Findings and Recommendation Report Summary

Office of the Child Advocate

Case Number: 2023-0315

[redacted]

Date of Death: April 1, 2022

Investigation Start: December 13, 2022

Recommendation Issued: February 4, 2025

Case Background

[redacted] was five weeks old when he died on April 1, 2022. Pursuant to MCL 722.627k, MDHHS notified the OCA of [redacted] death. On December 13, 2022, the OCA opened an investigation into the administrative actions of MDHHS leading up to and regarding [redacted] death. The following report summarizes the information and evidence found during the OCA's investigation.

Case Objective

The objective of this review is to identify areas for improvement in the child welfare system by looking at how CPS complaints and investigations involving [redacted] were handled by Wayne County CPS, medical professionals, service providers, and law enforcement. This review includes an analysis of Child Protection Law (CPL) and MDHHS policy regarding substance-exposed infants. The OCA discusses and provides citations to research that exists regarding the impact in utero substance-exposure has on a neonate and a child throughout their lifetime. This review reinforces the idea that the safety and well-being of a child is a shared responsibility of the family, community, law enforcement, and medical professionals aiding children and families. This report is not intended to place blame, but to highlight areas of concern regarding the handling of [redacted] case; inform policy, procedure, and practice of MDHHS and partners within the child welfare system; and advocate for changes within it on behalf of similarly situated children.

Research Source Materials

1 Chang G. "Maternal Substance Use: Consequences, Identification, and Interventions." Alcohol Research. 40(2): (2020). Maternal Substance Use: Consequences, Identification, and Interventions | Alcohol Research: Current Reviews (nih.gov); Bailey, Nicole A., Diaz-Barbosa, Magaly MD. "Effects of Maternal Substance Abuse on the Fetus, Neonate, and Child." Pediatric in Review. 39(11): 550-559 (2018). https://doi.org/10.1542/pir.2017-0201; Ross, E., Graham, D., Money, K. et al. "Developmental Consequences of Fetal Exposure to Drugs: What We Know and What We Still Must Learn." Neuropsychopharmacology 40, 61–87 (2015). https://doi.org/10.1038/npp.2014.147; Behnke, Marylou MD, Smith, Vincent, C. MD, et al. "Prenatal Substance Abuse: Short- and Long-Term Effects on the Exposed Fetus." Pediatrics 131 (3): e1009-e1024 (2013). https://doi.org/10.1542/peds.2012-3931

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3 Chang, "Maternal Substance Use: Consequences, Identification, and Interventions." Alcohol Research. 40(2): (2020); Bailey, "Effects of Maternal Substance Abuse on the Fetus, Neonate, and Child." Pediatric in Review. 39(11): 550-559 (2018); Ross, "Developmental Consequences of Fetal Exposure to Drugs: What We Know and What We Still Must Learn." Neuropsychopharmacology 40, 61–87 (2015); Behnke, "Prenatal Substance Abuse: Short- and Long-Term Effects on the Exposed Fetus." Pediatrics 131 (3): e1009-e1024 (2013).

4 Chang, "Maternal Substance Use: Consequences, Identification, and Interventions." Alcohol Research. 40(2): (2020); Bailey, "Effects of Maternal Substance Abuse on the Fetus, Neonate, and Child." Pediatric in Review. 39(11): 550-559 (2018); Ross, "Developmental Consequences of Fetal Exposure to Drugs: What We Know and What We Still Must Learn." Neuropsychopharmacology 40, 61–87 (2015); Behnke, "Prenatal Substance Abuse: Short- and Long-Term Effects on the Exposed Fetus." Pediatrics 131 (3): e1009-e1024 (2013).

5 Wachman EM, Schiff DM, Silverstein M. "Neonatal Abstinence Syndrome: Advances in Diagnosis and Treatment." JAMA. 319(13):1362–1374. (2018). 1940-0640-9-19.pdf (springer.com); Ghazanfarpour M, Najafi MN, et al. "Therapeutic approaches for neonatal abstinence syndrome: a systematic review of randomized clinical trials." Daru. 27(1):423-431. (2019). Therapeutic approaches for NAS.pdf; Lisonkova, S., Richter, L., et al. "Neonatal Abstinence Syndrome and Associated Neonatal and Maternal Mortality and Morbidity.' Pediatrics 144(2): e20183664. (2019). https://doi.org/10.1542/peds.2018-3664; Merhar S.L., McAllister J.M. et al. "Retrospective review of neurodevelopmental outcomes in infants treated for neonatal abstinence syndrome." J Perinatal. 38(5):587-592. (2018) Retrospective review of neurodevelopmental outcomes in infants treated for neonatal abstinence syndrome (nih.gov); Ordean A. & Chisamore B.

