

ACF

Administration
for Children
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**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families**

1. Log No: ACYF-CB-PI-05-01

2. Issuance Date: April 22, 2005

3. Originating Office: Children's Bureau

4. Key Words: CAPTA and the Born-Alive Infants Protection Act of 2002

PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of the Child Abuse Prevention and Treatment Act (CAPTA) Program.

SUBJECT: Child Abuse Prevention and Treatment Act requirements and the Born Alive Infants Protection Act of 2002.

LEGAL AND RELATED REFERENCES: The Born-Alive Infants Protection Act of 2002, Public Law 107-207; and the Child Abuse Prevention and Treatment Act.

PURPOSE: The purpose of this Program Instruction (PI) is to provide instruction to States about the requirements of the Born-Alive Infants Protection Act that are applicable to the CAPTA State grant program.

BACKGROUND: The Born-Alive Infants Protection Act, Public Law 107-207, was enacted on August 5, 2002, and amends the United States Code to provide that, in determining the meaning of any Act of Congress, or of any ruling, regulation or interpretation of a federal administrative bureau or agency, the words "person," "human being," "child," and "individual" "shall include every infant member of the species homo sapiens who is born alive at any stage of development." (1 U.S.C. 8(a)). The Act also defines the term "born alive" to mean the complete expulsion or extraction, at any stage of development, of a member of the homo sapiens species from his or her mother who – regardless of whether the umbilical cord has been cut, or whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion – after such expulsion or extraction, possesses certain indicia of life (1 U.S.C. 8 (b)). The text of the Act is attached.

The purpose of the Act was to reaffirm the legal principle that infants who are born alive, at any stage of development – including those born alive after failed abortions – are persons entitled to the protections of the law. See H.R. Rep. 107-186 at 3 and throughout (2001).

INSTRUCTION:

All references to a “child” or “children” in the definitions, provisions and assurances of the Child Abuse Prevention and Treatment Act, as amended, are to be read to include infants who are “born-alive” as that term is defined at 1 U.S.C. 8. States also must ensure that their State laws, procedures and practices with respect to child abuse and neglect conform to the requirements of CAPTA as its terms are interpreted in accordance with Public Law 107-207.

In particular, States must ensure that implementation of section 106(b)(2)(B) of CAPTA, which requires States to have procedures for responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), applies to born-alive infants. This means that the State must provide the following with regard to born-alive infants:

- X Coordination and consultation with individuals designated by and within health-care facilities with regard to responding to medical neglect (section 106(b)(2)(B)(i) of CAPTA);
- X Prompt notification by the individuals designated within health-care facilities of cases of suspected medical neglect (including withholding of medically indicated treatment from disabled infants with life-threatening conditions) to child protective services (section 106(b)(2)(B)(ii) of CAPTA);
- X At a minimum, *the authority* for State child protective services to pursue any legal remedies as may be necessary to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child (sections 106(b)(2)(A)(vi), 106(b)(2)(B), and 113(b) of CAPTA); and,
- X The authority for State Child Protective Services to pursue, and the *actual pursuit* of, any legal remedies that may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions (section 106(b)(2)(B) and section 113(b) of CAPTA).

INQUIRIES TO: ACF Regional Offices.

_____/s/_____

Wade F. Horn, Ph.D.
Assistant Secretary for Children and Families

Attachment

Born-Alive Infants Protection Act of 2002: Public Law 107-207

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Born-Alive Infants Protection Act of 2002''.

SEC. 2. DEFINITION OF BORN-ALIVE INFANT.

(a) In General.--Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

Sec. 8. `Person', `human being', `child', and `individual' as including born-alive infant.

(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words `person', `human being', `child', and `individual', shall include every infant member of the species homo sapiens who is born alive at any stage of development.

(b) As used in this section, the term `born alive', with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

(c) Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive' as defined in this section.'

(b) Clerical Amendment.--The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

8. `Person', `human being', `child', and `individual' as including born-alive infant.'