

CLC PRACTICE POINT

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HOW TO EFFECTIVELY ADVOCATE FOR A FOSTER CHILD WITH MENTAL HEALTH ISSUES

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Ensuring that your child client with mental health needs receives consistent and individualized mental health services in a timely manner will undoubtedly have a positive impact on all aspects of your client's future. Effectively advocating for your client's mental health needs will play an integral role in your client's placement stability, ability to learn and overall development. By encouraging your client's mental and emotional well-being, your client will be less likely to have problems in school, less likely to be involved with the criminal justice system and will achieve more successful permanency outcomes.

According to the Child Welfare League of America, more than 80% of children in foster care have developmental, emotional or behavioral problems.¹ The U.S. Department of Health and Human Services reports that 75-80% of all children requiring mental health services do not receive them.² A study of Medicaid claims indicate that an estimated 57% of youths in foster care meet the criteria for a mental disorder.³ Studies have directly linked foster care to conduct disorders.⁴ Foster children are more likely to have mental health disorders for a variety of reasons. Prior to entering foster care, many foster children experience extreme hardships within their family units such as poverty, homelessness, parental abuse and neglect, living with caretakers with untreated mental health disorders as well as exposure to prenatal risk factors, domestic violence and substance abuse.⁵ In addition, most foster care children are at a greater risk of developing a mental health disorder as a result of entering the foster care system due to the trauma they experience from being separated from family and the instability of multiple short-term foster care placements.⁶ It is estimated that only 3% of mental health providers work with children in foster care.⁷ Mental health providers that do

¹ Child Welfare League of America, Practice Areas, Child Mental Health: Facts and Figures, <http://cwla.org/programs/bhd/mhfacts.htm> (last visited Sept. 19, 2010).

² National Conference of State Legislatures, Issues and Research, Mental Health, Coordinated State Leadership for Better Mental Health, <http://www.ncsl.org/?tabid=14468> (last visited Sept. 19, 2010).

³ Heather N. Taussig & Sara E. Culhane, *Impact of a Mentoring and Skills Group on Mental Health Outcomes for Maltreated Children in Foster Care*, Archives of Pediatrics & Adolescent Medicine, Vol. 164, No. 8, at 739 (August 2010).

⁴ Child Welfare League of America, *supra*, note 1.

⁵ See Lisette Austin, *Mental Health Needs of Youth in Foster Care: Challenges and Strategies*, The Connection, Quarterly Magazine of the National Court Appointed Special Advocate Association, Vol. 20, No. 4, Winter 2004, at 6; Mental Health, A Report of the Surgeon General, Chapter Three, Children and Mental Health, Risk Factors, <http://www.surgeongeneral.gov/library/mentalhealth/chapter3/sec2.html> (last visited Sept. 19, 2010).

⁶ See Austin, *supra*, note 5, at 6; American Academy of Child & Adolescent Psychiatry, Policy Statements, AACAP/CWLA Foster Care Mental Health Values Subcommittee, http://www.aacap.org/cs/root/policy_statements/aacap/cwla_policy_statement_on_mental_health_and_use_of_alcohol_and_other_drugs_screening_and_assessment_of_children_in_foster_care (last visited Sept. 19 2010).

⁷ Austin, *supra* note 5, at 6.

work with children in foster care are often inexperienced trainees unfamiliar with navigating the child welfare system and are only available for a limited time.⁸

As a child, it is hard enough to navigate through the stresses of a mental health disorder when you have a supportive parent overseeing your mental health needs. Imagine a child in foster care with a mental health disorder who has no consistent adult in her life to oversee and advocate for her needs. This is why it is so important for lawyers to understand a child client's mental health needs and how it impacts every aspect of their client's life. The following review of statutory requirements and tips are provided to help guide you in advocating for your child client's mental health needs.

LEGAL SUMMARY OF MINNESOTA LAWS AND REGULATIONS RELATING TO MENTAL HEALTH SCREENING FOR CHILDREN IN FOSTER CARE

The information on mental health screening standards for Minnesota children in foster care included in this practice point is based on research conducted by Theresa Bevilacqua, Jonathan Bakewicz and Stephanie Friedland from the law firm of Dorsey and Whitney LLP. Many thanks to these dedicated lawyers for their thorough and invaluable research.

Mental Health Screenings/Diagnostic Assessments

Under Minnesota law, each county is responsible for coordinating a system of locally affordable and attainable children's mental health services which include mental health screenings called "diagnostic assessments." Minn. Stat. § 245.4874, subd. 1 (2009). A diagnostic assessment is a written summary of an evaluation by a mental health professional conducted via a face-to-face interview with the child and/or the child's family and/or guardian to determine if the child has a mental health disorder. Minn. Stat. § 245.4871, subd. 11 (2009).

