Legal Exemptions for Religious Based Medical Neglect

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Overview

* About the research and goals.

* Methods

* Results

* Discussion

* Recommendations for future research

* Final comments
The research & goals

*How do states and child welfare agencies deal with religious based neglect?

*Do child welfare/child protective services have policies and procedures guidelines for investigating?

*Do child protective services have policies and procedures for responding to religious based medical neglect?

*What guidelines are in place for investigating and responding?
What is neglect?

State definitions of child neglect vary.

- Typically include “failure of parent, guardian to ensure a child’s health, safety and well being.” (Children’s Bureau 2011).

Definition of medical neglect:

- A “type of maltreatment caused by failure of the caregiver to provide for the appropriate health care of the child although financially able to so do, or when offered financial or other means to do so.” (Children’s Bureau 2011).
Child neglect in U.S. 2011

- 676,569 Child victims of abuse and neglect.
- 531,413 (78.5%) victims of neglect
- 15,074 (2.2%) victims of medical neglect
- 1,258 Child Fatalities
- 96 (7.6% of 1,258) direct result of medical neglect

*Children’s Bureau: Child Maltreatment 2012*
Religious Freedom

Religious freedom protected by the 1st Amendment: divided into Two Clauses

Establishment Clause “Congress shall make no law respecting an establishment of religion” prohibits a state religion or giving preference to one religion over another.

Free Exercise Clause “or prohibiting the free exercise thereof” provides a liberty interest of citizens to adhere to any religious beliefs or practice.
### Religious Freedom and Supreme Court

|---------------------------|---------------------------------|----------------------------------|
| - Religious exemptions granted when state statutes provide for them. | - Provided presumptive constitutional right to religious exemption.  
- Religious objectors had to demonstrate beliefs and practices conflicted with the law. | |

*Sherbert v. Verner* provided presumptive constitutional right to religious exemption. Religious objectors had to demonstrate beliefs and practices conflicted with the law.
*Child Abuse Prevention and Treatment Act. 1974 (CAPTA)

*In 1983 CAPTA removed the religious exemption requirement.

*Religious Freedom Restoration Act of 1993 (RFRA)

State Statutes

*All 50 states, District of Columbia and Puerto Rico have religious exemption statutes for religious based medical neglect. (National District Attorneys Association National Center for Prosecution of Child Abuse, Religious Exemption Statutes)

*All state religious exemptions related to religious based denial have one or more intervention threshold.

*States have addressed the negative and positive rights in child parent relationship in three ways, parental liberty, best interest, harm standard.
Intervention threshold

Parental liberty interest: The “interest of a parent in the companionship, care, custody and management of his or her children.”

Best Interest: “The deliberation that courts undertake when deciding what types of services, actions, and order will best serve a child as well as who is best suited to take care of a child”

Harm Standard: “Clear and convincing evidence that parents’ actions or decisions represent likely and serious harm to the child.”
Challenges for Lawmakers and protective services

*Balance the constitutional rights of parents to raise and control children with states’ duty to protect children from abuse and neglect.

- When religious beliefs and practices are in conflict with or in violation of the law, right-holders are exempt.

- The state has the burden of proof to justify the violation.

*Define threshold of tolerance before the state intervenes in cases of child medical neglect.

*What policies and guidelines do child protective services have in place to respond and investigate religious medical neglect?
Methods

*In depth review of states religious exemptions statutes and case law addressing the problem of child medical neglect.

*Each state statute was examined to determined the extent religious exemptions contained elements of parental liberty interest, best interest, and the harm standard.

*Comparative analysis involving the systematic examination of states’ child welfare policy manuals.
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<th><strong>Results</strong></th>
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<tr>
<td><strong>Parental Liberty Interest (Study Sample)</strong></td>
<td>AK, CT, DC, GA, IL, ME, MS, NH, NY, OR, TN, TX, VT, VA, WV, WI</td>
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<td><strong>Parental Liberty Interest and Best Interest</strong></td>
<td>AZ, CA, ID, IA, KS, KY, MI, NV, NJ, NM, OH, PR, SD, WA, WY</td>
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<td><strong>Parental Liberty Interest and Harm Standard</strong></td>
<td>IA, LA, MT, ND, SC</td>
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<td><strong>Parental Liberty Interest, Best Interest and Harm Standard</strong></td>
<td>AL, AR, CO, DE, FL, MN, MO, ND, OK, PA, RI, UT</td>
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<td><strong>Limited Parental Liberty Interest: Immunizations</strong></td>
<td>HI, MD, MA, NC, NE</td>
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Wide differences across states in specificity of information provided to agency workers in responding to cases religious based child medical neglect.

Among the 16 states, only CT, ME, NY, TX, and VA provides specific guidelines for responding to religious based medical neglect.

ME, MS, TX, VA, WV, and WI policy guidelines included provisions prohibiting child removal from home for medical neglect solely on parental religious based refusal to provide medical treatment. Additional non-religious based evidence of imminent danger of serious harm or death to support substantiation required for temporary custody removal order.
State Child Protective Services Investigation and Intervention Policy and Procedure Guidelines for Responding to Religious Based Child Medical Neglect

All manuals included procedures for the immediate removal of children suspected of medical neglect.

