



# Montana

**Department of Public Health and Human Services**

**Child and Family Services Division**

## Policy Manual

October 2006

# 2006

## CHILD & FAMILY SERVICES POLICY MANUAL

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**Definitions**

**ABANDONMENT:** Parent leaves the child under circumstances that make it reasonable to believe that the parent does not intend to resume care of the child in the future **OR** willfully surrenders physical custody for six months and during that time does not manifest to the child and person having physical custody of the child a firm intention to resume custody or make permanent legal arrangements for the child **OR** parent is unknown and has been unknown for 90 days and reasonable efforts to identify and locate the parent have failed **OR** the voluntary surrender by a parent of a newborn who is no more than 30 days old to an emergency services provider. The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services. (202-2; 302-6; 305-2)

**ACTIVE EFFORTS:** Requirement under ICWA to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal. Active efforts should involve and use the available resources of the extended family, the tribe, Indian social services agencies and individual Indian care givers. (302-7; 305-1)

**ADJUDICATION:** The judicial determination, after a hearing, that the child has been abused, neglected, or abandoned. (302-3)

**ADJUDICATORY HEARING:** The hearing held to determine whether or not the child is a youth in need of care. (301-2; 302-3)

**ADOPTEE:** An adopted person or a person who is the subject of an adoption proceeding that is intended to result in the adoptee becoming the legal child of another person. (601-1)

**ADOPTION:** The act of creating the legal relationship between parent and child when it does not exist genetically. It is the permanent legal transfer of all parental rights from one person or couple to another person or couple. (601-1)

**ADOPTION RECORDS:** All documents, exhibits, and data about an adoption. (603-9)

**ADOPTIVE PARENT:** An adult who has become the mother or father of a child through the legal process of adoption. (601-1)

**AFFIDAVIT:** A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. Black's Law Dictionary

**AGENCY:** A child placing agency licensed by the state of Montana pursuant to Title 52, chapter 8 that is expressly empowered to place children preliminary to a possible adoption. (601-1)

**ASSISTED OR SUBSIDIZED GUARDIANSHIP:** Occurs when a child meets the statutory conditions precedent to guardianship and is approved for financial and/or medical assistance. (407-2; 407-3)

**BABY DOE MEDICAL NEGLECT:** Failure to respond to an infant's (**less than one year or hospitalized continuously from birth**) life-threatening conditions by providing appropriate treatment that, in the physician's judgment, will be most likely to be effective in ameliorating or correcting all life-threatening conditions. Does not necessitate treatment if the infant is irreversibly comatose; treatment would merely prolong dying; or treatment would be inhumane. (202-2)

**BEST INTERESTS OF THE CHILD:** The physical, mental and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child. [Mont. Code Ann. § 41-3-102(5)]

**BEYOND A REASONABLE DOUBT:** In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty and the equivalent of the words clear, precise and indubitable. Black's Law Dictionary

**BIRTH PARENT:** The woman who gave birth to the child or the father of genetic origin of the child. (601-1)

**BIRTH PARENT COUNSELING:** The statutorily required counseling (a minimum of 3 hours) on, among other things, adoption procedures and the consequences of a relinquishment, to be completed prior to execution of a relinquishment of parental rights and consent to adopt. (303-2)

**BUILDING SKILLS FOR ADULTHOOD SERVICES:** See Montana Foster Care Independence Program.

**Business Associate** means a person or organization that performs a function on behalf of the Department that requires the use or disclosure of protected health information and relates to the health care component activities of the Department. Such functions include claims processing, utilization review, quality assurance, billing, benefits management, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services. Business associates do not include members of the DPHHS workforce. An example of a business associate is a foster care contractor. (501-2)

**Business Associate Agreement** means a written agreement that specifies the uses and disclosures of protected health information that the Department requires of the business associate. (501-2)

**CA/N** means child abuse or neglect, or abandonment. (501-2)

**CASE RECORDS or CASE RECORDS OF THE DEPARTMENT** according to statute and rule means any records maintained by the Department relating to reports and investigations child abuse, neglect or abandonment. This includes photographs, video and audio tapes, case notes, correspondence, evaluations, and interviews. The term does not include confidential reports or evaluations provided to the department by other professionals, or licensing or registration files of providers licensed, registered or certified by the department. The term “case records” also does not include Criminal Justice Information. (501-2, 502-1)

**CHEMICAL DEPENDENCY COUNSELOR:** A counselor certified by the Commerce Department. (406-4)

**CHILD OR YOUTH (MINOR):** Any person under 18 years of age. Mont. Code Ann. 41-1-101.

**CHILD ABUSE OR NEGLECT** means:

- actual or psychological harm to a child;
- substantial risk of physical or psychological harm to a child; or
- abandonment.

The term includes:

- actual physical or psychological harm to a child or

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substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

- exposing a child to the criminal distribution of dangerous drugs, as prohibited by Mont. Code Ann. § 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by Mont. Code Ann. § 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by Mont. Code Ann. § 45-9-132.

**Dangerous drugs** means the compounds and substances described as dangerous drugs described in Mont. Code Ann. § 50-32-2.

- In proceedings in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child. (202-3, 202-5, 501-2)

**CHILD CARE AGENCY:** An agency providing substitute care for 13 or more children in a residential setting. (401-2)

**CHILD PLACING AGENCY** means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for the placement of any child with a family, person or facility not related by blood or marriage, either for foster care or for adoption. (502-1)

**CHILD PROTECTION TEAM:** Interdisciplinary team established by statute and convened as needed to assist in assessing the needs of the family, formulating and monitoring a treatment plan and coordinating services for the child and family. (104-1)

**CHILD PROTECTIVE SERVICES ALERT:** A notification from the Division's state office to all local offices that a child may be in danger. (203-1)

**CHILD'S SOCIAL HISTORY:** The form (DPHHS-CFS-107,

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Birth Family Social and Medical History, completed by the child's social worker in conjunction with the birth parents or significant others that includes relevant family background; education, health, mental health, religion and social information; tribal affiliation, if any; current and past living arrangements (placement history). (601-1)

**CLEAR AND CONVINCING EVIDENCE:** That proof which results in reasonable certainty of the truth of the ultimate fact in controversy - where the truth of the facts asserted is highly probable. Black's Law Dictionary

**CLOSED WITHOUT FINDINGS:** Unable to locate, family left the area before the investigation was completed, or investigation began but was never completed due to court order, administrative directive, etc. No determination made. (202-4)

**CLOTHING ALLOWANCE:** Payments made on behalf of a foster child for clothing to ensure that the child in care has at least a basic wardrobe. (405-6)

**CONCURRENT FAMILY:** A family approved by the department both as a foster family and an adoptive (or guardianship) family who will work with the placing agency and the child's birth family toward the goal of reunification while simultaneously committing to becoming a permanent family for the child. (402-3)

**CONCURRENT PLACEMENT:** The planned placement of a child with a resource family. (402-3)

**CONCURRENT PLANNING:** To work toward reunification of the child with his/her family while at the same time developing and implementing an alternative permanent plan. (402-3)

**CONCURRENT PLANNING HOME:** See Concurrent Family. (402-3)

**CONFIDENTIAL INFORMATION** means information in case records, that is restricted by law from being disclosed. (501-2)

**CONFIDENTIAL ADOPTION:** Occurs when there is no direct contact between the birth and adoptive families. Confidential adoption preserves the confidentiality and anonymity of the adoptive parents and the birth parents and is most appropriate

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in cases where the parent(s) pose a serious continuing risk to the child's health, safety and welfare. (601-1)

**CONFIDENTIAL INTERMEDIARY:** A person certified by the department and under contract with or employed by a non-profit entity with expertise in adoption. (603-9)

**COURT:** A court of record in a competent jurisdiction and in Montana means a district court or a tribal court. (601-1)

**COURT-ORDERED PROTECTIVE SERVICES:** Those services provided to a child and family pursuant to a court order. (202-1;302-3;302-4;302-5; 302-6)

**DAY CARE FACILITY** means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day care home, group day care home, or a day care center. It does not include a person who limits care to children who are related to him or her by blood or marriage or are under his or her legal guardianship, or any group facility established chiefly for educational purposes, unless the state is making day care payments to that person or facility. (501-2)

**DATE A CHILD IS CONSIDERED TO HAVE ENTERED FOSTER CARE:** The earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is 60 calendar days after the date on which the child is removed from the home. (301-2)

**DEPARTMENT:** The Department of Public Health and Human Services as provided for in Mont. Code Ann. §2-15-2201.

**DEPRIVATION:** The ongoing lack of parental care and control of a child because of death, continued absence from the home, mental or physical incapacity or unemployment of the parents. **Deprivation exists only from the parent(s), birth or adoptive.** (405-1)

**DESIGNATED RECORD SET** See Protected Health Information. (501-2)

**DISCLOSURE** means to release for inspection or copying, or to make known or reveal in any manner any information contained in case records (per Mont. Admin. R. 37.47.602, Mont. Code

Ann. § 41-3-208).

**Disclosure** under HIPAA means the release, transfer, provision of, access to or divulging in any other manner of information outside the entity holding the information. (501-2)

**DISPOSITIONAL HEARING:** If the child is adjudicated a youth in need of care, evidence is presented during the dispositional hearing to assist the court in making a decision regarding the resolution of the case which best protects the welfare of the child. (301-2)

**DOMESTIC VIOLENCE (PARTNER OR FAMILY MEMBER ASSAULT):** Bodily injury inflicted on a partner or family member or causing reasonable apprehension of bodily injury to a partner or family member. Bodily injury is physical pain, illness or any impairment of physical condition and includes mental illness or impairment. [See Psychological Abuse or Neglect (202-2) and Mont. Code Ann. (45-5-206)]

**DOMICILE OR RESIDENCE (ICWA DEFINITION):** A place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which one returns when not working or attending school. Generally, the residence of the parent with whom the child customarily resides is the residence of the child. Usually, the child's residence will be where the child is physically living. However, if s/he is physically residing off the reservation with relatives on a temporary basis, the child's residence may be the residence of the parent or custodian with whom s/he customarily resides. (305-1)

**EDUCATIONAL NEGLECT:** Complete failure to educate or enroll a school-aged child in an education program. (202-2)

**EMERGENCY ASSISTANCE SERVICES:** Services provided for situations involving abuse and/or neglect requiring the removal of the child, placing a social worker in the home to prevent the removal, expediting the early return of the child to the home or preventing the need for protective services. These are 100% federal TANF block grant funds. (405-3)

**EMERGENCY PLACEMENT:** The immediate removal of a child from the home when the social worker determines that a child is in immediate or apparent danger of harm. (302-1)

**EMERGENCY PROTECTIVE SERVICES:** Those services provided to a child and family when the social worker determines, based upon a thorough investigation, that the child cannot safely remain in the home without the provision of the service (out-of-home placement). (202-1;302-1)

**EMERGENCY SERVICES PROVIDER:** A uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or any law enforcement officer who is in uniform or is otherwise identifiable. (305-2)

**EPSDT:** (Early Periodic Screening, Diagnosis and Treatment) Medically necessary diagnostic treatment provided to Medicaid eligible children under age 21 as a result of an EPSDT screening performed by a medical provider. (405-5; 405-7; 405-8; 405-9)

**EXPOSURE TO DRUG DISTRIBUTION/MANUFACTURE:** Exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory. "Dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2. (202-2)

**EXTENDED FAMILY MEMBER (ICWA DEFINITION):** Defined by the law or custom of the Indian Child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt, uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. Extended family members include non-Indian relatives. (305-1)

**FAILURE TO THRIVE/MALNUTRITION:** Physician's diagnosis of failure to thrive or malnutrition of a child. (202-2)

**FAIR HEARING:** A hearing before a Hearings Officer in accordance with the fundamental principles that inhere in due process of law which require, at a minimum, notice and an opportunity to respond. (106-1)

**FAMILY GROUP DECISIONMAKING MEETING:** A meeting that involves family members in either developing treatment plans or making placement decisions, or both. The meeting also may include family members, support people, or family advocates to discuss and plan for the well-being of the family's children. (103-1)

**FATALITY:** Death by actual or possible abuse or neglect. (202-2)

**FOSTER CARE:** Full-time, 24-hour care of a child in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction and, if necessary, treatment to children who are removed from or without the care and supervision of their parents or guardian. (402-2)

**FOSTER CARE REVIEW COMMITTEE:** Appointed by the district court judge with five to seven members – the purpose of the review is to ensure the child's right to expedited placement in a permanent home. (409-1)

**FOSTER CARE SUPPORT SERVICES:** Services such as clothing allowance, diaper allowance, respite care or special needs allowance paid on behalf of a foster child who has a documented need for such services. (405-11)

**FOSTER PARENT ADOPTION:** Occurs when foster parents are approved by the department to adopt a child when the adoption is in the best interest of the child. (602-5)

**GROUP HOME:** Facility offering substitute care of 7 to 12 children/ youth. (401-2)

**GUARDIAN:** See Legal Guardian. (302-4; 407-2, 407-3; 407-4)

**GUARDIAN AD LITEM:** A special guardian appointed by the court in which a Child Abuse and Neglect proceeding is pending to represent the subject child in that particular proceeding and the status of guardian ad litem exists only in that specific proceeding in which the appointment occurs. Black's Law Dictionary

**GUARDIANSHIP:** See Legal Guardianship. (302-4; 407-2, 407-3; 407-4)

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**HEALTH CARE INFORMATION** means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identify of an individual, including one who is deceased, and that relates to that individual's health care or status.

- The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.
- The term does not include vital statistics information gathered under Mont. Code Ann. § Title 50, chapter 15.

**HEALTH CARE PROVIDER** under HIPAA means a provider of medical or health services as defined in 42 USC 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

**HEALTH INFORMATION** per the Health Insurance Portability and Accountability Act (HIPAA) means any information, whether oral or recorded in any form or medium, that is created by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that:

- Relates to the past, present, or future physical or mental health or condition of health care to an individual; or
- Relates to the past, present, or future payment for the provision of health care to an individual.

**Individually Identifiable Health Information** is a subset of Health Information including demographic information, collected from an individual that is created or received by a health care provider, health plan, employer, or health care clearinghouse that:

- Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; and
- Relates to the past present, or future payment for the provision of health care to individual; and
- Identifies the individual; or
- There is a reasonable basis to believe the

information can be used to identify the individual.

**HIPAA** means **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**. This includes the U.S. Department of Health and Human Services publication of a final regulation in the form of the Privacy Rule in December 2000, which became effective on April 14, 2001. This rule set national standards for the protection of health information. By the compliance date of April 14, 2003, covered entities must implement standards to protect and guard against the misuse of individually identifiable health information.

**IN CAMERA INSPECTION** means a matter is heard “*in camera*” in a judge’s private chambers or in a courtroom from which all spectators have been excluded. Black’s Law Dictionary

**INCARCERATION OF A PARENT:** Parent in prison or jail and did not make appropriate plans for the child. Incarceration alone does not constitute neglect. (202-2)

**INDEPENDENT LIVING SERVICES:** See Montana Foster Care Independence Program (408-1)

**INDIAN CHILD:** An unmarried person under 18 who is either a member of an Indian tribe or eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe as determined by the tribe. (305-1)

**INDIAN CHILD’S TRIBE:** The tribe in which the child is a member or is eligible for membership; in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the tribe with which the Indian child has more significant contacts as determined by the court; or the tribe which recognizes the child as a tribal member. (305-1)

**INDIAN CUSTODIAN:** An Indian person who has legal custody of an Indian child under tribal law or custom, or under state law; or an Indian person to whom temporary physical care, custody and control has been transferred by the parent of such child. (305-1)

**INDICATED:** Maltreatment occurred, but the perpetrator of the maltreatment is not identified as a “person legally responsible for the welfare of a child”. For example, an uncle commits an

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act of sexual abuse while visiting his niece. (202-4)

**INDIGENT YOUTH:** A person under age 18 who is receiving Medicaid, is in the custody of CFSD or DOC and has no other source of payment, or a youth whose family income is under 200% of federal poverty level as determined by the Addictive and Mental Disorders Division. (406-4)

**INITIAL DETERMINATION:** The initial assessment of a child's financial eligibility for IV -E foster care. (405-1)

**INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN:** A uniform law which has been enacted by all states, the Virgin Islands, and the District of Columbia which establishes uniform procedures for the interstate placement of children and fixes responsibilities for those involved in placing the child. (402-7)

**KINSHIP ADOPTION:** The adoption of a child by relatives or other kin who have been approved by the department when the adoption of the child has been determined to be in the best interest of the child. (602-4)

**KINSHIP CARE HOME:** An unlicensed home in which substitute care is provided by relatives, members of the child/family's tribe, godparents, or stepparents or by whomever a child, child's parents and family ascribe a family relationship and in which the child has had a significant emotional tie to the provider that existed prior to the agency's involvement with the child/family. (402-4)

**KINSHIP FOSTER HOME:** A youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

- a) a member of the child's extended family;
- b) a member of the child's or family's tribe;
- c) the child's godparents;
- d) the child's stepparents;
- e) or a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

**LEGAL GUARDIAN:** A person who has qualified as a

caretaker of a child/youth in the custody of the Department pursuant to court appointment. (302-4; 407-2, 407-3; 407-4)

**LEGAL GUARDIANSHIP:** A judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the child, custody of the child, and decision-making. (302-4; 407-2, 407-3; 407-4)

**LEGAL RISK PRE-ADOPTIVE PLACEMENT:** The placement of a foster child with people who have been approved as an adoptive resource, pending the child becoming legally free for adoption. (407-1; 602-6)

**LIMITED EMANCIPATION:** A status conferred on a youth by a court under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older. (305-3)

**LONG-TERM CUSTODY:** Court can award if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child and statutory conditions precedent are met. Used when neither adoption nor guardianship are in the child's best interests as permanent placement options. Child must be in a planned permanent living arrangement. (302-5; 407-5)

**MAINTENANCE PAYMENT:** A payment to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, with respect to a child and reasonable travel to the child's home for visitation. (405-1)

**MEDICAL NEGLECT:** Failure of parent, guardian or other person responsible for a child's welfare to provide adequate health care although reasonably able to do so. Adequate health care for a child means medical or non-medical remedial care if such care is covered by medical insurance. (202-2)

**MEDICAID REIMBURSED THERAPEUTIC SERVICES:** Services provided by therapeutic youth group homes or therapeutic family care services for which Medicaid is the funding source. (406-2)

**MONTANA FOSTER CARE INDEPENDENCE PROGRAM:**

Services intended to assist eligible youth in attaining those attitudes, values, skills, and experience necessary to live in a community as a responsible, self-sufficient adult. (408-1)

**NEWBORN:** An infant who a physician reasonably believes to be no more than 30 days old. (305-2)

**OPEN ADOPTION:** An adoption in which the birth parents have no legal or nurturing rights to the child but may have continuing communication and/or knowledge of the child's whereabouts and welfare. (601-1)

**PARENT:** The birth or adoptive mother, or the birth, adoptive or legal father whose parental rights have not been terminated. See also Birth Parent. (601-1)

**PARENT (ICWA DEFINITION):** Any biological parent or parents of an Indian child, or any Indian person who has legally adopted an Indian child, including adoptions under tribal law and custom. Does not include the unwed father when paternity hasn't been acknowledged or established. (305-1)

**PARENT:** A biological or adoptive parent or stepparent. [Mont. Code Ann. § 41-3-102(11)]

**PERMANENT PLACEMENT:** Reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age. (201-2)

**PERMANENCY PLAN:** The plan to identify a family that will make a permanent, lifetime commitment to the child and will provide a planned permanent living arrangement for the child. (301-2; 402-2)

**PERMANENCY PLAN HEARING:** The hearing required to determine the permanency plan for a child in foster care. (301-2)

**PERMANENT LEGAL CUSTODY:** Grants permanent responsibility for care, custody and control of the child to a person or agency. (302-6)

**PERSONAL REPRESENTATIVE** means under the HIPAA

Privacy Rule, a person authorized to act on behalf of the individual in making health care related decisions, which may include disclosure of the individual's protected health information. 501-2

**PERSON RESPONSIBLE FOR A CHILD'S WELFARE:** The child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides; a person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person responsible for the child's welfare in a residential setting. (202-3; 202-5; 501-3)

**PHYSICAL ABUSE:** An intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death. (202-2)

**PHYSICAL NEGLECT:** Failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, appropriate clothing related to weather conditions, failure to provide cleanliness and general supervision, or both or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child. (202-2)

**PHYSICAL OR PSYCHOLOGICAL HARM TO A CHILD:** The harm that occurs whenever the parent or other person responsible for the child's welfare:

- a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;
- b) commits or allows to be committed sexual abuse or exploitation of the child;
- c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;
- d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

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- e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or
- f) abandons the child.

The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior. Mont. Code Ann. § 41-3-102.

**PIPPS PROGRAM** (Preventive, In-Home, Post-Placement Services): Designed to provide the flexibility needed to fund special services not available under other Department programs. (110-1)

**PLACING PARENT:** A parent who is voluntarily making a child available for adoption. (601-1; 605-1)

**PLACING WORKER (IV-E):** A social worker, juvenile parole officer, contracted IV-E tribal social worker or probation officer responsible for placing a child into foster care. (402-2; 405-1)

**PLANNED PERMANENT LIVING ARRANGEMENT:** Long-term, planned foster care with a foster family, including a relative of the child, with whom a youth has lived for at least one year or the child meets one of the conditions listed in Mont. Code Ann. § 41-3-445. Long-term custody of the child is a condition precedent for a planned permanent living arrangement. (407-5)

**POST PLACEMENT EVALUATION:** A written report in which specific elements required by law are addressed, including a recommendation for or against finalizing of the adoption. The evaluation is usually completed by the worker who has supervised the placement of the child. (603-7)

**PRE-PLACEMENT EVALUATION (ADOPTIVE HOME STUDY):** The home study process conducted by the Department, a licensed child placing agency or a licensed clinical social worker that assists a prospective adoptive parent or family to assess its own readiness to adopt and assess whether the prospective adoptive parent or family and home meet applicable requirements. (602-2)

**PREPONDERANCE OF EVIDENCE:** Evidence which is of greater weight or more convincing than the evidence which is

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offered in opposition to it. Black's Law Dictionary

**PROBABLE CAUSE:** Reasonable cause; having more evidence for than against. Black's Law Dictionary

**PROFESSIONAL SUPPORT PERSON:** A person who has experience and training related to the type of medical problem for which specialized foster parents are expected to provide care. (406-1)

**PROTECTED HEALTH INFORMATION (PHI)** means Individually Identifiable Health Information that is transmitted electronically in any medium or maintained in any medium. PHI does not include educational records covered by the Family Educational Right and Privacy Act, 20 USC 1232, the student records held in post-secondary institutions or the records of students 18 years or older. PHI also does not include employment records held by a DPHHS in its role as employer.

- All PHI located in the case records containing reports of child abuse or neglect may be considered the division's **Designated Record Set** under HIPAA.

A **Designated Record Set** means 1) A group of records maintained by or for a covered entity that is:

- The medical records and billing records about individuals maintained by or for a covered health care provider;
- The enrollment, payment claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- Used, in whole or in part, by or for the covered entity to make decisions about individuals.

The term *record* means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used or disseminated by or for a covered entity. (501-2)

**PSYCHOLOGICAL ABUSE OR NEGLECT:** Severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including **acts** of violence against another person residing in the child's home. The term may not be construed to

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hold a victim responsible for failing to prevent the crime against the victim. (202-2)

**PROTECTIVE SERVICES:** Services provided by the social worker

- 1) to enable a child alleged to have been abused or neglected to remain safely in the home;
- 2) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or
- 3) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

The term includes emergency protective services, voluntary protective services, and court-ordered protective services. (102; 302-1; 302-6)

**PUBLIC HEALTH SERVICE ACT** was formerly the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1970 (42 CFR Part 2). It states that the records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under this Act. These regulations are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment. (501-2)

**QUALIFIED ALIEN:** An alien legally admitted to the U.S. whose status may include refugee, asylee, deportation withheld, parolee, conditional entry, Cuban/Haitian, Amerasian, battered spouse or child, Canadian Indians, enrolled Indians, or aliens lawfully admitted for permanent residence. The Office of Public Assistance will determine if the alien meets the criteria for a qualified alien. (305-1)

**QUALIFIED EXPERT WITNESS (ICWA DEFINITION):** A

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member of the Indian tribe who is recognized by the tribal community as knowledgeable of tribal customs pertaining to family organization and child rearing practices; or a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social, cultural and child rearing practices of child's tribe; or a professional person who has substantial experience in providing services to children and families and who possess significant knowledge of and experience with Indian culture, family structure, and child rearing practices in general. (305-1)

**REASONABLE CAUSE TO SUSPECT:** Cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person. (202-3)

**REASONABLE EFFORTS** (Standard): Only the services and activities that prevent removal of the child from his/her home or affect the reunification plan are the services/activities to be evaluated in determining the reasonable efforts findings. The adequacy of services will be judged by their appropriateness in addressing the needs that caused the child(ren) to be removed from the home. While some services may be a good idea and some very important, the finding is determined based on the offer to provide the services that affect the reunification. (302-7; See also Active Efforts for ICWA cases)

**RECORDS MANAGEMENT:** The systematic application of efficient methods to manage the creation, utilization, maintenance, retention, disposal and preservation of records. (501-2, 502-1)

**REDETERMINATION:** The reassessment of a child's financial eligibility and whether or not deprivation still exists in the specified caretaker relative's home from which the child was removed. Example: If the child was removed from the aunt's home (neither mom nor dad lived there then nor now), the deprivation of an absence parent exists for the child. (405-1)

**RELINQUISHMENT:** The informed and voluntary release in writing by which the parent voluntarily surrenders his/her rights to and responsibility for a child to an agency or individual. (303-2)

**REPORT OF CHILD ABUSE OR NEGLECT:** A referral made

alleging that a child is an abused or neglected child. (501-2)

**RESIDENTIAL ALCOHOL AND DRUG TREATMENT:**

Chemical dependency treatment provided either in a hospital licensed by DPHHS or in-patient hospital care or in-patient free standing component approved by the DPHHS pursuant to Title XX. (406-4)

**RESPITE CARE:** Short term supervision of care of a foster child in an emergency or on an intermittent basis. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home. Note: Respite Care is **not** an allowable IV-E activity. (405-10; Mont. Code Ann. § 52-2-602)

**RESPITE CARE ALLOWANCE:** Payments made on behalf of a foster child for assistance necessary to provide foster parents with relief from the daily care requirements of foster children whose mental or physical condition requires special or more intense care. (405-5; 405-10)

**SEAL:** To make secure against access and withhold for disclosure. (501-2)

**SEXUAL ABUSE BY PERSON RESPONSIBLE FOR THE WELFARE OF A CHILD:** The commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest of a child by a parent, guardian, adult residing in the child's home, foster parent, day care staff, employee of an institution or residential setting. (202-2)

**SEXUAL EXPLOITATION OF A CHILD:** Allowing or encouraging a child to engage in prostitution or films, photographs, use of a child in an exhibition of sexual conduct, etc., i.e., 'Kiddy porn'. (202-2)

**SHELTER CARE FACILITY:** A youth care facility that regularly receives children under temporary conditions until the court, probation office, department or other appropriate social services agency has made other provisions for the child's care. (401-2)

**SHOW CAUSE HEARING:** The hearing held within 20 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition. (301-2)

**SPECIAL NEEDS ALLOWANCE:** Payments made on behalf of a foster child who requires services or equipment which is not available through the EPSDT Program or from any other source. (405-5)

**SPECIALIZED FOSTER HOME:** A licensed foster home in which care and treatment is provided for children who have problems that cannot be adequately addressed in regular foster care. (406-1)

**SPECIFIED CARETAKER RELATIVE:** A person who has day-to-day care and control of the child and is related by blood, marriage, or adoption who is within the fifth degree of kinship to the child. (405-1)

**STIPULATION:** A voluntary agreement signed by the parent(s) in which the parent(s) agree to specific facts and submitted to the court to support the petition filed by the Department. (303-1)

**SUBJECT:** The child alleged to have been abused or neglected or the parents of the child. (501-2)

**SUBSIDIZED ADOPTION:** Occurs when a special needs child is approved for financial and/or medical assistance. It allows families to adopt special needs children who need additional resources to be maintained in the family. (604-1)

**SUBSTANTIATED OR INDICATED ABUSE/ NEGLECT THAT RESULTS IN THE DEATH OF THE VICTIM:** Refers to death resulting from abuse/neglect. (202-4)

**SUBSTANTIATED REPORTS OF ABUSE, NEGLECT, EXPLOITATION:** Upon investigation, the worker has determined that the facts showing that abuse, neglect, sexual abuse, or exploitation occurred are more convincing than the facts offered to show the abuse, neglect, sexual abuse, or exploitation did not occur. (202-4)

**SUBSTITUTE CARE:** Full-time care of a child in an out-of-home setting for the purpose of providing food, shelter, security, safety, guidance and, if necessary, treatment of children who are without the care and supervision of their parents or guardians. (401-1)

**SUPPLEMENTAL SERVICES ALLOWANCE:** Payments made

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on behalf of a foster child to cover those expenses that would not be covered by the regular foster care payment, Medicaid, school district or other funding sources. (405-8)

**SURRENDER:** To leave a newborn with an emergency services provider without expressing an intent to return for the newborn. (305-2)

**TEMPORARY INVESTIGATIVE AUTHORITY:** Judicial authority to conduct an intensive investigation into suspected child abuse and neglect under which the court grants specified relief. Can only be granted for 90 days. (302-2)

**TEMPORARY LEGAL CUSTODY:** The legal status created by an order of the court that gives a person or agency the right and responsibility for the care, custody and control of a child on a temporary basis. Can only be granted for six months with one six-month extension. (302-3)

**TERMINATION OF PARENTAL RIGHTS:** The legal rights of legal parents are terminated by a court of competent jurisdiction. (302-6)

**THERAPEUTIC FAMILY CARE/THERAPEUTIC FAMILY FOSTER HOME:** Treatment services provided in a family setting. (406-2; 406-3)

**THERAPEUTIC YOUTH GROUP HOME:** A community or campus-based treatment group home. (406-2; 406-3)

**THIRD PARTY ABUSE:** Harm to a child's health or welfare that is committed by any party not considered a "person responsible for the welfare of a child." (202-7)

**TREATMENT PLAN:** A written agreement between the Department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. (303-1; 302-6)

**UNFOUNDED REPORT OF ABUSE, NEGLECT, SEXUAL ABUSE OR EXPLOITATION:** After an investigation, the investigating person has determined the reported child abuse, neglect, or exploitation has not occurred. (202-4)

**UNSUBSTANTIATED REPORT OF ABUSE, NEGLECT,**

**SEXUAL ABUSE OR EXPLOITATION:** After an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred. (202-4)

**USE** means, with respect to individually identifiable health information (under HIPAA), the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information. (501-2)

**VISITATION PLAN:** A plan (based on the child's age and developmental level) that insures frequent, meaningful contact between the parent(s) and the child. (402-3)

**VOLUNTARY PROTECTIVE SERVICES:** Services provided to a child and family pursuant to a written and executed voluntary protective services agreement designed to prevent the necessity for court action. (202-1; 302-1;302-7)

**YOUTH FOSTER HOME:** See foster home. (401-2)

**YOUTH GROUP HOME:** See group home. (401-2)

**YOUTH IN NEED OF CARE:** A youth who has been adjudicated or determined, after a hearing, to be abused, neglected, or abandoned by the act or omission of a person responsible for the child's welfare in a residential setting. (302-3)

**YOUTH SHELTER CARE FACILITY:** See shelter care. (401-2)

**Child and Family Services Policy Manual: Reference Information  
Case Checklists – Initial Placement Through Finalized Adoption**

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**Case Opening  
Checklists**

The Case Opening Checklist is designed to aid workers and supervisors in tracking the many tasks that must be accomplished in the course of opening a case.