Case Number: 2023-0315

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Case Background

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Research Source Materials Continued

"Clinical presentation and management of neonatal abstinence syndrome: an update." Research and Reports in Neonatology 4, 75-86. (2014). https://doi.org/10.2147/RRN.S46441; McQueen K. & Murphy-Oikonen J. "Neonatal Abstinence Syndrome." The New England Journal of Medicine 375;25. 2468-2479. (2016). Neonatal Abstinence Syndrome (nejm.org)

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Findings and Recommendation Report Summary

Office of the Child Advocate

Case Number: 2023-0315

[redacted]

Response received from MDHHS: July 22, 2025

Findings

1. The child advocate finds that Michigan law, specifically the child protection law, does not adequately address the harm caused to newborn infants when they are experiencing withdrawal symptoms from non-prescribed substance exposure while in utero.

Responses

MDHHS Response to Finding 1: MDHHS disagrees. MCL 722.623 (a) requires a mandated reporter who knows or has reasonable cause to suspect based on the infant's symptoms, that the infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in their body, not attributed to medical treatment, to make a referral of suspected child abuse/neglect to Centralized Intake. Withdrawal not attributed to medical treatment is considered a symptom requiring a referral.

The law appears clear regarding which referrals must be reported to Centralized Intake. MDHHS then operationalizes the statutory requirement further by outlining which referrals must be screened in for investigation, which includes infants born exposed to substances not attributed to medical treatment when symptoms suggesting exposure, which may include withdrawal, are present.

Children's Protective Services (CPS) investigates referrals alleging an infant was born exposed to substances not attributed to medical treatment when exposure is indicated by any of the following:

- **Positive urine screen of the infant.**
- **Positive result from meconium testing.**
- **Positive result from umbilical cord tissue testing.**
- **A medical professional report(s) the child has symptoms that indicate exposure.**

If screened in for investigation, CPS must assess child safety and family well-being throughout the course of the investigation and determine the case outcome based on the evidence gathered, including whether further intervention is needed by the department or the court.

In addition, a Plan of Safe Care (POSC), a family-centered plan designed to ensure the safety and well-being of infants who have experienced prenatal substance exposure and their families, should be co-developed with the family during an investigation and revisited throughout the duration of any ongoing child welfare involvement.

The child advocate finds child protection law MCL 722.637(1) refers to a severe physical injury and references section 8 for definitions. This is the only section of child protection law containing the word "severely" or a derivative of the word severe.

"Severe" physical injury is not defined in child protection law.

MCL 722.637(1) refers the reader to section 8 for a definition of severe physical injury. Definitions are provided in section 2 (MCL 722.622) of the child protection law.

MDHHS Response to Finding 2: MDHHS agrees. This error was identified following Central Registry reform legislation in 2022. Any references to severe physical injury should have been updated to reflect serious physical harm to align with other references in statute. Serious physical harm is referenced in MCL 722.622 and defined in MCL 750.136b.

Findings and Recommendation Report Summary

Office of the Child Advocate

Case Number: 2023-0315

[redacted] [redacted]

