life-threatening conditions. The Medical Neglect Investigators will form a special investigation “Team” with a Designated Consultant Neonatologist and a local CPS caseworker.

(2) The federal regulations emphasize that parents are the decision makers concerning treatment for their disabled infant based on advice and reasonable medical judgment of their physician(s) with advice from the Hospital Review Committee, if one exists. It is not the State Office for Services to Children and Families nor the HRC, nor any other committee, who makes decisions regarding the care and treatment for a child

except in highly unusual circumstances where the course treatment is inconsistent with applicable standards established by law.

(3) The legislation requires that appropriate nutrition, hydration, and medication shall always be provided to the infant, and that the effectiveness of treatment shall not be based on subjective opinions about the future “quality of life” of an infant. In response to a report of medical neglect of a disabled infant with a life-threatening condition, SOSCF’s investigative role is to determine if the decision made to withhold treatment was based on reasonable medical judgment consistent with the definition of “withholding of medically indicated treatment.” (See Definition section)

Statutory Authority: HB2004

Stats. Implementation: PL98-457

DEFINITIONS

413-020-0610 (1) “Designated Consultant Neonatologist” means a neonatologist whose services are available to SOSCF to review medical information and consult with SOSCF and other experts deemed necessary in cases of suspected medical neglect.

(2) **“Designated Hospital Liaison”** means an individual(s), usually the hospital administrator, designated by each respective hospital to assist SOSCF with coordination, consultation, and prompt notification of suspected cases of medical neglect.

(3) **“Disabled Infant”** means a child of less than one year of age having a physical or mental impairment which may substantially limit one or more major life functions such as breathing, seeing, hearing, walking, caring for one’s self, performing manual tasks, learning and working.

(4) **“Hospital Review Committee (HRC)”** is a committee established by a medical facility or hospital to offer counsel and review in cases involving a disabled infant with life-threatening conditions.

(5) **“Medical Neglect”** means the failure to provide adequate medical care, including the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(6) **“Medical Neglect Investigator”** means SOSCF staff designated and trained to provide consultation and complete investigations of alleged medical neglect reports.

(7) **“Medically Indicated Treatment”** means treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician’s reasonable medical judgment will be most likely to be effective in amelioration or correcting all such

life-threatening conditions. It does not include the failure to provide treatment other than nutrition, hydration or medication to an infant when in the treating physician's reasonable medical judgment any of the following circumstances apply:

(a) The infant is chronically irreversibly comatose;

(b) 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;

(c) The provisions of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(8) **“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.

(9) **“Withholding of Medically Indicated Treatment”** means the failure to respond to the infant's life-threatening conditions.

Statutory Authority: HB2004

Stats. Implementation: PL98-457

POLICY

413-020-0620 Intake. Any person may make a report that a handicapped infant in a medical facility is not receiving adequate and necessary medical care. Reports which indicate withholding of medical treatment from disabled newborns with life-threatening conditions will be considered an emergency and assigned for investigation within one hour. Each SOSCF branch will develop local procedures to assure that such reports received after normal work hours will be promptly investigated. Anonymous reports will be accepted at Intake.

(1) Obtain from the reporting person as much of the following information as possible:

(a) Name and address of the hospital;

(b) Name and address of infant and infant's parents;

(c) The infant's name and birth date;

(d) The name of the infant's attending physician;

(e) The condition of the infant and in particular information regarding whether the infant may die or suffer harm within the immediate future if medically indicated treatment is withheld;

(f) The basis of the reporter's suspicion or belief that medically indicated treatment or appropriate nutrition, hydration, or medication is being or will be withheld;

(g) Name of the person making the report, source of the information, position to have reliable information (i.e. nurse, friend, family member, etc.), address and telephone number.

(2) Criteria to determine if an investigation is indicated:

(a) Would the reported circumstances, if true, constitute "medical neglect";

(b) Is there reasonable cause to believe that medically indicated treatment is being withheld? This must be based on the condition of the child, health care professional's statements, information that the parents have refused to consent to treatment, and consultation with the worker's supervisor;

(c) A Medical Neglect Investigator will be contacted to help determine if assignment for a CPS investigation is indicated. (Consultation with a Designated Consultant Neonatologist from a hospital other than the one where the infant is receiving treatment may be utilized at this point.

(3) Reporting the Alleged Neglect. When a report of suspected medical neglect is received, the local Law Enforcement Agency will be contacted per ORS 419B.020.

Statutory Authority: HB2004

Stats. Implementation: PL98-457

PRELIMINARY INVESTIGATION

413-020-0630 (1) When a report of suspected medical neglect of a disabled infant with life-threatening conditions is received and assigned for investigations, the

CPS caseworker will immediately contact a Medical Neglect Investigator for consultation and assistance in initiating a preliminary investigation. The Medical Neglect Investigator will have the responsibility to determine the role/activities of the CPS caseworker and the Medical Neglect Investigator during preliminary investigation and "on site" investigation of a report. The Medical Neglect Investigator will conduct the investigations whenever possible.

(2) During the preliminary investigations, the CPS caseworker or Medical Neglect Investigator will contact the Designated Consultant Neonatologist from a hospital other than the one where the infant is receiving care, for consultation and assistance. (Names of consultant neonatologists are available from the CPS program manager).

(a) The Medical Neglect Investigator (or Designated Consultant Neonatologist) shall contact the hospital liaison, advise that person of the nature of the reported suspected medical neglect, and request assistance to obtain the following information:

(A) Whether the infant is in the hospital;

(B) The name and location of the infant's parents;

(C) The medical condition of the infant, i.e., does the infant have a life-threatening condition;

(D) The nature of the care and treatment being provided to the infant and what, if any, additional or alternative treatment could be provided;

(E) If the infant's parents are in agreement with the care and treatment being provided or if they have refused to consent to recommended treatment;

(F) If there is a critical time pressure and thus a need for immediate court action;

(G) The analysis of the HRC or other review body;

(H) Whether the attending physician has consulted with other medical professionals concerning the care and treatment of the infant and whether the medical professionals are in agreement with the care and treatment being given.

