

Bulletin

June 18, 2008

Minnesota Department of Human Services -- P.O. Box 64941 -- St. Paul, MN 55164-0941

OF INTEREST TO

- County Directors
- Social Services Supervisors and Staff
- Tribal Social Services Directors and Staff
- Private Social Services Directors
- County Attorneys
- Judges

ACTION/DUE DATE

New laws effective August 1, 2008, unless otherwise specified.

EXPIRATION DATE

June 18, 2010

Summary of 2008 Child and Family Services Legislation

TOPIC

2008 Child Welfare Legislation.

PURPOSE

Provide a summary of the 2008 legislation that affects the delivery of child welfare services to children and families.

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SIGNED

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This bulletin summarizes the 2008 legislation that affects the delivery of child welfare services to children and families. Legislation is effective August 1, 2008, unless otherwise specified.

A. Adoption:

- a. Adult adoption
- b. Home studies, including background studies
- c. Child's social and medical history
- d. Guardian ad Litem access to records
- e. State Adoption Exchange registration withdrawal
- f. Access to original birth certificate.

B. Adoption assistance

- a. Annual Affidavit
- b. Recovery of overpayments
- c. Eligibility conditions
- d. Modification to the Adoption Assistance Agreement

C. Identifying fathers

D. American Indian Child Welfare Advisory Council

E. Interstate Compact on the Placement of Children (ICPC)

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G. Foster care:

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- b. Trial home visits
- c. Background studies
- d. Monthly case worker visits.

H. Child protection

- a. Time frame for screening child maltreatment reports

I. Adolescent services:

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- b. Court reviews for Youth age 16 and older

J. Commissioner's guardianship

K. Voluntary foster care placement for treatment:

- a. Voluntary foster care agreement
- b. Child in voluntary foster care placement for treatment
- c. Administrative and court reviews
- d. Permanency review hearing
- e. Annual review hearing
- f. Voluntary foster care for treatment after CHIPS adjudication
- g. Termination of the Voluntary Placement Agreement

L. Targeted case management services for children with developmental disabilities.

A. Adoption

a. Adult Adoption

The adoption statute was amended to address adult adoptions. The first amendment adds section 259.21 to Minnesota Statutes, Chapter 259, providing a definition of an adult adoption. The second set of amendments ensure consistent use of language throughout Minnesota Statutes, Chapter 259, and differentiates when statutory language applies to an adult adoption, a child adoption, or an adopted person, referring to children or an adult. The third amendment adds section 259.241 that addresses which adults can be adopted, the applicable adoption process, and the legal effects. The legislation specifies that consent is invalid if given by an adult who is determined to be a vulnerable adult or not competent. The fourth amendment eliminates the requirement of a child social and medical history under section 259.43, as well as an adoptive home study and background study under 259.41 for adult adoptions.

The final amendment to section 259.89 adds subdivision seven that allows a person adopted as an adult to retain the rights they had to access their original birth record prior to the adoption, in addition, to the access they have to their amended birth record.

[2008 legislative session, Chapter 361, Article 6, sections 1, 2, 3, 4, 5, 10, 11, 12, 21, 54; Minn. Stat., sections 259.20, subd. 1; 259.22, subd. 2; 259.23, subd. 2; 259.241; 259.41, subd. 1, 259.43; 259.52, subd. 2; 259.53, subd. 3; 259.57, subd. 1; 259.59, subd. 1, 2; 259.67, subd. 2, 3, 4; 259.89, subd. 7 and 524.2-114]

b. Home studies, including background studies

Minnesota Statutes, section 259.41, was amended to include that home studies may be paid for through the Public/Private Adoption Initiative, in addition to Non-recurring Adoption Expenses, Purchase of Service, or the prospective adoptive parent.

Minnesota Statutes, section 259.41, was further amended to require that a background study be completed on a relative as defined by section 245A.02, subd.13, even though a home study may not be required. In step-parent adoptions, a background study must be completed on the stepparent and their children of the step-parent who are members of the household where the child to be adopted lives, unless the step-parent's child is a sibling of the person being adopted through birth or adoption. When a relative or step-parent is not involved with a private child-placing agency, the prospective adoptive parent(s) need to contact the local county social service agency where they reside to conduct a background study. The local social service agency may charge the prospective parent a fee for such services.