**Use of the Case Opening checklist is mandatory. The checklist shall be included in every case file under “Case Notes/Recordings.”** As each task is completed, its completion should be dated and initialed on the checklist. It is the responsibility of the supervisor to make sure that all tasks are completed.

**Other Checklists**

Checklists for ICPC, Case Closure, Reunification and Adoption may be utilized when one of these activities occurs in a case. Although use of these checklists is optional, completion of all of the tasks on the checklists is required when the activity is applicable to the case.

## Child and Family Services Policy Manual: Reference Section

### Family Group Decision-making

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#### Philosophy

Family Group Decision-making is an effective way to maintain children in families. A Family Group Decision-making Meeting empowers parents, relatives, friends and service providers who are significant to abused and neglected children to plan for permanency either within the family, or to endorse Child and Family Services in planning for permanency outside the family.

Family Group Decision-making Meetings encompass a fundamentally respectful process in which family protective capacities and safety factors are identified. Protective Capacities are family strengths or resources that reduce, control, and/or prevent threats of serious harm from arising or having an unsafe impact on a child. Safety factors are a set of specific danger signs that combine with a child's vulnerability and directly contribute or reflect a child's present danger, unless offset or mitigated by suitable protective capacities. Protective Capacities are utilized to maintain children safely in the care of family members whenever possible. Involving family in the decision making process through Family Group Decision-making Meetings enhances family and social workers' ability to develop successful permanency and/or safety plans for children within statutory time lines. Increased use of Family Group Decision-making Meetings should increase:

- the number of children maintained in their families;
- the number of children placed with relatives rather than in foster care; and
- the involvement of extended family in planning for a child's permanency.

#### Definitions

**Facilitator:** Refers to the person whose primary responsibility is to facilitate the conference. The facilitator may be a qualified child protective services staff member who is **NOT** assigned to the case or a Regional Family Group Decision-making Program Officer or a contracted individual.

#### Social workers and child protective service staff as facilitators:

A community social worker may not facilitate a Meeting on one of their own cases.

The following is a list of required theoretical/practical training and practice exercises that the employee must successfully complete, under the direction of a qualified FGDM Mentor/Program Officer, before facilitating FGDM Meetings on an independent basis. The employee must have the endorsement of his or her supervisor before pursuing the

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### Family Group Decision-making

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training curriculum.

1. Complete advanced training provided by the regional FGDM facilitator
2. Observe an initial FGDM, in which they are not a participant.
3. Participate in a FGDM as the caseworker
4. Co-facilitate a Meeting with a qualified facilitator.
5. Facilitate a Meeting under the observation of a qualified facilitator.

Additional requirements may be suggested if skill enhancement is needed. Elements of the training criteria may be waived, based on experience and skill. Waiving any of the above listed criteria requires the Regional Administrator's approval.

Every year thereafter, a FGDM Mentor/Program Officer will observe at least one meeting facilitated by the employee and provide a formal evaluation of the meeting to the employee and his or her immediate supervisor.

Child protection staff who facilitate meetings will be encouraged to participate in at least one training program each year, which is designed to further enhance skills in FGDM.

The program officer will be responsible for offering training opportunities to all child protection staff in their assigned regions. The program officer will also be responsible to track the FGDM training of each social worker in their assigned region, and report progress to the worker's supervisor as requested.

**Family Group Decision-making Meeting:** A useful tool to involve family members in making safety and permanency plans and placement decisions.

**Family:** Refers primarily to the parent(s) of the child(ren) at risk of abuse or neglect. May also include extended family of the child or parents who are the primary focus of the Meeting such as members of the child/family's tribe, godparents, or stepparents or who is considered family.

**Program Officer:** Refers specifically to the regional FGDM Program Officers.

**Social Worker:** Refers to the social worker formally assigned

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**Family Group Decision-making**

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to the case.

**Assessment to Hold Meeting**

The decision to offer a Family Group Decision-making Meeting to parents should be based upon the best interest of the child and may be appropriate any time. The family may have more flexibility when designing the plan if the Meeting is held prior to the removal of the child(ren) from the home.

An Initial or Review Family Group Decision-making Meeting may be appropriate whenever significant changes in the case impact the best interest of the child. During the intake when risk of abuse or neglect is clearly established, a Meeting may be an appropriate tool in designing a safety plan for the child(ren) and to establish needed services and support for the family. During the ongoing stages of the case, a Meeting may be an appropriate tool for treatment planning for the parent(s) and permanency/concurrent planning for the child(ren). A meeting may be an appropriate tool to conduct a Safety Review of the child(ren) who are in need of protective services.

Family Group Making-making is also appropriate in ICWA cases. A Family Group Decision-making Meeting is strongly recommended to assist the worker to identify culturally appropriate placement options for the child(ren) and to demonstrate worker efforts in maintaining ICWA compliance.

The social worker shall discuss the case with his/her immediate supervisor and Regional Family Group Decision-making Program Officer to determine if the case is an appropriate case to refer for a Family Group Decision-making Meeting.

If at least one of the parents or guardian consent to a Family Group Decision-making Meeting, the social worker shall discuss the case with his/her immediate supervisor and Regional Family Group Decision-making Program Officer to determine if the case is appropriate for a Family Group Decision-making Meeting and complete the (CFS 158) Family Group Decision-making Assessment Form. Factors to consider if the case is appropriate include, but are not limited to:

- Would the meeting be helpful in identifying the child protection issues of the family?
- Would the meeting be helpful in developing safety, treatment, or permanency plans for the family?
- Would the meeting be helpful in preventing

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**Family Group Decision-making**

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the placement of the children?

- Would the meeting help identify family members and other significant persons for placement for the children and support for the family?

If the social worker, his/her immediate supervisor, and the Regional Family Group Decision-making Program Officer determine that there are compelling reasons that the parents of the children should not have a FGDM meeting, the social worker will document the reason on the Assessment Form. The social worker, his/her immediate supervisor, and the Regional Family Group Decision-making Program Officer will sign the Assessment form to indicate their agreement. If there are no compelling reasons, the social worker and/or Regional Family Group Decision-making Program Officer will ensure that a meeting is scheduled in a timely fashion.

**Offer of Meeting Form**

**Parents will be offered a Family Group Decision-making Meeting in all open cases within the first 90 days of opening a case regardless of whether the children have been placed out-of-home. This ensures that every family who has an open case will be offered an opportunity to participate in case planning through a Family Group Decision-making Meeting in addition to any other meetings with the social worker.**

The offer of a Meeting is documented on the (CFS-159) Family Group Decision-making Offer of Meeting Form by checking the appropriate line and signing the document. The Offer of Meeting form shall be maintained in the case file.

Offer of a Meeting does not guarantee that a meeting will be held. An assessment to hold a Meeting based on the child's best interests must be conducted prior to holding a Meeting. Refusal of a Meeting does not rule out a Family Group Decision-making Meeting. If the Department has Temporary Legal Custody of the child(ren) or a specific court order to conduct the Meeting, a Meeting may still be conducted.

**Family Group Decision-making Invitees**

Family Group Decision-making participants can be members of support systems other than family if appropriate. It is important for the parent(s) to help with the process of generating the invitation list for a Meeting because a Family Group Decision-making Meeting is empowering to the family.

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**Family Group Decision-making**

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Appropriate individuals for the family to invite may include, but are not limited to, members of the child/family's tribe, godparents, or stepparents or whomever a child, and child's parents ascribe a family relationship.

In cases involved with the court it is appropriate for the attorneys to be invited to the Meeting. Other individuals who may be invited are service providers involved with the family such as foster parents, therapists, school personnel, chemical dependency counselors, AA sponsors, religious affiliates, medical personnel, attorneys, case managers, county health department personnel, guardian ad-litem, probation officers, and other support services. Other individuals who may be invited are close neighbors, cultural advocates, and interpreters.

**Referral of Cases  
for Family Group  
Decision-making  
Meeting**

The social worker asks the parent(s) to compile an invitation list for the Meeting. The social worker may utilize the invitation list to obtain the names of individuals and service providers significant to the case. The names, addresses and phone numbers of individuals to invite are entered on the second page of the (CFS 160) Family Group Decision-making Referral Form.

The social worker submits a completed referral, signed offer form and affidavit if applicable, to the Family Group Decision-making Program Officer or to the immediate/designated supervisor in his/her region. The social worker and Program Officer will determine if the referral for a meeting is accepted or denied. If accepted, the referral will be assigned to a facilitator by either the Family Group Decision-making Program Officer, designated supervisor, or by other regional protocol (e.g., rotating lists).

**Meeting  
Preparation**

If the case is accepted for a Family Group Decision-making Meeting, the social worker and Facilitator work with the family to prepare for the Meeting. The preparation for the Meeting includes, but may not be limited to the following:

1. The social worker and Facilitator review the list that was generated with the assistance of the parent(s) and may suggest or add additional persons to invite to ensure that list is complete.
2. Facilitator may review the case history;
3. Facilitator conducts a thorough search and attempts to

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contact everyone on the referral list;

4. Facilitator prepares participants for the Meeting through conversations by phone and/or in person outlining the Meeting process and asking participants to identify their safety factors and family protective capacities prior to the meeting (if possible);

5. The Facilitator and social worker screen participants for safety issues and exclude persons from attendances that pose a safety risk to the participants. Alternative ways of participating by excluded persons will be explored.

6. Facilitator or social worker develops a plan to address cultural awareness/sensitivity issues as needed for all families. Prayer, foods, and environmental settings may be important cultural aspects of a Family Group Decision-making Meeting.

7. Family, social worker and Facilitator set a date for the Meeting;

8. Facilitator, administrative staff or social worker locates and reserves a comfortable room for the Meeting;

9. Facilitator, administrative staff or social worker sends the invitation letters with a Family Group Decision-making pamphlet enclosed. Remember, invitations can and do continue up to the meeting date;

10. The Facilitator, administrative staff or social worker plans appropriate food or meals to serve during the Meeting. Meetings occurring at meal times should include a meal with beverages.

The Facilitator will use large sheets of newsprint or a flip chart to list the specific goals, strengths, concerns/needs identified during the Meeting. The sheets are displayed for reference during the Meeting. The plan is also written as it is developed and typed up for all the participants to review.

#### Meeting Format

The following is a list of Family Group Decision-making Meeting components and represents one option in structuring the agenda. The order of components may vary to accommodate the needs of the family, the purpose of the Meeting and the schedule demands of service providers.

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**Sign in Sheet:** The sign in sheet includes a confidentiality agreement. Participants are asked to sign and complete the form at the beginning of the Meeting.

**Welcome:** The Facilitator asks the participants to introduce themselves to the group.

**Establish Ground Rules:** The Facilitator lists behavioral ground rules. A list of ground rules is available from Regional Family Group Decision-making Program Officers in each region.

**Breaks:** The Facilitator is responsible for scheduling break times during the Meeting. A guideline for breaks is a fifteen-minute break every two hours, and a one-hour break if a mealtime is part of a Meeting.

**Philosophy:** The Facilitator states the Family Group Decision-making philosophy.

**Statement of Purpose:** The parent(s), social worker or Facilitator will summarize the safety factors or the substantial risk of harm that were identified in the Investigative Safety Assessment. If the children are placed in out-of-home care, the social worker must discuss the need for developing concurrent planning options for the children.

**ICWA Checklist:** The facilitator will inquire whether the child(ren), their parents or their grandparents have American Indian heritage and, if they do, their tribal membership. The Social Worker for the case will fill out the ICWA Checklist (CFS/ICWA-252).

**Social History:** Information regarding absent parents and family information may be gathered. The Social History Form (CFS-107) may be given to the family at this time to fill out at a later date.

**Goals:** Goal statements are desired outcomes which address the concerns of the participants and needs of the family. The Facilitator discusses with the family what the group would like to see happen for the child(ren) and parent(s).

## Child and Family Services Policy Manual: Reference Section

### Family Group Decision-making

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**Protective Capacities:** The Facilitator leads a discussion on what the family is doing well in regard to the care and protection of their children. This discussion with the family will also include the participants' perceptions of the strengths and attributes the family has to offer to support the parent(s) in resolving the issues at hand. Listing the parent's protective capacities is frequently a very significant and positive part of the Meeting for all the participants. The protective capacities may also be listed after the concerns/needs if the Facilitator or social worker prefer.

**Safety Factors and Child Vulnerability:** The Facilitator leads a discussion on the child protective and safety factors regarding the child and the child's vulnerability. This discussion will also include the participants' comments regarding possible substantial risk of harm about the child and family. All safety factors and risk of harm for the child(ren) and parent(s) are stated clearly, honestly and respectfully. It is not necessary to state or list each safety concern and risk of harm more than once.

**The Plan:** The Facilitator evaluates the components of the plan as it is developed to confirm that significant concerns and goals are addressed. The plan will be for reunification of the family, but may also include concurrent planning in the event that reunification fails.

**Concurrent Plan:** If the children are placed in out-of-home care, concurrent planning options for the children must be developed.

**Specify time lines:** Plans are most effective when task is associated with a specific completion date and each responsibility is assigned to a specific individual.

**Set Review Date:** The most expedient time to set a review date is at the initial Meeting when the participants are all present.

**Evaluation:** Evaluation forms are distributed to all the participants to fill out before they leave the Meeting. Completed forms are collected by the Facilitator.

**Child and Family Services Policy Manual: Reference Section**  
**Family Group Decision-making**

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A Family Group Decision-making Meeting scheduled during the intake investigation/assessment may result in an action, safety, voluntary or family plan which will not be court ordered.

**Developing the Plan**

If a plan is to be submitted to a court, as a treatment plan, the plan may contain the statutory requirements of a treatment plan. The Social Worker must explain to Meeting participants the mandated elements of a Treatment plan (See policy section 303-1) and the plan must be signed by the parents prior to submission to Court.

**Important note:** Treatment plans may only be entered after an adjudication of a child as a youth in need of care or when the parents stipulate that the child has been abused or neglected.

Families who have a court-ordered treatment plan in place prior to the initial Family Group Decision-making Meeting, the plan developed at the Meeting may be submitted to the court for consideration.

**Non-negotiables:** The social worker should identify non-negotiable components of the plan prior to the development of the plan. Examples of non-negotiable issues are:

- Allowing an identified sex offender access to the child(ren); or
- Allowing a chemically dependent parent not to go to treatment.

The family may develop a plan which differs from the plan preferred by the social worker. When the family and social worker are unable to agree, the social worker develops a separate plan for the family and both plans are submitted to the court. The judge then orders which plan the family will follow to assure safety for the child(ren).

**Family Group Decision-making Models**

Alternative models may be used for the Meeting. One of the following may be used to develop a plan for the safety of the child(ren). The alternative utilized will be chosen based on the needs of the family and purpose of the Meeting. The process is adaptable to the unique circumstances of each family.

**Family writes the plan alone:** The non-family

## Child and Family Services Policy Manual: Reference Section

### Family Group Decision-making

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participants of the meeting leave the room when it is time to write the plan. The family writes the plan and then the other participants return and a representative from the family presents the plan to the group.

**Facilitator remains:** The family may request that the facilitator remain with them to assist in developing their plan. All other participants then leave the room. A family representative or the facilitator presents the plan to the group when the plan is complete and the Meeting participants reconvene.

**Family chooses who stays:** The parent of the child(ren) may choose which Meeting participants remain with them to develop the plan. A representative from those who remained during planning is selected to present the plan to the group when the plan is complete and the Meeting participants reconvene.

**All participants remain:** Each participant at the Meeting remains in the room to assist in plan development.

#### Post-Meeting Activities

Once the Family Group Decision-making Meeting is completed, the Facilitator asks the participants to evaluate the process. In addition, the plan may be formalized and signed by the parent(s).

**Evaluations:** The Facilitator and social worker review the evaluations of the initial Meeting as soon as possible after the conclusion of the Meeting. The evaluation forms frequently yield valuable information regarding the comfort of the physical setting, the effectiveness of the Meeting, as well as additional information regarding the child(ren) or parent(s). Evaluation forms of each Family Group Decision-making Meeting should be forwarded to the Program Officer. The Program Officer will compile the information from the evaluations as part of the Family Group Decision-making Meeting data collection process.

**Signing the plan:** The Facilitator, social worker or support staff types the plan after the Meeting. The format for the plan will differ from county to county because of court preferences. All plans should include a signature line for the social worker and the parent(s). When the plan is typed the social worker assigned to the

## Child and Family Services Policy Manual: Reference Section Family Group Decision-making

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case will schedule an appointment with the parent(s) to sign the plan. Each participant in the Meeting and/or invited persons not in attendance may receive a copy of the plan.

**Information updates:** The Family Group Decision-making Meeting Facilitator may contact the participants of the initial Meeting prior to the review meeting to get an update regarding case progress, new safety factors and new developments. In addition, the social worker may update the Facilitator regarding progress or changes in the case which have occurred since the initial Meeting.

### Review Meetings

Family Group Decision-making Review Meetings can be used for a variety of reasons if deemed appropriate at any stage of the case to include: To provide an opportunity for family and social worker to determine when/if the child(ren) can be returned to parent(s), if the concurrent plan for permanency must be implemented as the primary plan, to review obstacles to completing the treatment plan.

Review Meetings are scheduled at the initial Meeting. Dates are usually set for 30, 60 or 90 days after the initial Meeting. The Facilitator or social worker will send review reminder letters to all the initial Meeting participants prior to each review Meeting.

A Family Group Decision-making Review Meeting always has the potential to develop into a full Meeting. If the review does develop into a full Meeting, the post-Meeting requirements must be met.

The standard format for a Review Meeting is:

- The parent(s), social worker, and/or facilitator will summarize the safety factors or the substantial risk of harm that were identified in the original Investigative Safety Assessment.
- Review the original plan or the last review plan;
- If applicable, describe any progress towards resolving identified safety threats.
- If applicable, describe any new safety threats not previously identified that create a present danger to any

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**Family Group Decision-making**

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child.

- If applicable, describe any changes or additional information in protective capacities and/or child vulnerability.
- If applicable, describe any substantial risk factors that now create a present danger to any child.
- Make appropriate additions or amendments to the plan which reflect the current status of the case. The format for amended plans may vary from county to county subject to county attorney and or judge format preferences;
- If the children are placed in out-of-home care, the concurrent plan must be reviewed.
- Make permanency decisions, if appropriate;

In cases involving court action, the amended plan must be submitted to the court for approval if the court-approved plan is amended.

**Documentation  
and Data collection**

Evaluation forms may be distributed to all the participants to complete before they leave the Meeting. Completed forms are collected by the Facilitator and the evaluation process will be followed.

The social worker or the Regional Family Group Decision-making Program Officer (depending on the region) shall maintain the following records in the case file:

- C A copy of the Family Group Decision-making Meeting Plan;
- C A copy of the consent/refusal form;
- C A copy of the referral form and invitation list; and
- C A copy of the sign in sheet from the initial Meeting and subsequent reviews.

The Regional Family Group Decision-making Program Officers shall keep data of Family Group Decision-making Meetings.

**Child and Family Services Policy Manual: Reference Section**  
**Family Group Decision-making**

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The records shall include but are not limited to:

- Ⓒ The number of initial Meetings held in each region;
- Ⓒ The number of review Meetings in each region;
- Ⓒ The number of children served with a Family Group Decision-making Meeting;
- Ⓒ The number of Native American parent(s) and child(ren) served with a Family Group Decision-making Meeting; and
- Ⓒ The evaluation forms from each Family Group Decision-making Meeting in the region.

The Program Officers shall make monthly Family Group Decision-making Meeting data reports to the Administrator of the Division or the staff identified by the Administrator.

**References**

Mont. Code Ann. § 41-3-102(10)  
Mont. Code Ann. § 41-3-205(3)(k).

State of Montana  
Department of Public Health & Human Services  
**FAMILY GROUP DECISION MAKING  
OFFER OF MEETING FORM**

The Family Group Decision Making Program was explained to me by the meeting Coordinator and/or Social Worker. The Coordinator and/or Social Worker will contact people in my support system from an invitation list that I help to create. These people will come together in a meeting to share information and to assist with creating a plan of care and protection for my child(ren). People who come to the meeting may include the Social Worker, Relatives, Friends, Service Providers, Attorneys, Foster Parents, School Personnel, Counselors, or others.

I understand that the outcome of this meeting may involve a written summary and/or Family Plan that will be distributed to the conference participants, to invited persons not in attendance, and possibly to the Court. This Plan may be Court ordered and/or may supplement any Court ordered Treatment Plan already in place.

I understand that only one parent of each child needs to give permission in order for a FGDM Meeting to take place. The Department may also hold a meeting if neither parent has given permission if it is determined it to be in the best interest of planning for the child(ren).

At this time, I choose to:

\_\_\_\_\_ **Have a meeting.**

\_\_\_\_\_ **NOT have a meeting.**

\_\_\_\_\_  
Parent

\_\_\_\_\_  
Date

FAMILY GROUP DECISION MAKING  
ASSESSMENT FORM

**According to policy, Parents will be offered a Family Group Decision-making Meeting in all open cases within the first 90 days of opening a case regardless of whether the children have been placed out-of-home. ( Section 103-1; page 3)**

Family Name: \_\_\_\_\_

Date Case was Open: \_\_\_\_\_

90 Days from Opening: \_\_\_\_\_

Date Meeting was offered: \_\_\_\_\_

Date Family Consented to Meeting: \_\_\_\_\_

This case is appropriate for the FGDM meeting program.

This case is NOT appropriate for the FGDM meeting program at this time.

Reason:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Signatures necessary when a case is determined NOT appropriate for meeting.

\_\_\_\_\_  
Social Worker                      Date

\_\_\_\_\_  
Supervisor                              Date

\_\_\_\_\_  
FGDM Coordinator                      Date

**FAMILY GROUP DECISION MAKING REFERRAL FORM**

Caseworker: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Parent(s) \_\_\_\_\_ Address \_\_\_\_\_ Phone(s) \_\_\_\_\_

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Child(ren) \_\_\_\_\_ D.O.B. \_\_\_\_\_ Address/Placement \_\_\_\_\_

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Has the family been informed about the possibility of a FGDM meeting? \_\_\_\_\_ Yes \_\_\_\_\_ No

Child(ren) out of the home? Yes \_\_\_\_\_ No \_\_\_\_\_ If no, is placement imminent?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

Funding source for placement/services: (IV -E, CWR, IV -A, etc.) \_\_\_\_\_ Legal  
Status: \_\_\_\_\_ Native American child(ren)? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes,  
Tribal Affiliation: \_\_\_\_\_ **Please include copy of report to court/tx plan & signed  
consent form with this referral.**

Brief description of reason(s) agency is involved, concerns, reasons for the meeting  
and goal(s): \_\_\_\_\_  
\_\_\_\_\_

Social worker would like the meeting held within: \_\_\_\_\_ 3 days-1 wk \_\_\_\_\_ 2-3  
wks \_\_\_\_\_ 1month

Has the FGDM meeting been scheduled, yes or no? \_\_\_\_\_ If yes, what date is  
scheduled? \_\_\_\_\_

**Significant others to be invited**  
 (Relatives, friends, clergy, attorneys, foster parents, teachers, resource people, etc...)

Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____	Notes: _____

State of Montana  
Department of Public Health & Human Services

Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____
Name: _____ Hm Phone: _____ Wk/cell phone: _____ E-Mail: _____ Address: _____ Relationship: _____	Notes: _____



FAMILY GROUP DECISION MAKING EVALUATION FORM  
(For questions 1 and 2, circle the number that best corresponds to your opinion)

1. Were you satisfied with the overall process and outcome of this meeting?

1            2            3            4            5  
Yes                          Somewhat                          No

Comments related to question 1:

2. Do you feel that communication between the Family, Department, and other involved Service Providers improved because of this meeting?

1            2            3            4            5  
Yes                          Somewhat                          No

Comments related to question 2:

3. What do you feel was least helpful about this meeting and how could that be improved?

4. What do you feel was most helpful about this meeting?

5. Any additional comments or suggestions.

Date \_\_\_\_\_

Thank you again for your participation.

**STATEMENT OF CONFIDENTIALITY**

RE: \_\_\_\_\_ Family Group Decision Making Meeting(s)  
(family name)

Per Montana law, 41-3-205 MCA (1999), as an invited person to a Family Group Decision Making (FGDM) Meeting, I am authorized to hear about the case record and may receive a copy of the FGDM Family or Treatment Plan and meeting summary. However, outside these meetings, I understand I must maintain confidentiality by not discussing case information or sharing a copy of the report with anyone who is not authorized by law, or by written permission from the parent(s). I understand that if I permit or encourage disclosure of confidential information about the case I may be guilty of a misdemeanor.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Child and Family Services Policy Manual: Reference Information**  
**Child Protective Team**

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**Child Protective Team**

Use of interdisciplinary child protection teams is strongly recommended because they assist in assessing the needs of the family, formulating and monitoring a treatment plan and coordinating services for the family.

Child Protective Teams are formed as needed in any particular county. The Teams may be either temporary or permanent. The county attorney, county commissioners, guardian ad litem, or the Department may convene a Child Protective Team at any time. When a Team is convened, the supervisor of the service area, or his/her designee, acts as the Team's coordinator.

The Team membership must include:

- social worker;
- member of a local law enforcement agency;
- county attorney, or designee;
- representative of the medical professional;
- a representative of a public school system; and
- in the case of an Indian child to be reviewed, someone knowledgeable about Indian culture and family matters, preferably an Indian person.

Other members may include mental health professionals, the child's attorney, and/or the child's Court Appointed Special Advocate.

**Reference**

Mont. Code Ann. § 41-3-108.

## Child and Family Services Policy Manual: Reference Information Foster Parents' Liability Insurance

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### Background

The Montana Department of Administration, Risk Management and Tort Defense Division (RMTD), provides an insurance program for the state which applies to children placed and supervised by DPHHS in family foster care. Under this program, foster parents may be reimbursed for:

- 1) damages or losses to property of foster parents caused by intentional acts of foster children; or
- 2) claims made by third parties against foster parents because of the intentional acts of foster children.

The first \$100 of an allowable claim will be paid by DPHHS. Allowable claims over \$100 are paid by RMTD. There is a \$2,500 limit per incident.

Any claim approaching the \$2,500 limit must be investigated by a DOA insurance adjuster prior to repairs. This insurance program is secondary to any other coverage of the foster parents. Foster parents must first submit a claim for damages to their own insurance company and make a good faith effort for full recovery before a claim will be considered by RMTD.

For the purposes of the RMTD plan and the Tort Claims Act, foster parents are not considered state employees or independent contractors.

### Coverage

The total amount that may be reimbursed is \$100,000 per year or single claim per foster home. Third parties (not foster parents) may recover damages up to \$2,500 for the intentional acts of a foster child under age 18 placed and supervised by DPHHS in a licensed foster home.

### Exclusions

Exclusions under the RMTD plan include but are not limited to the following:

- intentional act or omission of a crime by foster parents;
- cash, coin collections, antiques, furs, or jewelry;
- mysterious disappearances;
- injury caused by an animal or foster family pet;
- firearms;

## Child and Family Services Policy Manual: Reference Information Foster Parents' Liability Insurance

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- damage caused by normal wear and tear of real or personal property;
- credit card misuse;
- claims that reflect a lack of supervision of the child at a level that could reasonably be expected by a foster parent; and
- charges for unauthorized phone calls.

### Filing A Claim

Foster Parent

A Liability Insurance Claim Form, LD-1 Rev. 7/91 should be requested from the Fiscal Officer at the Regional Office. The following must be attached to the form:

- a. verification from personal insurance carrier that the claim has been denied; and
- b. an estimate for costs of damages.

Completed forms should be reviewed and signed by the CSWS, then forwarded to the Operations and Fiscal Bureau, Box 8005, Helena, MT for further review and processing. Completed forms will be forwarded to the Risk Management and Tort Defense Unit (RMTD) for final determination of payment.

If payment is allowed, the foster parent will receive reimbursement from the Department of Administration and DPHHS central office will be notified. If payment is not allowed, the Supervisor of the Operations and Fiscal Bureau will be notified by the RMTD Unit. The Supervisor in the central office will notify the CSWS of the decision.

### References

Mont. Code Ann. § 2-9-101  
Mont. Code Ann. § 40-6-237

## Child and Family Services Policy Manual: Reference Information

### Fair Hearing Process

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#### Introduction

DPHHS Child and Family Services Division fair hearings usually involve substantiation of child abuse or neglect, licensing actions or denial of foster care benefits or day care benefits.

When a worker takes an action which results in substantiation of child abuse or neglect, denying, reducing to provisional status, suspending or revoking a foster care or child placing agency license, the individual against whom child abuse or neglect was substantiated or the licensee generally has the right to be notified that a fair hearing may be requested. When a worker denies foster care benefits or subsidized adoption benefits, the person denied benefits may request a fair hearing, and should be notified in writing of this right.

