

**FAQ REGARDING PUBLIC CHAPTER 820 (PC 820) AND OTHER REQUIREMENTS  
RELATED TO NEONATAL ABSTINENCE SYNDROME (NAS) IN TENNESSEE**  
*(Last Revised June 24, 2014)*

During 2014, the Tennessee General Assembly enacted Public Chapter 820 , effective April 24, 2014, which amends T.C.A. § 39-13-107. The new law provides that a woman can be charged with a **misdemeanor** if she illegally uses narcotics during pregnancy and if the baby is harmed as a result (ex. Neonatal Abstinence Syndrome). The intent of PC 820 is to give law enforcement and district attorneys a tool to address **illicit drug use** among pregnant women, through treatment programs including drug courts and particularly in egregious cases such as more than one NAS delivery. PC 820 contains a sunset provision in two years. The state of Tennessee is committed to tracking the impact of the law on mothers and babies. There are several other provisions in law or rule regarding NAS in Tennessee that may cause confusion or uncertainty, particularly among care providers. *The intent of this FAQ is to provide additional clarity to assist with consistency in application of these provisions and to minimize any unintended consequences of misunderstandings of the law or other requirements.*

The following FAQ responses and statements do not supersede the language of the statute, but are merely provided as guidance to health care professionals and other interested parties. The questions and responses are informational in nature and do not constitute legal advice. Moreover, the questions and answers are subject to change. Those who are or may be subject to this law are strongly urged to review the applicable laws and rules and seek their own legal counsel if necessary. The departments impacted by Public Chapter 820 are not bound by this guidance in their interpretation of the law because each situation is unique.

**Question: Are health care providers required to notify law enforcement about illegal use of narcotic drugs during a woman’s pregnancy that may have caused a newborn to be drug dependent in the context of Public Chapter 820?**

*Answer: No. The new law (Public Chapter 820) does not require health care providers to report pregnant women or mothers who may be illegally using narcotics to law enforcement.*

*If a provider “has knowledge of or is called upon to render aid to any child” suffering from abuse or neglect, existing law requires healthcare providers to notify the Department of Children’s Services of suspected abuse or neglect of a child. If a report is made to DCS, that department will investigate and determine if law enforcement needs to be involved. You can report at 1-877-237-0004 or online at <https://reportabuse.state.tn.us/>.*

**Question: What is Neonatal Abstinence Syndrome, or NAS?**

*Answer: Neonatal Abstinence Syndrome is a condition in which a baby has withdrawal symptoms after being exposed to certain substances in utero. The exposure can involve prescribed and/or illicit drugs. After delivery the baby experiences withdrawal because the substances are no longer being received through the umbilical cord. NAS is a clinical syndrome; the diagnosis typically involves (1) a history of exposure to substances that may precipitate a withdrawal, (2) evidence of the substance in the baby’s system and, (3) symptoms consistent with a state of withdrawal. Available literature suggests NAS does not necessarily correlate predictably with the amount or frequency of in utero exposure. Not all cases of exposure will lead to withdrawal syndrome.*

**Question: Does Public Chapter 820 change the requirement to report cases of NAS to the Department of Health for public health surveillance?**

*Answer: No. The Department of Health made NAS a **reportable condition** as of Jan. 1, 2013. Providers who make the diagnosis of NAS (typically hospitals and birthing centers) should continue to report cases of NAS to the Department of Health.*

**Question: Does the Department of Health provide information on the NAS case reports to law enforcement?**

*Answer: No.*

**Question: Will mothers automatically be prosecuted if referred to DCS?**

*Answer: No. Referred NAS cases receive a Child Protective Investigative Team (CPIT) review. The Child Protective Investigative Team determines if the case will be prosecuted. Information regarding Child Protection Investigative Teams and categories and definitions of child abuse and neglect may be found online:*

*<http://www.tn.gov/youth/dcsguide/policies/chap14/WA1.pdf>*

*<http://www.tn.gov/youth/dcsguide/policies/chap14/14.6.pdf>*

**Question: Does Public Chapter 820 change care or medical treatment provided to pregnant women?**

*Answer: No. This law does not direct any particular medical care or treatment.*

**Question: Does Public Chapter 820 create criminal liability for providers who prescribe narcotics to women of childbearing age?**

*Answer: No.*

**Question: Does Public Chapter 820 prohibit pregnant women from receiving pain management services?**

*Answer: No. Please refer to the Chronic Pain Guidelines for additional information. They may be found online at <http://health.state.tn.us/Downloads/ChronicPainGuidelines.pdf>.*

**Question: How does a health care provider identify appropriate substance abuse treatment resources for pregnant women or mothers?**

*Answer: The health care provider can contact the REDLINE at 1-800-889-9789 24 hours a day, 7 days a week for substance abuse treatment services. Additionally, for treatment for indigent individuals, view the provider list at <http://tn.gov/mental/A&D/DADAS%20Directory.pdf>.*

**Question: Are women who take prescribed medications under medical supervision subject to prosecution under Public Chapter 820?**

*Answer: No. The law specifically states that “prosecution of a woman for assault” may only occur “for the illegal use [emphasis added] of a narcotic drug.”*

**Question: Is Public Chapter 820 in effect indefinitely?**

*Answer: No. The law sunsets in two years.*

**Question: How does Public Chapter 820 relate to the Safe Harbor Act (2013 Tenn. Pub. Acts, ch. 398) which passed in 2013?**

*Answer: The Safe Harbor Act deals with services for pregnant women referred for prescription drug use/misuse and the parental rights of pregnant women abusing/misusing drugs.*

<http://www.tn.gov/sos/acts/108/pub/pc0398.pdf>

*The new law, Public Chapter 820, is a criminal statute concerning the prosecution of women who give birth to infants who are harmed by the women’s prenatal drug use and does not specifically deal with a mother’s parental rights.*

<http://www.tn.gov/sos/acts/108/pub/pc0820.pdf>

**Question: Are Public Chapter 820 and the Safe Harbor Act (2013 Tenn. Pub. Acts, ch. 398) contradictory?**

*Answer: No. Both statutes allow for treatment of pregnant women at risk of delivering a baby with NAS and provide protections from adverse legal consequences. Under Public Chapter 820, “It is an affirmative defense to a prosecution...that the woman actively enrolled in an addiction recovery program before the child is born, remained in the program after delivery, and successfully completed the program, regardless of whether the child was born addicted to or harmed by the narcotic drug.”*

**Question: How can NAS be prevented?**

*Answer: The primary prevention strategies for NAS include:*

- Careful consideration and judicious use of prescribed narcotics in women of childbearing age
- Preventing dependence/addiction in women of childbearing age
- Preventing unintended pregnancies in women using prescribed or illegal narcotics.

**Question: What else can health care professionals do to reduce NAS in Tennessee?**

*Answer:*

- Register to use the Controlled Substance Monitoring Database and check it before prescribing an opioid or benzodiazepine. Usage of the CSMD became mandatory April 1, 2013.

- *Refer to Chronic Pain Guidelines for recommendations on the appropriate treatment of chronic non-malignant pain for women of childbearing age.*
- *Talk with patients who are women of childbearing age about how to prevent an unintended pregnancy.*
- *Screen patients for substance use or risk and refer to mental health treatment resources as appropriate.*
- *Discourage women from smoking during pregnancy; nicotine dependence appears to increase the risk of development of NAS in the baby.*

**Question: Where can I learn more about NAS in Tennessee?**

**Answer:** *Visit the Department of Health's NAS website at <http://health.tn.gov/mch/nas/>.*