TX, VT, and DC manuals lacked specific information for the immediate removal of a child observed to need urgent medical treatment without a court order for emergency removal or temporary custody.

AK, DC, NH, OR, and VT manuals lacked clear guidelines for the removal of a child observed to be in a life-threatening condition and danger of death if not provided immediate treatment.

DC, MS, and VT manuals lacked specific guidelines for removal of a child in a life-threatening condition due to parental religious based medical neglect.

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<th>Specifically Addressed in Manual</th>
<th>Provides for Immediate Removal prior to Court hearing</th>
<th>Removal to Prevent Serious Harm or Disability</th>
<th>Removal for Life-threatening Condition</th>
<th>Cannot Remove Solely on Parental Refusal of Medical Treatment</th>
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State Child Protective Services Investigation and Intervention Policy and Procedure Guidelines for Responding to Religious Based Child Medical Neglect

Three procedures for CPS use of law enforcement to enter home for removal of child into state protective custody.

- Caseworker directly petitions law enforcement for assistance after consulting with supervisor (GA, NY, TX, WV, WI)
- Caseworker required to obtain supervisory approval prior to requesting law enforcement assistance (CT, IL, ME, NH, OR, VA, MS)
- Caseworker required to confer with a child protective services investigative team prior to requesting law enforcement assistance (TN, VT)
State Child Protective Services Investigation and Intervention Policy and Procedure Guidelines for Responding to Religious Based Child Medical Neglect

Child cannot be removed from home for child medical neglect solely on basis of parental refusal of medical treatment for child. Other reasons for emergency removal must be cited (ME, MS, TX, VA, VT, WI).

Child temporary custody without parent permission, court hearing, or order for temporary custody ranged from 6 hours (ME), 24 hours (MS) NH, 72 hours, CT, ME) and 96 hours to 7 days (GA).

During temporary custody hold, child can be given a medical examination and treatment without parental consent. In CT must consult with two physicians and obtain assessment of critical need for treatment and risk to child if treatment not provided.
Contained in very state’s civil or criminal code is a requirement for the provision of necessary medical care for children: failure to comply can result in removal of the child, fines, and/or jail time.

This is ignored in deference to the liberty interest of parents who are immune from prosecution for religious based child medical neglect even in cases of child fatality.

Religious exemptions fail to protect children because the exemption places the liberty interest of parents over the liberty interest of child’s right to life.
States conceptualize and treat religious freedom in the context of child welfare differently leading to differences in how CPS and state courts treat religious based child medical neglect cases putting health of child at serious risk.

Vagueness of religious exemption statues leave open a high degree of interpretation and confusion: problematic for child welfare agencies in translating policy into practice.

Lack of clarity and consistency in the application of the law through policies and procedures specific to religious based medical neglect weakens the protection of children.
Promote undue suffering and needless death of a child resulting from religious based denial of medical treatment.

Impede discovery and severely limits courts’ ability to order medical treatment in time to prevent serious harm of death.

Shelter parents or other guardians from criminal prosecution in cases of child fatality directly resulting from religious based denial of medical treatment.

Deny children equal protection from harm under the law and violate their constitutional liberty interest right to life.

Current religious exemption statutes
The ability of states to balance parental liberty interests and the duty of the state to protect children from medical neglect is best achieved by including greater specificity in guidelines related to religious exemptions in policy and procedure manuals.

Benefits of the state’s intervention must outweigh the benefits of the parents’ treatment option and be appropriate in similar cases.

Exclusive use of spiritual treatment must be demonstrated to have equal efficacy to medical treatment in similar situations.

Guidelines for responding to religious based medical neglect must delineate and clearly describe thresholds of intervention and procedural actions to follow: use of the harm standard would best achieve this.
Summary

*What federal laws are in place

*How states deal with religious based medical neglect

*1st amendment free exercise clause

*Review of all states statutes

*Examined the threshold that gives most autonomy to parents

*Application of the harm standard in legislation provides a more accurate threshold for state intervention to protect the child.

*Examined CPS child welfare manual to determine what policies and procedures exist when dealing religious based medical neglect
Future Research

* Expand the comparative analysis in different ways:
  - Compare the states that only included parental liberty interest in the religious exemption statutes and compare it to the states that included parental liberty interest, best interest, and harm standard in the religious exemption.

  - Find out if the states that included parental liberty interest, best interest, and harm standard wording in the religious exemptions were translated into clearer approaches to responding to child medical neglect situations in state agency policy and practice manuals.

  - Do CPS investigators have more autonomy or options for removing a child from the home or the parents custody in order to provided medical treatment.

* In a larger study:
  - Create five different groups (group 1: parent liberty interest only; group 2: parental liberty interest and best interest; group 3, parental liberty interest and harm standard; group 4: parental liberty interest, best interest, and harm standard; and group 5: only provide religious exemption for immunizations)

  - Look for similarities and differences in state policy and procedures manuals.
Final comments

*Spiritual and other types of healings are normally kept secret

*Religious groups keep their beliefs and practices secretive for fear of government intervention.

*The number of child fatalities is probably 30-50% higher than known

  *80% or 140 of the 172 had an expected 90% survival rate
  *10% had a greater than 50% survival rate had the children received traditional medical care
  *In only 2 cases the child would not have benefited from medical care.
Thank you!