[2008 legislative session, Chapter 361, Article 6, section 6; Minn. Stat., section 259.41, Subd.1]

c. Child's social and medical history

Minnesota Statutes, section 259.43, was amended to require minimum standards for the child's social and medical history. The law strengthens the requirement that the document contain

complete, thorough, detailed, current information for any child being adopted. The statute, which previously required only birth family history, now includes the requirement to provide the child's background and health history. The statute provides what specific information that must be included in a child's social and medical history, and clarifies who must receive a copy of the document.

[2008 legislative session, Chapter 361, Article 6, section 7; Minn. Stat., section 259.43]

Minnesota Statutes, section 260C.212, subd. 4 (e), was amended to require agencies to provide a copy of their social and medical history to youth emancipating from foster care. The child's social and medical history must meet the standards defined in Minnesota Statutes, section 259.43. This requirement is applicable whether a youth is under state guardianship or not.

[2008 legislative session, Chapter 361, Article 6, section 38; Minn. Stat., section 260C.212, subd.4(e)]

d. Guardian ad litem (GAL) access to records

All reports and records, on or related to the suitability of the proposed adoptive home maintained by the Department of Human Services, the county or child-placing agency may be accessed by the child's GAL.

[2008 legislative session, Chapter 361, Article 6, section 9; Minn. Stat., section 259.53, subd.3(b)]

e. State Adoption Exchange registration withdrawal

Because a child of any age who is under state guardianship and legally available for adoption may no longer sign an *Affidavit of Child Over 14 on Adoption*, or any other document, relieving county social services agencies of all recruitment efforts on the child's behalf. Minnesota Statutes, section 259.75, subd. 5, was amended to remove this as a reason to withdraw a child's registration on the State Adoption Exchange.

[2008 legislative Session, Chapter 361, Article 6, section 17; Minnesota Statutes, section 259.75, subd. 5]

f. Access to original birth certificate

Minnesota statutes, section 259.89, was amended to streamline the process for adopted person's age 19 or older to access their original birth record. To access his or her original birth record, an adopted person must submit a request to the Minnesota Department of Health (MDH) on a form titled "*Adoptee's Request for Original Birth Record Information and Search for Affidavit of Disclosure or Non-Disclosure*". Information and forms can be found on the MDH web site at www.health.state.mn.us/divs/chs/osr/adoption.html. After receiving a request, a non-certified copy of the original birth record will be released, if the birth parent(s) filed an affidavit of disclosure with MDH. In those cases where there is neither an affidavit of disclosure or non-disclosure on file with MDH, a search for the birth parent(s) listed on the birth record must be completed, as outlined in section 259.89.

The search for birth parent(s) process has changed; a search must be conducted. MDH now contacts a county social service or private adoption agency directly when the adoptee has listed the placing agency on the “*Adoptee’s Request for Original Birth Record Information and Search for Affidavit of Disclosure or Non-Disclosure.*” The Department of Human Services (DHS) will assist as needed in identifying the placing agency. If an adoptee knows the adoption agency or agencies involved in his or her adoptive placement, it is important that the adoptee list the agency or agencies on the form to increase the efficiency of the search process.

After the county social service or private adoption agency has been contacted to conduct the search, it must be completed within six months. The county social service or private adoption agency will document the results and the documentation will be submitted to MDH. After the search has been completed, the birth parent(s) has an additional 30 days to file either an affidavit of disclosure or non-disclosure. The MDH will determine whether to release the original birth information.

Minnesota Statutes, section 259.89, was amended to specify that personal and confidential contact must be made with birth parent(s). The contact with birth parent(s) by the child placing agency shall occur in-person, when considered by the commissioner of human services to be reasonable, otherwise contact is to be established by telephone or mail.

As referenced in the adult adoption section of this bulletin, Minnesota Statutes, section 259.89 was further amended to allow a person adopted as an adult to access their birth record.

[2008 legislative session, Chapter 361, Article 6, sections 18, 19, 20, 21; Minn. Stat., sections 259.89, subdivision 1, 2, 4, 7]

B. Adoption Assistance

a. Annual affidavit

The Minnesota statutes related to Adoption Assistance were amended to eliminate the annual affidavit requirement for families receiving Adoption Assistance. Minnesota Rules, part 9560.0092, which outlined use of the annual affidavit, was repealed.

