



<b>Title of Proposed Rule:</b>	<b>Substance Exposed Newborn Practice</b>	
<b>CDHS Tracking #:</b>	<b>20-07-20-02</b>	
Office, Division, & Program: OCYF, DCW, Substance Exposed Newborn	Rule Author: Susan Morris	Phone: 720- 527-8196
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### STATEMENT OF BASIS AND PURPOSE

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

The purpose of this proposed rule is to bring existing rule in alignment with statute following the recent passage of Senate Bill 20-028. The new legislation changed the definitions of abuse and neglect for substance exposed newborns, and this proposed rule would align rules with this statutory language.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
- to preserve public health, safety and welfare

Justification for emergency:

**State Board Authority for Rule:**

Code	Description
26-1-107(5)(I-II), C.R.S. (2020)	State Board to promulgate rules regarding (I) program scope and content and (II) requirements, obligations, and rights of clients and recipients.
26-1-109(2)(a), C.R.S. (2020)	State department rules to coordinate with federal programs.
26-1-111(2)(q), C.R.S. (2020)	State department to promulgate rules to determine the risk of harm to a child who is the subject of a child abuse and neglect report.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
19-3-216, C.R.S. (2020)	State Board of Human Services to promulgate rules to determine whether there is child abuse or neglect as defined in revised section 19-1-103(1)(a)(VII) and section 19-3-102(1)(g).
19-1-103(1)(a)(VII), C.R.S. (2020)	Redefines child abuse and neglect as it relates to presence of substances at birth.
19-3-102(1)(g), C.R.S. (2020)	Redefines definition for determining if a child should be adjudicated dependent and neglected.
42 U.S.C.A. § 290ee-9(a)	United States Secretary of Health and Human Services may make grants to entities that focus on addiction and substance use disorders and specialize in family and patient services
42 U.S.C.A. § 5106a(4)	Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA) Secretary shall make grants to states that enhance the child protective system by developing, improving, and implementing risk and safety assessment tools, including differential response

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Does the rule incorporate material by reference?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
Does this rule repeat language found in statute?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
	<input type="checkbox"/>		<input type="checkbox"/>	
If yes, please explain.				

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### REGULATORY ANALYSIS

#### 1. List of groups impacted by this rule.

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Mothers who deliver babies who are substance exposed at the time of birth and their children.

#### 2. Describe the qualitative and quantitative impact.

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The change in definitions of abuse and neglect for substance exposed newborns now allows counties to screen out and/or accept and assess abuse and/or neglect allegations for substance exposed newborn populations.

#### 3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The Department will partner with Child Welfare Training System (CWTS) to incorporate new practice into current training and provide updates to counties. Subsequently, there will be no new fiscal impact to the SACWIS system.

County Fiscal Impact

Increase in awareness and publicity focus, potential for a decrease in the number of Substance Exposed Newborn referrals and assessments.

Federal Fiscal Impact

The new definitions in both statute and regulation provide for more comprehensive compliance with Child Abuse Prevention and Treatment Act (CAPTA). Compliance ensures Colorado will continue to receive the full federal funding allotment.

Other Fiscal Impact (such as providers, local governments, etc.)

N/A

#### 4. Data Description

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

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The Comprehensive Addiction and Recovery Act (CARA) establishes a comprehensive, coordinated, balanced strategy through enhanced grant programs that would expand prevention and education efforts while also promoting treatment and recovery.

**5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

There are no alternatives because the definitions provide necessary clarification and the rules must align with the recent SB 20-028 statute change.

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**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
7.000.2	New definition	No previous language	<p>“Affected by Alcohol or Substance Exposure”</p> <p>A child is born affected by alcohol or substance exposure when it impacts the child's physical, developmental, and/or behavioral response.</p>	Mandated by 19-1-103 and 19-3-102, defining in Vol. 7	Recommend avoiding the use of the word "impact" as it is as vague as "affected by." Using uniform vague language will help focus on more specific language. One of the more specific words to include might be "teratogenic." Affected by = existence of a teratogenic effect. This can then help distinguish teratogenic effects from others (like withdrawal symptoms). No revision was made as the recommendation was to change Statue language which is out of the scope of this work group
7.000.2	New definition	No previous language	<p>“Threatened by Substance Use”</p> <p>The newborn child’s health or welfare is threatened by substance use when the medical, physical, and/or developmental needs of the newborn</p>	Mandated by 19-1-103 and 19-3-102, defining in Vol. 7	Recommend changing “may be” in the definition to “likely” as maybe is too broad and likely narrows the definition in defining impact. Made changes: The newborn child’s

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			child is likely to be inadequately met or likely unable to be met by parents and/or caregiver.		health or welfare is threatened by substance use when the medical, physical, and/or developmental needs of the newborn child <del>may be</del> is likely to be inadequately met or <del>may be</del> is likely unable to be met by parents and/or caregiver.
7.000.2	New definition	No previous language	“Substance Exposed Newborn”  Reference C.R.S. 19-1-103 and C.R.S.19-3-102	Mandated by 19-1-103 and 19-3-102, defining in Vol. 7	Concerned that there is not clarification or reference to Mandatory reporting and Mandatory Reporting Education. There is no revision as this rule does not address mandatory reporting.

