

Navigating New Legislation That Will Benefit Your Foster Care Clients

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Exciting legislation was passed in Minnesota this year that will directly benefit Minnesota's foster children. First, foster care youth are entitled to receive services and benefits until they are 21, and Minnesota law now provides a mechanism for the juvenile courts to keep jurisdiction over those cases where youth are taking advantage of foster-care-to-21 services. This Practice Point will walk you through the new provisions, and will provide tips you should follow to ensure your client can take full advantage of these entitlements.

Second, Minnesota statutes have been clarified to provide that court review of a foster care matter should be conducted at an in-court hearing that all parties have the opportunity to attend. This will eliminate the practice of conducting non-appearance paper reviews of cases, and ensure that every case receives the proper attention from the court and all parties involved with a child in foster care.

These changes go into effect on August 1, 2010. Review these changes and study the tips below so you can be ready to advocate for your client to take full advantage of these benefits.

FOSTER CARE BENEFITS AND COURT JURISDICTION TO AGE 21

A. Eligibility Requirements for Youth to Remain in Foster Care Between Ages 18 and 21 (Minn. Stat. § 260C.451)

Youth in foster care who wish to remain in foster care until age 21 must fit within one of the following eligibility criteria:

- 1) Completing secondary education or a program leading to an equivalent credential;
- 2) Enrolled in an institution providing postsecondary or vocational education;
- 3) Participating in a program or activity designed to promote or remove barriers to employment;
- 4) Employed for at least 80 hours per month; OR
- 5) Incapable of doing any of the activities described in 1) – 4) above due to a medical condition.

The youth must be in foster care immediately prior to their 18th birthday in order to elect to continue beyond age 18. These requirements are the same whether the youth is a state ward or is in long-term foster care.

ATTORNEY TIP: If you represent a child in foster care who may age out of foster care without a permanent family, start counseling them as early as possible about the availability of foster care services to age 21. Talk to them about their goals for education and employment, and explore with them how remaining in foster care can help them achieve their goals. As explained below, remaining in foster care to age 21 means that a majority of their housing costs will be covered, allowing them to stay focused on school or save money while working. It also gives clients more time to receive services and training that will help prepare them for full independence.

B. What Type of Benefits are Available for 18 to 21-Year-Olds in Foster Care?

• Payment for Foster Care Placements

According to the new law, "foster care benefits" includes payment for certain foster care placement settings (including family foster homes, foster care with relatives, group homes, and emergency shelters), as well as payment for a supervised independent living setting. Selection of the foster care setting is based on the child's best interests. The county social services agency uses an individual determination of the child's needs to determine the level of supervision to be provided with the foster care placement. The county's obligation to conduct monthly visitations will continue (Minn. Stat. § 260C.451, subd. 5; see also Minn. Stat. § 260C.212, subd. 4a), and the guardian ad litem will remain on the case.

• Continued Services Related to Independent Living Plan (Minn. Stat. § 260C.193)

Any child who is receiving foster care benefits immediately prior to their 18th birthday, and who is in foster care at the time of the request, can request an update of their Independent Living Plan (ILP). ILPs are required for children 16 and over who are in placement as a result of a permanency disposition (e.g., they are state wards or are in long-term foster care). At the request of the youth, the county social services agency must update the ILP and "provide continued services and foster care for the child including those services that are necessary to implement the independent living plan." Minn. Stat. §260C.451, subd. 2.

ATTORNEY TIP: If your client is entitled to an ILP, request an updated ILP, as well as reports on the progress of goals within the child's plan, at every annual review hearing. Also make sure that at every hearing the court reviews your client's progress on 11 transition goals required by Minn. Stat. § 260C.212, subd. 7(d)(2). The county's report to the court should address progress on all independent living and transitional goals; if it does not, raise the omission at the hearing and request that the report be supplemented with updates on the omitted issues.

C. Notice to Youth of Foster Care Benefits to Age 21

The county social services agency must advise any child in foster care within the six (6) months prior to the child's 18th birthday of the availability of foster care benefits up to age 21. The agency must provide documentation to the court that this notice has been given to the child. Notice of the availability of these

benefits must also be given to the child's parents or legal guardian and foster parents. Minn. Stat. § 260C.451, subd. 1.

