CHILDHOOD OBESITY – THE LINE BETWEEN PARENTAL RIGHTS AND MEDICAL NEGLECT

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CHILDHOOD OBESITY CASE EXAMPLES

New Mexico: 3-year-old Anamarie Martinez-Regino was removed from parental custody weighing 130 pounds. Her parents were charged with failure to follow treatment orders.

California: 13-year-old Christina Ann Corrigan died weighing 680 pounds. Her mother was found guilty of misdemeanor child abuse.

Indiana: 4-year-old Cory Andis was placed in foster care weighing 138 pounds. His parents were charged with 5 counts of criminal neglect.

New York: The NY Supreme Court reversed a decision to remove 9 year-old morbidly obese Brittany T, who suffered multiple comorbidities, from parental custody based on failure to prove willful violation of court imposed conditions.

OBJECTIVES

- ✓Explore the genetic, behavioral and social determinants of childhood obesity and children as a vulnerable population.
- ✓Examine legal definitions of child abuse and medical neglect in the context of childhood obesity
- ✓Debate the legal, ethical and practical dimensions of childhood obesity as a health policy issue
- ✓Define the parameters in which childhood obesity could be considered medical neglect and parents held liable for child abuse.

OBESITY DEFINED

Overweight is defined as a BMI at or above the 85th percentile and below the 95th percentile for children and teens of the same age and sex.

Obesity is defined as a BMI at or above the 95th percentile for children and teens of the same age and sex (CDC, 2016).

Terms such as extreme, severe and morbid obesity generally refer to a BMI well above the 95th percentile.

MEDICAL DIMENSIONS: COMORBIDITIES OF OBESITY

Endocrine effects

- insulin resistance progressing to Type 2 diabetes and its complications. Metabolic syndrome.

Pulmonary effects

- asthma, obstructive sleep apnea and associated pulmonary, cardiac and cognitive complications including learning disabilities and memory defects.

Gastrointestinal effects

- gall bladder disease; non-alcoholic fatty liver disease progressing to cirrhosis and end-stage liver failure

Cardiac effects

- hypertension, dyslipidemia, atherosclerosis, and left ventricular hypertrophy all of which increase risk of heart attack or stroke. Generally manifest as direct threats later in life.

Orthopedic effects

- Blount's disease (bowing of tibia) and slipped capital femoral epiphysis (rotated femur).

Psychological effects

- Depression; anxiety; low self-esteem; ADHD; body dissatisfaction; abnormal patterns of eating and weight control efforts; social marginalization and bullying; lower reported health quality of life, increased high risk behaviors.

RISK LEVELS

Level 1: Presence of obesity without a comorbid condition

Level 2: Presence of comorbidity that is reversible with potential for future harm

Level 3: Comorbidity with potential of future harm and is not reversible

Level 4: Comorbidity with potential to cause imminent, irreversible harm.

Assessment factors: presence and reversibility of comorbid conditions; presence and reversibility of imminent harm; nature and evidence base of treatment; availability of alternative treatment; parental behaviors that directly interfere with treatment.

(Varness, Allen, Carrel & Fost, 2009)

DEMOGRAPHIC DIMENSIONS OF CHILDHOOD OBESITY

In 2011-2014, children and adolescents aged 2-19 years:

Prevalence of obesity is approximately17% and affects about 12.7 million children and adolescents. [8.9% among 2- to 5-year-olds,17.5% of 6- to 11-year-olds, 20.5% of 12- to 19-year-olds]

The prevalence of obesity is higher among Hispanics (21.9%) and non-Hispanic blacks (19.5%) than among non-Hispanic whites (14.7%) and Asians (8.6%).

Children of low-income families are at proportionately greater risk than those in middle and high income families.

Prevalence of obesity decreases as the education of the head of household increases.

GENETIC, BEHAVIORAL AND SOCIAL DETERMINANTS OF CHILDHOOD OBESITY

- Genetic predisposition to obesity or obesity related disorders
- Individual risk behaviors
- Socioeconomic factors (including income stress, routine expenses, insurance, compliance)
- Education
- Environment (safety, food desert, school and community context, marketing and exposure to unhealthy food)
- Parenting and obesogenic home environment
- Ethnicity and culture
- Lack of access to or availability of qualified, multidisciplinary health teams and facilities

LEGAL DIMENSIONS OF CHILDHOOD OBESITY

Obesity prevention legislation between 2006 and 2009 included 1761 introduced bills with 475 (27%) being enacted. Eyler, Nguyen, Kong, Yan & Brownson. (2012)

