

August 19, 2009

MEMORANDUM

TO: Chief Executive Officers, Member Institutions
PLEASE ROUTE TO:
Director of Emergency Department, Director of Maternal-Child Health; Director of Human Resources

FROM: Barb Haller, Director, Health Policy & Regulation

SUBJECT: **CHANGE TO ABANDONED NEWBORN LAW**

Signed into law August 12, Public Act 96-0345 extends the time period during which a parent may relinquish an infant under the Abandoned Newborn Infant Protection Act (Act) to **30 days**. For your convenience, this memo also reviews current hospital requirements under the Act.

Effective January 1, 2010, a person may give up an infant who a licensed physician reasonably believes is **30 days old or less** (changed from 7 days) to personnel at a hospital, fire station, police station or emergency medical facility and, if there is no evidence of abuse or neglect, the relinquishing person has the right to remain anonymous. Hospitals should adjust their protocols, effective January 1, to reflect the 30-day timeframe under the amended Act.

The Act has been in effect since 2001 and has saved more than 50 infants from unsafe abandonment. Because relinquishments occur infrequently, and because an infant may be given up to ANY hospital personnel, it is essential for ALL hospital personnel to know hospital procedures under the Act. For your convenience, below is a review of requirements for hospitals under the Act that includes the amendment effective 1/1/2010.

A. REVIEW OF HOSPITAL RESPONSIBILITIES UNDER THE ACT

The Act states: “To ‘relinquish’ means to bring a newborn infant, who a licensed physician reasonably believes is 30 days old or less, to a hospital, police station, fire station, or emergency medical facility and to leave the infant with personnel of the facility, if the person does not express an intent to return for the infant or states that he or she will not return for the infant. In the case of a mother who gives birth in the hospital, the mother’s act of leaving that newborn infant at the hospital (i) without expressing intent to return for the infant or (ii) stating that she will not return for the infant is not a “relinquishment” under the Act.”

1. Examination of Infant. Effective January 1, 2010, the Act defines a “newborn infant” as a child who a licensed physician reasonably believes is 30 days old or less at the time the child is initially relinquished and who is not an abused or neglected child.

With respect to the relinquished newborn infant, every hospital must:

- Accept and provide all necessary emergency services and care to a relinquished newborn infant
- Examine the infant and perform tests that, based on reasonable medical judgment, are appropriate in evaluating whether the infant was abused or neglected.

2. If Abuse is Suspected or Infant is Not a Newborn as Defined

- If there is suspected child abuse or neglect that is not based solely on the infant’s relinquishment, personnel of the hospital who are mandated reporters under the Abused and Neglected Child Reporting Act must report the abuse or neglect.
- In addition, if a relinquished infant is not a newborn infant as defined in the Act, the hospital shall proceed as if the child is an abused or neglected child, for example, if the infant is clearly older than 30 days.

The hospital is deemed to have protective custody of the infant and the act of relinquishing an infant serves as implied consent for the hospital staff to treat the infant. Fire and police stations and emergency medical facilities that take in a relinquished infant must arrange for the infant’s transport to the nearest hospital as soon as transportation can be arranged.

3. Information for Relinquishing Person. If there is no evidence of abuse or neglect of the infant, the relinquishing person has the right to remain anonymous and to leave the hospital. Before they leave, hospital personnel shall:

- Offer an information packet (as described below) to the relinquishing person and
- If possible, clearly inform the person that acceptance of the information is completely voluntary; that registration with the Illinois Adoption Registry and Medical Information Exchange is voluntary; that the person will remain anonymous if he or she completes a Denial of Information Exchange; and that the person has the option to provide medical information only and remain anonymous.
- Verbally inform the relinquishing person that by relinquishing the child anonymously, they will have to petition the court if they desire to prevent termination of parental rights and regain custody of the child. (Nothing prevents the relinquishing person from providing his or her identity or completing adoption information forms and requesting that the hospital forward them to the Illinois Adoption Registry and Medical Information Exchange.)