(b) If treatment is indicated and recommended by the physician and the parents are refusing to consent to treatment, then court action should be immediately initiated or further counseling with the parents pursued. In addition to filing a petition in juvenile court, SOSCF shall request that a guardian ad litem (GAL) or court appointed special advocate (CASA) be appointed for the child.

(c) Criteria for continuing or closing preliminary investigation:

(A) If the facts confirmed by the treatment team indicate any of the following circumstances, then the investigation shall be terminated and the case closed: (The facts should be documented in the case file.)

(i) The infant is chronically and irreversibly comatose;

(ii) The provision of treatment would merely prolong dying, not be effective in ameliorating or correcting all the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant;

(iii) The provision of treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.

(B) Where there remains doubt about the hospital's compliance with state laws, parents refuse to authorize medically-indicated treatment, or there is a need for additional information to substantiate a conclusion, the investigation should be continued.

Statutory Authority: HB2004

Stats. Implementation: PL98-45

INVESTIGATION

413-020-0640 When additional information is necessary to substantiate a conclusion to the medical neglect report, the Medical Neglect Investigator shall form a special investigative team with a consultant neonatologist from a hospital other than the one where the infant is receiving care, a local CPS caseworker and any other necessary professionals such as a nutritionist or the local district attorney. The on-site investigation shall be completed in the shortest possible time.

(1) The Medical Investigator, with the assistance of the special investigation team members and designated hospital liaison, will complete the following:

(a) Interview treating physicians and others involved in the treatment;

(b) Arrange as early as possible meeting with HRC or other hospital review boards or committees. Determine at minimum the following: Did the HRC verify the diagnosis? How were the parents involved in the process? What treatment alternatives exist?

(c) Review medical records. The parents shall be requested to sign a release of information to allow CPS investigation and/or medical consultant to review records. If determined necessary, court intervention may be used to give access to medical records;

(d) Interview parents (after first determining with hospital social worker appropriateness and context for interviewing parents) to determine the parent's understanding of the child's condition and treatment alternatives, the decisions they have made, and the basis for those decisions.

(2) When necessary, the Medical Neglect Investigator may take the following actions:

(a) Make an on-site visit to the medical facility to observe the care and treatment being provided to the infant;

(b) If an alternative diagnosis was not entertained, and no consultants brought in, or there was not a procedure for reviewing the diagnosis and treatment recommendation, then the investigator may wish to arrange for an independent medical consultant and/or exam. The Medical Neglect Investigator shall recommend to the parent(s) that an independent medical examination or evaluation be performed. If the parent(s) do not consent, the specialist will seek a court order to obtain an independent medical examination or evaluation.

(3) Concluding the Investigation

(a) Following the investigation, the Medical Neglect Investigator will determine:

(A) Whether the report of suspected medical neglect of the handicapped infant with life-threatening conditions is valid. Information from the HRC or consulting physicians, including the Designated Consultant Neonatologist, shall be used to determine whether the treating physician exercised reasonable medical judgment. The reasonable medical judgment of the treating physician may differ from that of other physicians. Grounds for overriding the refusal of the parents of the infant to consent to medical care and treatment exist only if any reasonable medical judgment would be that treatment is medically indicated. The parents' refusal to consent shall be respected if the attending physician, the Review Committee, or a consulting physician finds that treatment is not medically indicated;

(B) Whether further action should be taken by the State Office for Services to Children and Families, and if there is a basis for juvenile court jurisdiction.

(b) If the parents of the infant refuse to consent to the medical care and treatment found to be necessary and adequate by the attending physician and the HRC, or by another consulting medical professional, or the attending physician refuses to provide treatment, SOSCF shall initiate the filing of a petition in juvenile court on behalf of the infant requesting the court to take jurisdiction of the infant so that medically indicated treatment may be provided. SOSCF will

also request that a Guardian Ad Litem (GAL) or Court Appointed Special Advocate (CASA) be appointed for the child. The caseworker will document these actions in the case record;

(c) If the infant's parents do not desire medical treatment beyond that being provided and if the reasonable medical judgment of the attending physician, HRC, or other consulting medical professional is that medically indicated treatment is being provided, the Medical Neglect Investigator will document this agreement in the case record. The CPS caseworker will close the case and take no further action;

(d) If the infant's parents desire medical care or treatment for the infant which is not being provided by the attending physician or the medical facility, the Medical Neglect Investigator will advise the parents of their option to seek another medical opinion or additional medical resources. The Medical Neglect Investigator shall document the advice given the parents in the case record, the caseworker will close the case and take no further action;

(e) The SOSCF caseworker shall assist the parent(s) with referrals to support groups, community educational resources, and agencies which provide services for disabled infants and their families, and to agencies with financial resources for medical and rehabilitative services;

(f) Following completion of the investigation, the Medical Neglect Investigator shall notify the assistant administrator for the Program Operations by

telephone of the report, the investigation and the actions taken. The telephone report is to be followed by a written report and documented in the case record.

Statutory Authority: HB2004

Stats. Implementation: PL98-45

ANNUAL INFORMATION UPDATE

413-020-0650 Each local SOSCF branch manager shall contact each hospital in their county and obtain the name, title, and telephone number of the designated hospital liaison who is responsible for coordination, consultation, and notification of the State Office for Services to Children and Families of cases of suspected medical neglect. The branch managers shall update this information annually.

Statutory Authority: HB2004

Stats. Implementation: PL98-45