

OHIO GENERAL ASSEMBLY  
**JOINT COMMITTEE ON AGENCY RULE REVIEW**

**SENATE MEMBERS**

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**DAN RAMOS**

**March 5, 2018**

Chairman Uecker called the meeting to order at 1:33 p.m.

Deputy Director Fouche called the roll. Senators Uecker, Balderson, Kunze, Skindell, Thomas and Representatives Duffey, Gavarone, Carfagna, Boggs, and Ramos were in attendance. Representative Manning was excused from the meeting. Representative Carfagna substituted for Representative Manning. Deputy Director Fouche stated a quorum was present. Chairman Uecker asked the Committee members to review the January 29, 2018 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Uecker called for questions or comments on the No Change Agenda. There were no questions from the Committee or public. Director Wolpert read the Regular Agenda. Item 19 was moved to the review portion of the agenda. Chairman Uecker called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. The Committee was temporarily recessed at 1:37 p.m.

The Committee was called back to order at 1:39 p.m. to discuss the review portion of the agenda. Chairman Uecker called Richard Tvaroch, Trumbull County Children Services, and Mary Wachtel, Public Children Services Association of Ohio (PCSA), for opponent testimony. Mr. Tvaroch and Ms. Wachtel believe the Ohio Department of Job and Family Services (ODJFS) rules in item 19 conflict with legislative intent, conflict with an existing rule, and ODJFS did not prepare an accurate Rule Summary and Fiscal Analysis (RSFA).

Chairman Uecker asked what options were available regarding collateral sources. Mr. Tvaroch stated based on his understanding they have 24 hours to make a screening decision based on information provided or public information. Chairman Uecker asked how applicable it is to get a waiver (release) from the individual. Mr. Tvaroch stated based on the investigation rules if they contact the individual it is considered initiation which would then require the case to be screened-in.

Senator Skindell asked the witness what information they were lacking for the scenario brought up in the testimony earlier to determine whether a case should be screened-in and who would be contacted to determine whether to screen-in the case. Mr. Tvaroch stated they can only call back the referent to obtain more information. Senator Skindell asked if counties had enough resources to screen-in. Mr. Tvaroch stated they did not have enough resources. Senator Skindell asked if CARA prohibited collateral contacts. Ms. Wachtel stated CARA did not prohibit collateral contacts.

Senator Skindell stated that for years ODJFS has had in guidelines that no collateral sources should be contacted. He asked what is different about putting the guideline in the Ohio Administrative Code (O.A.C.). Ms. Wachtel stated the Department's position that there should be no collateral contact prior to

screening-in is longstanding guidance. Ms. Wachtel said Senator Skindell's question would be better answered by the Department.

Senator Skindell asked why the Department has written the rules in regards to no collateral contacts as opposed to taking into consideration other states that have guidelines about using collateral contacts. Ms. Wachtel stated the Department's response to public hearing testimony refers to constitutionally sound practices and protecting the constitutional rights (of those being investigated). Ms. Wachtel stated she did not disagree with the Department's response but the case law in our Circuit refers to warrantless entry into homes and when children are removed from their parents' custody. Senator Skindell stated his understanding was that the rule has to be in place sometime in June. He asked if this can be done between now and that time. Ms. Wachtel believes the Department could have the rule in place by June and the PCSAO has given the Department options on how to change the rule.

Representative Gavarone referred back to the example in earlier testimony and asked if children services would be able to close the case if they determined there was no probable cause. Mr. Tvaroch stated once a case is screened-in there are a series of steps that must be followed and in Trumbull County it takes roughly 28-35 days to complete. Representative Gavarone asked if the case could be closed if the county determined there was no probable cause. Mr. Tvaroch stated the county may be able to waive some of the technical aspects of the investigation, but by statute they cannot waive a disposition. Mr. Tvaroch stated they run into the issue of then having an unsubstantiated report on the family's history.

Representative Ramos asked if Mr. Tvaroch could describe how expanding the population would increase costs. Mr. Tvaroch stated more cases could result in more home visits, additional staff, data entry, and mileage reimbursement. There were no further questions for the witnesses.

Chairman Uecker called David Frash, Deputy Director of the Office of Legislation for ODJFS, to provide comments and answer questions from the Committee. Mr. Frash introduced Carla Carpenter, Deputy Director of the Office of Families and Children for ODJFS, and Denise Pleska, ODJFS Legal Counsel. Ms. Carpenter stated the rule changes were in response to Federal law and to reinforce what has been longstanding guidance from the Department. Ms. Carpenter stated ODJFS offers a 24 hour period in which the PCSA can reach back to the referral source to gather additional information to help make the screening decision. Ms. Carpenter stated the legislative intent of CARA was to ensure that infants under 12 months of age who are born exposed to substance abuse and experiencing withdrawal symptoms do not fall between the cracks of our system.