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**STAKEHOLDER COMMENT SUMMARY**

**Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

Members of the Child Protection Task Group, County Child Welfare staff (large, mid and rural counties), Division of Child Welfare (Intake, Youth, Permanency, Child Protection and Prevention team members), Medical Provider, Community Stakeholders, Individuals with lived experience, Community Stakeholders in attendance in three Listening Sessions, SubPAC, CDPHE

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

Elephant Circle, Colorado Perinatal Care Quality Collaborative, Colorado CASA, Members of the Child Protection Task Force, County Child Welfare staff, Division of Child Welfare Community Stakeholders, Office of Respondent Parent Counsel, PC, Office of Child Representative, Child Protection Ombudsman, County Attorney's, Family Advisory Board-Substance Exposed Newborn Steering Committee,

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes     No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes     No

Name of Sub-PAC			
Date presented	April 8, 2021		
What issues were raised?	No issues were raised		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

Yes     No

Date presented	May 6, 2021		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

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**Other Comments**

Comments were received from stakeholders on the proposed rules:

Yes     No

*If “yes” to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

- Concerned that there is not clarification or reference to Mandatory reporting and Mandatory Reporting Education. There is no revision as this rule does not address mandatory reporting.
- Provide an evening or weekend Stakeholder Feedback Session to engage families and partners who work and are schooling children during the day. A Stakeholder Feedback Session was scheduled February 1, 2021 @ 5pm
- Add to the rules a requirement that information related to race and ethnicity be collected when reports are made. It would be good to collect information about the race of the person reporting too. This kind of data collection is a tangible way to defend against inequities based on race. No revision was made
- Do we need a definition to clarify “accept for when prescribed or monitored by a medical provider.” No revision was made by the work group and other community stakeholders felt that this is clear enough in the statute.
- Definitions should include reference to prenatal exposure. No revision made as child welfare does not get involved prenatally.
- “Well stated, well worded, the definitions provide good clarity” Member from SEN Steering Committee Family Advisory Board
- “The new language does a fair job of addressing the differences between affected versus threatened and as a treatment provider I appreciate acknowledgement that we will see behavioral responses which are not always indicative of concerns rather they may be expected.”

**PUBLISHER'S NOTE NOT FOR PUBLICATION:** The entirety of numbered rule 7.000.2 is not reproduced below, but instead only those additions are included, along with the preceding and subsequent section of rule for the purposes of clarifying alphabetical insertion of the new definitions. Asterisks are used below to indicate where a break between sections where edits are proposed occurs.

**7.000.2 DEFINITIONS [Rev. eff. 1/1/16]**

A: The following are definitions of commonly used terms used in these rules:

“Abuse” or “child abuse and/or neglect” is defined in Section 19-1-103(1) and 19-3-102(1), C.R.S.

“Actual knowledge” means direct and clear awareness of something, such as a fact or condition.

“AFFECTED BY ALCOHOL OR SUBSTANCE EXPOSURE” A CHILD IS BORN AFFECTED BY ALCOHOL OR SUBSTANCE EXPOSURE WHEN IT IMPACTS THE CHILD'S PHYSICAL, DEVELOPMENTAL, AND/OR BEHAVIORAL RESPONSE.

**“Age or developmentally appropriate” means**

1. Generally considered as suitable for children and youth of the same chronological age or level of maturity, or that are determined to be developmentally appropriate based upon the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and,
2. In the case of a specific child or youth, suitable for the child or youth based on the developmental stages attained, and with respect to the cognitive, emotional, physical, and behavioral capacities of the child or youth.

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“State automated case management system” means the state automated child welfare information system computer database.

“SUBSTANCE EXPOSED NEWBORN” REFERENCE SECTIONS 19-1-103 AND 19-3-102, C.R.S. (2020).

The “State Department” means the Colorado Department of Human Services.

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“Threat of moderate to severe harm” relates to conditions, behaviors or attitudes that could result in moderate to severe harm.

“THREATENED BY SUBSTANCE USE” THE NEWBORN CHILD’S HEALTH OR WELFARE IS THREATENED BY SUBSTANCE USE WHEN THE MEDICAL, PHYSICAL, AND/OR DEVELOPMENTAL NEEDS OF THE NEWBORN CHILD ARE LIKELY TO BE INADEQUATELY MET OR PARENTS AND/OR CAREGIVERS ARE LIKELY UNABLE TO MEET THE NEWBORN CHILD’S NEEDS.

“Toll-free, Statewide Child Abuse and Neglect Hotline” is the telephone number that is advertised to the public as a place for reporting known or suspected child abuse and/or neglect.

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