Courts in several states have now acted to remove obese children from the custody of parents on the basis of medical neglect. Several states have explicitly included obesity in their child abuse statutes (TX, PA, NY, NM, IN)

- Most cases involve children suffering from severe obesity and multiple comorbidities
- Very high standards applied that interpret medical neglect and imminent harm as immediately life threatening
- Action is generally taken after all other options for treatment and/or parental compliance with a court-ordered treatment plan are exhausted

MEDICAL NEGLECT

Failure to meet the health care needs of a child, resulting in harm to the child's health, and represents a serious adverse experience in childhood with immediate and long lasting sequelae into adulthood. (Dubowitz & Black, 2002)

- ✓Presence of medical comorbidities
- ✓Potential for those comorbidities to cause imminent harm from life-threatening medical conditions
- ✓Weight severity and/or failure to reduce weight alone are not sufficient

CO REV STAT § 19-1-103 (2016) – CHILD ABUSE

(1) (a) "Abuse" means an act or omission in one of the following categories that threatens the health or welfare of a child:

(I) Child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death (without justifiable explanation, verifiable and consistent history, evidence it was not an accidental occurrence);

(II) Child is subjected to unlawful sexual behavior;

(III) Child in need of services because the child's parents, legal guardian, or custodian fails to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

(IV) Child is subjected to emotional abuse. Emotional abuse is an identifiable and substantial impairment or risk of substantial impairment of the child's intellectual or psychological functioning/development

(V) Any act or omission described in section 19-3-102 (1) (a), (1) (b), or (1) (c);

(VI) Child is subject to the presence of a controlled substance being manufactured or attempted to be manufactured;

(VII) Child tests positive at birth for either a schedule I or II controlled substance not the result of the mother's lawful intake as prescribed.

(VIII) Child is subjected to human trafficking of a minor for sexual servitude,

(b) Investigators shall take into account accepted child-rearing practices of the culture in which the child participates.

§ 19-3-102 NEGLECTED OR DEPENDENT CHILD

(1) A child is neglected or dependent if: PGLC – parent/guardian/legal custodian

(a) A PGLC has abandoned the child or has subjected him or her to mistreatment or abuse or has allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the PGLC;

(c) The child's environment is injurious to his or her welfare;

(d) A PGLC fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;

(e) The child is homeless, without proper care, or not domiciled with his or her PGLC through no fault of such PGLC;

(f) The child has run away from home or is otherwise beyond the control of his or her PGLC;

(g) The child tests positive at birth for either a schedule I schedule II controlled substance, not lawfully prescribed to the mother.

(2) A child is neglected or dependent if:

(a) A PGLC has subjected another child or children to an identifiable pattern of habitual abuse; and

(b) Such PGLC has been the respondent in another proceeding in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse.

(c) The pattern of habitual abuse and the type of abuse pose a current threat to the child.

COLORADO CRIMINAL CODE (TITLE 18) 18-6-401 DEFINITIONS

(1) (a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.

ETHICAL DIMENSIONS FOR AND AGAINST LEGAL INTERVENTION

- Child and parental autonomy and privacy (liberty interests)
- Duty of care – parents, state, society (vulnerablility)
- Best interests of the child and/or family -- present and future
- State interests (cost and services) – present and future
- Utility and risk/benefit (competing evidence)
- Fairness (complexity in balancing etiology and apportioning responsibility)
- Procedural justice (lack of definition with inconsistency and bias between jurisdictions)
- Social justice (potential for differential targeting based on ethnicity and/or SES

TASK FORCE ASSIGNMENT

The Governor's Task Force on Childhood Obesity was formed to study the issues surrounding the dramatic increase in the incidence and prevalence of childhood obesity in the state and make recommendations accordingly. A number of preventive strategies have been researched and considered for future action.

Unfortunately, several recent cases have raised the question of whether the State should consider more direct intervention in some circumstances. Such intervention raises difficult legal and ethical issues. You have been asked to serve on a subcommittee that will consider and make recommendations to the Task Force on the following question regarding childhood obesity and parental responsibility:

Under what circumstances, if any, should childhood obesity be specified as medical neglect or child abuse under state child welfare statutes?

ADDITIONAL TASK FORCE QUESTIONS

Under what circumstances should treatment be court ordered?

Under what circumstances should a child be removed from parental custody?

Under what circumstance should parents be charged, prosecuted and subject to criminal penalties for child abuse or neglect?

What contextual factors should be considered as mitigating when reporting childhood obesity as medical neglect?

REFERENCES & ADDITIONAL READING

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