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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1340

Technical Regulation: Removal of Child Abuse and Neglect Prevention and Treatment Act Implementing Regulations

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration for Children and Families is removing the Child Abuse Prevention and Treatment Act (CAPTA) regulations in their entirety. These regulations no longer apply to the CAPTA programs they were originally designed to implement because of major legislative changes to CAPTA since the regulations were issued.

DATES: This rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Director of Policy, Children’s Bureau, Administration on Children, Youth and Families, (202) 401-5789 or by email at kathleen.mchugh@acf.hhs.gov. Do not email comments to this address.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final rule is published under the authority granted to the Secretary of the Department of Health and Human Services by 42 U.S.C. 5101, et seq.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and remove unnecessary and obsolete regulatory provisions. Removal of the regulations does not establish or affect substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Background

There have been major and extensive legislative changes to CAPTA since the CAPTA regulations in 45 CFR Part 1340 were issued in 1983 and updated in 1990. The regulations provided guidance to States to implement CAPTA programs that were in effect prior to 1996. These programs changed significantly beginning with the Child Abuse Prevention and Treatment Act Amendments of 1996. This CAPTA reauthorization overhauled the CAPTA state grant program, including the program authorizations for appropriations, making the regulations obsolete. Later, CAPTA reauthorizations also amended the State grant program in section 106 of CAPTA, making the regulations outdated since they do not include all of the CAPTA state grant program requirements contained in the law.

Furthermore, Section 6 of the President's Executive Order 13563 of January 18, 2011 called for retrospective analyses of existing rules "that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." As such, we believe it is unnecessary and outmoded to implement the CAPTA state grant programs through regulation. We believe the program requirements are made clear in the statute and have provided policy interpretations and program instructions to implement the program since 1996 in lieu of regulations. Removing the CAPTA regulations at 45 CFR Part 1340 would be in keeping with Executive Order 13563.

In addition, section 109 of CAPTA instructs the Secretary to adopt regulations that are “necessary or appropriate to ensure that there is effective coordination” among CAPTA programs. We believe these regulations are no longer necessary or appropriate to ensure coordination because we have provided policy interpretations and program instructions to guide such coordination.

For these reasons, based on our analysis of 45 CFR Part 1340, we are removing 45 CFR part 1340 from the Code of Federal Regulations.

Section-by-Section Discussion of the Provisions of this Rule

Subpart A – General Provisions

Section 1340.1 Purpose and scope.

We are removing section 1340.1 because it is outdated and non-essential to the current operations of the CAPTA programs. Paragraphs (a) and (b) clarify the role and activities of the National Center on Child Abuse and Neglect, which no longer exists; paragraph 1340.1(c) is extraneous because it only indicates that the requirements related to child abuse and neglect applicable to title IV-B of the Social Security Act are implemented by regulation at 45 CFR parts 1355 and 1357; and paragraph 1340.1(d) is unnecessary because it simply restates the prohibition on CAPTA funding for the construction of facilities that is provided for in section 108 of CAPTA.

Section 1340.2 Definitions.

We are removing the definitions in section 1340.2 because we are removing all of the sections to which the definitions apply. In addition, they are non-essential to the operations of the CAPTA programs for the following reasons. Paragraph (a) defines a “properly constituted authority” which is no longer relevant to the state plan requirements; paragraph (b) defines “Act” to mean the Child Abuse Prevention and Treatment Act, which is unnecessary; paragraph (c) defines “Center” as the National Center on Child Abuse and Neglect, which no longer exists. Paragraph (d) and its subparagraphs define and clarify the terms “child abuse and neglect”, “sexual abuse”, “negligent treatment or maltreatment”, “threatened harm to a child's health or welfare” and “a person responsible for a child's welfare”. These definitions are outdated and superseded by statutory definitions; paragraphs (e) through (h) define “Commissioner”, “grants”, “Secretary” and “State” which are either self-explanatory or defined in statute.

Section 1340.3 Applicability of Department-wide regulations.

We are removing section 1340.3 because we are removing all of the sections that the Department-wide regulations are applied to by section 1340.3. In addition, these referenced regulations apply to CAPTA programs through the referenced Department-wide regulation itself or are no longer applicable to CAPTA grants.