4. Reporting Requirements. Within 12 hours after accepting an infant, the hospital must report to the Illinois Department of Children and Family Services (DCFS) State Central Register (**800.252.2873**) for the purpose of transferring custody of the infant from the hospital to a child-placing agency or the Department. Since this is also the hotline for

reporting abuse, be sure to tell DCFS that you are reporting a relinquishment under the Abandoned Newborn Infant Protection Act.

5. Posting of Signs. Every hospital that is required to accept a relinquished newborn infant must post a sign in a conspicuous place on the exterior of the building, informing persons that a newborn infant may be relinquished at the facility. DCFS has established the specifications for the signs and their placement to ensure statewide uniformity.

6. Prohibition on Public Disclosure. Emergency medical professionals, employees, or other persons engaged in the administration or operation of a fire or police station, hospital, emergency medical facility, child placing agency, or the Department where a baby has been relinquished or transferred are prohibited from publicly disclosing any information concerning the relinquishment of the infant and the individuals involved, except as otherwise provided by law.

B. INFORMATION PACKET

Purpose and Contents of Packet. Hospitals should have a supply of information packets on hand. The purpose of the packet is to provide important information to the relinquishing person about their rights; options for future contact with the infant; and the opportunity to provide medical history information that can be forwarded (anonymously, if desired) to the adoptive parents. The information packet must include Illinois Adoption Registry and Medical Information Exchange application forms and written notice of parental rights regarding proceedings to terminate parental rights. **Note** that these documents can be obtained from the following website:

http://www.state.il.us/dcf/library/com_communications_sumlicen_abinfant.shtml

Scroll down about halfway to the words, “The information packet also includes...”

Please also note that the packet must include a resource list of providers of counseling services including grief counseling, pregnancy counseling, and counseling regarding adoption and other available options for placement of the infant. Hospitals should include in the packet a list of local providers of these services.

C. OTHER PROVISIONS

1. Medical Assistance. A newborn infant relinquished in accordance with the Act is deemed eligible for medical assistance under the Illinois Public Aid Code, and a hospital providing medical services to such an infant will be reimbursed for those services in accordance with that Code. In addition, for any day that a hospital has custody of a relinquished infant and the infant does not require medically necessary care, the hospital

will be reimbursed by the Department of Healthcare and Family Services at the general acute care per diem rate.

2. DCFS Duties. The Act specifies duties for DCFS, including with respect to contacting child-placing agencies to arrange for placement of the infant in an adoptive home, if possible. If no child-placing agency is able to accept the infant, then DCFS must assume responsibility for the infant as soon as practicable.

3. Immunity of Facility and Personnel. A hospital and the hospital's personnel are immune from criminal or civil liability for acting in good faith in accordance with the Act. However, nothing limits liability for negligent care or medical treatment.

D. FREQUENTLY ASKED QUESTIONS.

1. **Question:** What should hospital personnel do if a person tries to relinquish an infant who is older than 7 days, before January 1, 2010, when the extended time period becomes effective?

Answer: Although January 1, 2010 is the effective date of the amendment that allows a person to relinquish an infant 30 days or younger, hospital personnel should not refuse to accept an infant whom a person is attempting to relinquish. Handing back an infant to someone who may feel desperate is not likely to be in the child's best interest. If you have questions regarding a specific case, contact Linda Williams at DCFS (**800.252.2873**).

2. **Question:** If a person returns to the hospital to re-claim a relinquished infant, what should hospital personnel do?

Answer: Inform the person that in order to regain custody, they must petition the court. Tell the person to contact DCFS (**800.252.2873**) to obtain the information necessary to file a petition in the court for return of custody.

E. CONCLUSION. Please adjust your hospital's protocol, effective January 1, 2010, for accepting and caring for a newborn infant relinquished under the Act, to incorporate the 30-day amendment. Please schedule regular review of procedures with all hospital personnel, so that all staff are aware of the procedures to be followed if an infant is relinquished at or brought to your hospital. The complete text of PA 96-0345 can be accessed at

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=096-0345>

If you have any questions, please contact Barb Haller at bhaller@ihastaff.org or 630.276.5474.