[2008 legislative session, Chapter 361, Article 6, sections 14, 59; Minn. Stat., section 259.67, subd. 3; Minn. Rules, part 9560.0092]

b. Recovery of overpayments

The Adoption Assistance statute was amended to clarify that the DHS commissioner has the authority to collect overpayments for adoption assistance. This allows DHS to bill and collect an amount of adoption assistance paid to adoptive parent(s) in excess of the payment due, even when the overpayment was due to agency error or circumstances outside the responsibility and control of the family or provider. Adoption Assistance amounts covered by this section include: basic maintenance needs payments, monthly supplemental maintenance needs payments, reimbursement of non-recurring adoption expenses, reimbursement of special non-medical costs, and reimbursement of medical costs.

[2008 legislative session, Chapter 361, Article 6, section 15; Minn. Stat., section 259.67, subd. 3a]

c. Eligibility Conditions

The Adoption Assistance statute was amended to clarify that to be eligible for state-funded Adoption Assistance a child must be a ward of the DHS commissioner or a Minnesota tribal social service agency, or a child who will be adopted according to tribal law without a termination of parental rights or relinquishment. The adoption assistance statute was further amended to clarify that a child who is adopted by their legal custodian or guardian shall not be eligible for state-funded Adoption Assistance.

A technical change was made to support adoptive placement with relatives by adding adoption by a relative as a reason to waive recruitment efforts, otherwise required for Adoption Assistance eligibility. The federal statutory reference in the state's definition of special needs for the purpose of Adoption Assistance was corrected.

[2008 legislative session, Chapter 361, Article 6, section 16; Minn. Stat., section 259.67, subd. 4]

d. Modification to the Adoption Assistance Agreement

Minnesota Rules, part 9560.0093, subpart 2, which permitted the DHS commissioner to unilaterally modify the Adoption Assistance Agreement, if necessary, to comply with changes in federal or state law or rules related to the Adoption Assistance Program, was repealed.

[2008 legislative session, Chapter 361, Article 6, section 59; Minn. Rules, part 9560.0093, subpart 2]

C. Identifying fathers

The adoption statute was amended to provide the responsible social service agencies access to search the Minnesota Father's Adoption Registry when the agency has filed a Child in Need of Protection and Services (CHIPS) or other petition under Minnesota Statutes, Chapter 260C. This supports the best practice of early identification of children's fathers which facilitates engaging fathers and promotes timely permanency planning.

The agency may search the registry to determine if anyone has registered as a putative father for a child. A search is always necessary before an adoption would be finalized. In cases where the agency has searched the registry during the CHIPS case, the agency may file a certified copy of a juvenile court order from the CHIPS case as proof of the search. This will prevent the practice of having to search the registry more than one time.

Information about how to search Minnesota's Father's Adoption Registry can be found on the Department of Health web site, www.health.state.mn.us/divs/chs/registry/top.htm.

An early search of the Father's Adoption Registry may assist the responsible social service agency to identify the child's father as required under Minnesota Statutes, section 260C.212, subd. 4 and paternal relatives, as required in section 260C.212, subd. 5.

[2008 legislative session, Chapter 361, Article 6, section 8; Minn. Stat., section 259.52, subd.2]

D. American Indian Child Welfare Advisory Council

Legislation is in place to continue authorization of the American Indian Child Welfare Advisory Council to assist the DHS commissioner in formulating policies and procedures relating to Indian child welfare services and to make recommendations regarding approval of grants. The legislation is in effect until June 30, 2012.

[2008 legislative session, Chapter 361, Article 6, section 22; Minn. Stat., section 260.835, subd. 2)

E. Interstate Compact on the Placement of Children (ICPC)

Minnesota adopted the updated standards for the Interstate Compact on the Placement of Children (ICPC) to be consistent with standards that are being adopted nationwide. These standards will be effective when the new ICPC standards have been adopted by 35 states.

[2008 legislative session, Chapter 361, Article 6, section 23, 59; Minn. Stat., section 260.853]

F. Juvenile Court

Hearings and court records regarding child protection cases are open to the public. Minnesota Statutes, section 260C.171 was amended to cite Minnesota Rules of Juvenile Court process for the court to close any hearing or record related to a child in need of protection and services (CHIPS) hearing. The exceptions to the general rule that records are accessible to the public were deleted because the court rules contain the same or similar exception to the general rule of accessibility.