Ms. Carpenter stated language was inserted into the rules to allow the PCSA to speak to a provider and get the appropriate information. Ms. Carpenter stated the reports generally speaking come from mandated reporters. Ms. Carpenter stated these types of reporters should have the information that the PCSA needs. Ms. Carpenter stated the Department envisions the provider would have the release for that type of information so that the proper screening decision can be made. The PCSA would not be reaching out to the parent to request the treatment plan.

Representative Duffey asked if Ms. Carpenter would agree that as an indirect or direct result of this rule there would be more active cases in the State of Ohio. Ms. Carpenter stated the Department did not see it as creating a new influx of cases but more of what is already being screened-in or screened-out. Representative Duffey asked if cases that were going to be screened-out are now going to be screened-in as a result of this rule. Ms. Carpenter stated the Department would have no way to project the answer to Representative Duffey's question. Ms. Carpenter stated agencies that have been complying with ODJFS guidance regarding collateral contacts should not necessarily see an increase their workload.

Representative Duffey asked Ms. Carpenter if she disagreed with the statement that there will be an increase in expenditures. Ms. Carpenter stated she did disagree that there would be an increase in expenditures. Ms. Carpenter stated that PCSAs have a duty to respond to the reports that are made. Representative Duffey asked if expenditures were greater in an actual investigation than during the screening process. Ms. Carpenter stated screening-out would entail no further action and screening-in would require staff to respond to the referral. Representative Duffey asked why the RSFA question regarding the rule being filed due to recent legislation was answered "no." Ms. Carpenter believes the question was answered that way due to the rule being filed for five year review.

Senator Skindell asked if the Department conducted a survey with the PCSAs to determine whether or not more cases would be screened-in or screened-out due to this rule. Ms. Carpenter stated the Department did not conduct a survey. Senator Skindell asked again if a survey was conducted to determine whether or not there would be more screen-ins and if any persons had provided comments that the rule would result in a higher number of screen-ins. Ms. Carpenter stated that was not a concern that was provided to the Department. Senator Skindell stated the Department made no assessment by contacting the various agencies to determine whether there would be more screen-ins which would result in a greater financial burden within those agencies. Ms. Carpenter stated the Department had conversations with stakeholders but did not conduct a formal survey. Senator Skindell asked how a person would obtain a release if they cannot make collateral contact. Ms. Carpenter stated that generally speaking the referral source is going to be a mandated reporter especially when referring under CARA. Ms. Carpenter stated there was a 24 hour period in which the PCSA can work with the referral source to gather the information they need in order to make the decision to screen-in or screen-out.

Chairman Uecker asked who the PCSAs could contact once the release is signed in the first 24 hours. Ms. Carpenter stated the release provides the provider the opportunity to share details around the treatment. Senator Skindell asked how a PCSA would obtain a written consent for release of written information without the collateral contact. Ms. Carpenter does not believe most providers would share treatment information with the PCSA without the written release due to HIPPA regulations. Senator Skindell stated subsection (I) is inconsistent with itself. Ms. Carpenter stated the PCSA would not be making a collateral contact if the PCSA contacted the referral source.

Senator Skindell stated the referral source can generally not give the written consent. Ms. Pleska believes the potential confusion is that the rule applies to all cases and the Department is specifically speaking about the CARA provisions. Ms. Pleska stated if the PCSA can get a written consent they would be able to work with the potential service provider or treatment provider to gather more information to make the screening decision in regards to CARA.

Senator Skindell stated to Chairman Uecker that the rule was not written in the way that was being explained. Senator Skindell stated CARA and the rule were not linked. Senator Skindell stated that under subsection (H) the PCSAs were not able to screen-out unless they obtain information the required list of information. Senator Skindell stated subsection (I) allows for collateral contacts if the PCSA obtains a written consent. Senator Skindell stated the problem is that the PCSA would need to make a collateral contact to the person that can give written consent. Senator Skindell stated the referral source may not be able to give the written consent. Senator Skindell stated there was inconsistency with subsections (G), (H), and (I). Senator Skindell stated he did not know how the PCSAs would be able to handle the situations without screening-in all the referrals which would then increase the financial burden on the PCSAs. Senator Skindell stated the financial burden was not addressed in the RSFA.