Response received from MDHHS: July 22, 2025

Findings	Responses
The child advocate finds that current MDHHS policy surrounding substance exposed infants who are experiencing withdrawal symptoms is insufficient. Current MDHHS policy instructs CPS to contact "medical staff" to determine if the evidence available is indicative of abuse or neglect. In order to determine if serious physical abuse has occurred, policy instructs CPS to contact "a medical practitioner" to confirm the exposure or related symptoms meets the definition of serious physical harm. Policy does not define what individuals constitute "medical staff" or "a medical practitioner."	**MDHHS Response to Finding 3: MDHHS disagrees. Medical practitioner is defined in PSM 711-4. A medical practitioner is one of the following:** • **A physician or physician's assistant licensed or authorized to practice under part 170 or 175 of the public health code, MCL 333.17001 to 333.17088 and MCL 333.17501 to 333.17556.** • **A nurse practitioner licensed or authorized to practice under section 172 of the public health code, MCL 333.17210.** **MDHHS agrees to consider aligning the language in PSM 716-7 to require consultation with a medical practitioner.**
The child advocate finds that during the February 24, 2022, CPS investigation, CPS staff didn't contact the correct medical "staff" or "practitioner" to determine the level of harm caused or likely to be caused by the withdrawal symptoms [redacted] was experiencing. Anecdotally the OCA's review of child death cases has revealed a pattern where, in prior CPS investigations, CPS staff fail to make contact with the medical providers who have specific knowledge about a child's medical condition, how it developed, and how it is being treated.	**MDHHS Response to Finding 4: MDHHS agrees. MDHHS acknowledges review of the anecdotal statement.**
The child advocate finds there is no requirement in CPS policy to speak with the treating medical provider who has specific knowledge of the child's medical condition, how it developed, and how it is being treated.	**MDHHS Response to Finding 5: MDHHS disagrees. PSM 716-7 requires that investigations involving infants exposed to substances or alcohol also include the following:** • **Contact with medical staff to obtain the following information, if available:** **- Results of medical tests indicating infant exposure to substances and/or alcohol.** **- The health and status of the infant.** **- Documented symptoms of withdrawal experienced by the infant.** **- Medical treatment the infant or birthing parent may need.** **- Observations of the parent's care of the infant and the parent's response to the infant's needs.** • **To be considered serious physical abuse, a medical practitioner must confirm the infant's exposure, and any related symptoms, meet the definition of serious physical harm.** • **Interview with the infant's parents and any relevant caregivers to assess the need for a referral for substance use disorder prevention, treatment, or recovery services.**

Findings and Recommendation Report Summary

Office of the Child Advocate

Case Number: 2023-0315

[redacted]

Response received from MDHHS: July 22, 2025

Recommendation

The child advocate recommends the Michigan Legislature amend the child protection law to add the following language to MCL 722.622(p) regarding what constitutes a confirmed case of serious abuse or neglect:

722.622 Definitions. Sec. 2. (p) adding a new subsection MCL

722.622(p)(vi): A newborn infant experiencing withdrawal symptoms from alcohol, a controlled substance, or a metabolite of a controlled substance, they were exposed to while in utero that needs to be medically treated, unless the alcohol, controlled substance, metabolite of a controlled substance, or the child's symptoms are the result of medical treatment administered to the newborn infant or his or her mother.

Responses

MDHHS Response to Recommendation 1: MDHHS disagrees. Department policy operationalizes the statutory definitions of child abuse and child neglect and the required elements to reach a confirmed finding. Policy also permits case managers to assess whether the criteria for serious physical harm are met, which may result in the need for court intervention. Further, penalizing a parent struggling with substance use during and after pregnancy by placing them on Central Registry, following any confirmed finding of this nature, may have unintended consequences and a disproportionate impact on marginalized communities.

An approach that prioritizes prevention, treatment, and support for pregnant and parenting individuals with substance use disorders is the department's current focus and is supported by implementation of the federally mandated Plan of Safe Care (POSC) Protocol.

MDHHS is actively partnering with the Michigan Public Health Institute (MPHI) and other critical partners to implement an enhanced POSC, with the support of a comprehensive training series and toolkit, to improve outcomes for infants and their families. The POSC is designed to ensure the safety and well-being of infants who have experienced prenatal substance exposure and their families with an emphasis on prevention, treatment, and support.

The child advocate recommends the Michigan Legislature amend child protection law MCL 722.637(1) by removing the term "severely" and replacing it with "seriously" and removing the reference to section 8 and referring readers to section 2.

Suggested language:

Sec. 17. (1) Except as provided in subsection (2), within 24 hours after the department determines that a child was severely seriously physically injured as defined in section 8 section 2, sexually abused, or allowed to be exposed to or have contact with methamphetamine production, the department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.

MDHHS Response to Recommendation 2: MDHHS agrees. Child Protection Law should be updated throughout to reflect serious physical harm/seriously physically harmed for consistency.