[2008 legislative session, Chapter 361, Article 6, sections 30-31; Minn. Stat., sections 260C.163, subd. 1 and 260C.171, subd. 1]

G. Foster care

a. Placement

The child protection provisions were amended to provide clarification that will ensure the appropriate responsible social services agency has legal responsibility for a child when removal from their family is necessary, and in their best interest. Legal responsibility is obtained through a Voluntary Placement Agreement with the child's parent (or legal guardian) or a court order. When a court orders placement, or continues placement, the court order is to include an

individual determination that placement is in the child's best interest. The court finding that placement is in a child's best interest is to coincide with their actual physical removal.

When an agency has legal responsibility for a child, it may place the child in the home of a noncustodial parent, the home of a relative consistent with the process of an emergency relative placement [Minnesota Statutes, section 245A.035], or a licensed foster home.

These provisions are consistent with federal Title IV-E foster care requirements.

[2008 legislative session, Chapter 361, Article 6, section 24; Minn. Stat., section 260C.001, subd. 2]

b. Trial home visits

This statute was amended to clarify that the court cannot order a trial home visit without adjudication. Under Minnesota Statutes, section 260C.201, subd. 1, an award of legal custody to the agency must precede an order for a trial home visit. The court cannot order custody to the agency until there is adjudication. (Under Minnesota Statutes, section 260C.178, the court may order that a child is in protective care, which means the agency has legal responsibility for a child's placement due to the emergency removal of a child.)

An Emergency Removal Hearing is required within 72 hours of the time a child is removed from their parents' care and taken into custody. At an emergency removal hearing, in addition to ordering a child into protective care, when it serves the safety and best interests of a child, the court has the option of ordering a child returned to the care of parent(s) or guardian and ordering the parent(s) to comply with any condition the court determines necessary to meet the safety, health and welfare of a child. A trial home visit is a reunification tool and can only be ordered after a child has been in foster care and the parent(s) have made progress on correcting the conditions leading to foster care. [Minnesota Statutes, section 260C.201, subd.1, (a) (3)]

[2008 legislative session, Chapter 361, Article 6, section 32; Minn. Stat., section 260C.178, subd. 1]

c. Background studies

Language was added to the statute to clarify that the responsible social service agencies have access to criminal, and child/adult maltreatment history as part of an assessment to determine if it is safe for a child to be reunified with parent(s), placed in the care of a noncustodial parent, or to determine the suitability of a relative's home for immediate placement. The law provides the responsible social services agencies with access to information from the Bureau of Criminal Apprehension, commissioners of the Departments of Health and Human Services, law enforcement agencies, including local law enforcement data, and other county agencies regarding criminal and maltreatment history. This is not a background study conducted by DHS under Minnesota Statutes, Chapter 245C.

The responsible social service agency may access relatives' and household members' criminal and maltreatment history to determine if immediate placement of a child in the relative's home

would endanger their health, safety or welfare, and to assess the suitability of the relative prior to an emergency placement under the process describe in Minnesota Statutes, section 245A.035. This assessment does not require accessing information through a finger print-based check, and does not substitute for the background study required under Minnesota Statutes, Chapter 245C, for child foster care licensure. When the individual applies for child foster care licensure, an Adam Walsh background study, required under Minnesota Statutes, section 245C, is initiated.

[2008 legislative session, Chapter 361, Article 6, sections 34-36; Minn. Stat., section 260C.209, subd. 1, 2, and 5]

d. Monthly caseworker visits

The *Child and Family Services Improvement Act of 2006 [Public Law 109-288]* required monthly caseworker visits with children in foster care placement. Standards consistent with federal law were added to Minnesota Statutes, section 260C.212, subd.4a.

Every child/youth in foster care, including those on a trial home visit, is to have a face-to-face visit each calendar month. The visit must be between a child and caseworker who have responsibility for the child's foster care placement as assigned by the responsible social service agency. The majority of visits are to be in a child's relative or non-relative foster home, group home, or residential facility. When the court returns a child to their parents' care on a trial home visit, the visit would be in the parents' home.

The visit should focus on issues relevant to case planning and service delivery to ensure the safety, permanency and well-being of a child. *The Family-centered Practice Guide: Engaging, Assessing and Building Strengths with Families* (DHS 4938), offers best practice information about visits with a child on pages 18 and 19. This guide can be accessed on the DHS web site, at <http://www.edocs.dhs.state.mn.us>.

