



Bulletin

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DATE

June 28, 2016

OF INTEREST TO

County Directors

Social Services Supervisors
and Staff

Tribal Social Service
Directors and Staff

County Attorneys

Tribal Attorneys

ACTION/DUE DATE

Review and implement as
directed.

EXPIRATION DATE

June 28, 2018

Overview of 2016 Laws Affecting Children and Families

TOPIC

2016 child welfare legislation.

PURPOSE

Provide a summary of 2016 legislative actions that affect the delivery of child welfare services to children and families.

CONTACT

Autumn Baum, 651-431-4678, or
Autumn.Baum@state.mn.us

Deb Beske Brown, 651-431-4731, or
Deborah.Beske.Brown@state.mn.us

SIGNED

JAMES G. KOPPEL
Assistant Commissioner
Children and Family Services Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

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I. Child Protection

Under Title I of the Child Abuse Prevention and Treatment Act, as amended by Public Law 114-22, the state is required to consider any child who is identified by a state as a victim of sex trafficking as a victim of “child abuse and neglect” and “sexual abuse.” Based on this federal law, Minnesota Statutes, section 626.556 was amended and is effective May 29, 2017.

A. Screening in reports of known or suspected child sex trafficking as sexual abuse

Beginning May 29, 2017, the definition of sexual abuse is amended to include all reports of known or suspected child sex trafficking involving a child who is identified as a victim of sex trafficking, regardless of who is the alleged perpetrator. Sexual abuse includes child sex trafficking as defined in Minnesota Statutes, section 609.321, subdivisions 7a and 7b as:

1. Receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or
2. Receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause 1.

Sex trafficking victim means a person subjected to the practices in clauses (1) or (2). Reports of child maltreatment that allege substantial child endangerment or sexual abuse must receive a family investigation.

(2016 Minn. Laws, Ch. 189, Art. 15, § 24; Minn. Stat. § 626.558, subd. 2)

B. Agency responsibility for investigation when a child is identified as a victim of sex trafficking

The local welfare agency has been responsible for investigating allegations of sexual abuse when the alleged offender has been the parent, guardian, sibling, a person responsible for a child’s care, or person with a significant relationship to a child. Effective May 29, 2017, the local welfare agency will now also be responsible for investigating when a child is identified as a victim of sex trafficking.

(2016 Minn. Laws, Ch. 189, Art. 15, § 25; Minn. Stat. § 626.556, subd. 3e)

C. Multidisciplinary child protection teams may include children's advocacy centers

Beginning July 1, 2016, children's advocacy centers may participate in multidisciplinary child protection teams. Children's advocacy centers are defined as organizations, using a multidisciplinary team approach, whose primary purpose is to provide children who have been victims of abuse and their nonoffending family members with support and advocacy, specialized medical evaluation, trauma-focused mental health services, and forensic interviews.

(2016 Minn. Laws, Ch. 189, Art. 15, §§ 26, 27 and 28; Minn. Stat. § 626.558, subds. 1 and 2)

II. Confidentiality of child fatality and near fatality review team proceedings

Effective August 1, 2016, members of a child fatality and near fatality review team must not disclose what transpired during a child fatality and near fatality review, except to carry out the duties of a child fatality and near fatality review team. The proceedings and records of a child fatality and near fatality review team are considered protected nonpublic data as defined in Minnesota Statutes, section 13.02, subdivision 13 and are not subject to discovery or introduction into evidence in a civil or criminal action against a professional, the state, or a county agency arising out of the matters a team is reviewing.

Information, documents, and records otherwise available from other sources are not immune from discovery or use in civil or criminal action solely because they were assessed or presented during proceedings of a review team. A person who presented information before a review team or who is a member of a team shall not be prevented from testifying about matters within a person's knowledge. In a civil or criminal proceeding a person shall not be questioned about their presentation of information to a review team or opinions formed by a person as a result of a the review.

(2016 Minn. Laws, Ch. 163, Art. 3, § 6; Minn. Stat. §256.01, subd. 12a)

III. Children in out-of-home placement

The Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, required states to amend state policy and child welfare practice for children in out-of-home placement. These provisions apply to foster children placed in family foster homes, corporate foster homes, and residential facilities. These sections are effective July 1, 2016.

A. Case transfer process for Indian children in out-of-home placement to a tribal agency or tribe inside or outside of Minnesota

A new section, Minnesota Statutes, section 260C.125, was added to establish procedures for the transfer of responsibility for placement and care of an Indian child in out-of-home placement from a responsible social service agency to a tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement, inside or outside of Minnesota.

