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CLC PRACTICE POINT

No. 9 October 8, 2010

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

By Julia Hillel Larsen - CLC Staff Attorney

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

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[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]

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[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 updating[10] 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

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[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.

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CLC PRACTICE POINT

No. 20 September 22, 2011

ADVOCATING FOR FOSTER YOUTH WHO ARE PRESCRIBED PSYCHOTROPIC DRUGS

By Julia Hillel Larsen – CLC Staff Attorney

The information included in this practice point is based on a memorandum and recommendations prepared by and researched 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.

Over a third of child clients represented by the Children's Law Center of Minnesota (CLC) take psychotropic medications and many of these clients take more than one psychotropic medication at the same time. Youth in foster care are much more likely to be on psychotropic medications than youth in the general population.[1] Additionally, prescription of multiple psychotropic drugs at the same time is occurring at high rates for foster children.[2] Almost all psychotropic medications prescribed to children are not FDA-approved for use in children because the long-term health impact of these drugs on children is unknown.[3] Thus, there is cause for alarm about the appropriate use of psychotropic drugs for youth in foster care.[4]

One of the biggest concerns for youth in foster care who take psychotropic medications is that they usually do not have a single, clearly designated adult responsible for monitoring their mental health care.[5] Any youth taking psychotropic medications needs a committed adult to consistently evaluate if the drug is beneficial to the youth, if the youth is experiencing any harmful side effects or adverse reactions and if any negative symptoms are caused by the youth's mental health disorder versus symptoms triggered by the medications. In addition, youth in foster care often have behavioral issues caused by situational factors, such as past trauma; frequent placement changes which result in new schools, new workers and new doctors; and the uncertain future of their permanency outcomes, which might be better treated with alternative strategies.[6] While psychotropic drugs do help some children, the increased use of these drugs by children brings the additional responsibility of making sure that these children have access to other treatments that may ultimately replace or change the need for these medications.[7] As an attorney representing youth in foster care, there are several ways to ensure that your client receives appropriate treatment, case management services, and medication monitoring.

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[1] Laurel K. Leslie et al., *Multi-State Study on Psychotropic Medication Oversight in Foster Care*, Tufts Clinical and Translational Science Institute, 1 (Sept. 2010) [hereinafter *Multi-State Study*]. Psychotropic medication use for youth in foster care ranges from 13%-52% as opposed to 4% for youth in the general population. "Some US states report that more than 60% of foster children are prescribed mood altering drugs (at a rate 300% above the national average)." Citizens Commission on Human Rights, Facts About Foster Care Children Abused With Psychotropic Drugs, http://www.cchrstl.org/documents/facts_about_foster_care_children.pdf (last visited Sept. 8, 2011).

[2] *Hearing on Utilization of Psychotropic Medication for Children in Foster Care Before the House Ways and Means Subcommittee on Income Security and Family Support*, 6 (May 2008) [hereinafter *Hearing*] (testimony of Laurel K. Leslie MD MPH FAAP on behalf of the American Academy of Pediatrics).

[3] Karen Worthington, *Psychotropic Meds for Georgia Youth in Foster Care: Who Decides? Prepared for the Georgia Supreme Court Committee on Justice for Children*, 4 (Jan. 2011). In addition, 45%-74% of these medications are prescribed off-label, which means that they are prescribed in ways other than intended or approved by the FDA. *Id. at 5.*

[4] Many states have identified the overuse of psychotropic drugs as one of the leading issues facing their child welfare systems in the next few years. *Hearing, supra*, note 2, at 6.

[5] *Multi-State Study, supra*, note 1, at 2.

[6] *Multi-State Study, supra*, note 1, at 11.

[7] *Hearing, supra*, note 2, at 7.

I. UNDERSTAND THE LAWS AND PROCEDURES GOVERNING PRESCRIPTION AND ADMINISTRATION OF PSYCHOTROPIC DRUGS TO YOUTH IN FOSTER CARE

CONSENT

In Minnesota, psychotropic drugs can be prescribed and administered to minors without minors' consent. Consent from a parent or guardian for the prescription and administration of these drugs to minors is required, with the exception that consent will be delegated to the local social services agency, the child's social worker, for youth who are under state guardianship.[8] For youth who have been adjudicated a child in need of protection or services (CHIPS) or who have a pending CHIPS case, the youth's parent or guardian is responsible for consenting to the treatment with psychotropic drugs. If the parent is unable or unwilling to consent to the child's treatment with psychotropic medication recommended by a physician, the child's social worker may ask the court to order authorization of psychiatric care and treatment with psychotropic drugs.[9]