Findings and Recommendation Report Summary

Office of the Child Advocate

Case Number: 2023-0315

[redacted] [redacted]

Response received from MDHHS: July 22, 2025

Recommendation	Responses
The child advocate recommends MDHHS amend PSM 716-7 regarding investigations involving infants exposed to alcohol or substances. PSM 716-7 should define medical staff, or practitioners, to mean the child's treating medical provider who has received formal training to practice medicine. This should include individuals such as a physician, nurse, or other medical provider who are qualified to report about the infant's physical health, medical treatment being provided to the child for withdrawal symptoms, and what that medical treatment involves.	**MDHHS Response to Recommendation 3: MDHHS agrees. Medical practitioner is defined in PSM 711-4 as follows:** • **A physician or physician's assistant licensed or authorized to practice under part 170 or 175 of the public health code, MCL 333.17001 to 333.17088 and MCL 333.17501 to 333.17556.** • **A nurse practitioner licensed or authorized to practice under section 172 of the public health code, MCL 333.17210.** **MDHHS will enhance PSM 716-7 to mirror or link the language reflected in PSM 711-4.**
The child advocate recommends MDHHS amend PSM 716-7 to add new language requiring CPS specialists to contact and speak with the substance exposed infant's treating medical provider when a newborn infant is experiencing withdrawal symptoms from that exposure. When doing so, CPS specialists should determine the status of the infant's physical health if they are receiving any medical treatment for the withdrawal symptoms, what that medical treatment involves and if the infant's exposure and any related symptoms meet the definition of serious physical harm.	**MDHHS Response to Finding 5: MDHHS disagrees. PSM 716-7 requires that investigations involving infants exposed to substances or alcohol also include the following:** • **Contact with medical staff to obtain the following information, if available:** - **Results of medical tests indicating infant exposure to substances and/or alcohol.** - **The health and status of the infant.** - **Documented symptoms of withdrawal experienced by the infant.** - **Medical treatment the infant or birthing parent may need.** - **Observations of the parent's care of the infant and the parent's response to the infant's needs.** • **To be considered serious physical abuse, a medical practitioner must confirm the infant's exposure, and any related symptoms, meet the definition of serious physical harm.** • **Interview with the infant's parents and any relevant caregivers to assess the need for a referral for substance use disorder prevention, treatment, or recovery services.**
The child advocate recommends all CPS case managers be trained on the Michigan Governor's Task Force on Child Abuse and Neglect plan of safe care protocol.	**MDHHS Response to Recommendation 5: MDHHS agrees. MDHHS is actively partnering with MPHI and other critical partners to implement the enhanced POSC, with the support of a comprehensive training series and toolkit, to improve outcomes for infants and their families. The training series is expected to roll out in 2025. The department's training unit will also train on the enhanced protocol moving forward.**

Office of the Child Advocate

[redacted]

Date of Birth: February 24, 2022
Date of Death: April 1, 2022

Case Number: 2023-0315

Investigation Start: December 13, 2022

Recommendation Issued: February 4, 2025

OCA Background

The Office of the Child Advocate (OCA) is tasked with making recommendations to positively effect change in policy, procedure, and legislation by investigating and reviewing actions of the Michigan Department of Health and Human Services (MDHHS), child placing agencies, residential facilities providing juvenile justice services, or child caring institutions. The Child Advocate Act, Public Act 204 of 1994, also requires the OCA to ensure laws, rules, and policies pertaining to Children's Protective Services (CPS), Foster Care, Adoption, and Juvenile Justice are being followed. The OCA is an autonomous entity, separate from the MDHHS.

The OCA's review included reading confidential records and information in the Michigan Statewide Automated Child Welfare Information System (MiSACWIS), CPS complaints and investigation reports, the child's autopsy report, medical records, police reports, and substance abuse treatment records. The OCA also interviewed MDHHS staff, medical staff at the medical examiner's office and the hospital where the child was born, law enforcement, and service providers. Due to the confidentiality of OCA investigations, the OCA cannot disclose the identity of witnesses or complainants or sources of statements and evidence.

The objective of this review is to identify areas for improvement in the child welfare system by looking at how CPS complaints and investigations involving [redacted] were handled by Wayne County CPS, medical professionals, service providers, and law enforcement. This review includes an analysis of Child Protection Law (CPL) and MDHHS policy regarding substance-exposed infants. The OCA discusses and provides citations to research that exists regarding the impact in utero substance-exposure has on a neonate and a child throughout their lifetime. This review reinforces the idea that the safety and well-being of a child is a shared responsibility of the family, community, law enforcement, and medical professionals aiding children and families. This report is not intended to place blame, but to highlight areas of concern regarding the handling of [redacted] case; inform policy, procedure, and practice of MDHHS and partners within the child welfare system; and advocate for changes within it on behalf of similarly situated children.