This policy section contains a synopsis of the key aspects of the fair hearing process which is applicable to all fair hearings. It is intended to aid DPHHS workers involved in fair hearings. There are unique circumstances that arise in the course of fair hearings regarding different services and programs. Therefore, it is not intended to supplement existing laws, rules, and policy, in regard to any particular dispute upon adverse action. **(The synopsis was written primarily for licensing actions and has been edited to include fair hearings on substantiations of child abuse or neglect.)**

#### Notice

One of the most important aspects of the right to a hearing is the notice of that right. As it is usually not known which cases may go to a hearing, it is imperative that all notices sent are timely and adequate.

The notice is a fundamental aspect of the general right of due process which must be afforded under the United States Constitution. The purpose of a notice is to provide the client with the opportunity to be specifically informed of a DPHHS (Child and Family Services Division) action and the opportunity to contest the action in a fair hearing.

The notice of adverse action (including notice of a substantiation of child abuse or neglect) should contain the following information (refer to Policy Section 202-4 for specifics regarding

**Child and Family Services Policy Manual: Reference Information**  
**Fair Hearing Process**

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notice of substantiation):

- A. A statement of the adverse action and the reasons for the adverse action.
  - i. This should be a clear and concise listing of each and every reason that the Department is relying upon to justify its action. Include relevant background and any associated problems.
  - ii. Any reasons that are not specifically outlined in the notice might be excluded from evidence at the hearing.
  - iii. If at a later date the Department becomes aware of additional reasons for the action taken, an amended notice must be sent to the client. When an amended notice is sent, all reasons listed in the initial notice as well as the new reasons must be included.
- B. The effective date of the adverse action.
- C. The legal basis for the Department's action. All notices **must** contain proper legal citations! The Department could lose a case based on this technicality. Include all applicable rules and policies.
  - i. The proper citations include the appropriate sections of the Administrative Rules of Montana (Mont. Admin. R.). When more than one program is affected or there is more than one issue, be certain **all** applicable legal citations are included.
  - ii. List the Agency policy manual citation but **remember**, these manual sections are not law and can be used only in addition to the

**Child and Family Services Policy Manual: Reference Information**  
**Fair Hearing Process**

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Mont. Admin. R. sections.

- a. The Child and Family Services policy manual section references the Mont. Admin. R. citations for each policy section.
  - b. If the Mont. Admin. R. citations cannot be located or some question regarding correct citations comes about, contact the field supervisor or legal staff.
- D. An explanation of the client's right to request a fair hearing.
  - E. An explanation on how the client is to request a hearing.
  - F. An explanation of applicable time limitations for requesting a fair hearing.
  - G. A telephone number to call for additional information.
  - H. The client's right to be represented by legal counsel, friend, relative or other spokesman.
  - I. Any special circumstances that are important to an understanding of the adverse action's implications.
  - J. In the case of a substantiation of child abuse or neglect, that the individual against whom child abuse or neglect was substantiated does **not** have the right to a fair hearing if the court has awarded temporary legal custody to the Department based upon the worker's determination to substantiate abuse or neglect.

**Fair Hearing Request**

A claimant who is aggrieved by an adverse action shall be afforded the opportunity for a fair hearing as provided in the Administrative Rules of Montana. If information is needed as to

## Child and Family Services Policy Manual: Reference Information Fair Hearing Process

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the specifics of this issue, contact the CSWS.

Persons requesting a fair hearing as a result of a denial, reduction to provisional, suspension or revocation of any kind of license (other than day care) must request a fair hearing **within ten (10) days** of receipt of the notice.

Persons requesting a fair hearing as a result of a substantiation of child abuse or neglect must request a fair hearing **within 30 days** of the date of the substantiation letter.

**NOTE:** The notice should contain a specific statement advising the person receiving the notice as to the applicable time limitations for requesting a fair hearing.

The local office shall assist a claimant who seeks help in requesting a hearing.

The Hearings Officer need not grant or may dismiss a fair hearing or an adverse action when:

- a. The request for hearing is withdrawn by the claimant or his representative.
- b. The claimant or his representative without good cause fails to appear at the hearing.
- c. The request is not received on a timely basis.
- d. In the case of a substantiation of child abuse, the internal review of the Substantiation Review Panel has resulted in a reversal of the original substantiation determination.
- e. Either federal or state law requires automatic benefit changes for a class of individuals unless the issue is incorrect benefit adjustments.
- f. The Hearings Officer and/or the Department does

## Child and Family Services Policy Manual: Reference Information

### Fair Hearing Process

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not have jurisdiction over the subject matter or the appeal procedure.

If a hearing is requested and you are not certain that the decision was proper, be sure to check with the CSWS. It is possible he/she may be aware of a regulation which may support the decision. Legal assistance may also be available if the decision involves a legal interpretation. If workers are uncertain of the proper decision in a given case, consultation with the CSWS, RA and/or legal unit staff is crucial.

If an individual against whom the Department has substantiated child abuse or neglect requests a fair hearing, the substantiation cannot be entered into the CAPS system until the fair hearing is conducted and the Hearings Officer issues his/her findings.

Licenses or registration may be renewed provisionally and/or restricted pending evaluation or investigation. The worker must give adequate notice of the right to a fair hearing at that time or document in writing with signatures of the registrant(s) or licenser(s) that an agreement has been reached to allow for renewal and/or continued restricted operation pending completion of the evaluation or investigation.

#### **Administrative Review**

An administrative review is conducted with the purpose of identifying the issues and with the purpose of resolving the case, or certain issues to the case; thus, avoiding confusion at the hearing or avoiding an unnecessary hearing. This is also the time to find all issues. This is the time in which an amended notice may be found necessary. Issues can be settled during this review (or at any time during the appeal process).

**NOTE:** No Administrative Review is required in the case of a contested substantiation of child abuse/neglect. The substantiation of child abuse/neglect shall be reviewed by the Substantiation Review Panel upon the request for a Fair Hearing.

The Hearings Officer will send notice to the Regional Administrator (RA) of the request for a fair hearing within 10 days

## Child and Family Services Policy Manual: Reference Information

### Fair Hearing Process

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of receiving the request.

Once the Regional Administrator receives notice from the Hearings Officer that a claimant has requested a fair hearing, an administrative review must be scheduled and completed within 20 days.

- a. The administrative review must be scheduled, held and the DFS-4 administrative review report completed and sent to the Hearings Officer within 20 days from the date of the Hearings Officer's notice.
- b. There are specific time lines which the Department must meet in the appeals process. It is imperative that the administrative reviews are completed on a timely basis.

An administrative review is an informal conference held between the claimant (and/or his representative) and an assigned Department employee.

- a. The review will be conducted by the RA or a person designated by the RA. In order to assure a neutral and unbiased review, every effort should be made to assure that the person designated to conduct the Administrative Review, has not been involved in the decision resulting in the adverse action leading to the request for the fair hearing.
- b. It is recommended that the worker handling the case be present to state the facts of the case.

A review of relevant issues, facts, regulations and circumstances involved in the adverse action ( an exchange of information, documents, etc.) will occur at the Administrative Review .

- a. Be certain all pertinent evidence has been gathered and is available.

**Child and Family Services Policy Manual: Reference Information**  
**Fair Hearing Process**

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- b. Have copies for the opposing party of the regulations the decisions was based on.
- c. The claimant should be allowed to respond to the material presented and to bring in any other evidence he wishes to present in support of his/her position.

The person conducting this administrative review must complete the administrative review report (DFS-4).

- a. The report must contain a written summary of the review.
- b. If no resolution can be reached, list the matters at issue.
- c. Upon completion of the report, the claimant's or his/her representative's signature is to be obtained on the report along with notation as to whether the request for hearing remains in effect or has been withdrawn.

If the claimant does not appear for the administrative review, either reschedule the review or contact the Hearings Officer and request that a hearing be scheduled.

**NOTE:** There is not just cause to dismiss a fair hearing only because the claimant or his representative did not appear for the administrative review.

**Preparation for  
the Fair Hearing**

To prepare for the hearing, all evidence should be reviewed and organized in consultation with DPHHS legal unit staff. **DO NOT ASSUME THAT THE HEARINGS OFFICER IS FAMILIAR WITH THE POLICY YOU HAVE USED TO SUBSTANTIATE YOUR DECISION. BEGIN DEVELOPMENT FOR EVERY CASE WITH THE IDEA THAT THE HEARINGS OFFICER WILL HAVE NO PRIOR KNOWLEDGE OF POLICY.** It is your responsibility to lay out the circumstances of the case and the reasons for your decision.

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The Letter of Notification should be reviewed first.

- a. Review the legal citations to ensure that they are correct.
- b. Make sure that the letter speaks to all of the issues under dispute.
- c. If you find that the notice is not proper, send an amended notice.

Prepare material evidence. Any documents that you have used to make your determination should be included as exhibits.

- a. The DPHHS Legal Unit may send copies of your exhibits to the Hearings Officer along with a copy to the client or his representative before the date of the hearing. **This is required for a telephone hearing.**
- b. For an in-person hearing, the exhibits may be produced at the hearing. However, you are at a disadvantage if you do not provide material evidence prior to hearing.

You may write down your testimony and practice it so you are prepared for the hearing. However, you may not read aloud your written testimony. Similarly, your dictation may be reviewed to refresh your memory while testifying. Generally, your dictation will not be read into the record in place of your testimony unless you have no independent recollection of the events set out in your dictation.

Organize your exhibits in the order in which you intend to present them. This makes for a better organized presentation which can impact the Hearings Officer's impression of your testimony.

Remember that the Hearings Officer will not have prior knowledge of your case and the policy that you are using. It is beneficial to have a copy of the manual citation that you are

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using, along with the state law and Mont. Admin. R. rules. You may be asked to read this information at the hearing so that a record of the exact policy you are following is made. **Be prepared to interpret the policy you are referencing.**

Consult with the DPHHS Legal Unit.

Once the evidence which must be presented to prove the case is identified, the worker and the DPHHS Legal Unit staff should determine if witnesses will be necessary. The Department may have witnesses who have **firsthand knowledge** of the events which led to the adverse action.

Statements made by a person who is not a witness at the hearing are often not admissible as evidence. They are considered **hearsay evidence** because the claimant has no opportunity to cross-examine the person who made the statements. Therefore, the truthfulness and reliability of the statements cannot be determined. However, do not assume all such statements are "hearsay." Exclusions and exceptions to the hearsay rule exist and may be employed to allow for introduction of statements made to witnesses or otherwise. Sometimes the Hearings Officer will allow these statements to be introduced if there is no objection but one cannot be sure of this. The best approach is to have the person having personal knowledge of the events which led to the decision available for testimony at the hearing. (Evidence will be discussed later.)

If the witness will not come to the hearing voluntarily, s/he and the material in his/her possession can be subpoenaed to appear at the hearing. In order to subpoena a witness, the DPHHS attorney would prepare a subpoena for each witness to be subpoenaed. The subpoena should then be forwarded to the Hearings Officer for his/her signature far enough in advance to assure that the subpoena can be served upon the witness at least a week before the hearing.

If there is no way to have the witness available at the hearing, a sworn affidavit of the person should be obtained for introduction at the hearing. A deposition may also be taken if the witness will

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be more than 100 miles away at the time of the hearing. Telephonic testimony may also help to assure all witnesses testify. Although this document is considered hearsay evidence, the Hearings Officer may allow it to be introduced if there are no objections. (Witnesses will be discussed later.)

The worker and DPHHS attorney should meet with witnesses prior to the hearing and describe to them what will take place at the hearing and prepare them for the types of questions they will be asked at the hearing.

The witnesses should be aware of what they will be asked at the hearing but should not be coached as to what they should say.

#### Fair Hearing Procedures

The Fair Hearing will be conducted by telephone conference, unless a party to the hearing submits a request for an in-person hearing to the Hearings Officer.

- a. If the matter is complicated and there are a number of exhibits, an in-person hearing might be advisable. Hearings regarding substantiation of child abuse or neglect may be either telephonic or in-person. Usually fair hearings regarding suspension or revocation of a foster care or a day care license should be in-person hearings.
- b. Another factor to consider in requesting an in-person hearing is the number of witnesses who will be present.
- c. If DPHHS staff determine an in-person Fair Hearing is necessary or the Claimant requests such, notify the Hearings Officer.

All parties will be notified by the Hearings Officer of the time and place of the Fair Hearing.

The notice includes:

- a. an explanation of the Claimant's rights;

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- b. the Claimant's right to request an in-person Fair Hearing;
- c. notification informing the Claimant that the hearing request will be dismissed if he/she fails to appear at the Fair Hearing without good cause;
- d. special instruction if a telephone Fair Hearing has been scheduled;
- e. a request, in a telephone Fair Hearing, that any documents to be considered must be mailed to the Hearing Officer and opposing party prior to the Fair Hearing. It is extremely difficult for the Hearing Officer to conduct a hearing when the exhibits are not before him/her. It is also helpful to submit the exhibits prior to an in-person hearing.

The Claimant has the right to:

- a. represent him/her or be represented by an attorney or other person;  
**NOTE:** Department employees cannot represent the Claimant.
- b. examine all material in his/her case file that have a bearing on the matter at issue;
  - i. This includes all evidence that the Department intends to introduce at the Fair Hearing.
  - ii. If there are matters contained in the file which are confidential and which constitute the evidence which will be relied upon to support the agency's action, the worker should contact the DPHHS Legal Unit for assistance.
- c. present his/her own witnesses and evidence;

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- d. cross-examine all witnesses.

The Department is provided with similar opportunities.

- a. The Department may, and should, examine all materials the Claimant intends to introduce at the Fair Hearing.
- b. The Department may present its own witnesses and evidence.
- c. The Department may cross-examine all witnesses.

The Hearings Officer is responsible for tape recording the Fair Hearing.

At the opening of the hearing, the Hearings Officer will set out certain procedures, instructions, and provide certain information such as the right of either party to appeal his/her decision. The Hearings Officer will then require the oath be taken by all those testifying.

**NOTE:** Prior to the Fair Hearing, do not discuss the Department's position or evidence with the Hearings Officer unless **all** parties are present at the discussion. The Hearings Officer must remain independent and make a decision based on the facts presented only during and subsequent to the hearing. Each party must have the opportunity to refute any information presented by the opposing party.

At the Fair Hearing, do not address the Hearings Officer by his/her first name. The Hearings Officer is also not to address Department staff by their first name.

The Department is usually asked to present its evidence first. (Usually the Hearings Officer will explain the procedures, such as which party is to present his/her case first, immediately prior to the opening of the Fair Hearing.) The party who has the burden

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of proof should be the party who presents its position first. However, at the Hearings Officer's discretion, this rule may not always be followed.

It is often helpful to everyone to begin with a very concise statement of the facts which will be proved at the Fair Hearing and why the facts will justify the Department's actions.

- a. This statement is issued by the person chosen to represent the Department at the hearing.
- b. Sometimes the Hearings Officer will request this information just before "going on the record" to avoid unnecessary facts or issues being brought forth into the record.

Other Department witnesses should then testify.

- a. The person representing the Department should ask the witnesses questions which will allow them to tell their story.
- b. Questions should be prepared beforehand. If the Claimant's questions can be seen beforehand, have the answers ready.
- c. A chronological development is usually the best way to organize the questions asked.
- d. Testimony should be limited to relevant matters and should be as concise and non-repetitive as possible.
- e. The exhibits should be prepared and set up in the order they will be presented.
  - i. Exhibits which probably need to be introduced by DPHHS as evidence include the Claimant's application, the letter constituting notification of the adverse action and right to a hearing and any other written

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- documents supporting the Department's decision or necessary for background.
- ii. The DPHHS attorney must make sure copies of all exhibits are available for the Hearings Officer and Claimant.
  - iii. Give the Claimant or his/her representative ample time to examine exhibits. Delay and/or other problems can occur if the Claimant objects to any evidence being submitted on the grounds of "surprise."
- f. Preparation is important. Be certain of the issues. Be certain of the facts you are presenting throughout the hearing. This is it! **You cannot bring issues or facts about later, for example, in a brief, that were not brought forth at the hearing.**
- g. The manner in which the testimony and exhibits are presented is important.
- h. Keep in mind that one of your goals at the Fair Hearing is to present all evidence in a manner that makes it clear to the Hearings Officer as to what actions were taken and why. You are there to convince the Hearings Officer that these actions are correct.
- i. Do not assume the Hearings Officer knows the rules you speak to or is aware of the facts of the case. Present your testimony simply to him/her and be sure he/she understands your argument.

The Claimant or his/her representative will be allowed the opportunity to ask questions of any person who testifies. (Cross-examination).

- a. This is an area which often appears to make the worker most uncomfortable. Here are some ideas the worker should keep in mind when being cross-

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examined by the opposing party or being questioned by any other person:

- i. identify yourself;
  - ii. keep calm;
  - iii. be professional but not cold;
  - iv. speak clearly and distinctly;
  - v. always give spoken answers to questions (the recorder does not pick up a nod of the head);
  - v. use ordinary language;
  - vi. listen to the question that is asked and answer only that question;
  - vii. look at the person asking the question or at the Hearings Officer when answering;
  - ix. be as exact as possible in your testimony;
  - x. if you do not know the answer to a question, say so;
  - xi. do not answer a question you do not understand.
- b. When the Claimant is represented by an attorney, it is very possible that during cross-examination, the attorney will attempt to show that:
- i. you are hostile to or biased against the Claimant;
  - ii. your competency as a worker is questionable;

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- iii. there are discrepancies between the case file and your testimony at the hearing or between statements made in direct examination and statements made on cross-examination;
- iv. you made prior statements out of the hearing which are inconsistent with statements you have made at the hearing.

**Note:** The best defense against such tactics is thorough preparation. Come to the Fair Hearing with a carefully documented case record and a thorough knowledge of the case.

Once the Department has submitted its evidence, the DPHHS attorney informs the Hearings Officer that the Department's case is completed.

The Claimant will then present his/her position.

- a. The Claimant will have the opportunity to testify and to bring in witnesses.
- b. The Claimant does not have to testify on his/her own behalf, so if his/her testimony is important to the Department, the Claimant may be called as a witness by the Department.
- c. Copies of Claimant's exhibits should have been provided to the Department prior to the Fair Hearing. If not, the Hearings Officer will require copies be provided to the Hearings Officer at the time of the Fair Hearing.
  - i. If the exhibits are complicated, time may be allowed for the opportunity to examine the exhibits.
  - ii. If the DPHHS attorney has reason to believe the Claimant or his/her representative has

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exhibits he/she intends on presenting at the hearing and you have not received them, he/she should contact the Claimant/representative and request copies of these exhibits. Again, the best place to receive the party's exhibits is at the administrative review.

The Department can ask questions of the Claimant and his/her witnesses.

- a. The Department is provided the opportunity to ask further questions at the close of Claimant's presentation. (each side may be afforded an opportunity for rebuttal)
- b. Keep in mind the questions must be relevant to the issues at the hearing. Don't hesitate to ask questions, however. If in doubt to relevancy, ask. If found irrelevant, it will only be objected to or not considered by the Hearings Officer.
- c. Remember, you also are allowed to object to evidence the opposing party introduces.

The Hearings Officer has a right to ask questions and will often ask questions of witnesses, the Claimant and Department staff either during the testimony or later after the close of testimony, so long as such contacts are not impermissible ex parte contacts.

When the Claimant completes his/her case and the Hearings Officer and both parties have no further questions, the Fair Hearing is usually concluded.

- a. The Hearings Officer may allow a final argument. (This means a summation of the evidence and why your side should win.)
- b. The Hearings Officer may order that briefs including

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proposed findings of fact and conclusions of law be prepared. Either party may also request the filing of these documents. With this in mind, know who will prepare the Department's brief. To assure you meet time lines, mark the briefing schedule on a calendar.

Copies of the brief generally must be sent to the Hearings Officer and the opposing party.

The Hearings Officer must make a decision within 60 days of when the case is "deemed submitted" (i.e., when all evidence and exhibits are judged/deemed to have been submitted.)

- a. The Hearings Officer makes a decision based on the law after considering the evidence and testimony contained in the Fair Hearing record.

**NOTE:** Don't take the decision personally. If you were fully prepared at the hearing, that is the best you can do. Remember the decision is based on the law and this law may not be set out the same, or at all, in the policy manual.

- b. The decision is a written decision which is mailed to both sides.
- c. If either the Department or the Claimant disagrees with the Hearings Officer's decision, an opportunity is provided to appeal the decision to the DPHHS Director or, in the case of a substantiation of child abuse or neglect, the Child and Family Services Division Administrator.

**NOTE:** If the Department loses a case and the worker feels that the proper procedures were followed and the case should be appealed, bring this to the attention of the CSWS and appropriate DPHHS staff, including the Legal Unit.

- i. Instructions for this appeal are found in the Hearings Officer's decision and in the Mont.

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Admin. R., section 11.2.214.

- ii. Either party may submit written arguments on the law and a summary of facts presented at the Fair Hearing. **New facts are not permitted.** The parties may appear and orally argue their case before the DPHHS Director or the CFSD Administrator.

If the matter is not appealed to the Director or the CFSD Administrator, the decision of the Hearings Officer is final and must be complied with. If the Department prevails, refer any continued operation of registration or licensed facility to the County Attorney if appropriate.

### Overview

A party to an appeal who disagrees with the Director's or Division Administrator's decision may seek judicial review, in accord with Mont. Admin. R. 11.2.215; Mont. Code Ann. 2-4-702.

This has been a brief overview of the typical Fair Hearing. Fair Hearings are important and should not be taken lightly. Keep in mind the object is to persuade the Hearings Officer to uphold your decision. This can only be accomplished when the decision is well-documented, well-supported and presented in a manner that makes it clear to the Hearings Officer what actions were taken and why. Good preparation is the only way to do this effectively.

### Problem Areas Found at Past Fair Hearings

Several problem areas have been identified which can result in an adverse decision for the Department.

1. Poor documentation in case file.
  - a. The Department attempts to prove a fact which is not documented in the file. This problem frequently appears where the worker does not remember the fact being proven or is not available to present testimony at the Fair Hearing.
  - b. Document dates of all actions and other pertinent

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information in the case file. These dates should be clearly written and include the month, day and year.

2. Misunderstanding of Administrative Reviews. (Emphasis to Part IV)
  - a. Review the purpose of administrative reviews as set out in Part IV.  
  
**NOTE:** Remember that the principal purpose of the review is to attempt to resolve the issues.
  - b. Although the review is usually attended by the Claimant and/or his/her representative, keep in mind the Claimant may decide to bring a friend or relative along for support. Do not prohibit these individuals from attending the review. However, beware of the potential for abuse of this right. Some Appellants may try to organize the Administrative Review into a large support group for Appellant's position.
  - c. It does not matter whether the local DPHHS staff at the review were involved in the initial decision. They may actively attend and make decisions.
  - d. Review the Administrative Review section for information on what the review should include.
    - i. Be prepared.
    - ii. New evidence from either party can be considered. This is a good time to accept and review further verification.
    - iii. Cover all applicable issues to avoid confusion at the hearing.
    - iv. The Reviewer's completed narrative portion of the Administrative Review report (DFS-4).

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3. Improper notice of adverse action.
  - a. Enter the correct rules and regulations as to the legal basis for the Department's action.

The applicable Administrative Rules of Montana (Mont. Admin. R.) must always be listed. List the appropriate Montana Codes Annotated if possible. Also list the manual sections. Remember these sections are not law and can be used only in addition to the Mont. Admin. R. and statute. However, the Hearings Officer is likely to check for compliance with policy, especially where the policy is on point. If you cannot locate the Mont. Admin. R. or Mont. Code Ann. citations, contact your CSWS or the Legal Unit.
  - b. **List all the reasons which you determined caused the adverse action.** For example: You have, 1) determined that the day care operator abused a child in care, and 2) you also found out when investigating the case that there were more children in care than authorized. (Both of these reasons should be listed.) Background and old problems should be listed if they aided in making the conclusions leading to the adverse action.
  - c. Make sure the notice includes the applicant or recipient's Fair Hearing rights.
  - d. If you realize the notice is improper at the time a Fair Hearing is requested, amend the notice and mail to Claimant and, if applicable, to his/her attorney. A problem may arise due to the amended notice but an amended notice is better than an improper notice.
4. Complicated issues found prior to Fair Hearing.

If the Department finds the issues becoming complicated,

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such as interpretation of a rule, seek assistance by contacting the applicable Central Office or District/Regional staff. They may in turn seek help through the Legal Unit or use other appropriate means to assist you.

5. A request for a continuation of the scheduled Fair Hearing must be for a good reason.
  - a. The delay may create a hardship on the Claimant.
  - b. The Hearings Officer's schedule may be such that the rescheduling of the Fair Hearing is even further delayed.
  - c. The request for a continuance must be through the Hearings Officer. A party cannot presume that a hearing continuance has been granted only because he/she requested one. Advise the Claimant or his/her representative prior to the scheduled date.
6. If a telephone hearing is scheduled, submit all evidence the Department intends to present at the hearing to both the Hearings Officer and the Claimant or his/her representative prior to the scheduled date.

**Rules of Evidence** The rules of evidence are very complicated; therefore, this is a brief overview of the rules of evidence. This topic is being discussed only to give workers a general idea of the kinds of evidence they can present at a Fair Hearing, the kinds of evidence that may not be allowed, or kinds of evidence that will carry little weight in the making of the Hearings Officer's decision.

The law of evidence determines what evidence (testimony, documents, etc.) is admissible. In other words, what evidence may be presented to the Hearings Officer to prove or disprove the case.

**Some evidence is inadmissible.**

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- a. The evidence is **not pertinent** to the issues of the case.
- b. The evidence is **unreliable**, e.g. hearsay. (Some hearsay is considered reliable - prior inconsistent statement, statements made prior to death of witness and some hearsay is admissible statutorily, e.g. statements made by the affected youth in a substantiation of child abuse or neglect case.)
- c. The evidence is **unverifiable**, e.g. no witness available to authenticate.
- d. The evidence is **too prejudicial**, e.g. prejudice outweighs relevancy.
- e. The evidence would **violate certain other policy considerations in the legal system** (such as a protected confidential relationship).

**To be admissible, evidence must be:**

- a. **Relevant** - It must pertain to the matter at issue at the Fair Hearing.
- b. **Competent** - The evidence must be admissible according to the rules of evidence which have developed over the centuries to insure reliability or truthfulness of information. (Expert testimony presented by an expert witness; public record).
- c. **Material** - Even if relevant and competent, the evidence must be material to the issues at hand. That is, the evidence must have some weight and substance in either proving or disproving the issue.

**NOTE:** The fact that evidence is held to be admissible does not mean the Hearings Officer is required to place great weight upon it or even to believe it.

**Types of Evidence**

Most of the evidence presented at the Fair Hearing will fall

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into one of three categories:

- a. **Testimony** - Oral statements based on personal knowledge made by a witness under oath.
- b. **Writings** - Written statements. These include official records, business records, birth certificates, letters, etc., usually in conjunction with testimony verifying genuineness of documents, date recorded, etc.
- c. **Material Objects** - All physical objects presented as evidence that are not writings.

### Hearsay Evidence

There are many kinds of evidence. Hearsay evidence is the most difficult type of evidence to understand in regard to when it is admissible and when it is not admissible.

- a. Hearsay is testimony at the hearing, or written evidence presented at the hearing, of a statement made outside the hearing to prove the truth of the matter asserted in the statement. E.g. Tom testified that John said he saw Pete at the day care facility. John's outside statement, through Tom, regarding Pete's whereabouts, is excluded as hearsay.
- b. Hearsay is secondhand information.
- c. The Hearings Officer has no way to evaluate the statement.
- d. The individual was not under oath and, therefore, was under no compulsion to tell the truth.
- e. There is no opportunity for the other party to cross-examine such evidence.

### Exceptions and Exclusions to the Hearsay Rule

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There are numerous exceptions and exclusions applying to out-of-hearing statements. All prohibition of such statements are similar in that they are founded on a need to receive the evidence and all have to some degree inherent guarantees of the trustworthiness or reliability of the evidence that serves as an alternative to cross-examination. Only a very few are listed below:

- a. official written statements (public records);
- b. regularly kept records (business records);
- c. Witnesses prior inconsistent statement;
- d. excited utterances;
- e. admission or confession of one of the parties;
- f. dying declarations.

### Witnesses

In general, witnesses at a hearing can be divided into two categories: lay and expert witnesses. (Character witnesses fall into the lay witness category.) The basic distinction between the two classes lies in whether or not witnesses can offer opinions, inferences, and conclusions as a part of their testimony. It is quite possible that the same person can be a lay witness in some contexts and an expert witness in others.

- a. **Lay Witness** The lay witness is a person who does not have specialized knowledge or skill in a subject. That person is therefore allowed to testify only to what he has observed or otherwise perceived with his senses. The person may not testify about any inferences or conclusions he has drawn from the facts observed, no matter how obvious the inference or conclusion may be.

It is often difficult to distinguish between observed facts and inferences drawn from these observations;

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accordingly, the Hearings Officer is allotted great discretion in determining what is fact and what is opinion. However, the opinion of a lay witness is admissible where:

- i. the opinion is requested by the Hearings Officer;
- ii. the opinion is necessary to help the fact-finder (the Hearings Officer) assess the situation described.

The trend seems to be to allow a witness to state an opinion whenever it will be of assistance to the fact-finder. In addition, a provision of the Montana Administrative Procedure Act allows Hearings Officers to consider generally recognized technical or scientific facts within the agency's specialized knowledge. Mont. Code Ann. 2-4-612(6).

- b. **Character witness** (Generally, this kind of witness would only be used in Fair Hearings relating to such issues as foster care, etc.)

The character and reputation of a person are generally considered irrelevant and unnecessary evidence, except where the character of the person is in some manner an issue before the Hearings Officer. The usual method of showing good or bad character is to provide testimony about a person's reputation. Reputation is the generally accepted view of a person by the community. Rumors are not admissible testimony, nor is the personal opinion of the witness. The witness may generally testify only as to the person's neighborhood, but in some areas this definition has been expanded to allow testimony by relatives, old school friends, co-workers, and others who live in different neighborhoods.

A witness who is called to give character testimony

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will generally be asked first to testify as to his association with the person about whom he/she is testifying, and the basis of the knowledge about the person's reputation. This is required in order to help the fact-finder assess the reliability of the testimony.