Under the law, the responsible social service agency, in consultation with Indian tribes, is required to establish and maintain procedures to transfer responsibility for placement and care of a child to a tribal agency. Transfer of a case shall not affect a child's Title IV-E and Medicaid eligibility. If Title IV-E eligibility has not been determined, the responsible social services agency shall complete the eligibility determination prior to the transfer.

The process must include the responsible social service agency providing essential documents and information to the tribal agency, including but not limited to:

- Judicial determinations to the effect that continuing in the home from which a child was removed would be contrary to the welfare of the child and reasonable efforts were made to prevent placement, and determination, if family reunification is possible, , consistent with Minnesota Statutes, section 260.012
- Documents pertaining to a child's permanency proceedings under Minnesota Statutes, sections 260C.503 to 260C.521
- Documents related to a child's Title IV-E eligibility
- Documents regarding a child's eligibility or potential eligibility for other federal benefits
- Child's case plan, including child's health and education records, developed according to Minnesota Statutes, section 260C.212, subdivision 1, which is consistent with the Social Security Act, United States Code, Title 42, sections 675(1), and 675a
- Documentation of a child's placement setting, including a copy of the most recent provider's license

(2016 Minn. Laws, Ch. 189, Art. 15, § 6; Minn. Stat. § 260C.125)

B. Supporting normalcy for children in out-of-home placement using the reasonable and prudent parenting standard

This section permits foster parents and designated staff at corporate and residential facilities to allow a child to participate in extracurricular, social, or cultural activities that are typical for a child's age by applying reasonable and prudent parenting standards. Based on the applicable sections of the Preventing Sex Trafficking and Strengthening Families Act, and input from the Child Foster Care Work Group, this section was amended as follows:

- Defines “developmentally appropriate” to be based on a child’s cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group
- Defines “reasonable and prudent parenting” as meaning the standards characterized by careful and sensible parenting decisions that maintain a child’s health and safety; cultural, religious, and tribal values; and best interests while encouraging emotional and developmental growth
- Requires the commissioner to provide guidance about childhood activities and factors a foster parent and designated staff at corporate and residential facilities must consider when applying the reasonable and prudent parenting standard
- Provides factors that must be considered by a foster parent and designated staff at corporate and residential facilities when applying reasonable and prudent parenting to include:
 - Child’s age, maturity, and developmental level
 - Risk of activity
 - Best interests of a child
 - Importance of the experience on child’s emotional and developmental growth
 - Importance of a family-like experiences
 - Child’s behavioral history
 - Wishes of child’s parent or guardian, as appropriate
- Requires corporate foster care and residential facilities licensed under Minnesota Rules, Chapter 2960 to have at least one onsite staff who is trained on the reasonable and prudent parenting standards and authorized to apply them to decisions involving the approval of a foster child’s participation in age and developmentally appropriate extracurricular, social, or cultural activities
- Provides that foster parents and designated staff at corporate and residential facilities demonstrating compliance with the reasonable prudent parent standard shall not incur a civil liability if a foster child is harmed or injured because of participating in approved extracurricular, enrichment, cultural, and social activities

Minnesota Statutes, section 260C.215, subdivision 4 was amended to include training on reasonable and prudent parenting as part of required initial orientation and preparation continued after placement for all child foster care parents. Section 471 (a) (24) of the Social Security Act requires states to certify that foster parents and designated staff at corporate and residential facilities have completed the required training. County and tribal agencies with Title IV-E agreements, child-placing agencies, licensed corporate foster homes, and residential facilities approved for Title IV-E must certify completion of this required training to the Minnesota Department of Human Services by September 28, 2016.

(2016 Minn. Laws, Ch. 189, Art. 15, § 9; Minn. Stat., § 260C.212, subd. 14)

C. Compulsory school attendance for children in out-of-home placement

When a child is in out-of-home placement, the responsible social services agency must ensure that a child who has attained the minimum age for compulsory school attendance under state law is enrolled full-time in elementary or secondary school, instructed in elementary or secondary education at home, or instructed in an independent study elementary or secondary program. If the child is incapable of attending school on a full-time basis due to a medical condition, the agency must document the condition in the out-of-home placement plan. Information about the child's condition must be updated regularly.