Given the nature of our responsibilities, the OCA review is inherently prompted by a worst-case scenario. The investigation and review aim to give a voice to the children involved. It is important for readers to understand the majority of cases investigated and managed by children's protective services, foster care, and adoption, do not lead to the 'worst-case scenario.' The OCA has also reviewed countless instances where MDHHS' child welfare programs have been successful for children and families, and where dedicated child welfare professionals help families remain strong and together in the face of adversity. While the OCA reviews specific cases, the items identified in the findings of this document highlight missed opportunities often observed by the OCA. If addressed by MDHHS, the OCA believes it can help prevent future instances of harm.

[redacted] was five weeks old when he died on April 1, 2022. Pursuant to MCL 722.627k, MDHHS notified the OCA of [redacted] death. On December 13, 2022, the OCA opened an investigation into the administrative actions of MDHHS leading up to and regarding [redacted] death. The following report summarizes the information and evidence found during the OCA's investigation.

Family History and Background

[redacted] is [redacted] biological mother. [redacted] is her only known child. [redacted] identified Dowan Knighten as [redacted] biological father; however lawful paternity was never established. [redacted] was living at an America's Best Value Inn motel and Dowan was incarcerated when [redacted] was born. [redacted] was born premature at thirty-six weeks by caesarian section at Henry Ford Hospital on February 24, 2022.

When [redacted] was born, [redacted] was administered a urine drug screen by Henry Ford Hospital staff, and she tested positive for opiates and cocaine. [redacted] admitted to Henry Ford Hospital staff she was unemployed and had been using crack cocaine and heroin for more than a decade. She admitted using crack and heroin daily throughout her pregnancy with [redacted] She said her most recent use was on February 23, 2022. She did not receive prenatal care and left the hospital against medical advice on February 24, 2022. She initially planned to place [redacted] up for adoption but changed her mind on March 8, 2022.

Cocaine and opiates were detected in [redacted] meconium drug screen. [redacted] experienced withdrawal symptoms from his substance exposure and was diagnosed with Neonatal Abstinence Syndrome (NAS). This caused [redacted] to be hospitalized for twenty-three days while he was treated with morphine. [redacted] also had Hepatitis C.

MDHHS Centralized Intake (CI) received a complaint about [redacted] birth and withdrawal symptoms on February 24, 2022. That day, CI staff assigned the complaint to Wayne County CPS for investigation.

Case Number: 2023-0315

[redacted]

The OCA's investigation of the February 24, 2022, CPS investigation:

According to records the OCA investigator reviewed and the interviews they conducted, the CPS specialist and supervisor assigned to the February 24, 2022, CPS investigation, told Henry Ford Hospital staff [redacted] could be discharged to [redacted] As part of this decision, [redacted] verbally agreed to participate in substance abuse services through the Star Center (STAR), the Wayne County Early On program, Crystal Home Health's Maternal Infant Health Program (MIHP), and MDHHS prevention services. She also verbally agreed to follow safe sleep practices, obtain baby supplies, and take [redacted] to a pediatrician.

In addition to the verbal agreements there was a written safety plan. The written safety plan asked [redacted] to use substances only when a sober caregiver was present to care for [redacted] not to transport [redacted] when using substances and to make all controlled substances inaccessible to him. According to interviews the OCA investigator conducted, [redacted] was discharged from Henry Ford Hospital to [redacted] on March 24, 2022. CPS records, and interviews conducted by the OCA investigator, indicated when [redacted] was discharged to [redacted] she was still living in the America's Best Value Inn motel, had begun substance abuse treatment with STAR, and had obtained baby supplies. [redacted] also had one contact with the Early On program on March 10, 2022.

CPS and Livonia Police Department (LPD) records reviewed indicate that on March 31, 2022, a resident at America's Best Value Inn motel contacted the LPD and said [redacted] was found unresponsive. Emergency services responded to the motel and transported [redacted] to St. Mary Mercy Hospital, where he was declared deceased on April 1, 2022.

