



# State of New Hampshire

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Office of the Child Advocate

Moira O'Neill

Director

## **SYSTEM REVIEW BRIEFING**

System Review 2018-01

Enhanced Response: Substance Exposed Infants

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March 25, 2019

## 2. OCA Infants Exposed

### **Introduction**

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The mission of the Office of the Child Advocate (OCA) is to provide independent and impartial oversight of the New Hampshire Division for Children, Youth and Families (DCYF), the state agency responsible for child welfare and juvenile justice services, and to promote effective reforms to assure that the best interests of children are being protected. The OCA has independent access to all DCYF records that are not otherwise available to the public. This allows the office to objectively review and investigate concerns, and to make informed recommendations.

### **Jurisdiction**

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RSA 170-G:18 is the OCA's guiding statute. Under RSA 170-G:18, III(i), the OCA shall “[u]pon its own initiative or upon receipt of a complaint, review and if deemed necessary, investigate actions of the division for children, youth and families, or any entity that provides services to children under contract with and at the direction of the division, and make appropriate referrals. Findings of all investigations and responses to all complaints received shall be summarized in the annual report of the office of the child advocate.”

The OCA does not have the authority to:

- Investigate allegations of abuse or neglect
- Review or investigate complaints unrelated to DCYF
- Overturn any court order or DCYF decision
- Offer legal advice

### **Public Disclosure**

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To ensure transparency of government and build trust with citizens, the OCA will periodically release system reviews to inform the public on the activities, findings, and recommendations of the OCA. The OCA will not release the names, addresses or any other identifying information of individuals subject to any confidential proceeding or statutory confidential provision. See RSA 170-G:18, III-a(d)(1). Nor shall the OCA release system review findings publicly if there is a pending law enforcement investigation or prosecution. See RSA 170-G:18, III-a(d)(2).

### **Purpose of System Review Briefing**

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Periodically, the OCA will conduct system-wide reviews to identify opportunities for system strengthening. The System Review Briefing is designed to hold the OCA accountable to the public and to ensure transparency of the OCA's work within the confines of mandated confidentiality. If the OCA determines that a system review requires additional resources and/or time beyond a standard of 60 business days, the OCA will release a System Review Briefing. The System Review Briefing will identify the areas of additional research and how the system review will proceed, and an estimation of time to completion.

The opening of a system review does not indicate any confirmed violations or practice concerns regarding DCYF or DCYF-sponsored service. After a system review is opened, the OCA will conduct a comprehensive, independent study of relevant facts, records, and witness statements. If necessary, the OCA will also conduct independent research on evidence-based practice to offer informed, educated recommendations. Only after the OCA has completed its system review and research will it make a determination about whether to issue recommendations or share any key learning points for learning and system improvements. If the OCA determines that recommendations are needed, or there are key

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points learned from the system review, it will issue a full report on the Systems Review and/or include its findings in the OCA Annual Report.

For each OCA system review, the OCA will identify the area of concern and/or service area involved in the complaint or inquiry. The OCA will also identify any relevant DCYF policies or practices.

## System Review Number: 2018-01

### I. Service Area and Summary of Identified Concern

Case # 2018-01	Area of Concern: <b>Response to Infants Born Exposed to Illicit Substances</b>
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The OCA is reviewing DCYF's response to children born exposed to illicit substances and occurrences of subsequent incidents involving this population of children. In 2018, the OCA received notice of the death of two children, one age 20 months and one 23 months, with whom DCYF had previously been involved following each child's birth exposed to illicit substances. One was born exposed to cocaine and the other was born exposed to buprenorphine, amphetamine and methamphetamine. DCYF opened an assessment for neglect on each family following the children's births. Both assessments were closed as unfounded. DCYF had no further contact with one child and two subsequent assessments for neglect on the other, prior to their deaths.

The OCA has received an additional 14 critical incident reports for children who were born substance exposed. Critical incidents include serious injury, child death, parent death, or other adverse event. Three of the new 14 critical incidents received were deaths involving children born substance exposed who had been subjects of prior unfounded assessments conducted at birth. Additionally, the OCA has received complaints alleging action or safety plans for children born substance exposed were insufficient to ensure child safety.