- c. **Expert witness** An expert witness can be defined as any person who possesses special experience, skill, or learning in a particular field which exceeds that of the ordinary person. In most cases Department personnel such as Family Resource Specialists and Social Workers are considered expert witnesses. See Mont. Code Ann. 2-4-612(7). (The Agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.)

Such people are called as witnesses precisely because, in their particular fields of expertise, they can reach conclusions which are beyond the skill and ability of the fact-finder. Therefore, within his/her area of expertise, the expert witness is allowed to state opinions, inferences, and conclusions in the course of his testimony.

As with any other evidence, however, the Hearings Officer determines the weight to be given an expert's testimony, and can disregard it if he chooses. The expert's opinion can be challenged by the opposing attorney who may well call his own experts to attempt to refute the expert's opinion.

## Child and Family Services Policy Manual: Contract Monitoring

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<b>Introduction</b>	<p>CFSD contracts for services that support the Division’s mission to keep children safe and families strong. Contract compliance is essential to ensure funds spent on services to families and children meet the intent of the Division’s contracts.</p>
<b>Team Composition</b>	<p>Contract compliance is housed within the Program Assessment Team in the CFSD central office. The Program Assessment Team consists of: The Compliance Supervisor, the Program Compliance Specialist, the Contract Compliance Specialist and five (5) Financial Specialists. Typically, contract compliance reviews are conducted with a minimum of two contract monitors (the Contract Compliance Specialist and one Financial Specialist from the area where the program being reviewed is located).</p> <p>Larger programs/contracts require an increased number of contract monitors to participate to ensure the timely completion of a review. The central office contract monitor identifies the number of team members necessary to participate in.</p> <p>Other CFSD personnel may participate in contract compliance reviews for cross-training purposes and to lend expertise in various program areas as needed.</p>
<b>Contracts</b>	<p>Contract types include, but are not limited to: Foster Care services (residential and therapeutic out-of-home care), In-Home services (prevention, intensive home visitation, reunification, supervised visitation), Montana Foster Care Independence Program, Domestic Violence and Big Brothers/Big Sisters. The Management Team (the CFSD Administrator, Management Analyst, Administrative Officer, Regional Administrators and Bureau Chiefs) and the Program Assessment Team prioritize the contracts to be reviewed.</p>
<b>Review Types</b>	<p>Contract compliance review activities may vary from desk audits to full on-site reviews. Protocol is developed and implemented for each contract type that require on-site contract compliance reviews, which is referred to as the 3 Stage Process for Contract Monitoring.</p> <p>Protocol is in place for ‘routine’ on-site reviews as well as ‘issue-specific’ on-site reviews.</p>
Definitions	<p><b>Routine Reviews:</b> Contract compliance reviews are conducted with standard statewide protocol, standard monitoring tools/forms and are documented in a standard report format. The elements reviewed are predetermined by the Division (Management Team, and the Program Assessment Team with input from the Field</p>

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Supervisors) and are applied to all like-programs selected for review during that particular contract period.

**Issue-Specific Reviews:** Contract compliance reviews are conducted on the basis of reported problems with a particular program, as assigned by the Regional Administrator and/or Management Team. The elements of the program reviewed are based upon (but not limited to) the complaints received. The protocol may be similar, but may not include all elements in the standard review protocol. The tool/forms utilized are individually tailored to address the problem-areas noted for that particular program. The report may be similar to the standard report format, but may require signatures on the document itself that signify the program's willingness to address/correct serious issues identified. The report may also become an attachment to and/or referenced in a modified contract, acknowledging that the Department may choose not to continue to contract for services if the serious issues are not addressed in accordance to the report and to the Department's satisfaction.

### 3 Stage Process

The three stages utilized for contract monitoring are:

- C Preparation (making inquiries to other DPHHS regulatory personnel, arranging interviews and records reviews)
- C Implementation (conducting the review)
- C Exit (summarizing findings and requesting a contractor response)

Follow-up contract monitoring activities to further verify compliance is optional, based on the monitoring team's findings from the initial contract compliance review/assessment.

**NOTE:** The protocol developed for foster care contract compliance reviews (youth group home and shelter care facilities) was approved by the Montana Office of the Legislative Auditor in June 1998 (during a Performance Audit Follow-up). All established protocol will closely follow that which was developed for foster care contracts, as applicable.

### Monitoring Reports

Written contract compliance reports are generated by contract monitors following each on-site review. The report format utilized by contract monitors is detailed in the 3 Stage Process for Contract Monitoring developed for the specific type of contract.

Contract compliance review reports are not considered final until the request for a response is received within the 30-day response

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period, the 30-day response period lapses (with no response) or an extension request is made by the contractor prior to the expiration of the 30-day response period. Once a report is considered to be final, it will be available for circulation to all interested CFSD personnel.

### Foster Care Contracts

A synopsis of the final contract compliance review results and the review status are available on CAPS for foster care contracts. Brief synopses of contract compliance review results are located on FASD (facility assessment detail), for programs reviewed after 6/00. Additional details may be obtained by contacting the contract monitors identified on FASD.

### In-home Services Contracts

Final contract compliance review results and the review status for in-home services contracts are available through written or verbal contact with contract monitors. The designated regional contract monitor and/or the central office contract monitor will provide Division personnel with pertinent information resulting from reviews conducted.

**NOTE:** If DPHHS field or central office staff receive a request for a copy of a contract monitoring report produced (in whole or in part) by CFSD Contract Monitors of the Program Bureau, staff should not release these reports themselves. Instead, refer them to the Compliance Supervisor (444-5900) at the Child and Family Services Division, Program Bureau, P.O. Box 8005, Helena, MT 59604.

### Child Abuse and Neglect Reports

Contract monitors may receive information regarding allegations that a child may have been abused and/or neglected or may be in danger of abuse and/or neglect (CA/N) while conducting contract monitoring activities. Contract monitors must report this information to the proper authorities immediately. When CFSD staff act in the role of a contract monitor, he/she shall refrain from participating in a CA/N and/or licensing investigation.

When CA/N reports/referrals are entered into CAPS by Central Intake, and a provider number has been listed within the report, the central office monitor and the appropriate regional monitor receive an alert that a report has been made and is associated with a particular foster care provider.

### Youth Group Home and Shelter Care Facilities

If monitors are made aware of CA/N allegations involving a child in the care of a youth group home or in a shelter care facility, during the course of contract monitoring activities, monitor(s) must contact Centralized Intake (866-820-5437) to report those allegations. If monitors are conducting a review at the time they are made aware of the CA/N concerns, monitors must also promptly contact the Child

## Child and Family Services Policy Manual: Contract Monitoring

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Protective Services Supervisor, the Regional Administrator (in which the program is located) AND the Quality Assurance Division (QAD) Community Residential Licensing Supervisor and the QAD Community Residential Licensing Specialist, to make a determination of whether or not the monitoring review should continued (due to pending investigation).

If the CA/N allegations are involving a current employee of the program, contract monitors will cease the review until the investigation is complete OR continue the review as specifically authorized by both the Regional Administrator and the QAD Licensing Supervisor.

Contract compliance reviews may continue when the allegations made indicate that the CA/N concerns are related to children who previously resided in the facility, and/or program staff who were previously employed by the facility, and imminent risk of CA/N is not present.

Contract monitors provide investigators with all pertinent information obtained during the review process, as requested by investigative authorities. Once an investigation begins, it is then the contract monitors' responsibility to forward any pertinent information to the CPS or licensing investigator(s) until the investigation is complete.

Therapeutic Foster Care	Contract monitors follow the same protocol listed for CA/N allegations in youth group homes and shelter care facilities, with the exception of the licensing entity to contact. The CFSD Family Resource Specialist Supervisor and the local Family Resource Specialist should be contacted soon after the report is made to Central Intake. The CFSD licensing authorities in addition to the Child Protective Services Supervisor and the Regional Administrator where the program is located, determine whether the contract monitoring review should continue.
In-Home Services	In-Home services are not routinely provided in out-of-home care settings. However, if CA/N allegations are made involving a caretaker in a foster care setting, contract monitors will follow the protocol listed in the above-listed policy as applicable. Otherwise, monitors must promptly report the CA/N allegation(s) to Centralized Intake and promptly notify the Regional Administrator and the CPS Supervisor where the program is located to determine whether to cease the monitoring review or to continue as authorized.
Notice to Monitors	CFSD investigating workers are to provide written or verbal notification to the central office contract monitor that includes the

## Child and Family Services Policy Manual: Contract Monitoring

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CAPS report number and any ongoing concerns, when the investigation is closed. The central office contract monitor will forward this information to the appropriate Financial Specialist. See Section 202-5 (10/04) for further details on investigations in out-of-home care.

### **Foster Care Inquiries**

When an interested party contacts contract monitors to inquire about becoming a foster care contractor, contract monitors will contact both the assigned DPHHS Quality Assurance Division (QAD) Community Residential Licensing Specialist/Supervisor (youth group home and shelter care facilities) or the assigned CFSD Family Resource Specialist/Supervisor, the CFSD Residential Specialist and the CFSD Regional Administrator with the details of each inquiry.

### **CAPS Provider Contacts**

All contract compliance-related contacts exchanged between contract monitors and foster care contractors are documented on PRCD (provider contact detail).

### **Review Results**

A contract compliance review synopsis for each foster care contractor who receives a routine on-site monitoring review shall be entered on FASD no later than 30 days after the report is considered to be final by the central office contract monitor. The Program Bureau Chief approves each facility assessment on CAPS.

### **References**

Mont. Code Ann. §41-3-201  
 Mont. Code Ann. §41-3-202  
 Mont. Code Ann. §41-3-205  
 Mont. Code Ann. §52-2-617  
 QAD Community Residential Licensing Program Manual: #203  
 Licensed Provider Complaints, Referrals and Investigations

**Child and Family Services Policy Manual: Reference Information**  
**Human Immuno virus or Acquired Immune Deficiency Syndrome (HIV or AIDS)**

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**Purpose** This section establishes guidelines for staff providing services to children and youth at risk for human immuno deficiency virus (HIV) or acquired immune deficiency syndrome (AIDS).

**Definitions** **Human Immuno Deficiency Virus (HIV)** is the virus that causes acquired immune deficiency syndrome (AIDS). The virus was identified in 1983.

**Acquired Immune Deficiency Syndrome (AIDS)** is a condition that results from HIV infection. The infection is caused by a virus (HIV). By the time people with HIV develop AIDS, their immune systems have become damaged and can no longer fight off other infections. These infections may eventually be fatal.

**Opportunistic Condition** is an infection or cancer that occurs especially or exclusively in persons with weak immune systems due to AIDS, cancer, or immunosuppressive drugs such as corticosteroids or chemotherapy. KS, PCP, toxoplasmosis, and cytomegalovirus are all examples of opportunistic conditions. Also more loosely termed Opportunistic Infection (OI).

**Testing positive** means a person's blood contains antibodies to HIV as determined by blood tests conducted at the Montana State Public Health Laboratory.

**Testing negative** means a person's blood shows no sign of having antibodies to HIV (the virus that causes AIDS). However, if you were infected recently, you might test negative even though you have the virus.

**Clinical symptoms of AIDS:** Only a doctor can tell if someone has AIDS, which is a result of HIV infection. At first, many people with HIV begin by having flu-like symptoms, followed by no signs or symptoms at all. Later, some people may have severe or prolonged –

- fever
- fatigue
- diarrhea
- skin rashes
- night sweats
- loss of appetite
- swollen lymph glands
- significant weight loss

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- white spots in the mouth or vaginal discharge (signs of yeast infection)
- memory or movement problems

In addition, people with AIDS may suffer from infections that most healthy people can resist (opportunistic infections), as well as from cancer (including Kaposi's sarcoma, lymphoma, and invasive cervical cancer in women), pneumonia, and tuberculosis.

Modes of transmission: **High risk** means those -

- who have had unprotected sexual contact with an infected person, or a person with risk behaviors;
- have shared needles for IV drugs for non-medical purposes;
- have been born to an infected parent or a parent with high risk behavior (prostitute, IV drug user, sex partner of infected person, sex partner of homosexual or bisexual male); or
- have received blood transfusions prior to testing of the U.S. blood supply in 1985 (including people with hemophilia).

**Universal precautions** mean following sanitation and hygiene practices with the assumption that every person contacted may be infected.

**Foster Care**  
Infected Children

Children may be infected with HIV at birth, or by exposure through contaminated blood products, or sexual contact. They may show some symptoms of illness or be asymptomatic. Children who have tested positive for HIV antibodies and are asymptomatic are still able to transmit the virus through sexual or blood contact.

Whenever possible, the health of the child's parents should be monitored if the child was born with high risk factors. The biological, foster, and adoptive parents should be informed of the testing results and of the fact that due to a child's receiving maternal antibodies at birth, the infection status of a baby will be indeterminate up to approximately 15 months after its birth. Current research indicates about 25% of the infants born to HIV positive mothers will develop AIDS.

**Foster Home Issues**

Children with HIV/AIDS may enter the foster care system and cause extreme time demands on the foster parent. The foster

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parent must be able to cope with family's, friends', relatives' or service providers' fear of transmission. Other children in the home must be capable of following universal precautions with respect to blood or body fluids. The HIV positive child is highly susceptible to common illnesses which may cause repeated hospitalizations or death of the child. **Effort must therefore be made to reduce exposure of the HIV positive child to communicable illnesses.**

The foster parent will have to cope with the child's own separation issues upon entering foster care. Ample time and transportation will be needed for frequent trips for medical care for the child.

The foster parent will need the ability to cope with the child's medical needs. A medical or nursing background will be helpful. Licensing may need to be prioritized to accommodate the needs of the child more quickly.

### **Training**

A training course on HIV/AIDS, caring for HIV/AIDS patients and issues of long-term, chronic illness should be completed prior to providing care. When the social worker becomes aware of the diagnosis of HIV/AIDS, the worker will notify the foster parents that the child has HIV/AIDS. Foster parents have the right to know the child's diagnosis prior to accepting the placement and to give informed consent for providing care.

Training is needed regarding measures to prevent, anticipate or treat deadly opportunistic infections and to cope with side effects of medications. People with HIV/AIDS need to have a high nutritional intake. Medications must be administered precisely.

General wellness precautions need to be taken, such as:

- avoid crowds and sick people, especially people with chicken pox;
- review the need for and type of immunizations with the doctor prior to immunization;
- follow good hand washing techniques;
- wear gloves to change diapers or clean up messes;
- wear gloves when handling or cleaning up bodily fluids;
- wash up spills with fresh bleach solution (one part bleach for nine parts of water made fresh daily);
- put soiled diapers in plastic bags or wrap securely in

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- newspaper and put into the trash;
- do not share razors or toothbrushes;
- wash dishes with hot soapy water and air dry, or use the dishwasher;
- avoid tattooing and other activities involving exchanges of blood or body fluids;
- receive chemical dependency treatment, when needed, and learn about sexuality choices and consequences.

**Confidentiality**  
Children

Confidentiality is an important issue regarding a person's "need to know" the child's condition and the child's right to privacy. "Need to know" includes foster parents, school, doctor, dentist and the foster care review, Citizen Review Board, or child protection team. Written information on a HIV-positive child should be marked "Restricted" and kept in a sealed envelope in the case record. When information regarding a child's HIV-positive status is shared with others, each person must be advised of the need for strict confidentiality. Specialized foster care should be considered for a HIV-positive child when placement is needed.

**Day Care and Respite Care**

Careful evaluation should be done on children or young adults who scratch, bite, soil excessively, have open wounds, or who are careless about hygiene practices (i.e., use of sanitary pads) due to concerns about cross-infection. Care should be used in day care placement of children younger than three years of age. They should not be placed into a facility with younger children.

**Testing**

Children who are victims of sexual abuse need to be tested if recommended by a physician.

**Adoption**

HIV testing should be done on children prior to adoptive placement if recommended by a physician.

Testing may be done at HIV prevention sites, family planning or private clinics. Consent must be given by the parent or guardian unless the department has permanent legal custody of the child. The department may consent only when the department has permanent legal custody and the test is ordered by a physician. Both pre- and post-test counseling are required, regardless of anticipated results. Counseling is intended to reduce or stop high risk behaviors which can lead to or spread infection. Harmful results can occur to the youth or his or her family from violation of civil rights (privacy) or inaccurate test results. Before testing is done on a child in care,

**Child and Family Services Policy Manual: Reference Information**  
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a plan should be in place as to whom will need to know the results and what will be done if the test is positive.

**Interstate  
Compacts**

The child's service needs and medical and financial resources should be adequately explored prior to placement.

**Counseling**

The following guidelines are helpful for reducing stress when working with clients with HIV/AIDS:

- educate yourself. At this time, AIDS has no known cure. People with AIDS are living longer and people with HIV are not converting to AIDS as readily;
- explore your own personal attitudes about sexual issues and drug users;
- ask coworkers for clarification, support and encouragement;
- be nonjudgmental; hysteria about HIV/AIDS can be a problem in providing services; HIV is not easily transmitted;
- assess client's needs as disease progresses;
- encourage and support your clients in maintaining family and other supportive relationships;
- balance issues of life and death when working with your client;
- assist your client and his or her family in planning for death if you are asked; and
- be clear that HIV/AIDS is a blood-born, sexually transmitted disease that is not spread by casual contact.

**Casual contact** may be defined and illustrated as living in the same house with an infected person, caring for an AIDS patient, social kissing or swimming in a pool with an infected person.

Many drugs are now available for treatment of HIV/AIDS. They do not cure or prevent transmission. They are hard to take and cause many side effects.

**Support Groups**

Most larger communities have support groups for people living with HIV/AIDS. The Department of Public Health and Human Services HIV prevention sites may be contacted regarding support groups and other information such as toll-free telephone numbers regarding HIV/AIDS, drugs and sexuality.

**References**

Mont. Code Ann. § § 50-16-1002 through 50-16-1013.

## Child and Family Services Policy Manual: Child Care

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General Rule: DPHHS provides child care funds for parents participating in the following programs:

1. Non-TANF working families earning less than 150% of the federal poverty program;
2. TANF cash assistance families;
3. Eligible families living on the reservation, if not served by their Tribal child care program;
4. Tribal TANF families, if not served by their Tribal child care program.

These child care expenses are paid from the Child Care Under the Big Sky (CCUBS) System.

Child care payments for any of the programs listed below are made only for care provided in facilities which are licensed, registered or legally unregistered prior to placement.

Licensing Requirements:

Child care providers must either be licensed or registered in order to care for CPS children. An exception may be granted by the Regional Administrator to allow a Legally Unregistered (LUP) child care provider to serve a cps child; **however, IV-E funds cannot be used to pay a LUP.**

**1st Priority**  
**TANF Child**  
**Care**

1. Child care is available for a child who is temporarily removed (for less than 90 days) from a TANF cash assistance household receiving state paid child care because the child's caretaker relative is a participant in approved Family Investment Agreement (FIA) activities, employment, Work Readiness Component (WoRC) or Tribal NEW (Native Employment Work). The child must be under 13 years of age and have been included in the TANF cash assistance unit (or be excluded because (s)he is receiving SSI or foster care benefits). **This child care is paid from CCUBS and must be requested using the child care referral form copied on page 9.**
2. Child care is available to a foster parent who is a participant in approved FIA activities, employment, Work Readiness Component WoRC or Tribal NEW. The child must be in the department's placement and care authority and be under 13 years of age. **This child care is paid from CCUBS and must be requested using the child care referral form copied on page 9.**

## Child and Family Services Policy Manual: Child Care

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### 2nd Priority Non TANF Child Care

Child Care (Non-TANF) is available to foster care or other families whose income does not exceed 150% of poverty and participate in one of these general activities:

1. Employed and meeting a minimum hourly requirement; or
2. Employed and attending school or a training program; or
3. A teen parent attending high school or GED equivalency program.

Families must be employed at paid, legal labor or self-employed and meet a minimum hourly work requirement each month:

1. Two-parent families 120 hours a month with either or both working any combination of hours; or
2. Single parent families 60 hours per month; or
3. Single parent families 40 hours per month while parent attend school or training ? full time? (based on the school guidelines).

Families who meet the minimum monthly work requirement with the lowest income and teen parents attending high school or equivalency programs will have the highest priority.

#### Eligible Child:

An eligible child is one who:

1. is under 13;
2. is a child with special needs between ages 0-18  
For a child to be considered a "special needs/exceptional child" and receive day care services, the case record must contain medical documentation of an emotional, physical or developmental disability from an appropriate medical or licensed authority;
3. is a dependent child under the supervision of the court.

#### Residency:

Generally the family and child must be living in Montana; however foster care children who are placed outside of Montana and use child care services may use Non-TANF Child Care assistance.

#### Application Process:

A foster family may apply for Non-TANF child care assistance in person or by mail through one of the child care resource and referral (CCR&R) agency offices. **If the family is eligible,**

## Child and Family Services Policy Manual: Child Care

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**state child care assistance will cover child care expenses for the foster parents' children as well as those placed in their care. RA approval is required for sliding fee co-payments. This child care is paid from CCUBS.**

Special  
Needs/Exceptional  
Children and Rates

To qualify for a special needs rate for TANF or non TANF block grant funded childcare, the social worker must include in the approved case plan, any reference to the special needs for the child needing child care. The special needs evaluation must be attached to the child care referral form (copy on page 9). If a special needs subsidy is required, the social worker will work with the R and R staff to complete the special needs subsidy rating scale to determine the amount. **Instructions are on pages 10&11. Copies of the forms are on pages 14 - 18. This child care is paid from CCUBS.**

CCUBS

The Child Care Under the Big Sky System (CCUBS) interfaces with the TEAMS and CAPS systems. The TANF and nonTANF block grant programs administered by the State are managed by CCUBS. Each case is registered, all provider services tracked, and all payments are authorized on CCUBS. Child and Family Services Division (CFS) Social Workers request child care on the Child Care Referral Form (copy on page 9) and send it to the R&R who will enter the information into the CCUBS system and process payments for the TANF and non-TANF child care programs.

**Procedure:**

**Action:**

**CPS  
Worker:**

**FOR TANF AND NON-TANF BLOCK GRANT CHILD CARE  
PAID FROM CCUBS SYSTEM**

1. The Child Care Referral form (**copy on page 9**) is save as a Document Template (.dot). After saving as a template, select FILE, NEW to retrieve the template and complete.
2. Complete the CPS child care referral form in Microsoft Word, save as a new file and attach it to an e-mail addressed to the Child Care R&R. If the child has special needs, print a hard copy of the completed referral form and attach the child care plan (**copy is found on pages 12 & 13**) to the Referral form and mail to the R&R. If a special needs subsidy is required, meet with the Child Care Resource and Referral worker to complete the special needs subsidy rating scale to

## Child and Family Services Policy Manual: Child Care

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determine the amount. **Copy of the rating scale is on pages 14 - 18.**

3. To determine whether the child care should be TANF or non-TANF:
  - a. If the child is currently receiving TANF child care or is removed from a home receiving TANF benefits and the TANF benefits will continue for up to 90 days, request TANF CPS child care for up to 90 days.
  - b. If the foster family is receiving TANF child care for their child or TANF benefits, request TANF CPS child care.
  - c. If neither the foster family nor the family the child is removed from receive TANF benefits, request non-TANF CPS child care.

### **CAPS Paid Child Care**

If the foster family does not qualify for Non TANF child care or the child is not temporarily absent from a TANF household, the child may be eligible for IV-E funded child care or Emergency Assistance paid child care which will be paid from CAPS. If the child is ineligible for either IV-E or EA, then the child care will be paid with general fund

### **IV-E Child Care:**

A child who is IV -E eligible and in licensed foster care may have child care paid on his/her behalf for the period of time supervision is required for the child because:

1. the foster care parent is employed out of the home; or
2. the child is not in school and the foster parent's work responsibilities prevent their supervision; or
3. the foster parent is required to participate, without the child, in attendance at administrative or judicial reviews, case conferences, or foster parent training.

### **Emergency Assistance Child Care:**

Children who meet the eligibility criteria for emergency assistance may have their child care paid with emergency assistance funds.

1. The child care must be included on the wish list and approved within 30 days from the applicant's signature date; and
2. The child must be in a licensed or legally registered day care (an exception can be made by the RA to allow a legally unregistered day care provider to be paid with

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emergency assistance funds).

<b>General Fund</b>	A family, whose child has not been removed, but is eligible to receive CPS child care paid for by DPHHS, may be either a single or two parent family and must meet the abuse/neglect criteria as stated in the “Abuse/Neglect and CPS Child Care” paragraph below.
Abuse/Neglect	To qualify for CPS child care, the child(ren) must need child care because of the danger of neglect or abuse. The physical or emotional risk to the child(ren) needs to be documented in the case record. In addition, the family must be unable to pay for the needed child care. This financial situation must be documented in the case record.
Foster Children	<p>If the foster child is ineligible for IV-E or Emergency Assistance funded child care, the department may pay for CPS child care for the time foster parents spend at work, in training, counseling, or similar activities which are directly connected to their ability as foster parents to care for the foster children in their home.</p> <p>Every effort should be made to place children in foster homes where at least one foster parent is available to provide full-time care but this is not always possible.</p>
<b>CAPS Service Codes</b>	<p><b>SDCIH</b> <b>Hourly Day care for Infants:</b> (defined as birth through 23 months) in foster care placements or CPS. Service is provided on an hourly basis and provided by a registered/licensed provider or legally unregistered provider. The hourly unit type will be used for children in day care less than 6 hours a day.</p> <p><b>SDCID</b> <b>Daily Day care for Infants</b> (defined as birth through 23 months) in foster care placements. Service is provided on a per day basis and provided by a registered/licensed provider or legally unregistered provider. The daily unit type is for children in day care more than 6 hours a day.</p> <p><b>SDCRH</b> <b>Hourly Regular Day care</b> ( defined as ages 2- 12) in foster care placement. Service is provided on an hourly basis and provided by a registered/licensed provider or legally unregistered provider. The hourly unit type will be used for children in day care less than 6 hours a day.</p>

**SDCRD**

**Daily Regular Day care** (defined as ages 2 - 12 years) in foster care placements. Service is provided on a per day basis and provided by a registered/licensed provider or legally unregistered provider. The daily unit type is for children in day care more than 6 hours a day.

**SDCSH**

**Hourly Special Needs Day care** (defined as under age 18) provided by a registered/licensed provider or legally unregistered provider. The hourly unit type will be used for children in day care less than 6 hours a day. The children eligible for special needs day care are those who have a medical record with the appropriate written verification of an emotional, physical or mental disability and, who because of their disability or cognitive delay, are not able to properly manage or care for themselves or their property without assistance. Children who qualify for the special needs rate must have a plan approved either by the social worker supervisor or the R&R Agency for the other day care assistance programs.

**SDCSD**

**Daily Special Needs Day care** (defined as under age 18) provided by a registered/licensed provider or legally unregistered provider. The hourly unit type will be used for children in day care more than 6 hours a day. The children eligible for special needs day care are those who have a medical record with the appropriate written verification of an emotional, physical or mental disability and, who because of their disability or cognitive delay, are not able to properly manage or care for themselves or their property without assistance. Children who qualify for the special needs rate must have a plan approved either by the social worker supervisor or the R&R Agency for the other day care assistance programs.

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**CAPS****Procedure:**

1. Contact the R & R to insure that childcare is not also being paid from the CCUBS system.
2. Enter on the client's SERL/SERP (Services List/Services Detail-Payable) screens;
3. If only part-time child care is needed, use the hourly service code and add a comment to indicate the number of hours per day and number of days per week required (this will assist central office staff when the invoices are submitted);
4. If a situation requires a mixture (for example a foster parent who works part time and attends college part time) such as two days a week with 5 hours of day care and three days with 8 hours. Enter SDCRH with a comment "two days a week for 5 hours" and SDCRD with a comment "three days per week". When the invoice is submitted, central office staff can readily determine if we are billed excessive hours or full days. In a case of possible excessive hours in day care the case worker will be notified and has to opportunity to adjust the number of hours on the PAYA (Payment Approval) screen.

**References**

Mont. Code Ann. § § 52-2-701 through 52-2-702  
ARM 37.95.101 and 37.95.102

# Child Care Referral – Electronic Form

## Child & Family Services Division

1. Tab to each grey box to type in the blanks. Click on each drop-down box to view choices.
2. Complete one referral for each child. *(Save the file, edit, and then use 'File: Save-As' for siblings.)*
3. E-mail the completed form as an attachment to your Child Care Resource and Referral agency.
4. Save this document file for future child care updates, and print this document, as needed.  
*CCR&R: If child is currently receiving a child care scholarship, coordinate with CFSD Social Worker to determine if care can continue under the current child care program.*

**Child's Name:** \_\_\_\_\_ Birth Date (m/d/yyyy): \_\_\_\_\_ SSN: \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Sex: **Female**  
(type in box) (click to select one)

Today's Date (m/d/yyyy): \_\_\_\_\_ (type in box) If known, CCUBS Case#: **CS** \_\_\_\_\_

Child's Address: \_\_\_\_\_ City: \_\_\_\_\_ St: **MT** Zip: \_\_\_\_\_ - \_\_\_\_\_  
(type in box)

Is this child Hispanic or Latino? **No** Child's Race: **White & n/a & n/a & n/a & n/a**  
(click to select one) (click to select)

Child's Tribal Affiliation: **n/a** Tribal Enrollment # \_\_\_\_\_  
(click to select one)

Special needs (IEP/IFSP/Child Care Plan)? **No**

Does this child receive a TANF Cash grant? **No**

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### Child Care Arrangements:

Funding/Program: **TANF - In TANF HH, just need more care**

Currently in child care? **Yes** If yes, who is the child's provider? \_\_\_\_\_  
If not, is there a preference of child care provider? *(list in order)*: \_\_\_\_\_

Siblings? **No** Do they need the same provider? **Yes** If siblings will be placed together,  
include names and ages to assist in locating a provider: \_\_\_\_\_

Child Care Begin-date (m/d/yyyy): \_\_\_\_\_ End-date: \_\_\_\_\_ Total Hours per Week: \_\_\_\_\_

Daily Hours: M: \_\_\_\_\_ Tu: \_\_\_\_\_ W: \_\_\_\_\_ Th: \_\_\_\_\_ Fr: \_\_\_\_\_ Sa: \_\_\_\_\_ Su: \_\_\_\_\_

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### Social Worker's Name: \_\_\_\_\_

SW Phone: (406) \_\_\_\_\_, ext. \_\_\_\_\_ e-mail: \_\_\_\_\_@state.mt.us

SW Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_ - \_\_\_\_\_  
*Child care notices are mailed to the social worker.*

Additional Notes: \_\_\_\_\_

**Child and Family Services Policy Manual: Child Care**

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**Special Needs Instruction:**

In order to qualify for the special needs subsidy, a child must require special modifications/accommodations in the child care setting but may or may not have an identified disability.