CPS records show that CI staff were notified of [redacted] death via telephone on April 1, 2022. On the same day, CI staff assigned the death complaint for investigation to the CPS specialist managing the February 24, 2022, CPS investigation.

CPS records indicate the February 24, 2022, investigation was concluded after [redacted] death on April 1, 2022. CPS staff found that [redacted] physically abused [redacted] CPS staff wrote in their investigation report this finding was made because [redacted] was unable to demonstrate the ability to "consistently nurture and supervise [redacted] according to his developmental needs." CPS staff also wrote in their report the withdrawal symptoms [redacted] experienced weren't severe as this is what Henry Ford Health's social worker relayed to CPS.

During interviews with CPS staff, it was discovered CPS didn't speak with any doctors, nurses, or other medical personnel about whether [redacted] withdrawal symptoms caused him serious injury. During interviews with Henry Ford Hospital staff, the OCA investigator was told the hospital social worker would not be able to tell CPS whether [redacted] withdrawal symptoms were a severe injury or not. Henry Ford Hospital staff told the OCA investigator hospital social workers aren't qualified to make that determination.

The OCA investigator interviewed two Neonatologists, Dr. [redacted] and Dr. [redacted] Both attended to [redacted] while he was being treated for withdrawal symptoms at Henry Ford Hospital. The OCA was informed withdrawal symptoms by an infant caused by substance exposure, if not treated, may lead to seizures and an inability to eat. The physicians interviewed stated these can lead to death if medical treatment isn't provided. The physicians also said even though [redacted] didn't experience seizures during his withdrawal, he began to show signs he might, and so pharmacological treatment had to be provided. The physicians informed the OCA fetuses exposed to substances while in utero can lead to short-term and long-term physical health, developmental, and intellectual challenges. According to these treating physicians, the more substances a fetus is exposed to, the more difficult the withdrawal symptoms are to treat. Further adding an infant who has been exposed to opiates and is having withdrawal symptoms is especially difficult to treat.

The OCA's investigation of the April 1, 2022, CPS investigation of [redacted] death:

CPS records indicate LPD officers found drug residue and paraphernalia in [redacted] motel room the same day [redacted] died. Officers told CPS staff that [redacted] and a resident staying in the room next to [redacted] named [redacted] kept falling asleep after the LPD arrived. The LPD detective investigating [redacted] death told CPS staff that [redacted] admitted to using heroin on March 31, 2022, prior to [redacted] death. The detective said officers administered [redacted] a blood test on March 31, 2022, and it was positive for methadone, fentanyl, and benzodiazepines.

CPS records, and the medical records the OCA investigator obtained and reviewed from St. Mary Mercy Hospital, indicated heroin paraphernalia was found near [redacted] crib.

Case Number: 2023-0315

[redacted]

The OCA's investigation of the April 1, 2022, CPS investigation of [redacted] death:

The LPD report concerning [redacted] death was reviewed by the OCA investigator. It states [redacted] was already in rigor mortis when officers arrived. The report goes on to state that [redacted] told officers she found [redacted] unresponsive in his crib on March 31, 2022. It also states [redacted] wasn't following safe sleep practices. Officers interviewed other residents at the motel, and they said [redacted] and [redacted] appeared to be under the influence before and after law enforcement arrived.

The LDP report further states [redacted] fell asleep at the hospital after being told by officers and Henry Ford Hospital staff that [redacted] was deceased. Officers arrested [redacted] after this for possession of the drug paraphernalia found in her motel room.

According to CPS records, the April 1, 2022, investigation was concluded on June 17, 2022. CPS staff found that [redacted] improperly supervised [redacted] They documented this finding was made because [redacted] was under the influence of substances and was not able to respond to [redacted] needs the night he died. The OCA investigator learned from interviews with CPS staff that [redacted] autopsy report wasn't complete until after the April 1, 2022, investigation was closed. CPS did not obtain [redacted] autopsy report for their investigation.

The OCA investigator obtained and reviewed [redacted] autopsy report during the OCA investigation. The report states [redacted] cause and manner of death were both indeterminate. The report also states that one nanogram of cocaine and fentanyl were found in [redacted] urine and blood, respectively.