Due to the high health and safety risk associated with exposure to substances at birth, there are two responses required by law for states to address these births. First, under the Child Abuse Prevention and Treatment Act (CAPTA), as amended, to be eligible for a grant under the Act, governors are required to provide assurance that the state has a law or a statewide program relating to child abuse and neglect that includes policies and procedures "to address the needs of infants born with and identified as being affected by substance abuse or withdrawal systems resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder." 42 U.S.C. §5106a(b)(2)(B)(ii). This state law or program is to include a requirement that health care providers notify child protective services of the occurrence of such condition in infants. *See id.* Second, CAPTA requires assurance of the development of a plan of safe care for infants "born and identified as being affected by substance abuse or withdrawal symptoms" to ensure the safety and well-being of such infants following release from the care of health care providers. 42 U.S.C. §5106a(b)(2)(B)(iii).

In New Hampshire, RSA 132:10-e requires health care providers to develop a plan of safe care for infants "born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder." Under, RSA 132:10-f, health care providers are mandated to report suspected abuse or neglect of an infant to DCYF, and, if the infant has a plan of safe care under RSA 132:10-e, such plan shall accompany the report.

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When there is a report of an infant born exposed to, and affected by substance use or withdrawal symptoms resulting from prenatal drug exposure, or Fetal Alcohol Syndrome, DCYF policy requires an “enhanced response assessment.”<sup>1</sup> DCYF’s *Enhanced Response Policy 1184* requires a minimum of four face-to-face visits in a prescribed time period for any substance-exposed infant. The assessment must remain open for at least the full 60-day assessment period and requires a safety plan be put in place to ensure a means for maintaining the child’s safety at all times. In addition, the assessment must include relevant referrals to community services and parental participation in substance use treatment as necessary. In 2018, 466 children were involved in accepted assessments for that year in which the characteristics indicated “Child Born Drug Exposed.”<sup>2</sup> In 2017, there were 508 children involved in accepted assessments with DCYF.<sup>3</sup>

In response to critical incident reports, the OCA conducted a preliminary review of the prior cases for each of the children involved. The OCA discovered that, while each child had a history of at least one prior referral and closed assessment, eight children had multiple referrals and prior closed assessments leading up to the reported critical incident. At least three of the critical incidents involved families with closed assessments that occurred prior to the subject child’s birth. The incident reports, concerns received and similar observations made by other Child Advocate offices in the region, raised questions about the possibility of a trend in risk that might exceed the adequacy of current policy guiding response and enhanced assessment for substance exposed infants.

In December 2018, the OCA opened a system review of DCYF’s response to substance exposed infants focusing on the following questions:

- How does DCYF’s *Enhanced Response Policy 1184* operate in practice?
- Is *Policy 1184* sufficient to assist families to protect exposed infants and other children in the home while parents address substance use?
- Is there consistency across the state in handling assessments involving infants exposed to substances? If not, should there be or are the inconsistencies beneficial?
- What factors may have influenced the decision to close the prior assessments identified in cases of infants born exposed to substances who are later subject to a critical incident report?
- Are there ongoing factors or barriers that impair the effectiveness of *Policy 1184* to adequately support parents and protect children from subsequent harm?
- Should there be a differential response depending upon the substance?
- What do families need, and what resources are available to support them and their infants?
- Should there be more long-term supports or monitoring for children born substance exposed?
- What other New Hampshire and federal laws and policies impact the care and treatment of infants born exposed to substances?
- What is the response in other states to infants born exposed to substances, and are there more effective ways to support families and keep children born substance exposed safe?
- What substance use prevention and unintended pregnancy prevention initiatives are available in New Hampshire, and how is prevention of exposed births incorporated in those initiatives?

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<sup>1</sup> See DCYF’s *Enhanced Response Policy 1184* available at <https://www.dhhs.nh.gov/dcyf/documents/dcyfpolicy1184.pdf>.

<sup>2</sup> DCYF’s Results Oriented Management (ROM) System

<sup>3</sup> DCYF’s ROM System

## *II. Summary of Preliminary and Ongoing Research*

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To date, the OCA is conducting the following research:

- Review of Bridges History. The DCYF database, Bridges, includes documentation of all referrals, assessments, and open cases for abuse and neglect. The OCA has begun an in-depth review of the referrals, assessments, and any open cases related to reported critical incidents and any incoming incidents and inquiries identified as involving infants born substance exposed.
- Review of relevant policy and law. The OCA review includes:
  - DCYF's *Enhanced Response Policy 1184* and other DCYF assessment related policies.
  - State and federal law related to infants born exposed to substances
  - Practices in creating safe care plans and family supports.
  - Laws and policies in other states related to infants exposed to substances.
- Interviews with relevant agency staff. The OCA has begun to have conversations with staff members who monitor critical incidents and safety protocols for DCYF as well as several front-line DCYF staff.
- Research. The OCA is conducting research on evidence-based practices utilized to keep infants exposed to substances safe, and best practices for assisting families managing substance use and treatment.