1. Social Worker talks to CCR & R **regarding a special needs subsidy**.
2. CCR & R staff and social worker will **determine if it is appropriate to apply for a special needs subsidy**. This determination would be made based on:
  - 1) the diagnosis of a disability;
  - 2) description of the child's needs, or
  - 3) observation based on past difficulty maintaining a child care placement.
3. The CCR & R staff person and Social Worker complete the Special Needs Subsidy Rating Scale to identify the areas in which accommodations are required.
4. The CCR & R staff completes the Scoring Worksheet to determine the amount of additional special needs subsidy to be paid to the child care provider. Note that the Scoring Worksheet provides only provisional approval for the special needs subsidy rate. The amount calculated is entered into the system for payment but is only approved for 60 days while the Child Care Plan is completed.

**Within 45 days of application:**

1. The Child Care Plan is completed. This plan provides documentation of the child's need, identifies required accommodations (and estimated costs), identifies additional resources which may be available, and suggests at least two individuals who could provide additional information if needed.
2. If a child is receiving services from a developmental Disabilities Service Provider/Child and Family Service Provider, a staff person from that division should be included in the development

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of the Plan and the Child Care Plan should be considered an addition to the child's Individual Family Service Plan (IFSP) or Individualized Educational Program (IEP).

- a. If the child is receiving special education services, a school staff person should be included in the development of the Child Care Plan and it should be considered an addition to the child's IEP.
- b. If the child is not currently receiving early intervention or special education services, two things should occur. First, a referral should be made to the appropriate service provider to ensure that the Social Worker is aware of available services and that the child has access to these services. Second get assistance with the Child Care Plan from a qualified professional such as a physician, psychologist, social worker, or other professional who knows the child's needs and can provide documentation that special accommodations are required.
- c. The Child Care Plan is then submitted to the CCR & R intake staff person who will compare the Child Care Plan to the Rating Scale to be sure that the Plan supports the need for additional funds.
- d. If the Child Care Plan and the Rating Scale provide similar information, the special needs subsidy rate initially identified is approved.
- e. If the Child Care Plan does not identify accommodations that require additional costs and/or there is no documentation of the child's needs, the provisional special needs subsidy amount is revoked.

If the documentation on the Child Care Plan indicates a need for accommodations that are greater than those indicated on the Rating Scale, the CCR & R staff person may make modifications

**Child and Family Services Policy Manual: Child Care**

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on the Rating Scale to reflect these changes and increase the special needs subsidy amount.

**Within 60 days of application:**

The CCR & R staff person will enter a final amount into the system for the special needs subsidy which will support the child care placement.

Individual Child Care Plan	Child's Name:	Date Written:
	Child's Date of Birth:	Child Care Provider:

- I. Identify this child's primary special need or disability. Include specific diagnosis if appropriate.
  
- II. Describe individual accommodations or special care requirements which will be needed in order for this child to be included in typical child care routines and activities and the ongoing cost for each. Be specific about the type of assistance that will be needed. These special modifications should be related to outcomes on the child's Individual Family Service Plan or Individualized Education Program. Examples include: special instructions for toileting, the use of sign language or other communication systems, an aide to help with mealtime, or extra supervision during outdoor play time. Identify an approximate cost for each accommodation.

Medical Complexity of Care:

\$ \_\_\_\_\_

Self-Sufficiency with Daily Tasks:

\$ \_\_\_\_\_

Mobility:

\$ \_\_\_\_\_

Communication Skills:

\$ \_\_\_\_\_

Need for Supervision, Monitoring, and Intervention:

\$ \_\_\_\_\_

Cognitive or Comprehension Abilities:

\$ \_\_\_\_\_

Other Special Considerations:

\$ \_\_\_\_\_

- III. Identify any one-time expenses which will be required in order for the child to be successfully enrolled in a child care program. These costs might include a physical modification, positioning device, special training, or other cost that is unlikely to be required on an ongoing basis.

Description	Purpose	Cost Estimate (attach written estimate or price/source)
1.		
2.		
3.		
Total One-Time Expenses		

- IV. List any resources which are currently available to support this child care placement. Examples include the use of volunteers, a service provider who can provide specialized services or consultation in the child care setting, funding for equipment, or financial support for an educational aide.

Resource	Source of Funding/Support

- V. Identify at least two individuals who can provide documentation of the child's special needs or disabilities. At least one individual must be a service provider who can provide written documentation of the child's disability or special need.

Name		
Title		
Address		
City		
Zip Code		
Phone		
Fax		

- VI. Attach a copy of any additional documentation which demonstrates this child's disability or special need.

<b>SPECIAL NEEDS SUBSIDY  RATING SCALE</b>	Child's Name:		Date Completed:
	Child's DOB:	Provider's Name:	
	Person(s) Interviewed:		Relationship To Child:
	Interview Completed by:		Title:  Agency:

Each category contains statements describing how much additional care this child needs, ranked from highest (10) to lowest. Note that a score of “0” indicates that the no special care is required in the category. Please insert notes to describe this child’s needs where appropriate.

**1. Medical Complexity of Care:**

Child required on-site medical attention be a licensed medical or mental health professional and the child care provider must have specialized training related to the child’s medical or mental health needs.	10
	9
The child care provider must have specialized training related to the child’s medical or mental health needs and consults frequently with a medical or mental health professional.	8
	7
	6
	5
Child requires medical attention by a caregiver who has received some specialized training related to the child’s medical or mental health needs.	4
	3
	2
Child requires medical attention, mental health intervention, or monitoring by a caregiver who has received special instructions from the parent or a service provider.	1
Child’s needs can be met by staff with general knowledge.	0

Notes:

**2. Self-Sufficiency with Daily Tasks:**

Child requires total assistance with eating and/or toileting, such as requiring tube feedings or with special toileting needs such as ostomy care.	10
	9
	8
	7
	6
Child requires considerable assistance in eating and/or toileting.	5
	4
	3
	2
Child requires only minor assistance with eating and or toileting.	1
Child can take care of daily tasks with very little assistance.	0

Notes:

**3. Mobility:**

Child is unable to help with positioning or movement, needs frequent re-positioning, and the child is difficult to move.	10
	9
	8
	7
	6

Child can help with transfers, pivoting, position.	5
	4
	3
	2
Child is able to move independently with minor support.	1
Child's mobility is similar to other children of the same age.	0

Notes:

#### 4. Communication Skills:

Child is unable to communicate needs and wants, and is unable to use alternative communication methods.	10
	9
Child relies entirely upon alternative methods such as sign language, picture boards, gestures, facial expressions, etc., to communicate needs and/or to understand requests made.	8
	7
	6
	5
Child has limited verbal skills but is not non-verbal. One-on-one communication is required to gain child's attention, simplify instructions, or to understand the child's speech or gestures. Child may use alternative methods (see above) to supplement his or her verbal skills.	4
	3
	2
	1
Child's communication skills are roughly similar to other children of the same age.	0

Notes:

#### 5. Need for Supervision, Monitoring, and Intervention:

The child must remain within the child care provider's eyesight at all times and needs frequent intervention to prevent harm to self or other children.	10
	9
	8
The child must remain within the child care provider's eyesight at all times but may not need frequent intervention.	7
	6
	5
Child has behaviors which frequently require adult intervention but are not a threat to the child's or other children's safety.	4
	3
Child need assistance to initiate, respond to, or engage in peer interactions that are safe, positive and appropriate.	2
	1
Child requires the same kind of supervision, monitoring needed by other children of the same age.	0

Notes:

#### 6. Cognitive or Comprehension Abilities:

Child is unable to recognize danger, is unable to follow instructions without one-on-one assistance and has difficulty processing basic sensory information about the environment (does not include vision or hearing as the primary difficulty).	10
	9
	8
	7
	6
Child needs to be given one instruction at a time and may need reminders of what was asked of him in order to complete instruction.	5
	4
	3
	2
Child is able to understand and problem-solve with some special attention.	1
Child's level of understanding is similar to that of other children at the same age.	0

Notes:

7. Other Special Consideration not Included in 1 through 6 above.

If there are other considerations relating to the amount of supervision or care required by the child that are not included in the above categories, use the chart below to describe the needs. Assign a rating based on how much more supervision or care this child will need above what would be required by other children of the same age. (Examples: frequent seizures, danger to self or other children, fragility, etc.)

	10
	9
	8
	7
	6
	5
	4
	3
	2
	1
	0

Notes:

## Special Need Subsidy Rating Scale SCORING WORKSHEET

### Instructions:

1. Enter the points from each category of the *Special Needs Subsidy Rating Scale* in the Points column of the Scoring Chart.
2. Multiply this by the Weighing value to arrive at the Score for each category.
3. Add the scores together and enter the Total Score. If Less than 110, enter 100. Do not enter more than 300. If it is higher than 300, enter 300.
4. Subtract 100 from the total score and enter as a percentage in step 2 of the dollar calculation chart. This percentage could range from 10% to a maximum of 200%
5. Insert this percentage in step 2 of the Dollar Calculation Chart. Select either the hourly or monthly rate for care depending on the child care need.
6. Calculate the additional amount to be paid by multiplying either the hourly or monthly amount in the Dollar Calculation Chart (step 1) by the percentage (step 2).
7. Add this additional amount to the basic rate identified in step 1 to calculate the total special needs subsidy rate. This result represents the amount the child care provider will be paid during the provisional approval period of 45 days. After that date a final amount determination will be made based on the child's completed Child Care Plan.

### 1. Scoring Chart

Categories	Points	Weighing	Score
1. Medical Complexity of Care		X 7	
2. Self-Sufficiency with Daily Tasks		X 5	
3. Mobility		X 5	
4. Communication Skills		X 6	
5. Supervision, Monitoring, Intervention		X 11	
6. Cognitive or Comprehension Abilities		X 7	
7. Other Considerations		X 5	
TOTAL SCORE      If less than 110, enter 100.      If more than 300, enter 300			
		Subtract 100	- 100
RESULT      Enter this as a percentage in step 2 below.			

### 2. Dollar Calculation Chart

		HOURLY	MONTHLY
Step 1:	Use either the hourly column or the monthly column depending on whether the child care will be provided on an hourly or a full-time monthly basis. Insert the hourly or monthly rate for your region.		
Step 2:	Multiply the rate by the percentage you arrived at in the above Scoring Chart.	X %	X %
Step 3:	This is the additional amount you would authorize for special care		
Step 4:	Add the additional amount authorized to the hourly or monthly rate identified in Step 1 to calculate the total child care special rate.		

## Child and Family Services Policy Manual: Substitute Care for Children PIPPS (Preventative, In-Home, Post-Placement Services)

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<b>Purpose</b>	<p>The PIPPS program was created to provide Preventive, In-Home or Post-Placement Services (PIPPS) for eligible children. The PIPPS program is designed to provide the flexibility needed to fund special services not available under other Department programs.</p> <p>PIPPS services are funded with state general funds (GFO), TANF or IV-E. <b>Not all services are funded by all of these funding sources.</b> The availability of funds is determined by the status of the foster care budget and the Regional Administrator's allocation of funds to the program.</p>
<b>Eligibility</b>	<p>Funds set aside from the foster care budget for PIPPS should be used for services designed to:</p> <ul style="list-style-type: none"> <li>• purchase services for parents, guardians or children to prevent or eliminate the need for removal of children from their homes or to allow children to return home from out-of-home care;</li> <li>• prevent the placement of children in a higher or more restrictive level of care; or</li> <li>• facilitate the placement of youth in a lower or less restrictive level of out-of-home care.</li> </ul>
<b>Services</b>	<p>Services which may be provided by this program include:</p> <ul style="list-style-type: none"> <li>• psychological or other evaluations of families;</li> <li>• therapy;</li> <li>• in-home services;</li> <li>• co-payments for cooperative funding with other agencies;</li> <li>• supplemental services provided by licensed youth care facilities;</li> <li>• chemical dependency evaluations; and miscellaneous services.</li> </ul>
<b>Psychological and other evaluations</b>	<p>The PIPPS program may be used for psychological or other evaluations necessary to further program goals. PIPPS funds</p>

**Child and Family Services Policy Manual: Substitute Care for Children  
PIPPS (Preventative, In-Home, Post-Placement Services)**

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may be used if the family:

- is not eligible for Medicaid; or
- has been denied by First Health; or
- has no private insurance or other resources from which to pay the cost of the evaluation; or
- no other public program is available to cover the costs of services; and evaluation is necessary to adequately assess the family's needs and the permanent plan for the child(ren).

**Therapy**

Necessary therapy may be paid if the therapy is:

- **not** covered by Medicaid; or
- **not** being provided by a Medicaid provider; or
- the number of sessions warranted exceeds the number approved by First Health; or
- **not** included in the youth care facility (YCF) rate; and
- **not** covered by any other program or service.

PIPPS may be used to pay for specific therapy necessary to prevent placement. PIPPS may also be used for specific therapy needed to treat a child's unique problems if the therapy is not provided by the YCF and is necessary to:

- maintain the child's placement in the least restrictive level of foster care; or
- to return the child to the family home; or
- to achieve other permanent placement of the child.

**Supplemental services provided by Youth Care Facilities (YCF)**

Through PIPPS plans, the Department may enter into written agreements with YCF to provide additional services above those services required for the rate the YCF is paid. For example, if a group home was required to hire an additional

## Child and Family Services Policy Manual: Substitute Care for Children PIPPS (Preventative, In-Home, Post-Placement Services)

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staff member to provide security for a juvenile sex offender, the Department could enter into an agreement with the facility to pay the cost of the additional staff person.

Payment can only be made for services **requested** by the Department and necessary to accomplish the PIPPS plan goals. A payment in excess of the rate established by the Department for the YCF may not be made unless services in addition to those covered in the daily rate are provided.

**NOTE:** A written agreement outlining the specific additional services to be provided by the YCF should be executed by the parties prior to the provision of services.

The YCF must demonstrate that the staff has the necessary skills and training to provide the services required. It is not appropriate to pay a YCF more than the standard rate simply because the YCF accepts a difficult child.

### **In-Home Services**

For the purpose of this policy, in-home services means any services provided to a family that allows a child to remain in his or her own home rather than being placed in substitute care. These services do not include those provided by family-based services providers under contract with the Department. Family based service provider contracts are funded by sources other than PIPPS.

Services such as alcohol or drug evaluations, psychological evaluations, nutrition counseling, private homemaker services or other necessary services may be purchased for the family **if there are no other resources available** and the services will further the goals of the PIPPS program.

### **Cooperative Services**

If other entities, such as the school district or the Developmental Disabilities Division (DDD), are cooperating to provide services, the PIPPS program may be used to contribute to the total cost of providing the necessary services.

The Department may make a co-payment to another agency which is planning the services for the child if the services being provided meet the program goals outlined in the Eligibility section above. For example, the PIPPS program could be used to purchase transportation for a child to attend special education classes out of the district when all other educational costs are provided by the local school district.

**Child and Family Services Policy Manual: Substitute Care for Children  
PIPPS (Preventative, In-Home, Post-Placement Services)**

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**Miscellaneous Services** Services which are not specifically detailed in policy, but which meet the goals of the PIPPS program, may be funded under this program if approved by the social work supervisor and the Regional Administrator.

**CAPS** The provider must be a provider on CAPS. FSPL must be completed and must contain the service that is needed for the child.

**The financial funding/eligibility of the child may not be the same as the funding allowed for the service. The worker must verify the correct funding source with the financial specialist prior to requesting approval for the service through CAPS.**

Once the worker has verified the correct eligibility code, the worker should go to SERL and then SERP. SERP must be completed; completion of SERP will take the worker to SSJD. The worker should complete SSJD using the F12 lookup as necessary.

After approval is granted by the supervisor and regional administrator, a voucher will be sent to the provider.

Once the provider has completed the voucher and sent it the Operations and Fiscal Services Bureau (OFSB) for payment, the payment request will be entered on CAPS by the OFSB and will appear on PAYA for the social worker's approval. Once the service is approved on PAYA, a payment will be made to the provider.

**Exceptions** If the Department or any other state agency has an established rate for a service to be purchased under a PIPPS plan, the PIPPS payment should not exceed the established rate. Medicaid payment is "payment in full" for services rendered. PIPPS can only be used for services not covered by the Medicaid payments.

## Child and Family Services Policy Manual: Reference Information Required Training

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- Required Training** All CFSD supervisors, CPS and FRS social workers and case aides are required to complete the entire two weeks of MCAN within three months of being hired.
- All CFSD supervisors, CPS and FRS social workers and other specified employees are required to complete CAPS within six months of their being hired.
- All CFSD CPS Supervisors will complete the New Workers Orientation Packet with all new social workers and case aides, as appropriate, within 45 days of the social workers and case aides being hired.
- All CFSD staff members are required to participate in all annual Policy Training.
- All CPS social workers are required to complete Forensic Interviewing Training within 18 months after being hired unless a Bureau Chief or Regional Administrator excuses them from this training.
- All Regional CPS and FRS social workers and supervisors are required to complete Keeping Children Safe (KCS) within 24 months after being hired.
- All CPS and FRS social workers and supervisors are required to complete annual blood-borne pathogen training.
- All new CFSD staff members are required to complete HIPAA training within 30 days of being hired.
- All Regional CPS and FRS social workers and supervisors are required to complete the American Humane Family Group Decision-Making training within 24 months of being hired.
- CPS and FRS social work staff are encouraged to attend MCAN every 5 years.

**Child and Family Services Policy Manual: Reference Section**  
**Attending Graduate School With or Without a Title IV-E Stipend**

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Without a  
Title IV-E Stipend

Any employee wishing to attend graduate school that will require him/her to take time away from their job or work a modified work schedule:

- 1) Must have written (e-mail or hardcopy) confirmation from their Supervisor and RA or Bureau Chief approving the modified work schedule. The confirmation should include when the modified schedule will begin and when it is expected to end. Once the schedule has been agreed upon, any changes, including changes made to accommodate changing school schedules will need to be approved by the employee's Supervisor and RA or Bureau Chief. Employees shall request work schedule changes in writing (hardcopy or e-mail) and receive written (e-mail or hardcopy) confirmation from their Supervisor and RA or Bureau Chief approving or disapproving the modified work schedule.
- 2) CFSD employees wishing to use vacation or comp time as opposed to working a modified schedule may do so if the use of the time is approved by the Supervisor and RA or Bureau Chief. If vacation time or comp time is approved to attend school, an employee may not accrue comp time in order to complete their job duties
- 3) CFSD will attempt to accommodate the employee's leave or a modified work schedule for up to 3 years while attending graduate school. Should circumstances change, CFSD has the right to withdraw consent for leave or modified work schedule at anytime prior to the start of classes for a new semester.

Receiving a  
Title IV-E Stipend  
from the University  
of MT

Any employee applying for a Title IV -E stipend to attend the University of Montana's (UM) MSW program:

- 1) Must have been employed with CFSD for the last 5 consecutive years prior to the beginning of classes.
- 2) Must complete all application materials and be accepted into UM's MSW program.
- 3) Must have written (e-mail or hardcopy) confirmation from their Supervisor and RA or Bureau Chief approving their request to be accepted in the stipend program. A copy of this confirmation must be sent to CFSD's Management Analyst.
- 4) Must negotiate a modified work schedule with their

**Child and Family Services Policy Manual: Reference Section**  
**Attending Graduate School With or Without a Title IV-E Stipend**

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Supervisor and RA or Bureau Chief to accommodate their school schedule. The RA or Bureau Chief can, at their discretion, require an employee to reduce their weekly hours worked (hours worked cannot be reduced to less than 20 hours per week). **The decision to allow an employee to work a modified work schedule or require a reduction in their weekly hours worked rests solely with the RA or Bureau Chief and will be made on a case-by-case basis.**

- 4) CFSD employees wishing to use vacation or comp time as opposed to working a modified schedule may do so if the use of the time is approved by the Supervisor and RA or Bureau Chief. If vacation time or comp time is approved to attend school, an employee may not accrue comp time in order to complete their job duties
- 5) Must have written confirmation (e-mail or hardcopy) from their Supervisor and RA or Bureau Chief approving the modified work schedule. The confirmation should include when the modified schedule will begin and when it is expected to end. Once the schedule has been agreed upon any changes, including changes made to accommodate changing school schedules, will need to be approved by the employee's Supervisor and RA or Bureau Chief. The employee shall request work schedule changes in writing (hardcopy or e-mail) and receive written (e-mail or hardcopy) confirmation from their Supervisor and RA or Bureau Chief approving or disapproving the modified work schedule.
- 6) Must agree to accept all terms, conditions and requirements of the Title IV-E Program (see stipend agreement for specifics). Stipend recipients must sign all Title IV-E Stipend Program Agreements before he/she will receive any stipend payments. A copy of the signed agreement must be delivered to CFSD's Management Analyst. If changes occur within the program while the employee is still in school he/she will be required to sign updated or revised agreements providing the changes do not impact the employment obligation required under the original agreement.
- 6) Must graduate within 3 years from beginning the program.

**Child and Family Services Policy Manual: Reference Section**  
**Attending Graduate School With or Without a Title IV-E Stipend**

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Salish Kootenai College Title IV-E Stipend Program	CFSD has a contract with Salish Kootenai College (SKC) enabling SKC to draw down federal IV-E dollars to support their stipend program. SKC has a sub-contract with Walla Walla College (WWC) to provide stipends to individuals wishing to attend WWC's MSW program. <b><u>CFSD employees are prohibited from applying for or receiving a Title IV-E stipend through SKC or WWC.</u></b> The Administration for Children & Families (Federal Agency which oversees Title IV-E programs) has mandated that CFSD employees be excluded from participating in SKC's IV-E stipend program. In order to comply with this federal mandate, language has been added to the SKC contract prohibiting SKC or it's subcontractors from: recruiting CFSD employees to take part in the IV -E stipend program, accepting applications from CFSD employees to be accepted into their IV -E stipend program and providing IV -E stipends to any CFSD employee.
Repayment of Title IV-E Stipend	An employee receiving a Title IV-E stipend will be obligated to repay the stipend immediately and in full if any conditions of the agreement they sign are breached. An employee whose employment is voluntarily or involuntarily terminated prior to receiving their degree or completing their employment obligation to Child & Family Services Division will be required to repay the stipend immediately and in full upon termination.
Priority for Supervisory Positions	Should an office, Region or Bureau receive multiple requests from employees to enter into the Title IV-E stipend program, priority will be given to individuals holding a supervisory position.
Ability to Provide Employees With Modified Work Schedules	CFSD will attempt to accommodate the employee's leave or modified work schedule for up to 3 years while attending graduate school. Should circumstances change, CFSD has the right to withdraw consent for leave or a modified work schedule at anytime prior to the start of classes for a new semester. Each office, Region or Bureau can only provide a limited number of employees the opportunity to work a modified work schedule without adversely impacting the Division's operations. The number of employees who may be granted a modified work schedule or leave, in any time frame, will be assessed and determined on a case-by-case basis by the employee's RA or Bureau Chief.

**Child and Family Services Policy Manual: Reference Section**  
**Attending Graduate School With or Without a Title IV-E Stipend**

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Satisfactorily  
Performing Regular  
Duties

The Supervisor and RA or Bureau Chief may withdraw approval of the modified work schedule at the conclusion of the semester if an employee does not satisfactorily perform his/her work duties during the time the modified schedule has been approved.

## Child and Family Services Policy Manual: Investigation Legal Base

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**Legal Background** The child's **safety** is the paramount concern of Child Protective Services. The public policy of the State of Montana is to ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family. It is generally recognized that the sanctity of the family will not be violated unless there is some compelling state interest that justifies the state's intervention. That compelling state interest is the safety and health of the child.

The sanctity of the family and the right of an individual to raise his or her children according to his or her personal beliefs has been recognized by the United States Supreme Court and the Montana Supreme Court as a fundamental right which is constitutionally protected. Meyer v. Nebraska, 262 U.S. 390 (1923); In the Matter of J.L.B. 182 Mont. 100, 542 p.2d 1127 (1979). However, the public policy of Montana recognizes that a child is entitled to assert the child's constitutional rights so raising a child according to the parent's personal beliefs cannot conflict with the constitutional rights of that child. [Mont. Code Ann. § 41-3-101(1)(f)]

Montana recognizes the primacy of the family in the child's life by requiring that the Department place with family members whenever possible. When an out-of-home placement becomes necessary, the social worker is required to place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles prior to placing the child in an alternative protective or residential facility when it is in the child's best interests and the family is approved by the Department.

Given the recognized importance of the family, intrusion into the family unit by the state is justified only when the health and welfare of a child may be adversely affected or threatened by the conduct of those responsible for the child's care. Even then, the intrusion should not go beyond the level necessary to protect the child. The Adoption and Safe Families Act of 1997 states, "in determining reasonable efforts to be made with respect to a child, . . . the child's health and safety shall be the paramount concern." [Section 471(a)(15) of the Social Security Act]

**Authority** The Department of Public Health and Human Services, Child

## Child and Family Services Policy Manual: Investigation Legal Base

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and Family Services Division, is designated by statute as the agency responsible for the protection of children who are abandoned, neglected or abused, and is specifically charged with the duty to respond to reports of child abuse or neglect and to provide protective services when necessary, including the authority to take temporary or permanent custody of a child when ordered to do so by the court.

The Department's authority to intervene in people's lives is wholly statutory. Thus, the Department must strictly adhere to the specific requirements of the statutes in providing protective services to children in need of such care.

The Department has statutory authority to provide three categories of protective services: Voluntary protective services, emergency protective services, and court-order protective services.

Voluntary protective services must be provided pursuant to a written voluntary protective services agreement (See CFS-202 Attached). If the parent(s) and social worker negotiate a voluntary protective services agreement to protect the safety of the child, the social worker must inform the parent(s) of the right to have another person of the parent's choice present when the terms of the voluntary protective services agreement are discussed with the parent(s).

Emergency protective services are those services provided to a child when the social worker determines, based on a thorough investigation, that the child cannot remain safely in the home and the social worker places the child in an out-of-home placement.

Unless services are provided with the agreement of the parent pursuant to a written voluntary protective services agreement, the court must authorize or approve the actions taken by DPHHS to protect the child. It is through judicial proceedings that the interests of the state, the parents and the child are presented to the court for its determination as to the proper actions to be taken by the parties to assure continued protection of the child.

Therefore, if a social worker provides emergency protective

## Child and Family Services Policy Manual: Investigation Legal Base

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services, the social worker will generally submit an affidavit to the county attorney to support the filing of a child abuse/neglect petition. The services provided to a family after the court has issued an order based on a child abuse/neglect petition are court-ordered protective services.

The statutes contained in Title 41, Chapter 3, Montana Code Annotated set forth the specific definitions of what constitutes harm to the child's welfare that justifies state intervention into the family, and further provides the legal procedures which must be followed by the Department to fulfill its responsibilities to protect the welfare of the child and to obtain the court's sanction of its activities. (See Mont. Code Ann. § 41-3-101, et seq.)

### References

U.S. Constitution, 9<sup>th</sup> and 14th Amendments Montana Constitution

Mont. Code Ann. § § 41-3-101, et seq.

Mont. Code Ann. § § 52-1-101, 102, 111, 112, and 113.

Adoption and Safe Families Act of 1997, 42 U.S.C. 671(P. L 105-89)

## Voluntary Protective Services Agreement IMPORTANT INFORMATION

This voluntary protective services agreement is a specific plan to help you make changes that will ensure your child(ren)'s safety and reduce risk of future harm. **You have the right to have another person of your choice present during the discussion of and the signing of this agreement.**

Your decision to sign this agreement is voluntary. The custody of children does not change under this agreement. Signing this agreement indicates your desire to assure that your child's safety is not threatened in the future. The voluntary protective services agreement will remain in effect until the date indicated below unless:

1. Any participant in the agreement does not or cannot successfully follow through with the activities detailed in the agreement.
2. Another report of child abuse or neglect is received by the agency.

If either or both of the above occur, the social worker will conduct another safety assessment of the children. The safety assessment will determine what if any further action will be taken.

**Parent(s) /Guardian(s) Caretakers Initials:**

\_\_\_\_\_ I (We) have read and understand the above information about voluntary protective service agreements.

\_\_\_\_\_ The above information has been read to me (us) and I (we) understand it.

**I. Identifying information:**

Participant caretaker name(s):	Relationship to child(ren)

**Names of children included in this protective service agreement:**


Agreement is in effect from \_\_\_\_\_ to \_\_\_\_\_

Social worker name \_\_\_\_\_ Phone number \_\_\_\_\_

Social worker's supervisor name \_\_\_\_\_ Phone number \_\_\_\_\_

For after hours emergency call 1-866-820-5437

\*\*If you cannot follow this agreement, contact your social worker or the above emergency phone number.

## II. Voluntary protective services activities:

On \_\_\_\_\_ a social worker made a determination that the above named children were harmed or at substantial risk of harm based on an investigation of a report of child abuse or neglect. The activities of this plan will address the safety factors identified by the social worker, increase protective capacities and or reduce child vulnerability to reduce the likelihood that the children will be harmed or at substantial risk of harm in the future.

### Safety factor(s)

\_\_\_\_\_

Conditions that make this a threat and how condition can be changed:

Activity(ies) to be conducted, person responsible and completion date for the activity(ies):

Describe how activities will be monitored, how often and by whom:

### Safety factor(s)

\_\_\_\_\_

Conditions that make this a threat and how condition can be changed:

Activity(ies) to be conducted, person responsible and completion date for the activity(ies):

Describe how activities will be monitored, how often and by whom:

**Safety factor(s)**

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Conditions that make this a threat and how condition can be changed:

Activity(ies) to be conducted, person responsible and completion date for the activity(ies):

Describe how activities will be monitored, how often and by whom:

**III. Acknowledgement:**

I (We) understand this agreement and agree to fully participate in the activities assigned. I (We) understand that I (we) may inform the social worker at any time that I no longer wish to voluntarily participate in this agreement. At that time, the social worker will again assess the safety of my child(ren) and may determine that court action is necessary to protect my child(ren) from further harm. I also understand that any subsequent reports of child abuse or neglect to the agency may void this agreement.