The OCA investigator interviewed the medical examiner (ME) who completed the autopsy. The ME stated they could not say whether the cocaine and fentanyl contributed to [redacted] death. The ME added livor mortis found during [redacted] autopsy did not align with the position [redacted] said [redacted] body was in when she found him unresponsive. The ME informed the OCA this may indicate [redacted] died from unsafe sleep practices, but this could not be confirmed as his cause of death.

The OCA review of the Michigan Child Protection Law (CPL) (MCL 722.621-722.638):

MCL 722.623a requires mandated reporters to contact MDHHS CI when they have "reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in their body…[unless] the person knows [it's]…the result of medical treatment administered to the newborn or their mother." The remainder of the CPL does not specify what MDHHS is supposed to do with such complaints when they are made, or whether a newborn infant with such substances in their body is considered abuse or neglect. The CPL also does not specify whether a substance exposed newborn infant who is experiencing withdrawal symptoms that require medical treatment is considered serious physical harm. The CPL refers readers to the Michigan penal code, MCL 750.136b(1)(f) to define serious physical harm.

The OCA review of MDHHS policy regarding substance exposed newborn infants:

MDHHS policy PSM 716-7 currently states positive toxicology of substances in a newborn infant, in and of itself, isn't proof of child abuse or neglect. PSM 716-7 then states whether substance exposure means an infant was abused or neglected is to be determined by CPS staff based on the evidence they collect during their investigation from "medical staff". For such exposure to be considered serious child abuse or neglect, CPS must have a "medical practitioner" confirm the infant's exposure meets the definition of serious physical harm per MCL 750.136b(1)(f). MDHHS policy does not define what is meant by medical staff or practitioner.

MCL 750.136B(1)(f) defines "Serious physical harm" as any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

The OCA review of research on substance exposed newborn infants:

The detrimental short-term and long-term effects of maternal substance use during pregnancy on the fetus, neonate, and child are well documented in the research on this issue.1 This includes, among other substances, the use of cocaine, alcohol, nicotine, amphetamines, cannabinoids, and opioids.2 The use of such substances during pregnancy can cause prematurity and Neonatal Abstinence Syndrome (NAS).[3] It can also cause growth deficits, cognitive delays and impairments, and attention, behavioral, and emotional issues throughout a child's lifetime.[4]

Case Number: 2023-0315

[redacted] [redacted]

The OCA review of research on substance exposed newborn infants continued:

Neonatal Abstinence Syndrome (NAS) is a spectrum of clinical manifestations seen in neonates due to withdrawal symptoms secondary to intrauterine exposure to various drugs, including opioids, alcohol, benzodiazepines, and cocaine.[5] Short-term withdrawal symptoms from such drugs can include high-pitched crying, irritability, tremors, feeding difficulties, respiratory distress, gastrointestinal and vasomotor issues, sleep disturbances, and seizures.6 In some instances, if such symptoms are not treated using pharmacology it can result in the infant's death.[7] NAS has also been found to cause long-term consequences for children that include neurodevelopmental delays, behavioral challenges, and premature death.[8] When a newborn infant is suspected to have NAS, a scoring system called the Finnegan Score (FS), or Neonatal Abstinence Syndrome Score (NASS) are used to determine whether different withdrawal symptoms are present and whether medication (morphine, phenobarbital, clonidine, or methadone) should be administered to the newborn infant to treat the symptoms.[9] The scoring assessment is recommended to be done every few hours during admission when the initial score is below 8.[10] If the score becomes greater than eight (worsening of symptoms) the assessment must be done more frequently.[11] If two subsequent scores after the initial score are greater than eight, then medication should be used to stabilize the symptoms.[12] Presently, eighteen states have laws stating that substance use during pregnancy is child abuse, three states have laws that say substance use during pregnancy is a crime, and sixteen states have laws that health care workers must report drug abuse during pregnancy to the proper authorities.[13]

Factual Findings Introduction

The Child Advocate shall prepare a report of the factual findings of an investigation and make recommendations to the department or the child placing agency if the Child Advocate finds one or more of the following:

a) A matter should be further considered by the department or the child-placing agency.
b) An administrative act or omission should be modified, canceled, or corrected.
c) Reasons should be given for an administrative act or omission.
d) Other action should be taken by the department or the child-placing agency.

