

Child Welfare Policy Manual

Questions & Answers

2.1 CAPTA, Assurances and Requirements

1. Question: Must the policies that are the subject of the CAPTA assurances be embodied in State statutes?

Answer: There are five assurances in CAPTA that require provisions in State law. Those are: 1) a law for mandatory reporting by individuals required to report child abuse and neglect (section 106(b)(2)(B)(i)); 2) provisions for immunity from civil or criminal liability under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect; (section 106(b)(2)(B)(vii)); 3) upon implementation of provisions, procedures or mechanisms to assure that the State does not require reunification of a surviving child with a parent who has committed certain felonies, that conviction of any one of those felonies constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (section 106(b)(2)(B)(xvii)); 4) authority under State law for the State CPS 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 (section 106(b)(2)(C)(iii)); and 5) authority under State law to permit the State's CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions (section 113(b)).

However, if a State has a law in effect which conflicts with the provisions in any assurance, or the State's statutory definitions of "child abuse and neglect" and "sexual abuse" do not meet the minimum standards in sections 3(2) and 111(4) of CAPTA, it must modify its statute to correspond with the CAPTA requirements.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 12/9/11; updated 1/29/19
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106, 111 and 113

2. Question: Does the Administration on Children, Youth and Families (ACYF) intend to do in-depth reviews of State statutes and policies to determine State eligibility under the CAPTA Amendments of 1996?

Answer: CAPTA, as amended in the 1996 reauthorization, made a shift from eligibility requirements to submission of a State plan with assurances in the form of certifications by the State's Chief Executive Officer that certain provisions, procedures, or programs are in place in the State. Legislative history confirms that it was Congressional intent to simplify and streamline the administration of CAPTA at the Federal, State and local levels (Congressional Record - House, September 25, 1996, p. H11148). Accordingly, the primary responsibility for review of State statutes and policies rests with the States.

If there are instances in which ACYF is presented with evidence of potential deficiencies (e.g., through the new child and family services program reviews being conducted by the Children's Bureau, or other sources), action will be taken to verify whether a problem actually exists. If a deficiency is verified, the State will be notified in writing and will be required to take corrective action within a specified timeframe. Funds will not be jeopardized unless the State fails to correct the deficiency within the specified timeframe.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)

3. Question: May a state agency deny access to services provided under CAPTA based on the immigration status of the child, parent, or family members?

(New 12/20/2024)

Answer: No, states that choose to accept CAPTA funds may not deny children access to these services based on their immigration status or the immigration status of their family members. The CAPTA statute, in describing CAPTA program requirements, draws no distinction based on immigration status. Further, the CAPTA state plan for the state grant program requirements provide that state plans must include:

“(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes—

...

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports;

(v) triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;

(vi) procedures for immediate steps to be taken to ensure and protect the safety of a victim of child abuse or neglect and of any other child under the same care who may also be in danger of child abuse or neglect and ensuring their placement in a safe environment? (section 106(b)(2)(B) of CAPTA).

- **Source/Date:** 12/20/2024 (updated 1/6/2025)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA); ACYF-CB-IM-98-04; 8 U.S.C. § 1611(a) and (b)(1)(D); Attorney General Order No. 2353-2001, 66 Fed. Reg. 3616 (Jan. 16, 2001).