[2008 legislative session, Chapter 361, Article 6, section 39) (Minn. Stat., section 260C.212, subd. 4a]

H. Child protection

a. Time frame for screening child maltreatment reports

Minnesota Statutes, section 626.556, subd.7, was amended now requiring local social services agencies to determine if a child maltreatment report is to be accepted for assessment or investigation as soon as possible, but in no event longer than 24 hours after the report was received. The 24-hour time frame supports the use of screening review teams while limiting the delay in initiating assessments or investigations.

[2008 legislative session, Chapter 361, Article 6, sections 25, 26, 27, 55, 56; Minn. Stat., sections 260C.007, subd. 5, 6, 13; 626.556, subd. 7, 10a]

I. Adolescent services

a. Youth's social, medical and education history

Minnesota Statutes, section 260C.212, subd. 4, is amended to require social service agencies to provide a copy of a youth's social and medical history, in addition to an education report, when they leave foster care. This requirement is for all youth leaving care, regardless of whether they are under state guardianship. County social service agencies should include this information as part of the documents, records and other information required to be provided to a youth when leaving foster care under Minnesota Statutes, section 260C.212, subd. 7 (d) (3). The change in this section clarifies that a youth aging out of foster care receives a social and medical history, consistent with the history required in the adoption statute. [Minnesota Statutes, section 259.43]

[2008 legislative session, Chapter 361, Article 6, section 38; Minn. Stat., section 260C.212, subd. 4]

b. Court reviews for Foster Youth age 16 and older

Amendments to the administrative or court review of placements clarified who shall comprise the administrative review panel, and conditions under which the administrative review may become a hearing under the Minnesota Rules of Juvenile Protection Procedures. The elements required of the review are expanded to include the permanency and well-being of a youth.

Amendments require the county to give a youth notice of their right to access services beyond age 18 in accordance with Minnesota Rules, part 9560.0660, and the right to a fair hearing if services are denied.[Minnesota Statutes, section 256.245]

This section also specifies that if a youth is age 16 or older, the court, at its annual review hearing, shall review the independent living plan for a youth and make findings regarding progress toward the following specified goals that address a youth's preparedness for independent living upon discharge from foster care, including whether a youth:

- has obtained a high school diploma or its equivalent
- has completed a driver's education course or has demonstrated the ability to use public transportation in their community
- is employed or enrolled in postsecondary education
- has applied for and obtained postsecondary education financial aid for which they are eligible
- has health care coverage and health care providers to meet their physical and mental health needs
- has applied for and obtained disability income assistance for which their child are eligible
- has obtained affordable housing with necessary supports, which does not include a homeless shelter
- has saved sufficient funds to pay for the first month's rent and a damage deposit

- has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable
- if male, has registered for the Selective Service
- has a permanent connection to a caring adult.

DHS recommends that county social service staff use the Casey Life Skills assessment with youth and others, as appropriate (foster parent, counselor, biological family, etc.) to determine services to be incorporated into the independent living plan as required by Minnesota Statutes, section 260C.212, subd.1(c) (8).

The statute was amended to require that the responsible social service agency in conjunction with the placement provider, assist youth in obtaining the following documents prior to discharge from foster care:

- Social Security card
- birth certificate
- state identification or drivers license, green card or school visa
- school, medical and dental records
- contact information for a youth's sibling(s), if the sibling(s) are in foster care.

[2008 legislative session, Chapter 361, Article 6, section 40; Minn. Stat., section 260C.212, subd. 7]

J. Commissioner guardianship

The court may order the guardianship and legal custody of a child transferred to the commissioner of the Department of Human Services only when:

- the responsible county social services agency had legal responsibility for the permanency plan of a child, and the child was in foster care under the legal responsibility of a county social service agency at the time the court ordered guardianship to be transferred to the commissioner, or
- both parents are deceased and there is no individual who is willing and capable to assume the appropriate duties and responsibilities for a child.

[2008 legislative session, Chapter 361, Article 6, sections 42, 43; Minn. Stat., section 260C.325, subds. 1, 3]

K. Voluntary foster care placement for treatment

A new chapter of law, Minnesota Statutes, Chapter 260D, was established for the voluntary placement of children with developmental disabilities or serious emotional disturbance when foster care is needed to receive treatment. Chapter, 260D clarifies and combines existing policy and legal requirements that were previously found in several different sections of Chapter 260C. However, in Chapter 260C, children with a developmental disability or emotional disturbance were identified as being in foster care due solely to their disability. The new chapter was created

to serve the needs of children with disabilities, whose treatment needs cannot be met in their community, requiring out-of-home placement for treatment services.