MENTAL HEALTH CASE MANAGEMENT SERVICES

Social services case workers in child protection cases often refer cases to children's mental health departments within the local social services agency when a foster youth has serious mental health issues to determine if the youth has a "severe emotional disturbance.[10] A youth deemed to have a "severe emotional disturbance" is entitled to an array of additional "case management services"[11] which are coordinated with "family community support services."[12] In some counties, a child's social services case worker will work in connection with an assigned mental health case worker to consent to and monitor treatment with psychotropic medications. In other counties, once a referral to the mental health department is made, the child's social services worker is replaced with a mental health case worker who consents to and monitors treatment with psychotropic drugs and takes over all case management.[13]

- TIP - It is crucial that CLC attorneys verify who specifically at the local social services agency is responsible for consenting to treatment with and monitoring of psychotropic medications on behalf of the CLC client. Further, if the social service case worker responsible for these duties is an inappropriate medical decision-maker,[14] CLC attorneys should consider asking the court to appoint a temporary, independent guardian authorized to consent to the prescription of medication.[15]

Youth who are participating in or are eligible for "family community support services"[16] are legally entitled to medication monitoring services for psychotropic drugs, which should assist the child (or the parent or legal representative) in obtaining information about the drugs; monitoring for physical and behavioral changes that may be related to the child's use of, misuse of, or failure to take the drugs; and obtaining access to the child's source of medical care.[17]

- TIP - While every client might not be receiving or eligible for these medical monitoring services, CLC attorneys should ensure that CLC clients who are supposed to be receiving such services are in fact receiving them. Even if

[8] Minn. R. 9560.0450 (2007). Minnesota does not provide an exception for minor children to consent to taking psychotropic medication, but does allow for only the child to receive information, plan and decide on whether or not to accept mental health case management services in certain circumstances. *See* Minn. Stat §§ 144.341-144.347 (2010); *see also*, Minn. R. 9520.0907 (2007).

[9] *See*, Minn. R. 9520.0907.

[10] Minn. Stat. § 245.4871, subd. 6 (2010). Please refer to the October 2010 Practice Point on the CLC website for a closer look at specific services available to children with severe emotional disturbances.

[11] Minn. Stat. §§ 245.4871, subd. 3, 245.4881 (2010).

[12] Minn. Stat. §§ 245.4871, subd. 17, 245.4881, 245.4884 (2010). Services specifically include medication monitoring. *Id. See*, Minn. R. 9535.4020, 9535.4041 (2007). *See also*, Minn. Stat. § 245.4871, subd. 31.

[13] Please call CLC to learn how the county in which you are representing a child proceeds with case management.

[14] Does the assigned case worker have the time, knowledge or caring commitment to consent to and monitor the child's mental health services and treatment with psychotropic medications? Kathi Grasso, *Children and Psychotropic Drugs: What's an Attorney to Do?*, 3 [hereinafter *Grasso*]. Available at http://psychrights.org/Kids/Whats aLawyer2do.htm (last visited July 20, 2010).

[15] *Id.* at 7.

[16] *Supra*, note 12.

[17] Minn. R. 9535.4041.

CLC clients are not eligible for medication monitoring services provided to children with severe emotional disturbances, the principles found in the family community support services program are useful for advocating for any CLC client who is being treated with psychotropic drugs by arguing for the best interests of the child.

Youth who qualify for severe emotional disturbance services are entitled to a case manager who is legally obligated to arrange for a standardized assessment of the side effects of any prescribed psychotropic drugs. A physician chosen by the child's parent, legal representative, or possibly the child should complete this assessment.[18]

- ❖ TIP - CLC attorneys should consult with CLC staff to identify physicians who are aware of the harms caused to children by the over-prescribing of psychotropic medications, are conservative in prescribing them, understand the side effects that might result from taking these medications and will consider the full extent of trauma suffered by the CLC client in their assessment.

- ❖ TIP - CLC attorneys should make an objection if a CLC client has not received an assessment on the side effects related to the administration of the child's psychotropic medication and/or if a client age 12 or older, his attorney, or his guardians were not consulted in case management planning or physician selection.

