



Giving Every Child A Chance

June 11, 2013

Pamela Wentworth
Policy Development Unit
Department of Children and Families
P. O. Box 717
Trenton, NJ 08625-0717

RE: Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments Child Protection Investigations
Proposed Changes to N.J.A.C. 10:133G-3.5, 4, and 5.1
Proposed Number: PRN 2013-065

Dear Ms. Wentworth:

Thank you for the opportunity to submit comments to the proposed amendments to New Jersey regulations concerning disclosure of client information.

The Department of Children and Families (DCF) proposes to insert the phrase “to the extent it is pertinent to the child abuse or neglect that led to the fatality or near fatality,” information that it will release to the public and the media about these tragic cases.

It is clear from the Summary and Social Impact sections in the NJ Register concerning the proposed amendments that DCF is seeking to further limit the disclosure of information to the public and the media about a child fatality or near fatality. “The media or a member of the public **may assume that the proposed amendments will limit access to public information**, as he or she seeks the disclosure of client information during or after an investigation.” [emphasis added] DCF states the “amendment limits the disclosure of temporally remote or minor incidents that are insignificant to the child abuse or neglect, which led to the fatality or near fatality.”

Given the very limited information that DCF presently releases regarding child fatalities or near fatalities, ACNJ is troubled by DCF’s attempt to further limit information released to the public and the media when a child dies. If approved, the proposed amendment will result in important information being withheld from the public and the media because DCF may deem it to be “temporally remote,” “minor” or “insignificant.” Such a subjective standard hinders the public accountability contemplated by the federal CAPTA law.

When children die because of abuse or neglect, there is an understandable outcry for immediate action, which can cause state officials to want to step back from any public conversation. However, a public discussion regarding the circumstances of a child’s death or near fatality is critical to ensuring that other

children in similar situations do not die needlessly, especially if there is concern that the agency's action or inaction may have contributed to the situation resulting in a child's death.

This is not about placing blame, because Advocates for Children of New Jersey (ACNJ) recognizes that even when all procedures are appropriately followed children can still be seriously harmed. The disclosure of information is an effective means to improve future case practice, which can result in keeping New Jersey's children safer. Furthermore, this proposed change is contrary to the very "transparency" and "collaborative process" that DCF maintains that it wants to promote in the community.

ACNJ also recognizes that New Jersey regulations should comply with federal disclosure requirements mandated by the Child Abuse Prevention and Treatment Act (CAPTA). Section 106(b)(2)(B)(x) of CAPTA requires States to provide for the public disclosure of findings or information about a case of child abuse or neglect that results in a child fatality or near fatality. The U.S. Department of Human Services' Child Welfare Policy Manual (CWPM) provides guidance to states regarding the CAPTA's disclosure provisions. And the CWPM reflects a state's obligation to disclose "information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality....." [see CWPM 2.1A.4 Q/A #8]

Still, as proposed the amendment is too vague. While a rule need not be precise to be sustained, the rule "must establish a minimum, readily identifiable standard of conduct rather than a meaningless generality." (LeFelt, et al., *New Jersey Practice*, Volume 37 *Administrative Law and Practice*, 2nd Ed. (West Group 2000) The proposed changes do not include a standard or define "pertinent." The agency whose actions are being reviewed should not be given the authority to subjectively determine what information is "pertinent."

Therefore, ACNJ strongly objects to the changes proposed by DCF to NJAC 10: 133G-4.4(a)6 and NJAC 10: 133G-4.6(a)5 because all information currently listed under these sections is pertinent in all child fatality or near fatality cases.

In addition, ACNJ submits that regulations should further clarify the types of information that shall be provided in every child fatality or near fatality. This should include, but not be limited to:

- Details about services provided and the effectiveness of those services in addressing the child's healthy and safety and the family's needs;
- The dates and nature of the contacts the Division had with the child who is the subject of the fatality or near fatality and the parent(s), guardian(s) and/or caretaker(s);
- Details about the child abuse/neglect investigation(s) related to the child who is the subject of the fatality or near fatality, including all collateral contacts the Division conducted during the investigation(s);
- If the child(ren) were living in out-of-home placement any time prior to the fatality or near fatality, the frequency and location of visitation between parent(s), child(ren) and siblings;
- If substance abuse were an issue in the case, the dates and results of all substance abuse testing conducted and the results of those tests;
- The findings of all risk and safety assessments conducted on the family during the Division's involvement with the case.

When children die, it is difficult to remain objective when reviewing one's own actions. That is why CAPTA mandates that states develop procedures for the release of information. If DCF has the sole discretion to determine what information is "pertinent," how will the public find out if the agency made a determination that certain actions or inactions in the past did not contribute to the fatality or near fatality, when reasonable minds could differ?

As difficult as these child death or near death cases are, we must remember that the CAPTA mandates exist to protect children and families, not the agencies that serve them.

Thank you for the opportunity to submit our thoughts concerning this proposed change. Your consideration is appreciated.

Very truly yours,



Cecilia Zalkind
Executive Director



Mary E. Coogan
Assistant Director