(2016 Minn. Laws, Ch. 189, Art. 15, § 6; Minn. Stat., § 260C.125)

D. Case planning requirements for children 14 years or older in out-of-home placement

When preparing an out-of-home placement plan for a child age 14 or older, the child may select one member of the team preparing the child's out-of-home placement plan, which includes an independent living plan, to be designated as the child's advisor, and to advocate with respect to the application of the reasonable and prudent parenting standard. The responsible social services agency may reject an individual selected by a child if the agency has good cause to believe that the individual would not act in the best interests of the child.

A signed acknowledgment that describes a child's rights regarding education, health care, visitation, safety, and protection from exploitation, and court participation; receipt of the documents identified in Minnesota Statutes, section 260C.452; and receipt of an annual credit report must also all be included in the out-of-home placement plan.

This plan is reviewed in an administrative review or court review of placements under Minnesota Statutes, section 260C.203.

(2016 Minn. Laws, Ch. 189, Art. 15, § 8; Minn. Stat. § 260C.212, subd. 1)

E. Court or administrative review for youth in foster care past age 18

Courts must conduct annual reviews of children ages 18 to 21 in foster care to ensure the legally responsible social services agency is making reasonable efforts to finalize the permanency plan of the child. An administrative review must be completed at least six months after each of the court's annual reviews

(2016 Minn. Laws, Ch. 189, Art. 15, § 12; Minn. Stat. § 260C.451)

F. Successful transition to adulthood

Minnesota Statutes, section 260C.452 was added outlining requirements of the responsible social service agency to engage with a foster youth in case planning and services to plan a successful transition to adulthood. These requirements apply to a child under guardianship of the commissioner, a child with a permanency disposition of permanent custody to the agency, or a child who will leave foster care at 18 to 21 years of age. Most of these provisions were previously in statute and moved from Minnesota Statutes, section 260C.203.

The case planning requirements for foster children age 14 and older are in place to support a youth's successful transition to adulthood.

1. Notification of foster care benefits

A written notice to a child by the responsible social services agency is required six months before a child is expected to be discharged from foster care. The responsible social service agency must:

- Provide a written notice to a foster child explaining the right to continue foster care services past age 18 for eligible youth, and the right to appeal a denial of services
- File a copy of the notice with the court

If the court does not receive a copy of the notice by the time a foster youth is 17½, the court shall require the responsible social service agency to provide the written notice.

2. Discharge from foster care

For a child who will be discharged from foster care at age 18 or older, the responsible social service agency must develop a personalized transition plan as directed by the child during the 90-day period immediately prior to expected date of discharge. The transition plan must be as detailed as a child elects and include specific options, including but not limited to:

- Affordable housing with necessary supports that does not include a homeless shelter

- Health insurance, including eligibility for Medical Assistance, as defined in Minnesota Statutes, section 256B.055, subdivision 17
- Education, including application to the Education and Training Voucher program
- Local opportunities for mentors and continuing support services, including the Health Transitions and Homeless Prevention program, if available
- Workforce supports and employment services
- Copy of a child's consumer credit report as defined in Minnesota Statutes, section 13C.001, and assistance in interpreting and resolving any inaccuracies in the report, at no cost to the child
- Information on executing a health care directive under Minnesota Statutes, chapter 145C, and the importance of designating another individual to make health care decisions on behalf of the child if the child becomes unable to participate in decisions
- Appropriate contact information through 21 years of age if a child needs information or help dealing with a crisis situation

The court shall ensure the responsible social service agency assist the child in obtaining the following documents before the child leaves foster care:

- A Social Security card
- An original or certified copy of a child's birth certificate
- A state identification card or driver's license
- A tribe enrollment identification card, a green card, or a school visa
- Health insurance information
- Child's school, medical, and dental records
- A contact list of a child's medical, dental, and mental health providers
- Contact information for the child's siblings, if the siblings are in foster care

When a child leaves foster care at age 18 or older, the responsible social services agency is required to give the child written notice that foster care will terminate 30 days from the date the notice is sent. The child or their guardian ad litem may file a motion asking the court to review the responsible social service agency's determination within 15 days of receiving the notice. A child shall not be discharged from foster care until the motion is heard. The responsible social service agency shall work with a child to transition out of foster care.

The written notice of termination of benefits shall be on a form prescribed by the commissioner and shall include the right to have the responsible social service agency's determination reviewed by the court under this section or Minnesota Statutes, sections 260C.203, 260C.317, and 260C.515, subdivisions 5 or 6. A copy of the notice shall be sent to the child, child's attorney, if any, foster care provider, guardian ad litem, and the court. The responsible social service agency is not responsible for paying foster care benefits for any period of time after a child leaves foster care.