Parent / Guardian:	Date:	Other:	Date:
Parent / Guardian:	Date:	Other:	Date:
Social Worker:	Date:	Supervisor:	Date:

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## Child and Family Services Policy Manual: Investigation Philosophy

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### **Philosophy Statement**

It is the Division's mission to keep children safe and families strong. Safety of the child takes precedence over all other decisions surrounding child protective services. At the time of investigation, a child may be considered safe when there is an absence of serious threat of harm or when the threat of serious harm to a child is controlled by a response to an unsafe situation. It is also important to assess whether or not the response is sufficient to maintain the safety of the child from actual serious harm or substantial risk of harm over time.

The strength of families and their capacity to protect their children is always considered when determining whether a child is safe and what interventions must occur. The family's input must be considered when developing a safety plan for a child.

An investigation/assessment should be respectful, thorough, and timely in accordance with CFSD policy manual section 202-3.

### **Safety Practice Safe vs. Unsafe**

Safety is an abstract concept. Safety considerations for child protective services are based on immediate circumstances. A child is considered **unsafe** when the caretaker's actions or inactions present immediate threats of serious harm or actual harm to a vulnerable child and the family's accessible protective capacities are insufficient to prevent these actions or inaction.

A child is considered **safe** when there are no immediate threats of serious harm or actual harm stemming from caretakers' action or inactions or the accessible protective capacities of the family are able to prevent these actions or inactions.

When conducting a child protective services investigation the social worker must assess the safety of a child. Safety assessments are necessary with any of the following presenting conditions:

- any serious physical injury, taking into account the age of the child, the type of injury, and how the injury occurred;
- a history of inadequate food, clothing and shelter, with consideration given to the economic and cultural circumstances;
- lack of supervision, taking into account the age and maturity of the child, the availability of emergency assistance, and the length of time left alone;

## Child and Family Services Policy Manual: Investigation Philosophy

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- inadequate health care which could cause physical injury to the child, and where parents are financially able to provide such care, or are offered financial or other reasonable means to provide such care;

**NOTE:** Failure to provide traditional health care due to religious belief is not medical neglect, but the agency may need to intervene with legal action to protect the health of a child.

- failure to thrive or failure to supply clothing, shelter or education, though financially able to do so or offered means to do so;
- sexual abuse or exploitation, including fondling, penetration, sexual assault, deviate sexual conduct,
- psychological abuse which results in identifiable and substantial impairment to the child's emotional well-being or psychological or intellectual capacity to function, this includes acts of violence against another person residing in the child's home;
- exposure of a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory. Dangerous drugs means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2. (202-3; 202-5)

### **Safety Decisions**

The result of the assessment leads to safety decisions. Safety decisions incorporate three primary considerations:

- Threats of serious harm;
- Child vulnerability; and
- Protective capacities that are available to the child

Given these considerations a determination that the child is safe and no further action is necessary or that the child is unsafe must be made. If a child is unsafe, a safety plan is put in place to control the immediate threat. A decision must be made in conjunction with the social worker supervisor to open the case for ongoing services.

### **Substantiation Decision vs. Safety Decision**

The determination of whether or not a child is safe from immediate threat of harm should not sway the substantiation of child abuse and neglect. When the investigating social worker

## Child and Family Services Policy Manual: Investigation Philosophy

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can make that determination, the social worker shall substantiate abuse and neglect.

### References

Mont. Code Ann. § 41-3-101  
Mont. Code Ann. § 41-3-102

## Child and Family Services Policy Manual: Investigation Reports of Abuse and Neglect

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- Source of Reports** Anyone **may** report a suspected incident of child abuse or neglect.
- Mandatory Reporters** Professionals and officials **required** to report suspected abuse or neglect are:
- a physician, resident, intern or member of a hospital's staff engaged in the admission, examination, care or treatment of persons;
  - a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;
  - Christian Science practitioners and religious healers;
  - school teachers, other school officials, and employees who work during regular school hours;
  - a social worker, operator or employee of any registered or licensed day care or substitute care facility, staff of a resource and referral grant program or a child and adult food care program, or any other operator or employee of a child care facility;
  - a foster care, residential or institutional worker;
  - a peace officer or other law enforcement official;
  - a member of the clergy unless information came through confession and the communication is required to be kept confidential by canon, law, church doctrine, or established church practice and the person did not consent to the disclosure;
  - a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged child abuse or neglect; or
  - an employee of an entity that contracts with the Department to provide direct services to children.

## Child and Family Services Policy Manual: Investigation Reports of Abuse and Neglect

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### **When a Mandatory Reporter Must Report**

A mandatory reporter must report suspected child abuse, neglect, or abandonment when s/he knows or has reasonable cause to suspect, as a result of information s/he receives in his/her official or professional capacity, that a child is being abused or neglected.

Mandatory reporters are only mandatory reporters when they are on the job. When they are not acting in their official or professional capacity, they are no different than any other person, and are not required to report child abuse or neglect which they suspect or become aware through means other than their official capacity.

This also applies to employees of entities which contract with the Department to provide services directly to children. Employees of these entities are mandatory reporters when they become aware of suspected child abuse/neglect as part of their official duties provided under the terms of the contract with the Division. The same employees are not mandatory reporters of suspected or known child abuse or neglect of which they become aware through any other means, including employment activities which are not connected to a Department contract.

### **Anonymous Reporters**

An initial assessment/investigation into the home of the child may be conducted when an anonymous report is received; however, the assessment/investigation must, within 48 hours, develop independent, corroborative, and attributable information in order for the process to continue. Without the development of such information, the child may not be removed from the home.

### **CAPS**

All reports of suspected child abuse and neglect must be made to Centralized Intake to be entered on the CAPS system. Entry of the initial intake information should begin immediately with updates made as information is gathered. Determinations must be completed within 60 days, and CAPS screens need to be completed as soon as the determination is completed. All related documentation, assessment forms, substantiation letters, etc., need to be attached to text and must be in the case record. Instructions for completing the Report and Request screens are found in this manual at Section 202-2, Taking A Report/Referral.

**Child and Family Services Policy Manual: Investigation  
Reports of Abuse and Neglect**

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- Confidentiality**      The identity of the reporter and the identity of any person who provided information on the alleged child abuse or neglect incident must not be revealed to the parent, guardian or other person responsible for the welfare of the child who is the subject of the complaint unless a court requests the information (e.g., in a hearing or by court order).
- Follow-up**            All reports of suspected abuse or neglect must be responded to in accordance with Section 202-3, Investigation of the Report.
- References**            Mont. Code Ann. § § 41-3-201 through 41-3-208.  
Mont. Admin. R. 37-47-315  
Mont. Admin. R. 37-47-602, et. seq.

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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<b>Purpose</b>	The CAPS Report and Request Screens (CID1, and CID2) are used by Centralized Intake to record all child protective services cases/referrals related to complaints of alleged neglect and/or abuse. These screens are also used to document requests for services and informational reports. Once a report/referral is sent to the field, the CID1 and CID2 Screens convert to RRD1 and RRD2 Screens for use by the field. The RRD3 Screen is also used by the field.
<b>General Description</b>	<p>The information contained in CAPS on the Report/Referral screens summarizes the nature of a referral, investigation results, and types of services being provided during and after the investigation. The information will be used to document current and previous referrals as well as produce management reports relevant to the operation of Montana's protective service delivery system.</p> <p style="text-align: center;"><b>NOTE: Completion of the Report/Referral screens is required for CPS reports. CPI and CFS are also recorded on the Report/Referral screen.</b></p>
<b>General Instructions</b>	The referral information and person information is entered onto screen CID1.
<b>Person Search</b>	A search of the CAPS system must be completed to find a person's CAPS identification number; any prior CAPS CPS history; and/or address information. To find a person in CAPS, use person search (PERS).
<b>Prior History</b>	<p>If the person is known to the CAPS system, a CAPS number will be displayed. At that time the worker can search for prior CPS history. By entering the assigned CAPS ID number on RRRL, all reports associated with that person will be displayed. The search of prior history should also indicate if this person is currently involved in an investigation or open CPS case. SEAL (See All Client Information) screen will show which CAPS screens have information on a client.</p> <p>If it is known that the family has moved from another state and has a prior CPS background in that state, a background check is extended by Centralized Intake to other states where the family is known to have lived and had a CPS history. If the family was a client family prior to conversion to the CAPS system and Centralized Intake is made aware of that</p>

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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information, it will be noted in the Centralized Intake text so that the field social workers may contact the appropriate county to access that information.

### **Adding a Person**

If the person is not known to CAPS, the worker will need to enter the person's information to the system so a CAPS identification number can be assigned. After adding a person to CAPS, the SHIFT-F9 key can be used to bring the person information back to the CID1/CID2 screen without retyping the information.

If the person is also a provider (identified on PERL), add the provider number on CID1/RRD1. This will alert the family resource specialist that a referral was received on the provider/provider employee.

The worker should also check the person's address (ADDD) and relationship lists (RELL). The worker is responsible to add/update this information. **Do not add an "unknown" person on PERD.** The CAPS system provides several "unknowns" on PERL to fit most categories. Select the "unknown" from PERL that most closely fits the referral information.

### **Confidentiality Reports**

All reports of child abuse and neglect are confidential. Employees shall not look up information on persons in CAPS unless there is a work related reason to do so. Work related reasons are those that allow the employee to conduct the responsibilities of their work assignments constituting a "need to know." "Need to know" relates to the employees job-related activities as defined in the position description. Employees are prohibited from accessing CAPS information for personal reasons either on themselves or on behalf of another employee who may be the subject of CAPS information.

### **Sensitive Reports**

Occasionally, a report will be made on an agency employee, elected official or another person who is professionally known to the agency. These are considered sensitive reports and may be secured. The fact that a report or client is not secured does not give agency staff permission to review information stored in CAPS on individuals for whom the agency staff has no work related reason to know the information.

When secured, the worker who is assigned the report receives an alert when someone else in the agency reads the report.

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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Upon receipt of an alert that the report has been read, the assigned worker must report this to his or her supervisor immediately. The supervisor in consultation with the regional administrator will determine whether the employee who read the report had work related reason to access the information.

**Note: The assigned worker or supervisor will have to secure the report after it is sent to the field. CI can only secure a CID1, CI cannot secure an RRD1.**

Violation of this need to know policy is serious and will result in disciplinary action, up to and including termination of employment.

### Report and Request Intake Detail 1 (RRD1)

The information entered on this screen is used to document the intake and investigation process. The Centralized Intake worker taking the referral should enter the basic referral information as soon as it is received. All telephone reports to Centralized Intake will be entered on CAPS within 24 hours of receipt.

The worker is responsible for entering the date of the referral; the time (military time); the C7 number of the worker taking the initial referral; the C7 number of the assigned worker. The worker entering the information also must indicate the Report/Referral category (An F12 look up is available for the appropriate code). For CPS , the following are appropriate categories to select from:

- CPI (CHILD PROTECTIVE SERVICES INFORMATION)  
Documents a child protective services concern that is to be used when documenting information from a person about a child on whom no investigation will be conducted. Concerns about a family that do not meet the criteria of potential risk of harm to a child will be documented on CPI. These requests require no follow-up activity and no agency action will occur under a CPI. CPI referrals will be closed by Centralized Intake upon entering on CAPS unless a CPI contains information relating to an open CPS case. Centralized Intake will assign those CPI's to the field worker to whom the open CPS case is assigned.

### Category

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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- CPS (CHILD PROTECTIVE SERVICES)  
To be used in all situations in which a referral will be investigated. All reports of suspected abuse and neglect will be entered under this category; or
- CFS (CHILD PROTECTIVE SERVICES - REQUEST FOR SERVICES)  
To be used when information received by Centralized Intake does not indicate the need for investigation. Other reports in the CFS category include (and are limited to) home study requests (including ICPC requests), requests from the parent for voluntary services, requests for courtesy supervision (both county-to-county and ICPC), and third party physical and sexual abuse reports where the social worker collaborates with law enforcement or law enforcement requests assistance from the social worker.

<b>Status</b>	The Report/Referral status remains “open” (O) until the worker has completed the work on the referral/report or assessment. Status must be determined within 60 days of investigation start date.
<b>Reporter Detail</b>	<p>This information reflects who made the referral. The section allows the worker taking the referral to input information about who is making the referral or request; their relationship to the person they are calling about; and list a telephone number.</p> <p>This information cannot be modified once the worker presses “enter” on their keyboard.</p>
<b>Report General Information</b>	<p>The worker enters information about whom the report is about. The worker should enter the last name first, and then the first name of the person the report is about. If the last name contains two or more names, enter the name with spaces identical to the way it is written on the birth certificate, and also enter the name as an alias using different spacing options. (Do not use punctuation, such as a comma, period, etc., in this area.) If the person is a provider, the worker should enter the provider’s identification number.</p> <p>The address is entered along with the city and county. The county number is required. (An F12 look up is available to find the county number.)</p>

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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<b>Investigation Summary</b>	The Centralized Intake Specialist will enter (on the CID1) the basic referral information/allegations contained in the reported information. Upon conclusion of the investigation, the investigating worker will delete information provided by Centralized Intake under this heading and will add a brief summary as to the results of the investigation. (Initial information provided by CI will remain on the CID1 and the information added by the investigating worker will remain on the RRD1.)
<b>Investigation Start Date</b>	The date the worker makes the first contact with the family (phone, face-to-face, or written) or the date of first contact with any person (collateral contact) for the purpose of gathering information about the subject family/child of the report (not including background check). The background check is considered to be a part of the initial risk assessment which occurs during the intake process.
<b>Investigation End Date</b>	This is the date on which the worker ends the investigation/report. The worker must indicate the investigation/report is closed by entering "C" in the upper portion of the RRD1 screen at "status."
<b>Action Taken</b>	The worker enters information as to what services or actions were taken in response to this referral. (An F12 look up is available for this code table.) This portion of RRD1 is completed after the determination(s) are entered on RRD2. Only CPS cases require a determination.
<b>Report and Request Intake Detail 2 (CID1/RRD2)</b>	<p>This screen captures information about the family members, the victims, and the perpetrator. The worker is able to indicate whether the referral was substantiated or not, the relationship between the victim and the perpetrator, and type of abuse or neglect.</p> <p><b>Even though completion of CID1/RRD2 is not required for CPI and CFS, it is important to add the persons associated with these types of reports to RRD2 so CAPS will link persons to reports for future reference.</b></p> <p>The worker can complete the person search and person detail at this time. The worker also should add or update relationships and addresses.</p>

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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### Allegations

The worker should refer to the CAPS code table for the appropriate codes and definitions for allegations and determinations (an F12 look up is available for these code tables). For “CPS” category, select from the following allegation codes:

- ABA (ABANDONMENT)  
Parent leaves the child under circumstances that make it reasonable to believe that the parent does not intend to resume care of the child in the future **OR** willfully surrenders physical custody for six months and during that time does not manifest to the child and person having physical custody of the child a firm intention to resume custody or make permanent legal arrangements for the child **OR** parent is unknown and has been unknown for 90 days and reasonable efforts to identify and locate the parent have failed **OR** the voluntary surrender by a parent of a newborn who is no more than 30 days old to an emergency services provider.
- BDM (BABY DOE MEDICAL NEGLECT)  
Failure to respond to an infant's (**less than one year or hospitalized continuously from birth**) life-threatening conditions by providing appropriate treatment that, in the physician's judgment will be most likely to be effective in ameliorating or correcting all life-threatening conditions. Does not necessitate treatment if the infant is irreversibly comatose; treatment would merely prolong dying; or treatment would be inhumane.
- DED (FATALITY)  
Death by actual or possible abuse or neglect.
- EDN (EDUCATIONAL NEGLECT)  
Complete failure to either enroll a school-aged child in a public or non-public school or complete failure to home school a school-aged child.
- EDM (EXPOSURE TO DRUG MANUFACTURE/DISTRIBUTION)  
Exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory. “Dangerous drugs” means the

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

- FTT (FAILURE TO THRIVE/MALNUTRITION)  
Physician's diagnosis of FTT or malnutrition of a child.
- INC (INCARCERATION OF A PARENT)  
Parent in prison or jail and did not make appropriate plans for the child. Incarceration alone does not constitute neglect.
- MDN (MEDICAL NEGLECT)  
Failure of parent, guardian or other person responsible for a child's welfare to provide adequate health care although reasonably able to do so. Adequate health care for a child means medical or nonmedical remedial care if such care is covered by medical insurance.
- OTH (OTHER)  
For use for allegations not covered by code table.
- PHN (PHYSICAL NEGLECT)  
Either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.
- PHA (PHYSICAL ABUSE)  
An intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.
- PSA (PSYCHOLOGICAL ABUSE OR NEGLECT)  
Severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of **acts** of violence against another person residing in the child's home. However, psychological

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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abuse or neglect cannot be construed to hold a victim responsible for failing to prevent the crime against the victim.

- SAI (SEXUAL ABUSE BY PERSON RESPONSIBLE FOR THE WELFARE OF A CHILD)  
The commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest of a child by a parent, guardian, adult residing in the child's home, foster parent, day care staff, employee of an institution or residential setting.
- SEC (SEXUAL EXPLOITATION OF A CHILD)  
Allowing or encouraging a child to engage in prostitution or films, photographs, uses a child in an exhibition of sexual conduct, etc., i.e., "Kiddy porn".

### Sixty-Day Limitation

All referrals must have a determination completed and entered on CAPS within 60 days of the investigation start date. CAPS generates monthly management reports on referrals received by the Department. These reports cover a time period 60 days

prior to the current date (to insure completeness of the management report).

### Report and Request Intake Detail 3 (RRD3)

The worker can utilize this screen for their investigation/ assessment or activity regarding this referral. This screen provides eighteen lines for notation. There are no spell check options or lower case letters. This information will be saved to the system, but remains modifiable until the worker closes the report on screen RRD1.

If the worker requires more space to enter their report, the report is then completed in an electronic format. A worker can look to the TXTL, SEAL, or F9 to find any saved text on a particular person, client, or family.

### DocGen

The CAPS system provides the worker an investigation worksheet to use throughout their investigation process. This worksheet is DocGen D-100. The worksheet provides the worker information entered on the RRD1 screen, leaving out the information regarding the identity of the reporter, RRD2, RRD3, and TEXT saved on CAPS.

## Child and Family Services Policy Manual: Investigation Taking A Report/Referral

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- Errors** Each region has a person assigned the “supertask” of correcting input errors made while entering report information. Contact the CSW supervisor with specific information to be corrected, and the supervisor will refer this to the assigned person. Changes in determinations made by supervisor, regional administrator or substantiation review panel are also made by this assigned person.
- Confidentiality** Information entered on CAPS is confidential. Access to the RRRL screens is very limited. **Workers may not “browse” the system** or look at any CAPS information without having a work-related reason for doing so. This includes information stored in CAPS on oneself or another agency employee. Employees may not look up information at the request of another and disclose such information unless there is a bona fide work related need to know. Confidentiality will be maintained in accordance with Department policy. **Violation of this provision could lead to termination of employment.** (See Section 501-1 and 501-2)
- References** Mont. Code Ann. § 41-3-102.  
Mont. Code Ann. §§ 45-5-501, et seq. and 45-5-625.

## Child and Family Services Policy Manual: Investigation Investigation of Report

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### Response

Reports of suspected child abuse, neglect, or abandonment are received by Centralized Intake. All reports indicating reasonable cause to suspect that a child is abused, neglected, or abandoned by a person responsible for the child's care must be assessed and the immediacy of the timeframe for response by the social worker which is deemed appropriate will be determined by Centralized Intake. In situations where Centralized Intake makes a determination that an immediate response is necessary, the person designated to receive that information in the field will be notified by telephone. The CSWSs may aggravate or mitigate the response time based on their information or knowledge of the situation.

Reasonable cause to suspect means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

Person responsible for a child's welfare means the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides; a person providing care in a day-care facility; an employee of a public or private residential institution, facility home, or agency; or any other person responsible for the child's welfare in a residential setting.

Child abuse or neglect means either actual physical or psychological harm to a child **OR** substantial risk of physical or psychological harm to a child **OR** abandonment. The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare. The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

### CPS History

A search of the CAPS system must be completed to find a person's CAPS identification number; any prior CAPS CPS history; and/or address information. If the person is found in CAPS, the Centralized Intake specialist will provide the field worker with that information.

Field staff may also conduct a search in CAPS. To find a person in CAPS, use person search (PERS). If the person is known to the CAPS system, a CAPS number will be displayed. At that time the worker can search for prior CPS history. By entering the assigned CAPS ID # on RRRL, all reports

## Child and Family Services Policy Manual: Investigation Investigation of Report

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associated with that person will be displayed. The search of prior history should also indicate if this person is currently involved in an investigation or open CPS case. SEAL (See All Client Information) screen will show which CAPS screens have information on a client.

If it is known that the family has moved from another state, a background check is extended to other states where the family lived. If the family was a client family prior to conversion to the CAPS system, call the county where the family formerly resided to obtain any information not on the CAPS system.

If the person is not known to CAPS, the worker will need to enter the person's information to the system so a CAPS identification number can be assigned. After adding a person to CAPS, use the SHIFT-F9 key to bring the person information back to the CID1/RRD2 screen without retyping the information.

If the person is also a provider (identified on PERL), add the provider number on CID1/RRD1. This will alert the family resource specialist that a referral was received on the provider/provider employee.

The worker should also check the person's address (ADDD) and relationship lists (RELL). The worker is responsible to add/update this information. **Do not add an "unknown" person on PERD.** The CAPS system provides six "unknowns" on PERL to fit most categories. Select one of the six "unknown" from PERL that most closely fits the referral information. Do not create additional "unknown" persons.

### **Immediate Response**

Any report assessed by Centralized Intake which indicates a child may be in immediate danger of serious harm must be investigated immediately (depending upon the nature of the reported child maltreatment upon receipt of the report or within 24 hours of receiving the report).

### **Timely Response**

Investigation of reports assessed by Centralized Intake which are of a less urgent nature will be investigated promptly. The social worker must initiate the investigation within 14 calendar days of receiving the report.

### **Anonymous Reports**

Initial assessment/investigation of an anonymous report of child abuse or neglect may be conducted; however, the assessment/investigation must, within 48 hours, develop

## Child and Family Services Policy Manual: Investigation Investigation of Report

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independent, corroborative, and attributable information in order for the process to continue. Without the development of such information, the child may not be removed from the home.

### Written Report

A written report regarding an investigation must be completed within 60 days of receiving a referral. A copy of the report shall be furnished to the family, upon request, with the name and identity of the referent deleted.

### Persons Contacted

The investigating worker must contact the child and his or her parent(s) regarding all reports of abuse and neglect assessed by Centralized Intake as requiring an investigation.

The child who is the subject of the report of child abuse and/or neglect must be observed. The child **must** be interviewed if the child is verbal. When interviewing the child, the interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child. **A face to face contact or interview of the child is expected in an investigation.**

If the child is not interviewed, written documentation on the ISA is needed prior to closure of the report. An exception to this general rule may be granted by the Regional Administrator if in the best interests of the child. All exceptions must be documented on the ISA noting the reason for the exception and that it was approved by the Regional Administrator.

When the parent(s) are contacted, it may not be in the child's best interest to contact the parents immediately. For example, all serious physical or sexual abuse reports could result in criminal charges. Because the criminal defendant is afforded certain constitutional protection, social workers will discuss with their county attorney how the interview with the perpetrator will be handled and who will conduct the interview (i.e., the social worker or law enforcement officer).

**At the time of initial contact, either face to face contact or telephone contact, the investigating worker is required to inform the parent or subject of the investigation of the specific allegations against them. When the alleged perpetrator is not known at the outset of an investigation, the worker shall inform the parent or caregiver of the child of the allegations.**

## Child and Family Services Policy Manual: Investigation Investigation of Report

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### **Other Professionals**

It is helpful for the social worker to request information regarding the family assessment from other professionals. This is usually done with the knowledge and consent of the family. Sometimes the family will not give its consent, or the other person for whom information is being requested will not release information. In such instances, if the social worker believes the information is vital to the assessment, the worker will ask the county attorney to file a petition for temporary investigative authority and protective services, asking the court for release of the information to the Department.

### **Home Visits**

Although it is not mandatory to conduct a home visit in every investigation, each referral must be fully assessed to determine the scope of the investigation. The social worker should attempt to contact the family prior to visiting. Circumstances which might preclude contacting the family before visiting are when there is reason to believe:

- the child may be persuaded or coerced into not disclosing abuse or neglect by the parents;
- the parents might flee;
- evidence of abuse or neglect might be destroyed or tampered with;
- the mailing address or telephone number of the parent is not available;
- the child in the home is in immediate danger of harm; or
- the parent fails to respond to a letter or telephone call within a reasonable amount of time, considering the circumstances and the nature of the case.
- When conducting an initial home visit, the worker shall identify him or herself and advise the parents of the nature of the report as specifically as possible without revealing the source of the report. The worker shall attempt to solicit the parents' cooperation in conducting the investigation.

## Child and Family Services Policy Manual: Investigation Investigation of Report

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- When conducting an investigation at the child's home, the worker shall be respectful of the family's privacy to the extent possible.

### Duty of Social Worker

Depending on the nature of the referral and age of the child, the worker should attempt to interview the child alone, if possible, to prevent possible intimidation of the child by a parent.

### Consent to Enter

As a general rule, the worker may not enter the family home without the consent of the parents or the adult who is responsible for the care of the child. Under current Montana law, the following principles apply to the issue of consent:

- 1) consent may be limited, for example:
  - a) the person giving the consent has the right to not have pictures taken. Unless the social worker has a court order allowing the social worker entry and access to the child's home for the purposes of investigation, the social worker does not have the right to take pictures inside the home if the parent or adult caring for the child(ren) objects;
  - b) the person giving the consent has the right to restrict the social worker to one area of the home;
- 2) consent may be withdrawn at any time meaning that if the person that consented asks the social worker to leave, s/he must do so;
- 3) consent must be freely and voluntarily given. Consent obtained by coercion or threat (such as a threat to take physical custody of a child) is not considered to be consent;
- 4) The only exception to the general rule is when exigent (emergency) circumstances exist. An example of exigent circumstances which would justify a social worker's entry into a private home without a court order or consent would be when the social worker has:
  - a) reasonable cause to suspect that abuse or neglect has occurred; **AND**
  - b) a reasonable belief that immediate entry is necessary to prevent imminent danger to a child.

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**NOTE:** Assistance from law enforcement personnel should be obtained if the social worker determines that exigent circumstances are present when investigating a report of suspected child abuse or neglect

### When Refused Entry

If the worker conducting the investigation is refused entry by the parent and the worker has reason to believe the child is in danger of being abused or neglected, the worker should contact the county attorney and request that he or she seek an order to gain entry into the home.

If there is immediate or apparent danger of harm to the child, see Section 302-1, Immediate Protection and Emergency Protective Services, for procedures to be used for emergency removal of the child from the home.

### Social Worker Risk

When a worker has concern about his or her own personal safety, the worker should request that a law enforcement officer accompany him or her on the home visit.

When responding to a methamphetamine lab, workers should never enter the contaminated environment. Workers should refer to the statewide protocol for children found in drug labs for instructions on safely receiving and transporting children removed from methamphetamine labs.

### The Investigation

In conducting the investigation of a report, the worker should collect information regarding the child, his or her caretaker, the child's home environment, the circumstances surrounding any injury to the child, and any other matters relevant to the circumstances described in the report. The worker must assess the safety of the child(ren). The safety assessment form may be used as the worker's guide to the investigation. The worker may not inquire into the financial status of the child's family or custodian except for the purpose of determining eligibility for federal assistance programs.

### Urinalysis

If the social worker suspects that the parent may be using drugs, the social worker may not, absent a court order, require the parent to submit to a urinalysis. The social worker may not coerce the parent into submitting to a urinalysis by making the completion of a urinalysis as a condition for not removing the child from the parental home. In addition, the social worker may not take action based on the results of an over-the-counter test.

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Under Montana law, if interview is audio taped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered view by the family [subject to 41-3-205(3), Confidentiality]. Upon completing the audio taped or videotaped interview, the tape should be given to the county attorney's office.

<b>Examination of The Child</b>	The child should be examined by a physician when there is reason to believe the child is a victim of serious physical or sexual abuse, has been removed from a methamphetamine lab or there is reason to believe the child may have drugs in their system due to actions by the parent, unless the child is of a mature age and refuses, no evidence of abuse can be gathered because the incident occurred too long ago, or a physician is not available. If child is removed from a meth lab, worker should follow the statewide protocol for medical evaluation of children found in drug labs.
<b>Social Worker Action</b>	Based on the facts gathered and conclusions drawn as a result of the investigation, the worker must determine whether child abuse or neglect is substantiated, unsubstantiated, or unfounded.
<b>References</b>	Mont. Code Ann. § § 41-3-202, 41-3-204 through 41-3-207. 42 U.S.C. §5106a(b)(2)(A)(xviii and xix).

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<b>CAPS</b>	<b>CAPS is an official case record of the services provided by the Department.</b> Intake information, assessment/investigation results, person information, contacts, services provided, court history, placements and payment information must be recorded on CAPS. A case file in the local office containing documents from contracted providers, service providers, correspondence, court orders, etc. may contain supporting documentation.
<b>Frequency of Case Recording</b>	CAPS records should be routinely updated and completed before closure.
<b>Information Included</b> All Assessments/Reports	Records regarding <b>each</b> assessment/investigation of a report of child abuse and/or neglect must contain the following information (if available): <ol style="list-style-type: none"> <li>1. Report screens (CID1/RRD1 and CID2/RRD2);</li> <li>2. Person Detail screens (PERD - Person Detail, RELD - Relationship Detail, ADDD - Address Detail); and</li> <li>3. Completed Investigative Safety Assessment which is uploaded and titled as <b>Investigative Safety Assessment</b> or <b>ISA</b> and stored in DocGen by report number includes: <ul style="list-style-type: none"> <li>• documentation of safety factors</li> <li>• historical information</li> <li>• protective capacity and child vulnerability</li> <li>• a safety decision</li> <li>• dated contacts and supporting documentation related to the investigation.</li> </ul> </li> <li>4. A determination, e.g., abuse or neglect is indicated, substantiated, unsubstantiated, or unfounded. Facts supporting the determination should be included on the investigative safety assessment.</li> <li>5. If the worker substantiates that the abuse/neglect occurred, the substantiation cannot be entered on the CAPS system until the perpetrator has received due process (See Page 5 of this Section).</li> </ol>
<b>Determinations</b>	<b>Supervisor approval is required for ALL types of determinations.</b>

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### Substantiated Reports     SUB (DETERMINATION OF SUBSTANTIATED REPORTS OF ABUSE, NEGLECT, SEXUAL EXPLOITATION)

Upon investigation, the worker has determined that the facts showing that substantial risk of physical or psychological harm to the child exists or that the abuse, neglect, sexual abuse, or sexual exploitation occurred are more convincing than the facts offered to show the abuse, neglect, sexual abuse, or sexual exploitation did not occur or the risk does not exist.