Minnesota Statutes, section 260C.212, subd. 8 remains as the process and required court review for other voluntary placements. But all references to voluntary placements for children with disabilities have been removed from Chapter 260C and moved to Chapter 260D.

The Indian Child Welfare Act (ICWA) [United States Code, title 25, section 1901] and the Minnesota Indian Family Preservation Act [Minnesota Statutes, sections 260.751 to 260.851] apply to the voluntary placement of children for treatment. [Minnesota Statutes, section 260D.001 (g)]

Chapter 260D sets out voluntary foster care as the means for the county agency and parent(s) to provide needed treatment when a child must receive treatment in a foster care setting.

This chapter:

- provides a definition for voluntary placement for treatment
- excludes from this chapter a child who requires protective services or is in placement for any reason other than to access needed treatment
- confirms the agency and parent(s) are responsible to actively plan together to meet a child's need for safety, stability and permanency
- establishes court review and permanency planning processes for children in voluntary foster care for treatment
- supports and strengthens parents' rights and responsibilities during voluntary placement, including visiting their child, active planning with the agency to make treatment decisions, obtaining necessary medical, dental, educational services, and preserving their child's connections with family and community.

[2008 legislative session, Chapter 361, Article 6, section 28, 29, 33, 37, 41; Minn. Stat., sections 260. 101, subd. 2; 260C.141, subd. 2; 260C.205; 260C.212, subds. 1,8.]

a. Voluntary foster care agreement (VPA)

A signed VPA is required for all voluntary placements. Minnesota Statutes, sections 260C.212, subd. 8 and 260D.101, require that the VPA be in writing and in a form approved by the commissioner. A new form for Voluntary Placement for Treatment is being developed. A bulletin will be released in 2008 with information on the new form. For voluntary placements of Indian children, use DHS 3374, for all other voluntary placements, use DHS 1776. These forms can be accessed on the DHS web site, at edocs.dhs.state.mn.us.

[2008 legislative session, Chapter 361, Article 6, sections 41, 46; Minn. Stat., sections 260C.212, subd. 8 and 260D.101, subd. 2.]

b. Children in foster care for treatment

Voluntary foster care for treatment means that the agency and a parent agree that due to a level of care determination by the agency's screening team, or a determination regarding the level of

services necessary to address the child's developmental disability, the child must receive treatment for emotional disturbance or developmental disability in a residential facility. [Minnesota Statute, sections 245.4885 and 256B.092] Voluntary placement for treatment does not apply when there is a current determination that a child requires protective services, or if a child is in foster care for any other reason other than their need for treatment for an emotional disturbance or developmental disability, or related conditions. [Minnesota Statutes, sections 260D.001 (d) and 260D.005, subd. 5]

The county agency screening team uses the diagnostic and functional assessment to inform the team of a child's need for treatment that requires foster care placement. The county social services agency needs to make reasonable efforts to prevent the placement of a child and reunify a child with their parent(s) or guardian. Reasonable efforts would include a review of community resources that could meet the child's level of care and treatment needs. The standards of active efforts would be required for Indian children. [Minnesota Statute, section 260D.001 (g)]

If a child's needs can be met in a family foster care setting, relatives and kin would be the first consideration for placement, consistent with Minnesota Statute, sections 260C.212, subd. 2 (a) and subd.4 (b) (5). [Minnesota Statute, section 260D.001 (b)]

A youth age 12 and older, has the right to participate in development of the out-of-home placement plan, to visit parent(s) and sibling(s), and to the rights established in Minnesota Rules, part 2960.0050, as a resident of a facility. If a youth disagrees with the facility or the services, as established by the out-of-home placement plan, the agency would include this information in the report to court. [Minnesota Statutes, section 260D.102.]

