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Substance-exposed newborn infants and public health law: Differences in addressing the legal mandate to report

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ABSTRACT

Prenatal exposure to illicit substances is a finding that typically requires reporting to a child protective services agency. We examine whether there is differential reporting to two public agencies, and whether it varies by race/ethnicity and region. We also study predictors of indicating a maltreatment report as credible. Data on positive neonatal toxicology reports were obtained from the Illinois Department of Public Health (IDPH) and the Illinois Department of Children and Family Services (DCFS). Variation in reporting rates by race/ethnicity and region were compared with Pearson chi-square analysis. Multivariate logistic regression examined factors related to the likelihood of DCFS indicating a report as credible for maltreatment. IDPH recorded 1838 reports of substance-exposed newborn infants while DCFS only recorded 459 reports. There was a greater percentage of whites than blacks reported to DCFS as compared to those reported to IDPH ($p < 0.001$). There was a greater percentage of whites than blacks found to be indicated by DCFS as compared to those reported to IDPH ($p < 0.001$). Infants reported in rural areas were indicated less often (OR:0.34, 95% CI:0.17–0.67, $p = 0.002$) than those from urban areas. In conclusion, there was variation in reporting patterns between the two agencies. To optimize health outcomes for substance-exposed newborn infants (SEIs), the law should be clarified to provide clear standards for reporting and managing SEIs. Clinicians should ensure they are acting within the confines of existing law, and should engage in an interprofessional process with a broad array of stakeholders to develop statewide drug testing and reporting protocols.

1. Introduction

Infant exposure to illicit substances in-utero may represent an adverse health event and is considered a form of statutory child

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maltreatment in some US states (Abused and Neglected Child Reporting Act of 1975). Identification of such an exposure may signal a potentially dangerous caregiver or home environment that requires social and/or legal intervention ; (Minnes, Lang, & Singer, 2011; Minnes, Singer, Humphrey-Wall, & Satayathum, 2008). Animal (Thompson, Levitt, & Stanwood, 2009) and human (Behnke & Smith, 2013; Minnes et al., 2011; Ross, Graham, Money, & Stanwood, 2015) studies report adverse developmental outcomes as direct effects of illicit substance exposure in-utero. Reducing in-utero infant exposure to illicit substances is an important public health goal, although the approaches to attaining this goal remain varied and contested (Bishop et al., 2017).

While federal funding for drug abuse prevention and treatment services mandates the reporting of all substance-exposed newborn infants (SEIs) (Child Abuse Prevention and Treatment Act of 1974), and has recently been amended by public law 114–198 (the Comprehensive Addiction and Recovery Act) to mandate that states monitor the implementation of policies to provide appropriate services for these infants, current regulations dictating the triggers of such reports and the legal consequences befalling families of SEIs vary from state to state (Guttmacher Institute, 2018; Jarlenski et al., 2017). Additionally, within a single state, some groups may experience differential treatment under the law (Pierce et al., 2014). From a health systems perspective, variations from a single evidence-based practice are undesirable, and unwarranted variation should be minimized (Wennberg, 2002). From a legal perspective, there are precedents for certain states to follow the example of other states in adopting good policy (Nicholson-Crotty & Carley, 2016). However, there are also benefits in allowing variation to exist among state policies, including the application of law to a specific area of concern, tailoring the law to specific groups, and enabling a local innovation on a standard law or experimentation of a new law that then becomes a new model for other states to emulate or learn from (Kucskar, 2008; USDHHS, Substance Abuse and Mental Health Services Administration, & Administration for Children and Families, 2009).