To substantiate abuse or neglect, the social worker must have evidence which, as a whole, shows that the facts sought to be proved related to the alleged abuse, neglect, sexual abuse, or sexual exploitation or the substantial risk of harm indicate that it is more probable than not that the abuse or neglect **actually** occurred or the substantial risk of harm actually exists (preponderance of evidence).

The evidence of the substantial risk of harm or the abuse, neglect, sexual abuse, or sexual exploitation must meet the definition of abuse, neglect, or sexual exploitation as defined by state law (Mont. Code Ann. § 41-3-102).

**NOTE: If the worker substantiates that abuse or neglect occurred to a child under the age of 3, the worker must refer the child to the local Part C Contractor for a developmental assessment.**

### Other Determinations

- UNS (UNSUBSTANTIATED REPORT OF ABUSE, NEGLECT, SEXUAL ABUSE OR EXPLOITATION)  
After the investigation, the worker was unable to determine by a preponderance of the evidence that the reported abuse, neglect, sexual abuse or sexual exploitation has occurred.

**NOTE:** If a report is unsubstantiated, the report and all supporting documentation shall be destroyed within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated unless:

- there has been a previous or subsequent substantiated report concerning the same person; or
- a protective services court order has been issued based on the circumstances surrounding

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the initial allegations.

Upon written request by the perpetrator and review by the supervisor, unsubstantiated reports prior to October 1, 2003 may be destroyed if specified criteria are met. The Supertask person will remove the report and all supporting documentation.

- CWF (CLOSED WITHOUT FINDINGS)  
Unable to locate, family left the area before the investigation was completed, or investigation began but was never completed due to court order, administrative directive, etc. No determination made.
- IND (INDICATED)  
Maltreatment occurred, but the perpetrator of the maltreatment is not identified under Montana Code Annotated as a 'person legally responsible for the welfare of a child.' For example, an uncle commits an act of sexual abuse while visiting his niece. **Used only when the reported perpetrator is not someone responsible for the welfare of a child or when the perpetrator is unknown.**
- SUD (SUBSTANTIATED OR INDICATED ABUSE/NEGLECT THAT RESULTS IN THE DEATH OF THE VICTIM)  
Refers to death resulting from abuse/neglect, which will be designated as SU2.
- UNF (UNFOUNDED REPORT OF ABUSE, NEGLECT, SEXUAL ABUSE OR EXPLOITATION)  
Abuse, neglect, sexual abuse, or exploitation as defined by law did not occur. Used when there is no reason to suspect abuse/neglect occurred. If the referral is unfounded, the worker should indicate so by selecting "UNF." **The worker must consult with the CSWS prior to finding a report is unfounded.**

**NOTE:** The CAPS system is designed to automatically destroy unfounded reports every month. All identifying information is destroyed, but the statistics remain as a part of CAPS. **Any hard copy information of unfounded reports must also be**

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**destroyed.**

<b>Notice of determinations</b>	The worker must notify the person of the determination and document the notification.
<b>Due Process Requirements</b>	The right to employment is a constitutionally protected property interest. A substantiation of child abuse/neglect can affect the individual's right to employment. Therefore, if the worker makes a determination of child abuse/neglect, the individual against whom the abuse/neglect is substantiated is entitled to due process. This means the individual must be accorded the right to notice of and the opportunity to respond to the substantiation.
<b>Letter to Perpetrator</b>	If the worker substantiates the allegations, the worker must send a substantiation letter indicating the allegations were substantiated and explaining how the worker came to this conclusion. The worker must provide information regarding the appeal process, providing the address to send an appeal to and the time lines for appeal.
<b>Substantiated Report Notice to Named Perpetrator</b>	<p>Notice of substantiation of abuse or neglect will be sent <b>Certified Mail Return Receipt Requested</b>, (or hand delivered, if necessary) to the person or persons named as the perpetrator(s). If hand-delivered, the worker should attempt to get acknowledgment of receipt of the letter. A copy of the notice must be titled as <b>Letter to Perpetrator</b> when being stored in DocGen by report number. <b>The notice must state the following:</b></p> <ul style="list-style-type: none"> <li>• the allegation, but NOT the name or identity of the person who made the referral;</li> <li>• that the investigation substantiated abuse or neglect;</li> <li>• the type of abuse or neglect substantiated;</li> <li>• the acts or omissions which support the substantiation;</li> <li>• the possible impact of substantiation on the person's ability to work in certain fields;</li> <li>• the person's right to request a fair hearing to challenge the substantiation determination if the fair hearing is requested in writing within 30 days of the date of the notice letter; and</li> </ul>

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- There is no right to a fair hearing if:
- the court has adjudicated the child a "youth in need of care" and the facts upon which the adjudication is based are the same facts as the substantiated report and named alleged perpetrator upon which the substantiation is based; or
- the person has been criminally convicted of an offense related to the same facts of the substantiated report.

Workers must use DocGen D101, Letter to Perpetrator. The letter must be sent by Certified Mail Return Receipt Requested. A copy of the **signed** letter shall be kept in the hard file. Any returned or undeliverable letters shall be kept (with envelope) in the file, as should notice of receipt or notice of undeliverable.

**NOTE:** Under extraordinary circumstances, if notice will place the child or client in danger, a delay in sending out notice until the risk of imminent danger to the child or client is diminished may be approved by the community social worker supervisor in consultation with the Regional Administrator. This exception should be rare and such exception will be documented in case notes.

### **Entry of Substantiation Determination in CAPS**

When the worker receives a report of suspected child abuse and neglect and, after investigation, determines that the report is substantiated, the worker must enter SUP (substantiation pending) on CAPS and close the report. The investigation is complete at the time the worker makes the determination of substantiated. The SUP pending status indicates that the investigation is completed but that the perpetrator of the substantiated abuse has the right to exercise his/her due process rights.

Approximately 45 days after a determination of SUP is entered, a CAPS alert will be sent to the regional supertask person. If the perpetrator did not request a fair hearing, the CAPS supertask person will change the SUP code to SUB. If the perpetrator requested a fair hearing, the code remains SUP until after the Hearings Officer has rendered an opinion in the

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case after the fair hearing.

If Hearings Officer upholds the determination, the supertask person will change the SUP to SUB. If Hearings Officer (or the Substantiation Review Committee) overturns the determination, the supertask person will change the SUP code to UNX (unsubstantiated after review). Only CAPS supertask persons can enter the UNX code.

**Fair Hearing Request** **The only time the subject of an investigation/case record has the right to a fair hearing is if the Department substantiated child abuse or neglect against the individual.**

Upon receipt of a request for a fair hearing, the supervisor receiving the request shall consult with the worker who substantiated the abuse or neglect. Also upon receipt of a request for a fair hearing, the supervisor will send a copy of the investigative report (DocGen D100, Investigation Worksheet and other supporting documentation, excluding identifying information of the referent) to the person requesting a fair hearing. (Refer to Policy Section 106-1, Fair Hearing Process)

### **Internal Substantiation Review**

The request for a fair hearing will result in an internal review conducted by the Substantiation Review Panel. Therefore, the supervisor will also send the relevant case file information to the Central Office for the Substantiation Review Panel to use in conducting an internal review prior to the fair hearing. The review panel will determine whether or not the evidence and case record supports the substantiation. If the Substantiation Review Panel determines the documentation does not support the substantiation, a letter shall be sent to the individual requesting the fair hearing informing him/her of the internal review and the decision of the Substantiation Review Panel to reverse the substantiation.

### **Decisions Regarding The Safety of Children Throughout the Life of a Case**

Decisions regarding the safety of children are based on the information obtained during the safety assessment process along with the worker's consultation with their supervisor. The safety assessment can assist in making a safety decision. **The safety decision is independent of whether or not the report is substantiated.** The decision to make a safety response is based on the family's ability to protect the child(ren) from identified safety threats while considering child vulnerability and historical information.

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**Safety should be assessed throughout the life of the case and must be assessed every six months using one of the following tools:** FGDM, FCRC, Permanency Planning Staffing, Safety Review, Safety Assessment at Reunification, Safety Assessment at Case Closure. The Safety Assessment at Reunification tool will be used when considering reunifying the child with the caregiver(s). The Safety Assessment at Case Closure tool will be used before child protective services are withdrawn unless the case is being closed within 60 days of the Reunification Assessment.

### Client Opening

Persons become clients when they receive intervention services. Intervention services are defined as:

- services received directly from the Department to reduce the risk of further abuse/neglect: and/or
- services which are recommended/required and monitored by the Department in order to reduce the risk of further abuse/neglect.

Persons on CAPS become clients when a worker assigns that person to their caseload (on AXED - Assignment and Transfer Detail) and completes CLID (Client Detail) and IARD (Initial Assessment and Review) screens. As the worker gathers more information on the client, appropriate screens on CAPS should be completed. These include ICWD (ICWA Detail) if the child is Native American or Alaskan Native, SPND (Special Needs Detail), MEDS (Medications), MDTD (Medical Treatment Detail), MMHD (Medical/Mental Health Detail), EMPL (Employment List), EDHL (Education History List), and FIND (Financial Detail).

### Social Worker Responsibility - CAPS

In any CPS case opened beyond the investigation, it is the worker's responsibility to document:

- on IARD, the short term and long term goals for the client; and
- on SERP and SERN, services that are being offered to alleviate the problem;
- on CRTD, any court actions taken (if any);

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- PROB (Problem Detail), TASK (Task Detail) and LINK (Problem/Task Link) Screens for treatment plan development if CAPS is being used to generate the treatment plan.

### Health Services

Health-related services provided during an investigation should also be entered on SERL (Services List), using SERP (Services Payable) for services paid through CAPS and SERN (Services Non-Payable) for non-paid services and services paid by another source.

### Case Closure

Closure reviews must be done on CAPS on IARL. Protective services cases may be closed when the worker determines that the child is safe through the Safety Assessment at Case Closure process and the supervisor agrees to the closure. Reason for the closure shall be documented on IARD and on the Safety Assessment at Case Closure form. For cases open beyond **60 days**, the worker is encouraged to notify the parent in writing that the agency has terminated services to the family when a case is closed.

### References

Mont. Code Ann. §§ 41-3-201 through 205.  
Mont. Admin. R. 37-47-315  
Mont. Admin. R. 37-47-601, et. seq.

## Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

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### Introduction

Mont. Code Ann. § 41-3-102 requires the department to investigate complaints of child abuse and neglect alleged to have been perpetrated by a person responsible for a child's welfare. (See definition below.)

The division responsible for conducting abuse/neglect investigations in out-of-home care is CFSD.

If the report of child abuse or neglect is determined to be a 'CPS,' the division is mandated to investigate the report. An investigation by law enforcement or a licensing entity regarding a case does not relieve the division of its responsibility to investigate and assess the safety of children in the out-of-home care setting.

Out-of home care settings are day care facilities, family foster homes, therapeutic foster homes, youth group homes, shelter care facilities, therapeutic group homes, child care agencies, residential treatment facilities, youth detention facilities, and juvenile correctional facilities.

### Definitions

**Child abuse or neglect (CA/N)** means actual harm to a child's health or welfare; substantial risk of harm to a child's health or welfare, or abandonment. The term includes actual harm or substantial risk of harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare. The term does not include self-defense, defense of others, or actions taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare. (Mont. Code Ann. §41-3-102.)

**A person responsible for a child's welfare** means the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides; a person providing care in a day care facility; an employee of a public or private residential institution, facility, home or agency; or any other person responsible for the child's welfare in a residential setting. (Mont. Code Ann. § 41-3-102.)

**NOTE:** The Department does not have statutory authority to investigate all reports of abuse/neglect perpetrated against minors. Because public or private schools are not residential facilities and are not mentioned in the law, the Department is not responsible for investigating reports of abuse in schools. Likewise, the Department does not have authority to investigate

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child abuse reports alleged to have been committed by persons other than a person responsible for the child's welfare.

This type of report should be referred to law enforcement and the county attorney.

### **Child-on-Child Assault Considerations**

An incident of abuse of one child by another may be appropriately labeled as "assault" or "intimidation" and, because assault and intimidation are criminal offenses, the incident should be investigated by the local law enforcement agency.

Abuse of a child by another child does not fit the legal definition of child abuse under Mont. Code Ann. § 41-3-102, however, the division does have the responsibility to determine if the abuse occurred as a result of the care giver's lack of supervision, exposure of the child to an unreasonable risk, or of the direct involvement by a care giver

If, at the time of the report

- there is no information reported which would lead one to believe that staff were not present;
- or, if there was no information reported which would lead one to believe that staff had the ability to protect or prevent the incident and failed to do so;
- and, if there is no information provided which would indicate that the abuse/neglect was perpetrated by a staff person;

**the report will be entered as a licensing report.**

If, at the time licensing staff review the situation and find that there **was** a concern as to whether or not the staff responded appropriately, they will contact Centralized Intake and provide that information so that the field can be notified of those concerns.

Therefore, the report must be entered into CAPS by Centralized Intake as a "CPS," giving the provider's name and provider number on CID1, while leaving the identity of perpetrator as

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“Unknown” on CID2.

A child should not be entered as the perpetrator on CAPS. However, if a staff member or administrator of a youth care facility, a day care facility, or a foster parent condones or fails to intervene in incidents of child-on-child assault, the foster parent, staff member or administrator may be guilty of child abuse or, at least, of complicity in the assault. If the investigation indicates that the foster parent or staff member is culpable, the person’s name should be added to the report as the perpetrator by the investigator.

### Response

When a report of abuse or neglect in out-of-home care is received, Centralized Intake will send the report to the CSWS who is responsible for the county where the home or facility is located. The CSWS is then responsible for notifying the Regional Administrator or designee of the referral, as well as the appropriate licensing supervisor. The Regional Administrator or designee and licensing supervisor will determine whether a joint investigation will be done, or if a CPS investigation will be completed initially.

The appropriate licensing supervisor for regular or therapeutic family foster care is the Family Resource Specialist Supervisor for the area in which the foster home is located. If the licensing

study for the foster family was completed by a child care agency, the director of the agency should be notified.

The licensing supervisor for all group homes, child care agencies, and residential treatment facilities is the Quality Assurance Division (QAD) Licensing Program Manager (444-6587).

The appropriate licensing supervisor for day care facilities is the QAD Day Care Supervisor (444-7770).

The appropriate licensing supervisor for juvenile detention centers is the Juvenile Corrections Licensing Specialist (444-7471).

The appropriate person to notify for juvenile correctional facilities is the facility Administrator. The Administrator of Pine Hills in Miles City may be reached at 232-1377, and the Administrator at Riverside may be reached at 225-4500. If the

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Facility Administrator is the party of concern, please notify the Department of Corrections Juvenile Corrections administrator at 444-0851.

The county attorney, and if appropriate, law enforcement, should be notified of the report of child abuse and neglect to determine if a criminal investigation should be conducted either prior to or in conjunction with the investigation by the Department.

**All reports of child abuse or neglect in out-of-home care facilities will be investigated promptly .**

### Other Agencies

Law enforcement and county attorney involvement will be determined by the county attorney based on his or her assessment of the need for a response. Advance planning with law enforcement agencies regarding abuse reports in out-of-home care is helpful. This may include a mutually agreed upon protocol regarding each agency's response.

### Interagency Investigations

If there is any possibility that criminal charges could be filed, workers should attempt, whenever feasible, to do a joint investigation with law enforcement.

### Investigation

The Regional Administrator or designee determines which division staff will investigate a report of abuse in out-of-home care. Best practice dictates that any investigation of a report of abuse in out-of-home care should not be conducted by the person who conducted the licensing study of the facility or by the person who placed the child who is the subject of the report. An independent investigation, however, is not always feasible. The person who assigns the worker(s) to conduct the investigation should be aware of the potential for claims of conflict of interest and should designate investigative staff accordingly.

### Contract Monitors Information

If the allegations involve a youth group home, shelter care, child care agency, therapeutic group home, or therapeutic foster care program, the assigned investigator(s) may obtain information from the central office and regional contract monitors as applicable to the investigation (e.g., most recent contact, areas of concern/strength noted in monitoring reviews, etc.). Once an investigation begins, it is the contract monitor's responsibility to forward any pertinent information to the CPS or licensing investigator(s) until the investigation is complete. If a contract

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monitoring review is in process when a CA/N referral is received, the review will cease until the investigation is complete or the monitors have been specifically authorized by the Regional Administrator and the appropriate licensing supervisor to continue the review. When CFSD staff act in the role of a contract monitor, he/she shall refrain from participating in a CA/N and/or licensing investigation. Refer to Policy 107-1, Contract Monitoring for further information.

### Notification to Youth's Parent(s) and Worker(s)

When a report of alleged abuse or neglect is received on any child in a licensed placement or unlicensed kinship home or facility and an investigation is warranted, the investigating worker will:

- Notify the parent(s) that a report has been received, that an investigation will be completed, and that the parent(s) will be notified of the determination at the conclusion of the investigation. If the victim has been injured to the extent that medical treatment is obtained, the parent(s) shall be notified immediately, except when parental rights have been terminated. Refer to Policy 402-5, Supervision of Out-of-Home Placements, pages 7-8 for additional information regarding authorization for medical treatment.
- If the report is determined to be unfounded, inform the parents of this fact.
- If the report is determined to be unsubstantiated, inform the parents of this fact, and, upon their request, provide them with copies of the case file information (pursuant to 41-3-205 Mont. Code Ann.). However, any identifying information regarding the reporter and the alleged perpetrator must be redacted from the file, and must not be divulged to the parents.
- If the report is determined to be substantiated, inform the parents of this fact, and, upon their request, provide them with copies of the case file information. The case file information should include the identity of the perpetrator, **unless** the perpetrator has appealed the substantiation, in which case his or her identity should be withheld pending the outcome of the fair hearing process. Information identifying the reporter must be redacted

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from the file.

- If the parental rights have been terminated, the investigating worker will not notify the parents of abuse/neglect allegations.

### **NOTE**

The question of whether disclosure of information poses a threat to the child should be considered at all times, and any such threat to the child supersedes the parents' right to information or notification at any stage of the investigative process; however, the potential threat and decision should be documented thoroughly by the investigating worker and approved by the supervisor.

### **Residential Care**

When alleged victims are reported to have been abused in residential care and the abuse or neglect has been substantiated, the investigating worker shall notify the placing workers of all victims. The placing workers will also notify the parents of the victims, except when parental rights have been terminated.

### **Day Care**

When the alleged victim is reported to have been abused in day care, the parents of the alleged victim(s) shall be notified of the interview with their child(ren). This does not imply that the parents must give their permission to have their child interviewed, but the worker must assess whether notification would compromise the investigation.

### **Parental Notification for Day Care**

Prior to any adverse licensing action, if the investigating worker believes it is important to notify the parents of other children in care, he or she should seek to obtain a court order to notify those parents. Unless otherwise specified in the court order, the worker cannot give the parents any detailed information regarding the investigation (i.e., name of victim or specific allegations). If the parents have questions, the worker should suggest that the parents contact the facility director.

### **Interviews Facility Director**

When investigating at a facility or with a child placing agency, an entrance interview may be conducted with the director to discuss what he or she may know about the reported incident(s) and to inform the director about the process of the investigation. The director may be helpful in arranging interviews with staff and children, and in providing space and other logistical support for the investigation.

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An entrance interview is not required if the investigators have reason to believe the interview would interfere with the investigation.

Prior to leaving the facility, the investigator should discuss with the director any assessed risk issues, any problems which require immediate attention, and the next steps in the investigation.

The alleged victim(s) should always be interviewed. A setting should be chosen which is both private and non-threatening.

### Alleged Victims

The worker should determine if there are other victims that were not named in the report and assess the safety of those victims. Interviews should be promptly conducted with those victims.

**If the facility refuses the worker access to the child(ren), the worker shall seek a court order to obtain access.**

### Witnesses

All witnesses should be interviewed. In residential child care facilities it is important to locate and interview potential witnesses, particularly those staff whose shift may not be at the same time as the alleged incident(s), but who, nevertheless, work with the alleged victim(s) and may have some knowledge of the alleged perpetrator(s) that could be beneficial to the investigation.

### Alleged Perpetrators

Interviews with the alleged perpetrator(s) should be conducted after the interviews with the child(ren) and witnesses. The alleged perpetrator does not have the right and should not be allowed to be present during an interview with the child(ren).

The transfer or suspension of the alleged perpetrator(s) should be assessed and discussed with the facility director. However, no personnel recommendations should be made by the investigator (i.e., suspension or termination from employment). The facility director must make any disciplinary decision. In most cases, it will be prudent to deny the perpetrator(s) access to the child(ren) during the course of the investigation. Should the facility director decide against transfer or suspension of the alleged perpetrator(s) and the worker believes the child(ren) is in jeopardy, the child(ren) should be removed from the facility.

### Documentation

A review should be conducted of any documents that might

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have a bearing on the incident. Such documents might include: time cards, nursing notes, shift staff reports, facility policies/procedures, facility records on the child, staffing patterns, personnel files, orientation and training documentation, incident reports and licensing studies.

### Findings and Conclusions

Upon completing the investigation, the worker shall present a written report to his or her immediate supervisor. The report should include a summary of the incident, the process used in the investigation, the interviews conducted, the documents located and reviewed, and the findings and conclusions of the investigating worker.

The worker who licenses the facility should be notified of the findings as soon as possible following the initial investigation. Any concerns regarding child care practice should be noted in the report to the licensing worker, regardless of whether there is a finding of abuse and/or neglect.

Written follow-up notification of the outcome of the investigation shall be sent to the director of the facility or program by the investigating worker within 15 days following the completion of the investigation. If the employee requests a fair hearing, this notification will be delayed until a determination has been made through the fair hearing process.

### NOTE

Upon completion of an investigation of a regular youth group home, therapeutic youth group homes, shelter care facilities, child care agencies, and therapeutic foster care programs, the investigating worker is responsible for notifying the central office contract monitor and the appropriate regional contract monitor that the investigation is complete.

### CAPS

Child abuse/neglect investigations should be documented by the investigating worker on the Report/Request screens under the category 'CPS'. Licensing investigations should be documented by the licensing worker on the Report/Request screens under the category of 'LIC.'

### References

Mont. Code Ann. §§ 41-3-102, 41-3-201, 41-3-202, and 41-3-205.

## Child and Family Services Policy Manual: Investigation Third Party Abuse

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<b>Definition</b>	<p>A <b>person responsible for the welfare of a child</b> and who is legally capable of committing "child abuse" is limited by Montana law to the "child's parent, guardian, foster parent, or an adult who resides in the same home; a person providing care in a day care facility; an employee of a public or private residential institution, facility, home or agency; or any other person legally responsible for a child's welfare in a residential setting."</p> <p><b>Third party abuse</b> means harm to a child's health or welfare, as defined in Mont. Code Ann. § 41-3-102, that is committed by any party not mentioned in the legal definition quoted above. Such abuse is properly labeled assault, sexual intercourse without consent, or other appropriate label from the criminal code and is not legally "child abuse."</p>
<b>DPHHS Role</b>	<p>The Department does not have specific legal authority to investigate reports of third party abuse. Such reports are the investigative responsibility of designated law enforcement agencies. However, historically in many Montana communities, DPHHS has played a role in assisting law enforcement with investigations involving minors.</p> <p>In some communities, law enforcement officers have not been trained to interview child victims. In others, they operate under the misconception that the Department is responsible for investigating all abuse of children.</p> <p>The law enforcement agency should be the lead agency in any investigation of third party abuse. The role of DPHHS may be one of providing assistance to the investigating officer(s) and county attorney.</p> <p>Each local supervisor should develop written or oral agreements with each law enforcement agency in their area regarding reports and investigation of third party child abuse.</p>
<b>CAPS</b>	<p>When providing assistance to law enforcement in interviewing third party assault victims, Centralized Intake will enter this service on CID1 under the category of 'CFS.'</p> <p>If, during the course of a CPS investigation, the worker discovers the perpetrator was a third party rather than a person responsible for the welfare of a child, the determination on RRD2 should be 'IND' (indicated).</p>
<b>Reference</b>	<p>Mont. Code Ann. § 41-3-102.</p>

## **Child and Family Services Policy Manual: Investigation Reports of Suspected Medical Neglect of Handicapped Infants**

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<b>Background</b>	This policy section applies to health care providers receiving Federal funds, e.g. hospitals. (Section 202-3, Investigation of the Report, addresses reports of medical neglect by parents or others responsible for the child's welfare.) The Federal law establishing these policies is referred to as "Baby Doe" and prohibits discrimination on the basis of handicap. Under this law, nourishment and medically beneficial treatment should not be withheld from handicapped infants solely on the basis of their present or anticipated mental or physical impairments.
<b>Reporters</b>	Under Mont. Code Ann. § 41-3-201 professionals, including health care providers, must report suspected child abuse or neglect. The withholding of medically indicated treatment, defined in Mont. Code Ann. § 41-3-102, and Section 202-2 of this policy manual, is one form of abuse or neglect that must be reported.
<b>Investigation</b>	Reports of such suspected medical neglect shall be investigated promptly by the social worker pursuant to the requirements of Mont. Code Ann. § 41-3-202. Where appropriate, the social worker should conduct an on-site investigation of reports of such alleged medical neglect of handicapped infants.
<b>Consultation with ICRC</b>	Whenever a hospital at which an infant who is the subject of a report of suspected unlawful medical neglect is being treated has an Infant Care Review Committee, the investigating worker should consult with the ICRC in carrying out the investigation.
<b>Legal Action</b>	If the report is substantiated after investigation, or if more information is needed to substantiate the report, the social worker should contact the county attorney and request that he or she file a Petition for Immediate Protection and Emergency Protective Services or other legal remedy. Where necessary, the petition may request an order from the court compelling the provision of medically indicated treatment, as defined in Mont. Code Ann. § 41-3-102.
<b>Notification of Division</b>	Upon receipt of a report of suspected medical neglect of a handicapped infant, the local office shall notify the Program Bureau Chief at the central office. Contact should be made by telephone followed by written confirmation.

**Child and Family Services Policy Manual: Investigation  
Reports of Suspected Medical Neglect of Handicapped Infants**

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<b>Division Action</b>	The central office is responsible for contacting the appropriate Health and Human Service (HHS) official regarding each report of suspected medical neglect of handicapped infants per 45 CFR 84.55(c)(v).
<b>References</b>	Mont. Code Ann. § 41-3-102. Mont. Code Ann. §§ 41-3-201 and 202. Mont. Code Ann. § 41-3-427. 45 CFR 84.55

## Child and Family Services Policy Manual: Investigation Critical Incidents and Internal Reviews

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<b>Introduction</b>	<p>The Child and Family Services Division uses a team approach to conduct internal reviews. The internal review is intended to be a learning and self-correcting tool for the Division. The internal review provides a systematic method of reviewing critical events, and uses findings to improve child protective services policy and practice.</p>
<b>Definitions</b>	<p><b>CRITICAL INCIDENT</b> means the: occurrence of serious injury or death to a child, provider, or staff person that may have a connection to Division policy, procedures, or rules, or any other occurrence or situation which is deemed by the Division Administrator to be a critical incident.</p> <p><b>NOTE:</b> A Regional Administrator can request that the Division Administrator review a particular incident to evaluate whether it constitutes a critical incident and should be handled as outlined under this policy.</p> <p>Other situations that may merit an internal review include, but are not limited to: sexual abuse of a child by a foster parent, provider, or staff; child-on-child serious assault in a foster home or facility; or, any serious altercation between staff, provider, or foster parent and child.</p> <p><b>INTERNAL REVIEW</b> means: an assessment of relevant policies, rules, practice and law, and staff compliance with them in a given case or situation.</p> <p><b>On-site Review</b> includes in-depth interviews and a thorough review of the relevant case records. The work will be accomplished in the field.</p> <p><b>Desk Review</b> includes a thorough review of relevant case records, completed in a central location. Telephone interviews may be conducted.</p> <p><b>INTERNAL REVIEW TEAM</b> means those staff assigned by the Division Administrator to conduct an internal review of the Division's involvement in and response to a critical incident.</p> <p>Team members shall not include anyone who has had prior significant involvement with the case under review.</p>

## Child and Family Services Policy Manual: Investigation Critical Incidents and Internal Reviews

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The team shall include one person from the Division's central office, experienced in conducting internal reviews, who shall serve as an ongoing member of the internal review team.

The team shall also include one line social worker, or a person with expertise in the area under review.

Other members may vary, depending upon the circumstances in each case.

### Process

Whenever there is doubt whether a serious incident is a "critical incident," staff shall proceed with notification requirements and **securing** of the records as though it is a critical incident.

### Notification

All critical incidents shall be reported immediately to the Regional Administrator by the supervisor or social worker. The Regional Administrator, or his or her designee, shall immediately notify the Division Administrator and/or the Department Director.

Prior to beginning the **internal** review, the team leader shall notify the Regional Administrator of the pending review. After reviewing the case file, the Regional Administrator shall notify staff involved with the case of the pending review.

### Securing Case Record

Immediately following the occurrence of a critical incident, **or on the date a review of a critical incident is requested**, the Regional Administrator or the supervisor shall secure the existing file. All electronic records shall be printed, and placed with all hard copy records in the file. The contents shall be secured and sent to the Division Administrator.

Except for copying case files, it is important that nothing be added to, or taken from, the case record prior to the review of the case record by the team. The Regional Administrator or supervisor may copy any documents necessary for work to continue on the case while the complete file is in use by the internal review team.

