

# Child Welfare Policy Manual

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## Questions & Answers

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### 2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

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**1. Question: Section 106(b)(2)(B)(x) of CAPTA requires States to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?**

**Answer:** A "near fatality" is defined under section 106 (b)(4)(A) as "...an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical", this would be considered a "near fatality" under CAPTA.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - 106(b)(4)(A)

**2. Question: The requirement for public disclosure states that "findings or information" about a case must be disclosed. Does this mean that States have the option to disclose either the findings of the case, or information which may be general in nature and address such things as practice issues rather than provide case-specific information?**

**Answer:** No. The intent of this provision was to assure that the public is informed about cases of child abuse or neglect which result in the death or near death of a child. As with the use of the other "or's" in this provision ("child abuse or neglect" and "child fatality or near fatality"), we understand the language to be inclusive and not limiting. Specifically, the reference to "findings or information" requires the disclosure of information about such a case even if there are no findings, in accordance with section 2.1A.4, Q/A #8 of the CWPM. Thus, when child abuse or neglect results in the death or near death of a child, the State must provide for the disclosure of the information required by section 2.1A.4, Q/A #8 of the CWPM. However, nothing in this provision should be interpreted to require disclosure of information which would fall within the specific exceptions that states are allowed to establish under section 2.1A.4, Q/A #8 of the CWPM.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated and reissued 8/06/13

- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(x)

**3. Question: One State has child fatality review panels that are charged with the review and evaluation of child fatalities and near fatalities in the State. In this process, they evaluate the extent to which the agency is effectively discharging its child protection responsibilities. The child fatality review panels publish an annual report that includes information, findings and recommendations on each case, and this report is made public. Would this process meet the requirement in section 106(b)(2)(B)(x) for public disclosure of findings or information about cases of child abuse or neglect that result in child fatality or near fatality?**

**Answer:** If the minimum information that must be released per section 2.1A.4, Q/A #8 of the CWPM is included in the report, this process would meet the CAPTA requirement.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(x)

**4. Question: Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to provide an assurance that it will have provisions which "allow" for public disclosure when child abuse or neglect results in a child fatality or near fatality. Yet section 2.1A.1, Q/A #1 of the Child Welfare Policy Manual (CWPM) "requires" public disclosure in such cases. Can you explain the requirements for this State plan assurance?**

**Answer:** "Provisions which allow for public disclosure" in section 106(b)(2)(B)(x) of CAPTA means that the State must have procedures or provisions that allow the public to access information when child abuse or neglect results in a child fatality or near fatality. The State does not have discretion in whether to allow the public access to the child fatality or near fatality information; rather, the public has the discretion as to whether to access the information. In other words, the State is not required to provide the information to the public unless requested. However, once a request has been made, the State must provide the information in accordance with section 2.1A.4, Q/A #8 of the CWPM.

Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. \*

\* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

- **Source/Date:** updated 9/27/11; 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) § section 106; Child Welfare Policy Manual - sections 2.1A.1 Q/A #1, 2 & 4 and 2.1A.4 Q/A #2

**5. Question: Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that results in a child's fatality or near fatality. Is the State required to turn over all of the information in the entire case record, when requested?**

**Answer:** No. The State is not required to release all of the information in the entire case record. Rather, the State must provide for the disclosure of findings and information in accordance with section 2.1A.4, Q/A #8 of the CWPM. As such, the State may determine its procedures in accordance with these parameters, and can release the full investigation; a summary of the investigation; or a statement of findings and information about the incident among other options. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. \*

\* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

- **Source/Date:** updated 9/27/11; 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106;

**6. Question: When child abuse or neglect results in a child fatality or near fatality, is the State required to disclose to the public personal information about the child, including name, date of birth and date of death?**

**Answer:** As required by CWPM section 2.1A.4 Q/A #8, the State is required to provide the child's age and gender when child abuse or neglect results in a child's death or near fatality; disclosure of the child's name, date of birth, date of death or other personal information is not a Federal requirement. However, a State is not prohibited by CAPTA from having procedures or policies that release such information.

Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. \*

\* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

- **Source/Date:** updated 9/27/11; 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

**7. Question: In a case of child abuse or neglect that results in a child fatality or near fatality, is the State required to provide information on the child's siblings, or other children in the household?**

**Answer:** Generally no. The information about another child in the household who is not a fatality or near fatality victim is not subject to the CAPTA public disclosure requirement unless this information is pertinent to the child abuse or neglect that led to the fatality or near fatality. This information in fact may be protected by the confidentiality requirements applicable to titles IV-B/IV-E of the Social Security Act. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. \*

\* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

- **Source/Date:** 10/24/2006; updated 9/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

**8. Question: Section 106(b)(2)(B)(x) of CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. Under this provision, is there information that a state must disclose to the public?**

**Answer:** Yes. States must develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family.

- **Source/Date:** 09/12/12
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5106a et seq.) § section 106