

RÉSUMÉ DIGEST

ACT 359 (HB 678)

2017 Regular Session

Horton

Existing law encompassed by the Children's Code provides relative to referral for mediation in proceedings authorized by the code (Ch. C. Art. 437), and for requirements and conditions relative to reporting of child abuse and neglect (Ch. C. Art. 601 et seq.).

New law generally retains existing law; repeals a reference to an informal family services plan in provisions relative to mediation; and modifies definitions for purposes of existing law and new law relative to child abuse and neglect as follows:

- (1) Establishes that the term "newborn" means a child who is not more than 30 days old as determined within a reasonable degree of medical certainty by an examining physician.
- (2) Revises the definition of "prenatal neglect" to mean exposure to chronic or severe use of alcohol or the unlawful use of any controlled dangerous substance as defined in existing law, or in a manner not lawfully prescribed, which results in symptoms of withdrawal in the newborn or the presence of a controlled substance or a metabolic thereof in the newborn's body, blood, urine, or meconium that is not the result of medical treatment, or observable and harmful effects in the newborn's physical appearance or functioning.

Existing law provides requirements relative to medical identification of prenatal neglect and reporting thereof by physicians.

New law adds to existing law a provision stipulating that if a physician has cause to believe that a newborn was exposed in utero to an unlawfully used controlled dangerous substance, then the physician shall order a toxicology test upon the newborn, without the consent of the infant's newborn's parents or guardian, to determine whether there is evidence of prenatal neglect. In cases when the test results are positive, new law requires the physician to issue a report as soon as possible in accordance with existing law relative to reporting of child abuse and neglect.

New law requires that if there are symptoms of withdrawal in the newborn or other observable and harmful effects in his physical appearance or functioning which a physician has cause to believe are due to the chronic or severe use of alcohol by the mother during pregnancy, or are the effects of fetal alcohol spectrum disorder, then the physician shall issue a report in accordance with existing law relative to reporting of child abuse and neglect.

New law provides that if a newborn exhibits symptoms of withdrawal or other observable and harmful effects in his physical appearance or functioning that a physician believes are due to the use of a controlled dangerous substance in a lawfully prescribed manner by the mother during pregnancy, then the physician shall make a notification to the Department of Children and Family Services (DCFS) on a form developed by the department. Stipulates that such notification shall not constitute a report of child abuse or prenatal neglect, and shall not require prosecution for any illegal action.

New law authorizes healthcare providers to share any protected health information, as defined in federal regulations (45 CFR 160.103), with DCFS for the purpose of complying with the notification requirement of new law.

New law requires DCFS to promulgate administrative rules in order to implement the provisions of new law. Provides that such rules shall include, at minimum, all of the following:

- (1) The manner in which the notification shall be made to DCFS.
- (2) The form and minimum required contents of the notification.
- (3) The plan to monitor the statewide system regarding the availability and delivery of appropriate services for newborns and affected families and caretakers.

New law stipulates that if a physician, acting in good faith and in accordance with new law, makes a notification to DCFS concerning suspected prenatal substance exposure when the mother used a controlled dangerous substance during pregnancy in a lawfully prescribed manner, then the physician shall have no civil or criminal liability for damage or injury arising from that notification unless the damage or injury was caused by the physician's willful or wanton misconduct or gross negligence.

New law provides that new law shall not become enforceable until the date of adoption by DCFS of the administrative rules necessary to fully carry out its requirements as provided in new law, and that new law shall be enforceable on and after that date.

Effective August 1, 2017.

(Amends Ch. C. Arts. 437(A), 603(24), and 610(G); Adds Ch. C. Art. 603(19) and R.S. 40:1086.11; Repeals Act No. 396 of 2007 R.S.)