ATTORNEY TIP: Make sure your client is fully aware of the right to remain in foster care beyond age 18, and what benefits are available to him or her. Be sure to advise your client of the eligibility requirements so that he or she understands the role the youth must play to remain eligible for extended foster care. The youth should understand that they need to be in foster care (i.e., not on run or in an unauthorized placement) when they turn 18 in order to be sure the case will not be dismissed before they can elect to continue in foster care (§ 260C.451, subd. 3 describes continued foster care as available to eligible children "already in care"). Start this dialogue about continued foster care early, long before your client's 18th birthday.

D. Juvenile Court Jurisdiction Over Foster Care Expanded to Age 21 (Minn. Stat. § 260C.193)

Court jurisdiction now extends up to age 21 over youth who continue in foster care. The purpose of extended court jurisdiction is for conducting the foster care reviews required under Minnesota law, specifically reviews of long-term foster care and independent living plans.

Court jurisdiction over an 18 to 21-year-old in foster care cannot be terminated "without giving the child notice of any motion or proposed order to dismiss jurisdiction and an opportunity to be heard on the appropriateness of the dismissal." If the child asks to leave foster care or actually leaves, the court may terminate jurisdiction. Minn. Stat. § 260C.193, subd. 6(a).

For other cases in which court review is not required for a youth continuing in foster care beyond age 18, and for cases in which a court order is not necessary for a child to be in foster care, the court can terminate jurisdiction on its own or another party's motion if it determines that jurisdiction is no longer necessary to protect the child's best interests. Minn. Stat. § 260C.193, subd. 6(b).

If jurisdiction is not otherwise terminated by the court, and if the youth does not elect to continue in foster care past 18, jurisdiction continues until the child turns 18. Minn. Stat. § 260C.193, subd. 6(c).

ATTORNEY TIP – As described in Part E below, youth can return to foster care even if they had previously left foster care. Unfortunately, once a court terminates jurisdiction, the law currently does not provide a clear mechanism for the court to re-open the case and resume jurisdiction if the child chooses to come back into foster care. For this reason, it is imperative that you encourage your client to stay in foster care beyond 18. If your client is unsure about or decides against remaining in foster care, however, you should take the following steps:

- 1) Request that the court retain jurisdiction until the child turns 21, even if the client may leave foster care at any point after 18, and
- 2) Ask for the court to set a hearing one year from the date of the last review.

Advise your client that the request is solely to give them the full protection of court oversight should they ever decide to return to foster care. Please call CLC staff attorneys to discuss this strategy as you approach this critical point in your client's case.

Because court jurisdiction now extends over youth in foster care up until age 21, as of August 1, 2010, CLC's policy will be to keep all files open until the client turns 21. You will remain your client's lawyer as long as they are in foster care – including if they return to foster care later after having left foster care – and will continue to help advocate for the services and benefits to which they are entitled.

E. Returning to Foster Care Between Ages 18 and 21

STATE WARDS

- State wards can return to foster care anytime between ages 18 and 21.

Minnesota law contains provisions allowing youth between ages 18 and 21 to return to foster care if they had previously left foster care. State wards who left foster care retain their ability to return to foster care for placement at any time between the ages of 18 and 21. Minn. Stat. § 260C.456.

If a youth who left foster care was still a state ward within the six months prior to their 18th birthday, he or she can request that an individual plan related to his or her vocational, educational, social or maturational needs be developed. The agency must develop that plan with the youth, and must "provide foster care with maintenance and counseling benefits as required to implement the plan." If the plan includes foster care, the county agency enters into a voluntary placement agreement with the individual. Minn. Stat. § 260C.451, subd. 6.

NON-STATE WARDS

- If a foster youth who is NOT A STATE WARD leaves foster care, they MAY be able to return to foster care... it depends upon availability of county funds.

For youth who were not state wards when they left foster care, the provision of additional foster care benefits between ages 18 and 21 if they return to care is dependent on whether the county has funds available to provide the benefits. Minn. Stat. § 260C.456.

ATTORNEY TIP: If your client is not a state ward, and is considering leaving foster care instead of continuing past 18, it is very important that you counsel them about the potential obstacle they may face if they do someday wish to return to foster care before they turn 21. While many counties, including Hennepin and Ramsey, have made assurances that benefits and services will be available to all children who return to care, a youth in foster care who is not a state ward and who leaves foster care must understand that there is a possibility they may not receive services when they return if funds are not available. Thus, you should encourage youth to stay in foster care if they believe they will need services at any time between age 18 and 21.

