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House of Representatives, June 3, 2019

**An Act To Ensure the Safety and Well-being of Infants Affected by
Substance Exposure**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative McCREIGHT of Harpswell.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §4002, sub-§5-B**, as enacted by PL 2013, c. 192, §1, is
3 amended to read:

4 **5-B. Fetal alcohol spectrum disorder.** "Fetal alcohol spectrum ~~disorders~~ disorder"
5 means ~~conditions~~ a condition whose effects include having facial characteristics, growth
6 restriction, central nervous system abnormalities or other characteristics consistent with
7 prenatal alcohol exposure identified in a child from birth to 12 months of age.

8 **Sec. 2. 22 MRSA §4004-B**, as amended by PL 2017, c. 407, Pt. A, §83, is further
9 amended to read:

10 **§4004-B. Infants born affected by substance use disorder or after prenatal exposure**
11 **to drugs or with a fetal alcohol spectrum disorder**

12 The department shall act to protect infants born identified as being affected by ~~illegal~~
13 ~~substance use, demonstrating~~ or withdrawal symptoms resulting from prenatal drug
14 exposure, whether the prenatal exposure was to legal or illegal drugs, or having a fetal
15 alcohol spectrum ~~disorders~~ disorder, regardless of whether the infant is abused or
16 neglected. The department shall:

17 **1. Receive notifications.** Receive notifications of infants who may be affected by
18 ~~illegal~~ substance use or ~~demonstrating~~ withdrawal symptoms resulting from prenatal drug
19 exposure or who have a fetal alcohol spectrum ~~disorders~~ disorder;

20 **2. Investigate.** Promptly investigate notifications received of infants born who may
21 be affected by ~~illegal~~ substance use or ~~demonstrating~~ withdrawal symptoms resulting
22 from prenatal drug exposure or who have a fetal alcohol spectrum ~~disorders~~ disorder as
23 determined to be necessary by the department to protect the infant;

24 **3. Determine if infant is affected.** Determine whether each infant for whom the
25 department conducts an investigation is affected by ~~illegal~~ substance use, ~~demonstrates~~ or
26 withdrawal symptoms resulting from prenatal drug exposure or has a fetal alcohol
27 spectrum ~~disorders~~ disorder;

28 **4. Determine if infant is abused or neglected.** Determine whether the infant for
29 whom the department conducts an investigation is abused or neglected and, if so,
30 determine the degree of harm or threatened harm in each case;

31 **5. Develop plan for safe care.** For each infant ~~whom~~ who the department
32 determines to be affected by ~~illegal~~ substance use, ~~to be demonstrating~~ or withdrawal
33 symptoms resulting from prenatal drug exposure or ~~to have~~ who has a fetal alcohol
34 spectrum ~~disorders~~ disorder, develop, with the assistance of any health care provider
35 involved in the ~~mother's~~ caregiver's or the child's medical or mental health care, a plan for
36 the safe care of the infant and, in appropriate cases, refer the child or ~~mother~~ caregiver or
37 both to a social service agency, a health care provider or a voluntary substance use
38 disorder prevention service; ~~and~~ . For purposes of this subsection, "health care provider"

1 means a person described in section 4011-A, subsection 1, paragraph A, subparagraphs
2 (1) to (10), (15), (17) to (20) or (22); and

3 **6. Comply with section 4004.** For each infant ~~whom~~ who the department
4 determines to be abused or neglected, comply with section 4004, subsection 2, paragraphs
5 E and F.

6 **Sec. 3. 22 MRSA §4011-B**, as amended by PL 2017, c. 407, Pt. A, §84, is further
7 amended to read:

8 **§4011-B. Notification of prenatal exposure to drugs or having a fetal alcohol**
9 **spectrum disorder**

10 **1. Notification of prenatal exposure to drugs or having a fetal alcohol spectrum**
11 **disorder.** A health care provider involved in the delivery or care of an infant who the
12 provider knows or has reasonable cause to suspect has been born affected by illegal
13 substance use, ~~is demonstrating~~ has withdrawal symptoms that require medical
14 monitoring or care beyond standard newborn care when those symptoms have resulted
15 from or have likely resulted from prenatal drug exposure, whether the prenatal exposure
16 was to legal or illegal drugs, or has a fetal alcohol spectrum ~~disorders~~ disorder shall notify
17 the department of that condition in the infant. The notification required by this
18 subsection must be made in the same manner as reports of abuse or neglect required by
19 this subchapter.

20 A. This section, and any notification made pursuant to this section, may not be
21 construed to establish a definition of "abuse" or "neglect."

22 B. This section, and any notification made pursuant to this section, may not be
23 construed to require prosecution for any illegal action, including, but not limited to,
24 the act of exposing a fetus to drugs or other substances.

25 **2. Definition.** For purposes of this section, "health care provider" means a person
26 described in section 4011-A, subsection 1, paragraph A, subparagraphs (1) to (10), (15),
27 (17) to (20) or (22) or any person who assists in the delivery or birth of a child for
28 compensation, including, but not limited to, a midwife.

29 **SUMMARY**

30 This bill modifies reporting requirements and the Department of Health and Human
31 Services' responsibility for establishment of a plan of safe care to include infants affected
32 by substance use regardless of whether the mother's substance use was legal or illegal. In
33 addition, this bill clarifies provisions regarding withdrawal symptoms so that the infant is
34 no longer required to demonstrate withdrawal symptoms and instead is required to be
35 affected by withdrawal symptoms. This bill also changes the requirement for the safe
36 plan of care to require that service referrals be made not just for a mother but for any
37 caregivers of the infant. These changes reflect changes in the federal Child Abuse
38 Prevention and Treatment Act.