During the diagnostic assessment, the mental health professional should ask questions and gather information about the following:

- (a) a child's current life situation and sources of stress, including reasons for referral for a diagnostic assessment;
- (b) the history of the child's current mental health problem or problem(s), including important developmental incidents, strengths, and vulnerabilities;
- (c) the child's current functioning and symptoms;
- (d) the child's diagnosis, including determination of whether the child meets the criteria of severely emotionally disturbed; and
- (e) the mental health services needed by the child.

Minn. Stat. § 245.4871, subd. 11.

Diagnostic assessments may be done differently due to a child's particular situation, such as being too young to talk. A completed diagnostic assessment is used to determine eligibility for a variety of programs and services.⁹

⁸ *Id.* at 6.

⁹ Programs and services include (a) certain county mental health services; (b) Children's Therapeutic Services & Supports ("CTSS") & outpatient mental health services in the medical assistance benefit set; (c) Supplemental Security Income ("SSI"); (d) mental health benefits through a health plan; and (e) mental health services in a special education plan at school. Minnesota Children and Youth with Special Needs, Minnesota Department of Health, Children's Mental Health Topic: Who Pays? Taking the MAZE Out of Funding, at 176-177, <http://www.health.state.mn.us/divs.fh/mcshn/maze/cmh.pdf> (last visited Sept. 20, 2010).

Timing of Diagnostic Assessments

Under Minnesota law, all residential treatment facilities and acute care hospital inpatient treatment facilities that provide mental health services for children must complete a diagnostic assessment for each of their child clients within five (5) working days of admission. Providers of outpatient and day treatment services for children must complete a diagnostic assessment within five (5) days after the child's second visit or thirty (30) days after intake, whichever occurs first. However, in either case, where a diagnostic assessment is available and has been completed within 180 days preceding admission, only updating¹⁰ of the diagnostic assessment is necessary. Further, if the child's mental health status has changed markedly since the child's most recent diagnostic assessment, a new diagnostic assessment is required. Minn. Stat. § 245.4876, subd. 2 (2009).

❖ TIP-ENSURE THAT YOU ARE GETTING COPIES OF ANY SCREENINGS OR ASSESSMENTS AND THAT MENTAL HEALTH SERVICES ARE BEING PROVIDED IN A TIMELY MANNER.

- If your client's screening is not meeting the required statutory timelines you will need to ask the court to order that assessments are completed or updated immediately.
- If you did not receive a copy of your client's screening or assessment you will need to ask the court to order that you receive a copy pursuant to Minn. Stat. § 260C.171, subd. 3 (2009).
- Please ensure that you forward a copy of the screening or assessment to Children's Law Center of Minnesota (CLC), so that CLC staff can review it.

Mental Health Professionals Conducting Diagnostic Assessments

Diagnostic assessments are generally conducted by mental health professionals who are required under Minnesota Law to have training and experience in working with children consistent with the age group to which the mental health professional is assigned. Mental health professionals include the following professionals who have certain qualifications:

- * Psychiatric Nurses
- * Clinical Social Workers
- * Psychologists
- * Psychiatrists
- * Marriage and Family Therapists

Minn. Stat. § 245.4871, subd. 27.

❖ TIP-ENSURE THAT MENTAL HEALTH SCREENINGS ARE BEING DONE WITH AN APPROPRIATE PHYSICIAN WHO UNDERSTANDS THE SPECIFIC ISSUES THAT RELATE TO FOSTER CHILDREN WITH MENTAL HEALTH NEEDS.

- If it appears that the mental health professional is not updating your client's diagnostic assessment, but merely reiterating a past assessment, you should ask the court to order a new and independent

¹⁰ "Updating" means a written summary by a mental health professional of the child's current mental health status and service needs. Minn. Stat. § 245.4876, subd. 2.

assessment. This will ensure that your client's current diagnosis is not solely based on prior assessments.

- CLC staff, especially our staff social worker Weida Allen, can help you formulate this argument for court. Weida can also recommend a specialist who conducts independent mental health evaluations and who specifically understands the needs of foster children with mental health issues.

Requirements to Implement Recommendations of a Diagnostic Assessment

Under Minnesota Law, the responsible social service agency is obligated to ensure the recommendations of the diagnostic assessment are implemented. Minn. Stat. §§ 260C.212, subd. 1 (9-10) (2009); 245.4874, subd. 1 (6).