[2008 legislative session, Chapter 361, Article 6, sections 44 -47; Minn. Stat., sections 260D.001- 260D.102]

c. Administrative and court reviews:

Administrative reviews are required, consistent with Minnesota Statutes, section 260C.212, subd. 7. Except for children in voluntary placement for treatment, the first administrative review is required before the first court report, which is due within 165 days of placement. [Minnesota Statutes, section 260D.103]

A written report is to be sent to the court within 165 days of placement, which needs to include:

- Statement of facts that necessitated a child's foster care placement
- child's name, birth date, race, gender and current address
- parents' names, race, birth dates and address
- statement about a child's eligibility for membership or enrollment in an Indian tribe, and the agency's compliance with the Indian Child Welfare Act [Minnesota Statutes, sections 260.751 to 260.835]
- foster parents' name and address, or facility information, including the name of the chief administrator and facility address
- copy of the out-of-home placement plan [Minnesota Statute, section 260C.212, subd. 1]

- summary of the administrative review
- any information the agency, parent, child, foster parent, or residential facility staff want the court to consider
- treatment plan
 - For children in need of placement due to emotional disturbance, attach a copy of their individual treatment plan [Minnesota Statutes, sections 245.4871, subd. 21 or 125A.023, subd. 3 (c)]
 - For children in need of placement due to a developmental disability or related condition, attach a copy of their individual service plan, waived care plan, or the child individual interagency intervention plan [Minnesota Statutes, sections 256B.092 subd. 1b; 125A.023, subd. 3 (c) or Minnesota Rules, part 9525.0004, subpart 11]

The agency must inform a child, (age 12 or older), their parents' and foster care provider about court review requirements, their right to submit information to the court, their right to be heard by the court and that they can request an in-court hearing, including:

- when information the parent, child or provider want the court to consider is due to the agency to ensure that it is included with the court report
- how to exercise the right to be heard in person by the court
- how to request an in-court hearing.

An in-court hearing is not required, unless requested. When the court receives a report, the court determines:

- whether the voluntary foster care arrangement is in the child's best interest
- whether the parent(s) and agency are appropriately planning for the child
- whether it is appropriate to appoint council or a guardian ad litem for a child age 12 or older who has expressed disagreement with the foster care facility or services.

If the court finds that the voluntary foster care placement is in a child's best interest and the agency and parent(s) are appropriately planning for a child, the court will issue an order including individual findings to support the court's finding. If the court finds that the placement is not in a child's best interest or the agency and parent(s) are not appropriately planning for a child, the court will schedule a hearing and appoint a guardian ad litem.

Refer to Adolescent Services, (section I) of this bulletin for further discussion about the administrative reviews and court reviews for youth over age 16.

[2008 legislative session, Chapter 361, Article 6, sections 48, 49; Minn. Stat., sections 260D.103 and 260D.105]

d. Permanency review hearing

A permanency review is required when a child has been in voluntary foster care for treatment for 13 months from the date of the voluntary foster care agreement, or has been in voluntary foster care for treatment for 15 of the last 22 months. At this point, the agency must:

- terminate the agreement and return a child home
- determine that there are compelling reasons to continue the voluntary foster care arrangement and request judicial approval of the determination
- File a petition for the Termination of Parental Rights.

Compelling reasons has the same definition as Minnesota Statutes, section 260C.007, subd. 8. The agency may determine compelling reasons because a child must be in placement to access treatment, their individual treatment needs cannot be met in the community or through home-based care, the parent continues to be responsible to plan with the agency for a child's needs, and maintains appropriate contact with their child. To request court approval of the determination of compelling reasons to continue the voluntary foster care placement, the agency would file a "Petition for Permanency Regarding a Child in Voluntary Foster Care for Treatment." The petition would be drafted by the county attorney and includes:

- the date the voluntary placement agreement was signed
- whether the petition is due to child's developmental disability or emotional disturbance
- the plan for a child's ongoing care, and the parents' participation in the plan
- a description of the parents' visitation and contact with their child
- the date of the court finding of best interest
- the social services agencies' reasonable efforts to finalize a permanency plan for a child, including reunification with their child's parent(s) or active efforts for an American Indian child
- citation to Minnesota Statutes, Chapter 260D as the basis for the petition
- an updated copy of the out-of-home placement plan.

The permanency review hearing is to be held no later than 14 months from placement, or within 30 days of the petition filing date, when the child has been in placement for 15 of the last 22 months.

At the permanency review hearing the court will ask:

- the parent(s) if they have reviewed the "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment," if the petition is accurate, and if they agrees to continue the voluntary foster care arrangement
- the parent(s) if the parent is satisfied with the agency's reasonable (or active) efforts to finalize the permanency plan, including a consideration of community services that would allow their child to remain safely in the parents' home
- the parent if they consent to an order that approves the county's reasonable efforts to finalize the permanency plan that includes ongoing future planning for a child's safety, health and best interest, and approve of the compelling reasons why the continued voluntary placement is in their child's best interest.
- the child's guardian ad litem, or any other party if they agree that the court should approve the county's reasonable efforts to finalize the permanency plan that includes ongoing future planning for a child's safety, health and best interest, and approve the compelling reasons why the continued voluntary placement is in a child's best interest.