In the course of preliminary research, the OCA identified several states doing work to improve their policies and practices for protecting infants exposed to substances and supporting families with substance use concerns. The OCA plans to consult with experts in those states to learn from their work and determine if there are opportunities for interstate collaboration to better assist families and provide protection for children.

In addition, the OCA has learned of the practice of establishing an action or a safety plan with families of substance exposed infants. The OCA has received concerns, however, that such plans frequently are not followed by families, or are not meaningfully monitored by DCYF. This may be due to a problem of caseload volume, available medical or nursing expertise, other case-specific or systemic factors, or inadequate resources that preclude caseworkers investing the time needed with families to ensure the effectiveness of any given plan. The OCA will explore safety and action planning practices, including ways in which plans can be developed with ease of outcomes measurement. Techniques in family engagement and support in substance use rehabilitation will be included in practice review.

The OCA has learned the DCYF recently began to review *Enhanced Response Policy 1184*. The OCA will monitor DCYF's review and any other work being done on this issue by DCYF and other agencies, and, if beneficial, look for opportunities to collaborate in reviewing this system issue.

## *III. Next Steps*

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The OCA System Review will include in-depth examination of a sample of children's cases who first encountered DCYF through enhanced assessments. The focus will be on those cases identified by the occurrence of a critical incident subsequent to the child's substance exposed birth and enhanced assessment. The purpose will be to identify possible trends in risk and agency response. In addition to continuing examination of federal and state law and state policies, the review will make comparisons by states and within New Hampshire, by district. This will include variations in district office practices specific to *DCYF Enhanced Response Policy 1184*. The review will also take into consideration prevention

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initiatives addressing parental supports, maternal health and substance use, and prevention of unplanned/unintended pregnancy during substance use.

Planned interviews include:

- DCYF staff involved in assessments of infants exposed to substances at birth
- New Hampshire state and local agencies and providers who share responsibility for the safety and well-being of infants born substance exposed. These interviews will include discussion of the following topics with respect to substance exposed infants:
  - Identified risks and needs of infants and families when substance exposure is a factor
  - Effective assessment instruments for identifying strengths and needs of families impacted by substance use
  - The respective roles of, and relationship between, various state and local agencies
  - The efficacy of existing programs, policies, and training to address concerns related to substance exposed infants
  - Resources available to those working with families of substance exposed infants as well as the families themselves
  - Challenges and constraints of supporting families of infants exposed to substances
- New Hampshire state and local agencies and providers who share responsibility for maternal child health, prevention of substance use during pregnancy and unplanned/unintended pregnancies during substance use.

The system review will be framed in findings of evidence-based programs identified as best standard for addressing the needs of families and their children born substance exposed. While the focus of this System Review is response to children born at risk, identified prevention interventions will be emphasized wherever possible.

### *IV. Estimated Length of Investigation*

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It is the goal of the OCA to provide timely system reviews. The length of time for a system review will vary depending upon internal OCA resources, the complexity of the issues and the nature of the review, as well as the length of time needed to obtain accurate and up-to-date reports and relevant information. The OCA will generally work to complete a system review within 60 business days from the date the review is opened. Any delay outside of that timeframe will be documented in the OCA's internal database and approved by the Child Advocate.

**The OCA expects to complete the System Review Report for System Review 2018-01 and submit it to DCYF, the Oversight Commission on Children's Services and any other related agencies or providers involved in the review no later than July 1, 2019. Should the OCA fail to adhere to this timeline, an updated briefing, which explains the need for additional time, will be posted.**

### *V. Conclusion*

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This System Review Briefing, and the subsequent System Review Report, will be posted on the OCA's website. The OCA is appreciative of the cooperation and commitment to system improvement of DCYF, agencies, providers, and any other persons involved in this system review.

With Regards,

Moira O'Neill, PhD  
Director