(2016 Minn. Laws, Ch. 189, Art. 15, § 13; Minn. Stat. § 260C.452)

3. Children in voluntary foster care for treatment

A new section was added to Minnesota Statutes, Chapter 260D, to address the successful transition to adulthood requirements for children in voluntary placement. They apply as follows:

- *Case planning:* A child age 14 or older must be provided with the case plan requirements under Minnesota Statutes, section 260C.212, subdivisions 1 and 14, including an out-of-home placement plan and independent living plan, and ensure the plans support age and developmentally appropriate activities
- *Notification:* The responsible social service agency must provide written notice of the right to continued access to services for certain children in foster care past age 18 and of the right to appeal denial of social services. The notice must be provided to a child six months before their 18th birthday
- *Administrative or court reviews:* When a child is age 17 or older, the administrative review or court hearing must include a review of the responsible social service agency's support for a child's successful transition to adulthood, as required in Minnesota Statutes, section 260C.452, subdivision 4

(2016 Minn. Laws, Ch. 189, Art. 15, § 15; Minn. Stat. § 260D.14)

G. Children in permanent custody of agency

Courts must conduct annual in-court reviews of children ordered into permanent custody of the responsible social services agency to ensure that the agency has made intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts to return a child home, or secure a placement for a child with a fit and willing relative, custodian, or adoptive parent. The court must also review whether the responsible social services agency made reasonable efforts to finalize an alternative permanency plan for a child, including to ensure there are compelling reasons it continues not to be in the best interests of a child to:

- Return home,
- Be placed for adoption; or
- Be placed with a fit and willing relative through an order for permanent legal and physical custody under Minnesota Statutes section 260C.515, subdivision 4.

(2016 Minn. Laws, Ch. 189, Art. 15, § 14; Minn. Stat. § 260C.521, subd. 1)

IV. Northstar Care for Children Monthly Benefit Increased

Effective July 1, 2017, the basic monthly rate will be increased for all children receiving Northstar Care for Children benefits; this includes foster care, Northstar Kinship Assistance, and Northstar Adoption Assistance. The monthly basic rate will be increased as follows:

- Ages birth-5 is currently \$565, increasing to \$650
- Ages 6-12 is currently \$670, increasing to \$770
- Ages 13 and older is currently \$790, increasing to \$910

(2016 Minn. Laws, Ch. 189, Art. 15, § 4; Minn. Stat. § 256N.26, subd. 3)

V. American Indian Child Welfare Initiative

Funds to assist the Mille Lacs Band of Ojibwe and Red Lake Nation in taking the first step towards participating in the American Indian Child Welfare Initiative (Initiative) were appropriated. Each tribe will receive \$400,000 to hire staff to begin the planning phase.

Currently, the Leech Lake Band of Ojibwe and White Earth Nation participate in the Initiative.

(2016 Minn. Laws, Ch. 189, Art. 23, § 2)

VI. Updates on the Legislative Task Force on the Protection of Children

The Legislative Task Force on the Protection of Children has several new tasks, including to review and recommend alternatives to law enforcement responding to maltreatment reports by removing children from their homes, and to clarify the definition of substantial child endangerment. The task force is also allowed to establish a work group to review the Minnesota Assessment of Parenting Children and Youth (MAPCY). In addition, the task force has increased membership to include four more members from the Minnesota House of Representatives and four more members from the Minnesota Senate. The task force is required to meet at least quarterly.

(2016 Minn. Laws, Ch. 153, § 1; 2015 Minn. Laws, Ch. 71, Art. 1, § 125)

VII. Fetal alcohol spectrum disorders training for child foster care licensing

The training requirements for child foster care licensing in Minnesota Statutes, section 245A.175 were amended to add an annual requirement of one hour of training on fetal alcohol spectrum disorders within the first 12 months of licensure. After the first 12 months of licensure, training on fetal alcohol spectrum disorders may be part of the 12 hours of the required in-service training per year.

This training requirement is effective August 1, 2016 and applies to child foster care license holders and caregivers in foster family and treatment foster care settings, and all staff providing care in foster residence settings (corporate foster care).

(2016 Minn. Laws, Ch. 101, § 1; Minn. Stat. §245A.175)

Americans with Disabilities Act (ADA) Advisory

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