II. EDUCATE AND QUESTION THE EFFECTIVENESS AND SAFETY OF DRUGS PRESCRIBED TO YOUR CLIENT

You and your client should fully understand the prescribing doctor's reasons for prescribing the medication, the benefits and risks including potential harmful side effects of the prescribed medications and any possible treatment alternatives to taking the medication. As the child's attorney, you should know of any medications that your client is taking or has been prescribed in the past. Psychotropic medications as well as any drugs including over-the-counter medications can adversely affect behavior.

Familiarize yourself with your client's current medications and medication history by reviewing your client's records.[19] This includes hospital records, nurse's notes, child protection reports and evaluations from therapists or counselors. Pay close attention to how many times a child was started on a new drug and research whether reports of behavioral issues can be matched to the administration of a newly prescribed drug.[20] Speak with the person in charge of monitoring your client's medications and anyone who has frequent contact with the child such as teachers, doctors, therapists, foster parents, relatives and all mental health professionals involved in your client's care.[21] If you have questions about the drugs your client is prescribed or has taken in the past, you can consult the most recent version of the Physician's Desk Reference and the Essential Guide to Prescription Drugs.[22] In addition, call or look up on the internet the pharmaceutical company that produces the medication to ask for a copy of or to view the package insert for the drug.

Find out how your client feels about taking prescribed medications, and if they wish to be informed about the drugs they are prescribed. Ask your client if there was something that helped or did not help him in the past. Ask your client if he would like a second opinion about the prescribed drugs from a doctor who is unrelated to the court system.[23] Your client will be more likely to take his medications, if appropriate, as directed and to promptly report adverse side effects correctly, if he is included in the decision-making process.[24]

- ❖ TIP - If you suspect that your client is being under, over or ineffectively being prescribed psychotropic medications and your client wants a second opinion, ask the court to order the county to arrange for a second

[18] Minn. R. 9520.0907. A child who is age 12 or older has the right to be included in the planning of case management services, which includes choosing the physician, unless a mental health professional determines the child's participation is clinically inappropriate to the child's mental health needs and the reasons behind such a determination are documented in the child's case record. *Id. See also*, Minn. R. 9520.0914, subp. 2.
[19] *Hearing, supra*, note 2, at 8. Ask the child's social worker for a medical history of the child's biological family or, if appropriate, contact the child's biological family since clients often come into the system without proper medical histories.
[20] *Grasso, supra*, note 14, at 4.
[21] *Id* at 4-5. Contact CLC for a list of questions to ask on behalf of your client who is prescribed psychotropic medications.
[22] *Id.* at 5.
[23] *Id.*
[24] *Id.* at 4.

option from an independent doctor. CLC staff has the names of doctors who provide clean, unbiased assessments and who understand the effect that a traumatic past has on a child's behavior.

III. ADDITIONAL LEGAL ARGUMENTS TO MAKE ON BEHALF OF A CLC CLIENT WHO WISHES TO PREVENT OR RESTRICT TREATMENT WITH PSYCHOTROPIC DRUGS

If a CLC client is being treated with psychotropic drugs, CLC attorneys should ensure that a CLC client's wishes on this topic are heard and may use the best interest argument to object to the CLC client's treatment with psychotropic medications. The following are examples of best interest arguments, consistent with growing medical trends, which can be used to object to treatment with psychotropic drugs on behalf of a CLC client.

- Alternative interventions and treatments besides the prescription of psychotropic drugs have not been properly considered or pursued. Trying less invasive treatments, like counseling, prior to the administration of psychotropic drugs is in the child's best interest.

- The prescribed psychotropic drug is not FDA-approved for children or the dosage prescribed exceeds maximum recommendations and therefore it is in the child's best interest to pursue alternative interventions.

- The prescribed psychotropic drug has many potential, adverse side effects and therefore it is in the child's best interest to pursue other options.

- The child was never properly informed of the risks of the medication by a doctor or anyone else. After understanding the listed side effects and serious risks associated with the drug, the child is adamantly opposed to taking the medication.

- The prescribed psychotropic drugs are not related to any diagnosis in the CLC client's medical history. It is in the child's best interest to get a diagnosis prior to taking psychotropic medication that may or may not be aligned with the child's diagnosis.

- It is not in the child's best interest to take the prescribed medication because the psychotropic drugs are inappropriate to the child's diagnosis or treatment plan, or more specifically, the mental health services being provided are not appropriate to the developmental age of the child and/or are not being provided in a manner most likely to facilitate progress toward treatment goals.