Sections 1340.3(a) and (b) specify the Department of Health and Human Services regulations that are applicable to all grants and contracts made under this part:

- 45 CFR Part 16 – Procedures of the Departmental Grant Appeals Board

- 45 CFR Part 46 – Protection of human subjects
- 45 CFR Part 74 – Administration of grants
- 45 CFR Part 75 – Informal grant appeals procedures
- 45 CFR Part 80 – Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services – effectuation of title VI of the Civil Rights Act of 1964
- 45 CFR Part 81 – Practice and procedure for hearings under part 80
- 45 CFR Part 84 – Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
- 48 CFR Chapter 1 – Federal Acquisition Regulations
- 48 CFR Chapter 3 – Federal Acquisition Regulations – Department of Health and Human Services.

Section 1340.4 Coordination requirements.

We are removing the coordination requirements in section 1340.4 because it is superseded by coordination language in section 101 of CAPTA, enacted in the CAPTA Amendments of 1996.

Subpart B--Grants to States

Sections 1340.10 Purpose of this subpart, 1340.11 Allocation of funds available, 1340.12 Application Process, 1340.13 Approval of applications, 1340.14 Eligibility requirements and 1340.15 Services and treatment for disabled infants.

We are removing sections 1340.10 through 1340.15 because they are obsolete. Prior to the enactment of the CAPTA Amendments of 1996, section 107 of CAPTA authorized funding for two State grant programs: (1) to assist States to develop, strengthen and carry out child abuse and neglect prevention and treatment programs; and (2) to assist States in responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), and improving the provision of services to disabled infants with life-threatening conditions and their families. Sections 1340.10 through 1340.14 applied to the former and 1340.15 to the latter and are not applicable to the current CAPTA State grant program in section 106.

The CAPTA Amendments of 1996 and later amendments significantly revised the State grant requirements in law prior to 1996. Now, States must submit a State plan in order to be eligible to receive a grant, including extensive State plan assurances. There is no longer the grant application and approval process specified in the regulations and States now provide assurances in their State plans that certain activities will be carried out using the grant funds to achieve the objectives of the law.

The protections for disabled infants (commonly known as “Baby Doe”) are now included in the statute in the form of a State plan assurance. Specifically, States are required under section 106(b)(2)(C) of CAPTA to have procedures to respond to reports of withholding medically indicated treatment from disabled infants with life-threatening conditions. In addition “withholding of medically indicated treatment” is defined in section 111 of CAPTA. No longer is there a specific State grant program and funding for improving the

provision of services to disabled infants with life-threatening conditions and their families.

Subpart C--Discretionary Grants and Contracts

Section 1340.20 Confidentiality.

We are deleting section 1340.20 because section 106 of CAPTA addresses requirements for state grantees for confidentiality of records, and confidentiality requirements for other grantees can be addressed in the terms and conditions of the grant.

Appendix to Part 1340 – Interpretive Guidelines Regarding CFR 1340.15—Services and Treatment for Disabled Infants

We are deleting the appendix to Part 1340. The appendix was added through a Final Rule (50 FR 14878) in 1985 to implement a grant program made available through the Child Abuse Amendments of 1984 (P.L. 98-457). This grant program is no longer in effect as it was at the time the appendix was added (Child Abuse Prevention and Treatment Act Amendments of 1996 (P.L. 104-235)).

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104-13), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. There are no new requirements as a result of this regulation.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not result in a significant impact on a substantial number of small entities.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity.) Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, harmonizing rules, and of promoting flexibility. The regulations we are removing are obsolete and no longer applicable to the current law. By removing these outdated regulations, we are ending potential confusion in regard to the status of the regulations among states, grantees and other affected groups seeking information on the CAPTA program rules. There are no budget implications associated with removing the CAPTA regulations from the Code of Federal Regulations.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C. Chapter 8.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The required review of the regulations and policies to determine their effect on family well-being has been completed, and this rule will have a neutral impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The regulation has no federalism impact as defined in the Executive Order.

List of Subjects in 45 CFR Part 1340

Child welfare, Grant programs-health, Grant programs-social programs, Individuals with disabilities, Reporting and recordkeeping requirements, Research, Technical assistance, Youth.

Dated: August 18, 2014.

Mark Greenberg,
Acting Assistant Secretary for
Children and Families.

Approved: February 27, 2015.

Sylvia M. Burwell,
Secretary.

Editorial note: This document was received for publication by the Office of Federal Register on March 25, 2015.

Subchapter E—[Removed and Reserved]

For the reasons discussed above, under the authority at 42 U.S.C. 5101 et seq. the Administration for Children and Families amends Title 45, Subtitle B, Chapter XIII, by removing and reserving Subchapter E, consisting of part 1340.

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