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A Lawyer's Check-Up: How to Be an Advocate for Your Child Client's Medical Needs and Rights

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Studies have shown that foster children, as a group, suffer from more sickness and chronic medical problems than homeless and impoverished children.¹ The rates at which they suffer physical, developmental and mental health problems are disproportionately high.² It is ever more important, that everyone involved in a foster care matter work hard to identify and address the health needs of foster children. As an attorney representing the child, you play a valuable role in ensuring your client is receiving the medical services he or she needs and is entitled to while in care. You should remain vigilant throughout the life of a case to make sure that medical and dental needs are being adequately addressed. Children's Law Center of Minnesota (CLC) offers the following tips and statutory requirements to help guide you in advocating for your clients' healthcare needs.

Minnesota Statutory Requirements for Medical and Dental Care of Foster Children

Individualized Determination of Needs

To meet the best interests of children in foster care, individualized determinations of the child's specific needs must be made. Minn. Stat. §260C.193, subd. 3.

Physical Examinations

The social services agency that accepts a child for placement is responsible for determining if the child has had a physical examination within 12 months before coming into the agency's care. If not, the child must receive an examination within 30 days of entering care. The agency must ensure the child has an examination annually. Minn. Stat. §260C.212, subd. 4(d). The court may also order any minor under its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court. Minn. Stat. § 260C.157, subd. 1.

Out-of-Home Placement Plan

The social services agency prepares a written out-of-home placement plan for each child placed away from a parent or guardian in a child protection matter. Minn. Stat. § 260C.201, subd. 6. The out-of-home placement plan must set forth the efforts the agency is taking to "ensure the oversight and continuity of health care services for the foster child." Those efforts may include:

- (i) the plan to schedule the child's initial health screens;
- (ii) how the child's known medical problems and identified needs from the screens, including any known communicable diseases are in the plan;
- (iii) how the child's medical information will be updated and shared (including immunizations);
- (iv) who is responsible for oversight of the child's prescription medications;
- (v) how physicians or other appropriate medical and nonmedical professionals will be consulted and involved in assessing the health and wellbeing of the child, and determine the appropriate medical treatment for the child; and

¹ CASCW Practice Notes, Vol. 2, No. 2, Winter 2000, pg. 5 (citing CWLA Testimony submitted to the Senate Finance Subcommittee on Health Care for the Hearing on the Health Care Needs of Children in the Foster Care System, Oct. 13, 1999).

² "Developmental Issues for Young Children in Foster Care," American Academy of Pediatrics – Committee on Early Childhood, Adoption and Dependent Care, PEDIATRICS Vol. 106, No. 5, November 2000.

- (vi) the responsibility to ensure that the child has access to medical care through either medical insurance or medical assistance.

Minn. Stat. § 260C.212, subd. 1(c)(9).

Out-of-home placement plans must include health records and information, specifically:

- (i) names and addresses of the child's health care and dental care providers;
- (ii) a record of the child's immunizations;
- (iii) the child's known medical problems;
- (iv) the child's medications; and
- (v) any other relevant health care information, such as eligibility for medical insurance or medical assistance.

Minn. Stat. § 260C.212, subd. 1(c)(10).

The court approves the case plan as it is presented, or may modify it after hearing from the parties. Minn. Stat. §260C.201, subd. 6(c). Foster parents must receive a copy of the case plan. Minn. Stat. § 260C.212, subd. 1(d).

Reviews of Case Plans

Out-of-home placement plans are to be reviewed and updated every six months by the social services agency, including the safety needs and wellbeing of the child, and the appropriateness of services provided to the child. Minn. Stat. § 260C.212, subd. 7.

For children in long-term foster care, the social service agency must review, at least annually, whether long-term foster care continues to be the most appropriate arrangement for meeting the child's needs. That review must include an assessment of whether the child's physical and mental health needs are being appropriately addressed. Minn. Stat. §260C.201, subd. 11(d)(3). The court's annual review of long-term foster care case plans also must ensure that appropriate health services are being provided. Minn. Stat. § 260C.201, subd. 11(g)(4).

Medical Issues for Older Youth in Foster Care

The case plan for children age 16 or older must include an independent living plan (ILP). One of the objectives that must be addressed in the ILP is health care planning and medical coverage. (Minn. Stat. § 260C.212, subd. 1(b)(8).

For older youth, the agency must report progress to the court on specific transition goals, including having health care coverage (foster care youth are entitled to continued coverage under Medical Assistance until age 21, but must apply for it before leaving care to ensure uninterrupted coverage), having health care providers that will meet their physical and mental health needs, and applying for and obtaining any disability income assistance for which they are eligible. Minn. Stat. § 260C.212, subd. 7(d).

Before a youth leaves foster care, the court requires the agency to establish that it has helped the youth obtain medical and dental records, and a contact list of medical, dental and mental health providers, among other critical documents. Minn. Stat. § 260C.212, subd. 7(d)(3), and subd. 4(4)(e).

Many foster care benefits are available to 18-21 year olds. Along with case management, education, access to financial resources, and independent living skills training, young adults in foster care until age 21 are entitled to access to community resources for health care.

Access to Medical Records – An attorney representing a child in out-of-home care is entitled access to any records, responsible social services agency files, and reports which form the basis of any recommendation made to the court. Minn. Stat. § 260C.171, subd. 3. This could include medical records and reports contained

in agency or court files. A release of medical records may be necessary in order to obtain the records from other providers. Contact CLC if you need guidance in requesting records not contained in the social services or court files.

Children also have the right to access their own medical records. When children are out of foster care, they must be given a copy of their social and medical history. Minn. Stat. § 260C.212, subd. 4(e).

Tips on Counseling Your Child Client

You can have an impact on your client not only by advocating on his or her behalf in court and with other parties, but also simply through your counselor role. Here are some suggestions:

- Regularly discuss how the child feels. A confidential and trusted relationship could help you draw out information such as whether there are aches, pains, and other symptoms which may point to medical, dental, or mental health issues that need attention.
- Make sure the client is receiving regular medical care. Has the client been to see a doctor and a dentist while in foster care?
- Encourage the client to learn healthy habits. As an attorney, you have an opportunity to be a positive role model for your foster care client. Keep an eye out for opportunities to encourage the child to learn about and practice the following:
 - Hygiene – healthy hygienic routines are often something foster children had no opportunity to learn in the home
 - Healthy nutrition – the importance of healthy eating may have been the last thing on the mind of families with significant stressors
 - Exercise and staying active
 - Being their own medical advocate
 - Encourage the client to be honest with everyone involved in their foster care case about their medical and dental concerns. It is particularly important for older foster care youth to learn their own medical care protocol, medicine routine, and therapeutic needs so they can become ready for independence
- Address teenage pregnancy and birth control issues. Is the client getting all of the information they need to make sensible decisions about safe sex or prenatal care?
 - Attorneys can help them access information and additional resources
- Preparation for independence.
 - Before the client turns 18 and is dismissed from court jurisdiction, make sure she is working with her case worker to complete forms and applications for Medical Assistance or medical insurance coverage.
 - Make sure the youth has his or her complete medical history, medical records, record of prescriptions and immunizations, and contact information for all dental and medical care providers before the case is dismissed.

If you have any questions, please call CLC at 651.644.4438.