- A full medical and social history must be considered by a physician and is in the child's best interest before psychotropic medications are prescribed in order to prevent any negative reactions to a certain drug as well as prevent any unnecessary psychotropic drug treatment.

- There has been no exploration of any risk of adverse interaction between several other medications the child is currently administered and the newly prescribed psychotropic medication. This includes an exploration of any adverse interaction between street drugs or alcohol the child has a history of taking and the newly prescribed medication. It is in the child's best interest to have a medical professional explore and consider any adverse interactions before the child is administered psychotropic drugs.

- The listed side effects for the psychotropic drug prescribed include conditions that might never dissipate even after the drug is discontinued. It would be in the child's best interest to have a hearing to present and weigh the risks versus the potential benefits of taking the drug to the court.

- Due to the child's history of noncompliance with taking other medications and of running away it would be in the child's best interest to explore other options that do not have such drastic side effects if suddenly stopped.

All objections and legal arguments regarding a CLC client's psychotropic medications should be made at a client's review hearing or by motion to be heard if the matter needs to be addressed in a more timely manner then the client's next scheduled review hearing. Ask that specific requests that the court grants, such as assessment requests, verification of who is responsible for consent and medication monitoring and including the child in the decision-making process, are included in the written court review order. Document all correspondence with any of the parties relating to this topic and if necessary file a motion and memorandum of law on the issue presented to all the parties and the court. Ask the court to direct the agency to regularly submit progress reports on the psychotropic drug treatment of your client to evaluate if there is a necessity to continue with such treatment.[25]

IV. CONCLUSION

Ensuring CLC clients are getting proper mental health treatment affects all aspects of their lives, especially their education and permanency outcomes. We, as advocates, must guarantee that our clients are not being abused or neglected again due to a lack of appropriate and continuous monitoring of their mental health needs.

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

[25] *Id.* at 6.

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CLC PRACTICE POINT

No. 2 March 2, 2010 (updated January 2013)

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

By Lori Semke- CLC Systemic Reform Program Director

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.212, subd. 2 (2012).

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.219 (2012). 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(2012).

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 (2012). 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, as defined in section 144.4172, subdivision 2, will be monitored and treated while the child is in foster care;

(iii) how the child's medical information will be updated and shared, including the child's immunizations;

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[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.

(iv) who is responsible to coordinate and respond to the child's health care needs, including the role of the parent, the agency, and the foster parent;

(v) who is responsible for oversight of the child's prescription medications;

(vi) how physicians or other appropriate medical and nonmedical professionals will be consulted and involved in assessing the health and well-being of the child and determine the appropriate medical treatment for the child; and

(vii) 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) (2012).

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) (2012).

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) (2012). Foster parents must receive a copy of the case plan. Minn. Stat. § 260C.212, subd. 1(d)(2012).

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.203 (2012).

A court review must be conducted at least annually for children ordered into the permanent custody of the responsible social services agency.[3] The review includes determining whether the current permanent custody disposition is in the best interests of the child, and that there is currently no other disposition that would be in the child's best interests. Minn. Stat. § 260C.521, subd. 1(b)(1) (2012). The child's out-of-home placement plan as well as the agency's reasonable efforts to finalize an alternative permanent plan must be reviewed to:

(1) ensure that permanent custody to the agency with placement of the child in foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanency disposition order under this chapter that would better serve the child's needs and best interests;

(2) identify a specific foster home for the child, if one has not already been identified;

(3) support continued placement of the child in the identified home, if one has been identified;

(4) ensure appropriate services are provided to address the physical health, mental health, and educational needs of the child during the period of foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and

[3] Minn. Stat. §260C.521, subd. 1(a) (2012). Prior to August of 2012, this type of placement was termed long-term foster care.

(5) plan for the child's independence upon the child's leaving foster care living as required under section 260C.212, subdivision 1.

Minn. Stat. § 260C.521, subd. 1(c)(1)-(5) (2012).

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(c)(11)(ii)(2012).

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[4]), 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.203(e)(2)(v)-(vi)(2012).

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.203(e)(3)(2012), and Minn. Stat. § 260C.219(e)(2012).

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 (2012). 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.219(e) (2012).

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?

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[4] On January 1, 2014, the Affordable Care Act (ACA) will extend Medicaid coverage to age 26 for former foster care youth. CLC will inform its volunteer attorneys and clients of the exact application of this federal requirement to Minnesota's foster care youth once it is known.

- 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.