❖ TIP-MAKE SURE THAT THE RECOMMENDATIONS IN THE DIAGNOSTIC ASSESSMENT ARE IMPLEMENTED.

- Ask the court to adopt the recommendations of your client's diagnostic assessment into your client's case plan pursuant to Minn. Stat. § 260C.212.
- If you believe that the recommendations of the diagnostic assessment are not being adequately addressed, ask the court to order that the recommendations be implemented pursuant to Minn. Stat. §§ 260C.212, subd. 1 (9-10); 245.4874, subd. 1 (6).

Specific Services to Children with Severe Emotional Disturbances

Special Minnesota laws exist to address mental health services for children that are deemed by a mental health professional to be severely emotionally disturbed. If a mental health professional concludes, as a result of a diagnostic assessment, that a child is severely emotionally disturbed, then such child is eligible for additional services.

Under Minnesota law, a child with "severe emotional disturbance" means a child who has an emotional disturbance and who meets one of the following criteria:

- (a) the child has been admitted within the last three (3) years or is at risk of being admitted to inpatient treatment or residential treatment for an emotional disturbance; or
- (b) the child is a Minnesota resident and is receiving inpatient treatment or residential treatment for an emotional disturbance through an interstate compact;
- (c) the child has one of the following as determined by a mental health professional:
 - (i) psychosis or a clinical depression;
 - (ii) risk of harming self or others as a result of an emotional disturbance; or
 - (iii) psychopathological symptoms as a result of being a victim of physical or sexual abuse or psychic trauma within the past year; or
 - (vi) the child, as a result of an emotional disturbance, has significantly impaired home, school, or community functioning that has lasted at least one year or that, in the written opinion of a mental health professional, presents substantial risk of lasting at least one year.

Minn. Stat. § 245.4871, subd. 6.

In addition, children with a "severe emotional disturbance" are eligible for mental health case management services. Case management services include assisting in any additional diagnostic assessments needed, developing a functional assessment, developing an individual family community support plan, and assisting the child and the child's guardian and/or advocate in obtaining needed services by coordination with other agencies and assuring continuity of care. Minn. Stat. § 245.4871, subd. 3. Case management services are provided by a case management service provider, which means a case manager or case manager associate employed by the county or other entity authorized by the county board to provide case management services. Minn. Stat. § 245.4871, subd. 4.

- ❖ TIP-IF YOU HAVE A CLIENT WITH A SEVERE EMOTIONAL DISTURBANCE, ENSURE THAT HE OR SHE IS RECEIVING CASE MANAGEMENT SERVICES.
 - Make sure that your client has been assigned a case manager who specifically ensures that your client is being provided with continued mental health care. Make sure that this case manager is actively assisting your client in getting needed services and is collaborating with other agencies involved in your client's case.

CRUCIAL ADVOCACY TOOLS

As your client's attorney you can make a huge difference in all aspects of your client's life by avidly advocating that your client's mental health needs are identified and addressed in an effective manner. It is imperative that you start this process by building a strong rapport with your client. You must listen attentively to what your client is telling you in order to get to know your client and understand what he or she is feeling. If you work as a team, assuming you have the consent of your client to share information, with family, foster parents, teachers, mental health providers, case workers and all those involved in your client's case, your client is much more likely to get individualized and consistent mental health care.

- ❖ TIP-LISTEN TO WHAT YOUR CLIENT IS SAYING TO YOU AND, WITH PERMISSION FROM YOUR CLIENT, ENSURE THAT ALL THOSE INVOLVED IN YOUR CLIENT'S CASE ARE COMMUNICATING AND COLLABORATING ABOUT THE SERVICES YOUR CLIENT NEEDS.
 - Children in foster care often feel that they are responsible for being removed from their families or for their involvement with the child welfare system.¹¹ They often feel that they are unable to control their own lives. These feelings further exacerbate existing mental health problems. By listening to your client in an empathetic and non-judgmental manner you can make them feel more in control. Explain to your client that it is not their fault that they are in foster care and that your job is to fight for what they want to happen in their lives.
 - If you suspect that your client has mental health needs that are not being addressed, be sure you discuss your concerns with your client first. Try to raise these concerns with your client as soon as possible. Get specific permission to share these concerns with all those involved in your client's case.

If you have any questions or require any help with these issues, please call Children's Law Center of Minnesota at 651.644.4438.

¹¹ Austin, *supra* note 5, at 6.