Ms. Pleska stated that many times the medical provider is the referent and is required to call a PCSA if there is an infant that has been born exposed or is experiencing withdrawal symptoms. Ms. Pleska stated

the medical provider is required under CARA to begin the development of a safe care plan. Ms. Pleska stated the idea is that when the provider makes the referral to the PCSA the plan of safe care has begun so the provider will have much of the information to provide to the PCSA to make the screening decision. Ms. Pleska believes the rules as they are currently written addresses all concerns.

Senator Skindell stated respectfully that CARA was only one portion of the cases. Senator Skindell stated that if a grandma calls with information the PCSA is going to have to screen-in because they cannot make a collateral contact. Senator Skindell asked how a written release could be obtained when the PCSA is not allowed to make a collateral contact. Ms. Carpenter provided an example of how current guidance would work. Ms. Carpenter stated if grandma was the referral source the PCSA would make the screening decision based on the facts that were given.

Chairman Uecker asked how many counties currently comply with ODJFS guidance. Ms. Carpenter stated ODJFS had not received questions or concerns from counties except Trumbull. Chairman Uecker stated there could be many more counties not complying with ODJFS guidance, it just never came to light with ODJFS. Ms. Carpenter stated that could be the case but she did not believe it to be the case based on conversations ODJFS staff has had with counties. Chairman Uecker stated there was a June 2018 deadline for these rules and asked what happens if that deadline is missed. Ms. Carpenter stated that ODJFS would be out of compliance federally with CARA provisions. Ms. Carpenter stated there were fiscal ramifications for being out of compliance but did not have an amount to provide to the Committee.

Representative Duffey asked if any other state has identical language to the proposed CARA language ODJFS is proposing. Ms. Carpenter stated she could not say whether or not other states had language that precisely mirrored the proposed language before the Committee today. Representative Duffey asked if it would be possible for people to disagree with the Department's interpretation of CARA. Ms. Carpenter stated there are multiple ways to achieve compliance with federal law. Ms. Carpenter stated the Department was guided by broader constitutional principles regarding the collateral contacts.

Representative Duffey asked why the Department answered "no" to the RSFA question regarding if the rule has a fiscal effect on school districts, counties, townships, or municipal corporations. Ms. Carpenter stated that PCSAs have a duty to respond to any report of abuse or neglect. Representative Duffey asked if that was not a fiscal effect. Ms. Carpenter stated the Department was not asking PCSAs to do more than they were doing currently.

Senator Skindell asked if the rule could be filed if the guidance language was removed from the rule. Ms. Carpenter stated the rule could be filed with the guidance language removed, but believes the proposed rule currently supports constitutionally sound practice across the board with all cases. Senator Skindell asked if other states allowing collateral contacts were then violating the Constitution. Ms. Carpenter stated that those states have put intense guardrails on collateral contacts.

Senator Skindell stated that Ohio could do that as well. Ms. Pleska stated that the Department has reviewed their position on the constitutional aspects and has determined over a long period of time that what the Department is promoting is within the constitutional parameters. Mr. Frash believed that asking the Department to take their policy out of the rule would be a little counterintuitive. Senator Skindell stated in order to meet the deadline maybe the Department could consider temporarily removing the language and then sit down with interested parties and create rules dealing with collateral contacts. Senator Skindell stated he did not believe the proposed language was the right solution at this time.

Chairman Uecker asked what position the Department would have on allowing certain collateral contacts to be made. Ms. Carpenter stated other states had guardrails allowing certain collateral contacts to be

made by PCSAs. Ms. Carpenter stated the Department would need to engage in more dialogue with other states to get a full picture of how those policies are practiced. Chairman Uecker referred to the past 30 days and stated the Department had not had discussions on the issue. Ms. Carpenter stated she had reached out to colleagues in other states and the Department tried to strike the right balance between the issues of protecting the child and protecting the parents' constitutional rights. There were no further questions for the witnesses.

Chairman Uecker temporarily recessed the Committee at 3:07 p.m. to allow the members to caucus. The Democrat Committee members caucused in room 44 and the Republican members caucused in room 45. Senator Balderson refrained from caucus. Chairman Uecker called the meeting back to order at 3:54 p.m.

Chairman Uecker called Mr. Frash to provide comments to the Committee. Mr. Frash stated the Department would put rule 5101:2-36-01 in "To Be Refiled" status.

Chairman Uecker reminded the public of the next JCARR meeting on Monday, March 26, 2018 at 1:30 p.m. in the Senate Finance Hearing Room.

Chairman Uecker adjourned the meeting at 3:56 p.m.

  
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Joseph Uecker, Chair

  
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Larry Wolpert, Director