This study of one US state's mandatory reporting laws and regulations for SEIs examines factors potentially associated with variations in the fulfillment of reporting mandates. Illinois law requires every laboratory-confirmed SEI to be reported to both the Illinois Department of Public Health (IDPH) (Fornoff, Egler, & Shen, 2001; Illinois Administrative Code, 1986) and to the Division of Child and Family Services (DCFS) (Abused and Neglected Child Reporting Act of 1975), the agency overseeing child protective services. Reports to these agencies result in the provision of supportive or preventative services for families. In addition, DCFS may also take a child into protective custody. However, separating a child from a parent by removal of the child or incarceration of the parent is controversial and often has unclear benefit-to-harm ratios (Oswald, 2013). Furthermore, separation runs against the social services approach of supporting the child-parent relationship (Berger & Font, 2015; Ondersma, Simpson, Brestan, & Ward, 2000).

There is no law specifying which infants should be tested. Both formal reports and the authors' personal experience show that hospitals in Illinois have varying policies regarding which infants should be tested (Birchfield, Scully, & Handler, 1995; Fornoff et al., 2001). Also, the authors' personal experience suggests that contrary to professional association policy recommendations (American College of Obstetricians and Gynecologists, 2015; Patrick & Schiff, 2017) and rudimentary medical ethics approaches (Warner, Walker, & Friedmann, 2003), an informed consent process for drug testing is not regularly implemented in SEI screening. This study focuses on how SEIs are handled after a positive toxicology has already been identified.

As SEI reporting is administered by two different state agencies, variations in reporting may occur. One possible source of variation in SEI reporting may occur due to the racial/ethnic background of the caregivers. One study found a ten-fold higher rate of reporting blacks, as compared to whites, among a cohort universally screened for prenatal substance use, despite similar rates of substance use among various racial/ethnic groups (Chasnoff, Landress, & Barrett, 1990). Another study showed that although one institution's policy did not explicitly consider race/ethnicity in its newborn screening protocol, black newborn infants were tested for cocaine exposure more often than white newborn infants (Ellsworth, Stevens, & D'Angio, 2010). A third study determined that the higher number of black and Hispanic infants reported to DCFS, relative to white infants, were explained by other demographic and pregnancy-related factors (Putnam-Hornstein, Prindle, & Leventhal, 2016).

Our study also investigates whether geographic factors influence SEI reporting. We are not aware of any studies on this topic. The literature on child maltreatment in general shows varying patterns of reporting depending on where a population falls on the urban-rural spectrum. Regarding physical maltreatment, urban areas tend to show fewer intentional child injuries and lower rates of investigation as compared to rural areas (Freisthler, Gruenewald, Ring, & LaScala, 2008; Sedlak et al., 2010; Wells, Lyons, Doueck, Brown, & Thomas, 2004). Recurrent reports for repeated child maltreatment were less common among metropolitan areas as compared to either urban or rural areas (English, Marshall, Brummel, & Orme, 1999), while rural areas showed a greater risk of repeated reports with increasing injury severity as compared to urban areas (Thackeray, Minneci, Cooper, Groner, & Deans, 2016). A survey of urban and rural laypersons and child protective service workers found higher rates of reported child neglect in rural areas but higher rates of indicated reports of child neglect in urban areas (Craft & Staudt, 1991).

DCFS classification of abuse versus neglect may also influence SEI reporting. Illinois law defines an SEI as neglect. However, some SEI cases may be classified as abuse because of DCFS's legal right to generate its own rules and classification schemes (Children and Family Services Act of 1989) or from interpretation of unclear laws (Miller, 2010). An allegation of abuse generally requires a higher burden of proof to indicate maltreatment than an allegation of neglect (Kahn, Gupta-Kagan, & Eschelbach Hansen, 2017).

This study has two main aims. First, we compare the racial/ethnic and regional compositions of reports recorded by the two public agencies of IDPH, which records reports for public health purposes, and of DCFS, which facilitates socio-legal intervention. Second, we examine DCFS reports for SEI to determine whether race/ethnicity, region, or allegation classification of abuse versus neglect are associated with a determination of indication for credible evidence of maltreatment. We hypothesize that black and Hispanic race/ethnicity and allegation classification of neglect will be associated with greater indication while rural region will be associated with lower indication.

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