The Child Advocate believes the findings should be further considered by the department, an administrative act should be corrected, and additional actions by MDHHS and other child welfare partners are necessary to help detect and prevent child abuse.

Findings

1. The child advocate finds that Michigan law, specifically the child protection law, does not adequately address the harm caused to newborn infants when they are experiencing withdrawal symptoms from non-prescribed substance exposure while in utero.

2. The child advocate finds child protection law MCL 722.637(1) refers to a severe physical injury and references section 8 for definitions.
   a. This is the only section of child protection law containing the word "severely" or a derivative of the word severe.
   b. "Severe" physical injury is not defined in child protection law.
   c. MCL 722.637(1) refers the reader to section 8 for a definition of severe physical injury. Definitions are provided in section 2 (MCL 722.622) of the child protection law.

3. The child advocate finds that current MDHHS policy surrounding substance exposed infants who are experiencing withdrawal symptoms is insufficient. Current MDHHS policy instructs CPS to contact "medical staff" to determine if the evidence available is indicative of abuse or neglect. In order to determine if serious physical abuse has occurred, policy instructs CPS to contact "a medical practitioner" to confirm the exposure or related symptoms meets the definition of serious physical harm. Policy does not define what individuals constitute "medical staff" or "a medical practitioner."

4. The child advocate finds that during the February 24, 2022, CPS investigation, CPS staff didn't contact the correct medical "staff" or "practitioner" to determine the level of harm caused or likely to be caused by the withdrawal symptoms [redacted] was experiencing.
   a. Anecdotally the OCA's review of child death cases has revealed a pattern where, in prior CPS investigations, CPS staff fail to make contact with the medical providers who have specific knowledge about a child's medical condition, how it developed, and how it is being treated.

5. The child advocate finds there is no requirement in CPS policy to speak with the treating medical provider who has specific knowledge of the child's medical condition, how it developed, and how it is being treated.

Case Number: 2023-0315

[redacted] [redacted]

Recommendations

1. The child advocate recommends the Michigan Legislature amend the child protection law to add the following language to MCL 722.622(p) regarding what constitutes a confirmed case of serious abuse or neglect:

   722.622 Definitions. Sec. 2. (p) adding a new subsection MCL 722.622(p)(vi):

   A newborn infant experiencing withdrawal symptoms from alcohol, a controlled substance, or a metabolite of a controlled substance, they were exposed to while in utero that needs to be medically treated, unless the alcohol, controlled substance, metabolite of a controlled substance, or the child's symptoms are the result of medical treatment administered to the newborn infant or his or her mother.

2. The child advocate recommends the Michigan Legislature amend child protection law MCL 722.637(1) by removing the term "severely" and replacing it with "seriously" and removing the reference to section 8 and referring readers to section 2.

   Suggested language:

   Sec. 17. (1) Except as provided in subsection (2), within 24 hours after the department determines that a child was severely seriously physically injured as defined in section 8 section 2, sexually abused, or allowed to be exposed to or have contact with methamphetamine production, the department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.

3. The child advocate recommends MDHHS amend PSM 716-7 regarding investigations involving infants exposed to alcohol or substances.
   a. PSM 716-7 should define medical staff, or practitioners, to mean the child's treating medical provider who has received formal training to practice medicine. This should include individuals such as a physician, nurse, or other medical provider who are qualified to report about the infant's physical health, medical treatment being provided to the child for withdrawal symptoms, and what that medical treatment involves.

4. The child advocate recommends MDHHS amend PSM 716-7 to add new language requiring CPS specialists to contact and speak with the substance exposed infant's treating medical provider when a newborn infant is experiencing withdrawal symptoms from that exposure.
   a. When doing so, CPS specialists should determine the status of the infant's physical health, if they are receiving any medical treatment for the withdrawal symptoms, what that medical treatment involves and if the infant's exposure and any related symptoms meet the definition of serious physical harm.

Conclusion

Under authority pursuant to The Child Advocate's Act, MCL 722.903, the OCA respectfully submits this report of findings and recommendations.

The matters addressed in this report must be further considered by MDHHS and the Michigan Legislature. These recommendations may effectuate positive change and can improve the lives of similarly situated children involved in Michigan's child welfare system.

Before publishing, MDHHS has 60 days to provide a written response to this report in defense or mitigation of the action. The published report will include any statement of reasonable length made to the OCA by MDHHS.

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