F. Definition of "Child" Expanded to Age 21 for Purposes of Foster Care

The definition of "child" in Minnesota's child protection statutes has been amended to include individuals under age 21 who are remaining in foster care beyond age 18. This ensures that relevant provisions and requirements under the child protection statutes (including those that entitle children to services or benefits) will apply to 18-21 year olds who remain in foster care. For all purposes other than continued foster care, youth in foster care beyond age 18 are considered adults. Thus the custody provisions in any legal custody order, in any long-term foster care order, or in any order awarding guardianship of a state ward to the commissioner of human services will terminate when the youth turns 18th. Minn. Stat. § 260C.451, subd. 7.

ATTORNEY TIP: When you are talking to your client about the benefits of staying in foster care, reassure them that they will be considered legal adults, no longer under the custody of the state or county, and that they will have the ability to enter contracts, open bank accounts, vote, etc. They will be independent adults, and their decision to remain in foster care is one they can make freely, but they will be expected to be responsible and follow the rules of the foster placement in which they are living. As adults, they will need to take some initiative to take advantage of available services.

G. Court Must Conduct Annual Review (Minn. Stat. § 260.201, subd. 10(e)).

When a child remains in foster care past age 18 and the court retains jurisdiction, the court must continue to review the matter annually, consistent with the requirements currently in place to review long-term foster care and independent living plans.

ATTORNEY TIP: At each review hearing, ensure that the next annual review is scheduled for the client. If there is a disruption of the foster care placement during the interim, you should request further court review (by letter or email to the court, copying all parties) so that all parties can address the issues and identify a new more appropriate placement you're your client (see Minn. Stat. § 260C.201, subd. 11(f)).

REQUIREMENT FOR IN-COURT REVIEWS

Several provisions in the legislation going into effect on August 1st address and clarify the requirements surrounding court reviews of foster care cases and the child's ability to participate in those reviews. Most notably, amendments to several statutes clarify that the court must conduct "in-court" appearance reviews for foster care matters [Minn. Stat. §§ 260C.201, subd. 11(g) (long-term foster care matters), 260C.212, subd. 7(d) (review of independent living plans), 260C.317, subd. 3(b) (state ward reviews of progress toward adoption)].¹ These changes eliminate the practice of conducting non-appearance, paper reviews of cases so that every child receives the full attention of the court and all parties involved by having a hearing at which the parties can appear to discuss the child's case. This will lead to more meaningful court reviews, more

¹ Provisions relating to 90-day reviews of out-of-home placements in CHIPs cases, which already provided clear guidelines requiring in-court reviews, were unchanged by this legislation.

progress toward permanency goals, and strengthens court practice of ensuring that children have the opportunity to participate in those hearing involving their lives.

Changes to Minn. Stat. § 260C.163, subd. 1(e) also clarify the court's duty to conduct an age-appropriate consultation during permanency hearings. The change reiterates that the court should consult directly with the child at each hearing, and cannot rely on other parties to conduct the consultation.

None of the changes concerning in-court appearance hearings require that all children must attend all hearings. Attorneys should always counsel their clients about the benefits of attending court hearings, and remind them of the right to attend and express their opinions to the court. It will still be up the child to decide if they want to attend court proceedings. If the child does want to attend, the county agency must make arrangements for the child's transportation to the hearing. (See Comment to Rule 27.02 of Minn. R. Juv. Prot. P.).

ATTORNEY TIP: The law is now very clear: reviews of foster care cases must be conducted in court. Non-appearance hearings and paper reviews should no longer occur. If you believe that a hearing set for your client has been scheduled as a non-appearance hearing, refer to the applicable provisions above, and request that the hearing be re-set as an appearance hearing. Even if the child does not wish to attend, there is immense value in having all parties gather and discuss the case in person, rather than relying on written reports to convey the status of the case to the court. For this reason, it has long been CLC's policy to request that all reviews be conducted in court, even if the child chooses not to attend. Consult CLC staff if you have any concerns about your client's attendance at court hearings.