

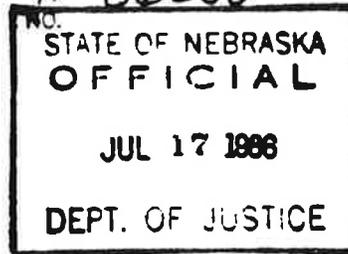
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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July 17, 1986



**SUBJECT:** State Compliance with Child Abuse Prevention and Treatment and Adoption Reform Act of 1978; Medical Neglect of Handicapped Infants.

**REQUESTED BY:** Gina C. Dunning, Director  
Nebraska Department of Social Services

**OPINION BY:** Robert M. Spire, Attorney General  
Royce N. Harper, Assistant Attorney General

**QUESTION:** Are the State of Nebraska and its overseeing state agencies in compliance with requirements of the Child Abuse Prevention and Treatment Act with respect to the prevention of medical neglect of handicapped infants.

42 U.S.C. §5103 4(b)(2)(K) provides that in order for a State to qualify for federal assistance under the Act in carrying out child abuse and prevention programs such state shall

. . . have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate

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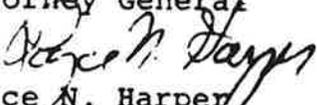
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health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

The State of Nebraska is, in our view, in compliance with the eligibility requirements set forth in §4(b)(2)(K). Nebraska's extensive reporting statute, which is contained in §28-711 of the Nebraska Revised Statutes (Reissue ) provides a mechanism for physicians, medical institutions and nurses to report any incident of abuse or neglect of a child or disabled person to the proper law enforcement agency or to the Department of Social Services, the state's primary child protection agency. Pursuant to §§28-712 and 28-713, law enforcement agencies and the Department of Social Services are also empowered to investigate each report of abuse or neglect. Where appropriate, the law enforcement agencies or the Department are authorized to take immediate steps to protect an abused or neglected person, including the initiation of legal proceedings.

In accordance with its statutory mandate, the Department of Social Services has adopted and implemented procedures to respond to reports of suspected medical neglect of handicapped infants. The Department has coordinated its efforts with law enforcement agencies and physician groups in order to effectuate the goals of the reporting statutes. Nebraska's reporting statutes, together with the procedures adopted by the Department, in our opinion, meet the specific requirements of the federal Child Abuse Prevention and Treatment Act set forth in section 4(b)(2)(K).

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Approved:

  
Attorney General