With the petition and the consent of the parent(s), the court may take the following actions at the permanency review hearing:

- approve the agency's compelling reasons for continued voluntary placement if it is in the best interest of a child
- find that the agency made reasonable (or active) efforts to finalize the permanency plan for a child.

If the court does not approve the voluntary arrangement, it will dismiss the petition and the agency must either:

- reunify a child with their parent(s)
- file a petition under Minnesota Statutes, section 260C.141, or 260C.201, subd.11, asking for appropriate permanency options or 260C.301.

When the court approves an agency's compelling reasons for a child to continue in voluntary foster care for treatment, and finds that the agency made reasonable effort (active efforts) to finalize the permanency plan for a child, the court will approve the continued voluntary foster care arrangement, and continue the court's jurisdiction for the purpose of reviewing a child's placement every 12 months. A court finding that it approves the continued voluntary placement means that the agency has continued legal authority to place a child and the voluntary placement agreement remains in effect.

[2008 legislative session, Chapter 361, Article 6, section 50; Minn. Stat., section 260D.107]

e. Annual court hearing

Every 12 months that a child remains in voluntary foster care for treatment, the court reviews the voluntary placement. Notice of the annual court hearing is provided to the parent, child, and foster parents or facility staff.

The court will determine that the agency is making reasonable efforts (active efforts) to finalize the permanency plan for a child, which means that the agency is providing services to:

- ensure that voluntary placement continues to be the most appropriate legal arrangement to meet a child's safety, health and best interest
- engage and support the parents' continued involvement in planning and decision-making for the needs of their child
- strengthen a child's ties to their parent(s), relatives and community
- implement the out-of-home placement plan
- ensure that the out-of-home placement plan provides appropriate services to address the physical health, mental health, and education needs of a child
- ensure that appropriate plans for a child's safety, permanent and independent living arrangements after their 18th birthday.

[2008 legislative session, Chapter 361, Article 6, section 51; Minn. Stat., section 260D.109]

f. Voluntary foster care for treatment after CHIPS adjudication

When a child has been in foster care due to safety issues, and the family has corrected the safety conditions, but a child cannot be reunified due to their need for continued treatment, the agency can enter into a voluntary foster care agreement with the family to complete a child's needed treatment.

For a county agency to have continued legal authority for placement, the agency will need to file a motion to end the jurisdiction under Minn. Statute, section 260C.193, and petition for a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment," consistent with Minnesota Statutes, section 260D.107.

[2008 legislative session, Chapter 361, Article 6, section 52; Minn. Stat., section 260D.201]

g. Termination of the Voluntary Foster Care Agreement

A child's parent(s) may end the voluntary foster care agreement with written notice to the agency. For an Indian child, their parent(s) or custodian may end the voluntary placement upon demand. [Minnesota Statutes, section 260.765, subd. 4.]

The agency may terminate the agreement upon written notice to the parent(s) or legal guardian. The written notice will include information about how to request a fair hearing, consistent with Minnesota Statutes, section 256.045. The written notice is considered received three business days after the notice is mailed. The notice of termination does not terminate the voluntary agreement. The voluntary agreement and the agency's legal authority to a child are terminated by a child's return home, or a court order.

Prior to sending written notice, the agency will engage the parent(s) in transition planning, including increased visitation, and a plan for what services will be provided when a child is reunified. The agency and parent(s) plan for the child's transition to occur no sooner than 72 hours from the receipt of the notice, and no later than 30 days.

[2008 legislative session, Chapter 361, Article 6, section 53; Minn. Stat., section 260D.301]

L. Targeted case management services for children with developmental disabilities

This section of the legislation allows the commissioner of DHS to request an amendment to the federal state plan for medical assistance, to provide children with developmental disabilities targeted case management services.

[2008 legislative session, Chapter 361, Article 6, section 57]

Special Needs

This information is available in other forms to people with disabilities by calling (651) 431-4671 or contact us through the Minnesota Relay Services at 1 (800) 627-3529 (TTY) or the Speech-to-Speech Relay, call (877) 627-3848.