**If the Division Administrator decides that an internal review of a critical incident is not necessary, the Division Administrator will notify the Regional Administrator of the decision and authorize the case file to be made available for regular use.**

## Child and Family Services Policy Manual: Investigation Critical Incidents and Internal Reviews

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### Charge Letter

If an internal review is deemed appropriate, the Division Administrator shall designate an internal review team leader, and provide written instructions in the form of a “charge” letter to the team members. Instructions shall include:

Establish the “charge” for the internal review team, specifying the parameters of the critical incident the team is to review. Designate the leader and members of the internal review team. Establish the time frame for the internal review. **Determine whether the internal review will be conducted on-site, or whether it will be conducted as a desk review.**

The team shall make every effort to limit the scope of the review to that which is outlined in the charge letter. If other serious incidents are discovered while conducting the internal review, the team shall report those incidents to the Division Administrator.

Within five working days of receiving a charge letter from the Division Administrator regarding an internal review, team members will begin on-site interviews and case record review. Staff involved with the case under review shall be made available to the team, with instructions to provide full and complete information as requested. Referrals for counseling and emotional support for staff and/or providers should be made when necessary.

The team leader shall consult with the Division Administrator and the appropriate Regional Administrator. The internal review team is responsible to the Division Administrator, but has the freedom to determine which records to review, who to interview, and which tasks need to be completed in order to accomplish the review.

The internal review team will be provided complete access to all records and case files relevant to the specific charge to the team.

### Case Record

For the protection of both the Division, and the individual staff involved in the critical incident, the team leader shall immediately confirm that the case record has been secured. The internal review team reviews the case record to:

- determine the frequency and nature of client contact;

## Child and Family Services Policy Manual: Investigation Critical Incidents and Internal Reviews

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- determine the process and information used to conduct assessments and/or to make decisions in the case;
- determine whether state laws, rules, Division policies, and current **acceptable** practices in the field were followed;
- determine whether appropriate consultation and supervision were provided to the worker in the case;
- determine whether case notes are current; and
- determine whether all of the required forms and other necessary documents are in the case record.

### Interviews

Since the nature of the review is fact-finding, it is important that the interviews be conducted by mutual agreement between the internal review team and the persons to be interviewed.

The team leader shall determine who to include in each interview, after consultation with the person to be interviewed and that person's supervisor. If there is disagreement on the persons to be interviewed, the team leader will consult with the Division Administrator.

**Entrance Interview** - Prior to, or upon arrival at the review site, the internal review team will conduct an entrance interview with the Regional Administrator to explain the nature and parameters of the internal review.

**Other Staff Interviews** - The internal review team will determine which staff will be interviewed. Working with the Regional Administrator and the supervisor, the team will schedule interviews to ensure the least possible disruption to ongoing work in the office.

**Exit Interviews** - Prior to departing from a community where the internal review team is conducting an on-site review, the team will schedule and conduct a meeting with the Regional Administrator and affected staff to advise them of subsequent steps to be taken for the review.

The review team will schedule and conduct an exit interview with the Regional Administrator and other staff involved in the case, prior to closing the review.

## Child and Family Services Policy Manual: Investigation Critical Incidents and Internal Reviews

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The review team will provide a summary of the draft findings to the Regional Administrator and affected staff. The Division Administrator may make an exception for the team not to present the draft findings, if pressing issues require speed in addressing the critical situation.

Subsequent to the exit interview, affected staff may respond to the team's findings and recommendations in writing through the Regional Administrator. The portions of those responses relevant to the facts of the reports will be considered for inclusion in the final report.

### Final Report

The internal review team shall present its written findings in a final report. The report shall be given to the Division Administrator. The Division Administrator shall consult with the legal unit, and determine recommendations and/or requirements for follow-up action.

The final report will include, but not be limited to, the following:

- background information
- description of Division involvement in the case
- findings of fact of what actually happened - the critical incident that occurred - as best as the team can ascertain
- determine whether relevant policies, rules, and laws were correctly followed
- recommendations, except that the team shall not make any recommendations with respect to personnel matters or personnel-related corrective action
- proposals for improvements in the delivery of services as they relate to the critical incident.

The Division Administrator or Regional Administrator may share the contents of the report with local office staff involved in the review, with the Department's legal unit, and the Department Director.

Sensitive information relating to specific individuals shall be shared only with those individuals with a specific and direct "need to know." If the final report contains confidential

## Child and Family Services Policy Manual: Investigation Critical Incidents and Internal Reviews

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materials, the report shall not be released to anyone other than those listed in this section, unless the confidential material is removed, or approval to release the report is obtained from the Department's legal unit.

When appropriate, a copy of the report's recommended policy changes will be provided to the management team for their review and possible incorporation into the Division's Policy Manual. Confidential information shall not be included for review by the management team.

### Media

The Division Administrator, or his or her designee, shall be the spokesperson for the case with the media. Other staff, including the internal review team members and those persons directly involved with the case, shall not discuss the case with persons who do not need to know the information.

Staff contacted by the media regarding the case, or regarding the internal review, shall immediately notify the Division Administrator. Approval to discuss the case must be granted by the Division Administrator prior to staff discussion with the media regarding the case or the internal review.

### Follow-up

The Division Administrator shall contact the Regional Administrator to discuss the internal review team's final report and recommendations. If the report demonstrates the need for change in local office or staff practice, the Division Administrator and the Regional Administrator shall determine corrective actions that are needed and the specific time frame by which they should be accomplished.

The Regional Administrator will promptly respond, in writing, to all requirements and recommendations for corrective action directed by the Division Administrator. The response will include the corrective action steps that already have been, or will be, addressed.

The Regional Administrator will arrange for a general staff meeting to discuss the findings and recommendations as a means of clarifying facts and applying the information learned through the review.

### References

Mont. Code Ann. § § 52-1-103 (1) and 52-1-103 (4)  
Mont. Admin. R. 37.43.103  
Mont. Admin. R. 37.43.104

## Child and Family Services Policy Manual: Investigation Child Protective Services Alert

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<b>Definition</b>	A <b>Child Protective Services Alert</b> is a notification from DPHHS central office to all local offices that a child may be in danger.
<b>Circumstances</b>	<p>A social worker would initiate an alert when a child's location is unknown under circumstances such as the following:</p> <ul style="list-style-type: none"> <li>• where children reported to have been abused and/or neglected, or in danger of such, have been removed before an investigation could be started or completed; or</li> <li>• where children in the Agency's custody have been illegally removed from Agency control.</li> </ul>
<b>Action</b>	Under such circumstances, the social worker mails or faxes the protective services alert to the Office Manager in the central office. The protective services alert indicates to which counties and/or states the alert is to be sent. The Office Manager in central office sends the alert to all jurisdictions indicated.
Information	<p>The alert may include the following information:</p> <ul style="list-style-type: none"> <li>• names, ages and sexes;</li> <li>• brief physical description of each person;</li> <li>• suspected destination;</li> <li>• names and addresses of relatives;</li> <li>• possibility family may apply for public assistance;</li> <li>• possibility the family may flee from contact;</li> <li>• whether the family is considered dangerous;</li> <li>• persons to contact if family is located; including phone, address and supervisor; and</li> <li>• a brief description of the family situation.</li> </ul> <p>Indicate what action the locating social worker should take if the family is located. Specify any of the above information that is not available. Normal county-to-county movement is handled between the counties in writing and by telephone contact. The central office should be advised by the social worker initiating the alert to cancel it when the family has been located.</p>
<b>CAPS</b>	When viewing the PERL screen, if a 'C' appears in the "CAN/P" field, a Child Protective Service alert was received on that person. Please contact the designated central office staff for the specifics and action to be taken. If a 'P' appears in the "CAN/P" field, the person is a provider person or person

**Child and Family Services Policy Manual: Investigation  
Child Protective Services Alert**

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associated with a provider (e.g. the son of a foster care family provider). If a 'B' appears in this field, the person has a protective service alert and is a provider (or associated with a provider).

After requesting an alert be issued by central office, a 'C' should be displayed in "CAN/P" field. This can only be entered by the designated person in the central office.

## Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

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<b>Introduction</b>	<p>The 1997 Legislature revised statutes regarding custody and visitation of children in a marriage dissolution, required the adoption of a parenting plan that includes specific provisions in the best interests of a child, provided an option for mediation for dispute resolution, and provided a fee to help defray the cost of court-sanctioned educational programs on the effects of divorce on children. While the Department is rarely involved directly in cases of divorce and custody, it is important to be aware of the statutory changes and the impact those changes may have on the families we deal with.</p>
<b>Appointment of a Guardian Ad Litem</b>	<p>The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, parenting and parental contact. The guardian ad litem has the following duties:</p> <ul style="list-style-type: none"> <li>C to conduct investigations necessary to ascertain the facts related to the child's support, parenting, and parental contact;</li> <li>C interview or observe the child;</li> <li>C make written reports to the court concerning the child's support, parenting, and parental contact;</li> <li>C appear and participate in all proceedings; and</li> <li>C perform other duties as directed by the court.</li> </ul> <p>The guardian ad litem has access to court, medical, psychological, law enforcement, social services and school records pertaining to the child, the child's siblings and parents or caretakers. In a domestic relations proceeding under Title 40 Chapter 4, the information should not be released without a court order. When giving a GAL appointed for a custody dispute access or copies of information in a CPS file, the GAL should be cautioned about the confidentiality of such document pursuant to Mont. Code Ann. §41-3-205.</p> <p>The guardian ad litem may be an attorney, but may not be the county attorney, deputy county attorney or the Department of Public Health and Human Services or any of its staff.</p>
<b>Divorce/Custody Home Studies</b>	<p>The court may order an investigation and report (divorce/custody home study) concerning the parenting</p>

## Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

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arrangements for the child. **The Department of Public Health and Human Services may not be ordered to conduct the investigation unless the person involved is a recipient of cash assistance under the temporary assistance for needy families block grant, FAIM financial assistance as defined in Mont. Code Ann. §53-2-902, food stamps or general relief.** Other reasonable options for payment of the study by the parents must be exhausted. Verification of receiving public assistance can be obtained by the worker from the TEAMS system. If the person is a recipient of public assistance, and the Department has been ordered to conduct that investigation, see policy Section 204-2, Dissolution - Child Custody Investigation/Report for home study procedures.

### Parenting Plan

The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors including (but not limited to):

- the wishes of the child's parents;
- the wishes of the child;
- the interactions of the child with the child's parents, siblings and other significant persons;
- the child's adjustment to home, school and community;
- the mental and physical health of all individuals involved;
- physical abuse or threat of physical abuse by one parent against the other or the child
- chemical dependency or chemical abuse on the part of either parent;
- continuity and stability of care;
- developmental needs of a child;
- failure, by a parent, to pay birth related costs and/or financial support for a child;
- whether the child has had frequent and continuing contact with both parents, and if that is in the best

## Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

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interest of the child; and

- adverse effects on the child from continuous and vexatious parenting plan amendment actions. Examples of vexatious actions include amendments filed within six months after a child support action against one parent is brought, and filing amendment actions without making good faith efforts to comply with the provisions of the parenting plan.

### **Interim Parenting Plan**

The court may adopt an interim parenting plan proposed by one of the parties. That interim plan is in effect until the proceeding for dissolution is dismissed, or the dissolution is finalized along with an approved final parenting plan.

### **Final Parenting Plan**

#### Objectives

The objectives of the final parenting plan are to:

- protect the best interests of the child;
- provide for the physical care of the child;
- maintain the child's emotional stability and minimize the child's exposure to parental conflict;
- provide for the child's changing needs, in a way that minimizes the need for future amendments to the parenting plan;
- set forth the authority and responsibilities of each parent; and
- encourage parents to meet their responsibilities to their minor children through agreements in the parenting plan rather than through judicial intervention.

#### Criteria

The parenting plan may address parenting functions such as:

- maintaining a loving, stable, consistent, and nurturing relationship with the child;
- attending to the daily needs of the child including physical, developmental, spiritual, and supervision/guidance needs;
- attending to adequate education for the child;

## Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

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- ensuring the interactions and interrelationships of the child with the child's parent(s) and siblings and any other person who significantly affects the child's best interest; and
- exercising appropriate judgment regarding the child's welfare.

### Provisions

The final parenting plan may include provisions, consistent with the best interests of the child, for:

- designation of a parent as custodian of the child;
- designation of the legal residence of both parents and the child;
- a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays and special occasions;
- finances to provide for the child's needs;
- any other factors affecting the physical and emotional health and well-being of the child;
- periodic review of the parenting plan when foreseeable circumstances arise;
- sanctions that apply if a parent fails to follow the terms of the parenting plan;
- allocation of parental decision making;
- the method of resolving future disputes concerning the child between the parents (other than court action); and
- the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

The court may order the parties to participate in a dispute resolution process to resolve conflicts between parties

## Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

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regarding the adoption of the parenting plan.

Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent. Either parent may make emergency decisions affecting the child's safety or health.

The court shall order that the parenting plan be sealed except for access by the parents, guardian, or other person having custody of the child.

### **Parent(s) Change of Residence**

If a parent's change in residence will significantly affect the child's contact with the other parent, notice must be served no less than thirty days before the proposed change in residence and must include a proposed revised residential schedule.

### **Amendment of the Parenting Plan**

The court may amend a parenting plan if it finds that a change has occurred in the circumstances of the child, and that amendment is necessary to serve the best interests of the child. The court, in making a decision to amend the parenting plan may also consider whether:

- the parents agree to the amendment;
- the child is 14 years of age or older and desires the amendment; or
- one parent has willfully and consistently refused to allow the child contact with the other parent, attempted to frustrate or deny contact with the child by the other parent, or one parent has changed or intends to change the child's residence in a manner which significantly affects the child's contact with the other parent.

### **Court-Sanctioned Educational Programs**

In a proceeding for dissolution of marriage involving a minor child or in a parenting plan proceeding involving a minor child, the court shall inform the parents of available educational programs concerning the effects of divorce on children. The court may order the parents to attend such a program. The program must be educational in nature and not be designed for individual therapy. The cost of such a program must be paid for from the fees for filing petitions for contested amendments of a parenting plan.

### **Mediation**

The purpose of mediation is to reduce the acrimony that may exist between the parties and to develop an agreement that is

## Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

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supportive of the best interests of a child in the proceeding. The mediator shall attempt to effect a settlement of the parenting, child support, parental contact with the child, maintenance, or property settlement dispute.

A mediator must meet the following minimum qualifications:

- knowledge of the court system and the procedures used in family law matters;
- knowledge of other resources in the community to which the parties may be referred for assistance;
- if applicable, knowledge of child development, clinical issues related to children, the effects of marriage dissolution on children, and parenting research; and
- knowledge of the mediation process.

### Court-Ordered Supervision

The court may also order supervised visitation by the noncustodial parent, if without such an order, the visitation would endanger the child's physical health or significantly impair the child's emotional development. **The court may not order the Department of Public Health and Human Services to supervise the visitation.**

### Grandparent-Grandchild Contact

The district court may grant to a grandparent of a child reasonable rights to contact with the child during any proceeding, including divorce and custody proceedings and child abuse and neglect proceedings. **If the grandparents petition for contact with a grandchild and the Department is involved in a child abuse and neglect proceeding, the Department must be served notice of this petition.** Under these circumstances, the court may only grant this contact upon finding, after a hearing, that the contact would be in the best interest of the child.

A grandparent may not petition the court more often than once every two years unless there has been a significant change in the circumstances of the child, the child's parent(s)/guardian, or the child's grandparent.

If the child has been adopted by a person other than a stepparent or a grandparent, the grandparent may not petition for contact and any existing court-ordered visitation becomes

**Child and Family Services Policy Manual: Investigation  
Dissolution Proceedings – General Information**

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void.

**Custodial Interference**

A person commits the offense of custodial interference if knowing that the person has no legal right to do so, the person takes, entices, or withholds from the lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

**Parenting Interference**

A person commits the offense of parenting interference if, knowing that the person has no legal right to do so, the person:

- before the entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights; or
- is one of two persons who has the parenting authority of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parenting rights.

**Interfering with Parent/Child Contact**

A person who has been granted parent-child contact under a parenting plan commits the offense of interference with the parent-child contact if the person knowingly or purposely prevents, obstructs, or frustrates the rights of another person entitled to parent-child contact under an existing court order.

**Aggravated Interference with Parent/Child Contact**

A person who commits the offense of interference with parent-child contact by changing the residence of the minor child to another state without giving written notice as required in Mont. Code Ann. § 40-4-217 or without written consent of the person entitled to parent-child contact pursuant to an existing court order commits the offense of aggravated interference with parent-child contact.

**Defenses to Interference**

A person does not commit the offense of interference with parent-child contact or aggravated interference with parent-child contact if the person acts:

- with the consent of the person entitled to parent-child contact;
- under an existing court order; or
- with reasonable cause.

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Return of the child prior to arrest is a defense only with respect to the first commission of interference with the parent-child contact or aggravated interference with the parent-child contact.

**References**

Mont. Code Ann. § 40-4-205.

Mont. Code Ann. §§ 40-4-212, 213, 215, 217, 218, and 219.

Mont. Code Ann. §§ 40-4-226 and 227.

Mont. Code Ann. §§ 40-4-233 and 234.

Mont. Code Ann. § 40-4-301 et seq.

Mont. Code Ann. § 40-9-102.

Mont. Code Ann. §§ 45-5-304, 331, 332, and 45-5-333.

**Child and Family Services Policy Manual: Investigation  
Dissolution Proceeding – Child Custody Investigation/Report**

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<b>Policy</b>	The Department of Public Health and Human Services will, when ordered by a district court and as allowed by Mont. Code Ann. §40-4-215 provide a home study to the court for those eligible. The home study should include both a CPS and criminal records check.
<b>Procedure</b> Social Worker	Social workers shall begin the process of a home study only after they have received a copy of an order issued from a district court. A person eligible to receive this service must be a recipient of cash assistance under the temporary assistance for needy families block grant, FAIM financial assistance as defined in Mont. Code Ann. §53-1-902, food stamps or general relief. Other reasonable options for payment of the study by the parents must be exhausted. Verification of receiving public assistance can be obtained by the worker from the TEAMS system.
<b>Service Provision</b>	When the court order is received, Department staff will start the home study process in a timely manner. The study process and report usually takes less than 60 days. The Department, however, must first provide mandated services. Therefore, because of other service priorities, the home study process may take longer than 60 days.
<b>Time Extension</b>	When the court establishes a time frame in the court order which the worker cannot meet, the worker shall negotiate changes with the attorneys or the judge. It is preferable to obtain an amended order which sets forth the new time limit.
<b>Home Study Process</b>	The social worker should study the physical environment (home) of both parents. The worker should interview each parent separately at least twice (home and DPHHS office). Parents should also be seen together. Children should be interviewed and/or observed in the home environment of both parents as well as without parents present. School and/or day care providers should also be contacted. References from both parents must be solicited and contacted. The social worker should ensure that the parents have adequate employment or sources of income to support the child(ren). Exceptions to the study process must be discussed with the immediate supervisor and reasons documented in the case file.
<b>Investigator's Duties</b>	In preparing his or her report concerning the child, the investigator may consult any person who may have information about the child and potential custodial arrangements. Upon order of the court, the investigator may refer the child to

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professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or child's custodian. The child's wishes should be considered and consent must be obtained if the child has reached the age of 16 unless the court finds that he or she lacks mental capacity to consent. Costs of any evaluations or consultations are the responsibility of the parties to the action.

**Form of the Report** The report should include the following:

- Cause Number
- Parties to the Action
- Name of Agency
- Name
- Address
- Phone Number of Social Worker
- List of persons contacted (dates and type of contact - phone, home visit, office, etc.)

Section I. Physical Environment

Describe briefly each home setting - space, housekeeping, neighborhood, child focus, obvious dangers or hazards, etc.

Section II. Parents

- the wishes of the parent(s) regarding the child's custody;
- the mental and physical health of all individuals involved;
- physical abuse or threat by one parent against the other parent or the child;
- chemical dependency, as defined in Mont. Code Ann. §53-24-103, or chemical abuse on the part of either parent.

Section III. Children

- the wishes of the child as to his or her custodian;
- the interaction and interrelationship of the child with his or her parent or parents, his or her siblings and any other person who may significantly affect the child's best interests;
- the child's adjustment to home, school and community;  
and

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- the mental and physical health of the children.

**Section IV. Reference  
Checks**

Note all persons contacted and their comments (preferably written).

**Section V. Social  
Worker's  
Recommendations**

The worker should clearly separate facts and conclusions. A statement indicating which parent should, in the worker's opinion, have custody and the reasons for the recommendation must be included.

**Case File**

The investigator shall make the investigator's file available to the attorneys and all parties not represented by attorneys. The investigator may be called as a witness at the custody hearing. A complete file of the investigator's reports, notes and activities shall be made and kept in the local DPHHS office.

**CAPS**

When ordered by the Court to complete a divorce custody home study, enter this request on RRD1, using 'CFS' as the category. When the study is completed, enter the end date on RRD1 and the action taken as 'HOS'.

**References**

Mont. Code Ann. § §40-4-212 and 40-4-215.

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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**Background** The requirements of the Adoption and Safe Families Act of 1997 compels states to make concerted efforts to prevent removal of children from their homes and to reunify families in which efforts to prevent removal failed and the children were placed in out-of-home care. The Act requires that federal funding previously allocated for either family support or family preservation services under the (former) Family Preservation and Support Services grant must be dedicated to four service categories:

- Community-based family support services;
- Family Preservation services;
- Time-limited family reunification services; and
- Adoption promotion and support services.

The State's focus for in-home services is to divert children from entering the foster care system and reduce the duration of stay in foster care. In-home services are services delivered to a family to ameliorate conditions that may lead to a removal of a child from his or her home due to abuse or neglect. These services are also used to improve the safety concerns in a family whose children have been removed so that the children may safely be reunited.

**Definitions** The first three categories of services (listed above) are covered in this policy and are defined as:

**Family support services.** Community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting ability, to afford children a safe, stable and supportive family environment, and otherwise to enhance child development.

**Family preservation services.** Services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including:

- Service programs designed to help children: Where safe and appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be safe and appropriate for the child, in some other planned, permanent living arrangement;

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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- Preplacement preventative services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain safely with their families;
- Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;
- Respite care of children to provide temporary relief for parents and other care givers (including foster parents); and
- Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

**Time-limited family reunification services.** Services and activities that are provided to a child (and the family) who has been removed from his/her home and placed in foster care and to parents or primary care giver of such a child, to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15 month period that begins on the date the child is considered to have entered foster care. These services may include the following:

- Individual, group, and family counseling;
- Inpatient, residential, or outpatient substance abuse
- Treatment services;
- Mental health services;
- Assistance to address domestic violence.
- Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries;
- Family Group Decision Making;

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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- Supervised visitation;
- Transportation to and from any of the above services.

### Goals

When services are available and there is no imminent risk of harm to the child(ren) by remaining in the home, the goals of the agency are to:

- Increase the capacities of at-risk families to nurture their children in healthy environments by providing parents with the knowledge, skills and support to do so; and
- To decrease the length of time the child remains in foster care.

**NOTE:** In-home services may be provided by division personnel ('in-house') or through contracted providers, as available in each region. When in-home services are provided in-house, social workers refer families for services following the procedures established within their particular regions. This policy section applies directly to contracted providers.

### Eligibility Criteria for In-Home Services

The following children are eligible for in-home services:

- Child(ren) are at risk of child abuse and neglect but the social worker has **not opened** a Child Protective Services (CPS) case;
- Child(ren) are at risk of child abuse and neglect and have recently been referred to the Department but the child(ren) has not been removed from the parental home and the social worker **has opened** a CPS case; or
- Child(ren) are placed in out-of-home care by the Department and the parent(s) are participating in a treatment plan for reunification.

The family must:

- Display the ability to provide minimally acceptable safe child care;
- Be willing to accept the service offered; and

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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- Live in a home which does not pose an immediate threat to the health or safety of the child or to the service provider.

### **Social Worker Action** Referral for Services

If the social worker determines, through the receipt of a report of abuse or neglect, that a child has been or is in danger of abuse or neglect, the social worker may refer the family for in home services if the child(ren) meet one of the criteria for eligibility.

Social workers must submit a completed CFSD referral form (Form 050) to in-home services programs when making referrals. Social workers must also keep a copy of this form in CFSD case file. This Referral Form 050 can be downloaded from Outlook, Public Folders, All Public Folders, HHS, Forms, CFSD Forms, Form 050, or received as a template file from the Division, to be installed on individual computers. See copy at the end of this section. The social worker may refer the family for family support services, family preservation services, or time-limited reunification services. The referring social worker will provide the home visitor with the following information regarding the family:

- a) Department's treatment plan (as applicable for open CPS cases);
- b) The basis for CPS involvement and the status of Court action;
- c) Expectations of types of services to be provided;
- d) The purpose for the services to be provided;
- e) Frequency and intensity of requested services; e.g. hours per week;
- f) The anticipated length of services to be provided; and

When the family has an open CPS case at a minimum the In-Home contractor must provide a written report monthly to the social worker. If the contractor detects a new safety issue this will be reported to the worker.

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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1. Parenting Skill Building including but not limited to:
  - Teaching appropriate parenting skills such as alternatives to corporal punishment, which encourages a “no hit” policy;
  - Age-appropriate expectations;
  - Parent as role model;
  - Choice and consequences; and
  - Display of greater parent/child affection and trust.
2. Family Behavior Skill Building
  - Anger management techniques;
  - Teaching ways to prevent child abuse and neglect and reducing family conflict;
  - Teaching appropriate communication skills; and
  - Teaching assertiveness skills.
3. Organizing Skills
  - Teaching budgeting skills;
  - Teaching housekeeping, homemaking and other organizational skills needed to provide a positive environment to include modeling positive behavior such as assisting the family to clean the home;
  - Referring and linking family with follow-up services when necessary;
  - Transporting or arranging for transportation for families; and
  - Helping families develop skills to maintain ongoing progress.
4. Medical and Dental Referrals
  - Workers shall indicate whether or not there is a need for: **(1) dental care, (2) immunizations, (3)**

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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**physical check-ups, (4) mental health services, and (5) any other condition warranting medical attention.** The worker shall indicate health needs on Form 050. If the worker is not able to determine the status of these needs at the time of referral to In-Home services, then the worker must indicate on Form 050 that the in-home visitor should make this determination and if there is a need, to then follow-through with the appropriate referrals.

5. Linking other Resources:

- Referring and linking families with needed concrete services such as aiding the family to obtain needed furniture, beds, etc.

6. Parental Support Services:

- Community Parent Education Classes
- Parent Support Group
- Respite Care
- Day Care

7. Reunification Activities:

- Supervised Visitation (contractors to use forms CFS-209 and CFS-208)
- Family Group Decision Making for Reunification Purposes (forms CFS-159 and CFS-160)
- Any of the above listed services used for the purpose of reunifying families.

In-home services are primarily provided to the child and parent(s) in the family home. Services may include, but are not limited to supervised visitation between parent(s) and a child who is in foster care. In-home services also include time-limited reunification. The frequency and intensity of services furnished must be identified in the DPHHS referral form (CFS 050) and further outlined in the provider's Family Service Plan (distinguishable from the Department's Treatment Plan).

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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Services can include attendance and participation of the home visitor in Family Group Decision Making meetings scheduled on behalf of the family being served by the contractor.	
Family Group Decision Making	<p>If the case is open and if the family is not already participating in Family Group Decision Making, the contractor must offer the family a chance to participate in this service. The contractor must use the FGDM Offer of Meeting Form (CFS 159), on which the family indicates that it either accepts or rejects a chance to participate in Family Group Decision Making. If the family indicates acceptance of the chance to participate in FGDM, then the family must sign the FGDM Referral Form (CFS 160). The contractor must then send the Referral Form on to the regional FGDM coordinator.</p> <p>Regardless of whether the contractor is providing preventive or reunification services, the contractor must offer the family the chance to participate in FGDM, if the case is open and the family is not already participating in FGDM. If the contractor is actively providing In-Home services to a family, that contractor should be involved in FGDM meetings, regardless of whether or not the contractor has initiated that activity.</p>
Educational Classes	Families may not be referred for educational classes only. Services must include a combination of home visiting services and classes or home visiting services only.
Community Services	<p>Other services provided by the community, which might be used to maintain the child in his/her home while the social worker and the parents work to improve the home situation, may include the following:</p> <ul style="list-style-type: none"> <li>• Mental Health Counseling</li> <li>• Alcohol and Drug counseling</li> <li>• Public Health Nurse</li> <li>• Social Work Counseling</li> <li>• School Counselors</li> <li>• Medical Services</li> <li>• Planned Parenthood</li> <li>• Services for Special Needs Children</li> <li>• Day Care</li> <li>• Respite Care</li> <li>• Parenting Classes</li> <li>• Parents Anonymous</li> </ul>

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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- Other Support Groups
- Big Brothers and Big Sisters
- Financial Assistance Services
- Vocational Rehabilitation Services
- Housing/Emergency Housing
- Utility Assistance
- Domestic Violence Shelters
- Churches
- Relative Support, and
- Information, Referral and Follow-up

<b>In-Home Services Provider Action</b> Acceptance/Denial	The in-home services provider notifies the referring social worker of the acceptance or denial of the referral.
Initial Contact	<p>Once the family is accepted for in-home services, the provider must attempt to contact the family “face-to-face” within 72 hours from the time the referral was received. If unable to make “face-to-face” contact, the referring social worker will be notified immediately. If the contractor must put the family on a waiting list, this is conveyed to the social worker, along with the estimated date to begin service. The contractor must record this information on the 050 in the contractor’s section at the end of the form.</p> <p>In-Home contractors must be immediately accessible for emergencies 24-hours per day.</p>
Family Service Plan	<p>The in-home services provider develops a Family Service Plan within 30 days after services begin. The Family Service Plan is developed by the contractor, involving appropriate family members and the social worker (when the family has an open CPS case); dated signatures are also required on the plan. Family Service Plans are to be reviewed/revise at least quarterly, involving the social worker, the family and the in-home services provider.</p> <p>All revisions to the Family Service Plan are to include dated signatures of all participants, as well as the in-home services program supervisor. The in-home services provider furnishes the social worker with a copy of the initial Family Service Plan and any revisions thereof within two (2) weeks of obtaining all signatures.</p>
<u>On-going Services</u>	In-Home Services are most effective when provision is intense following referral, e.g. 60-100 hours in the first three

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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months of a family crisis. Social Workers should keep this in mind when requesting frequency and intensity of services on referral.

In-Home Services are to be provided to a family primarily within the home; the exception is when the contractor is providing Supervised Visitation and FGDM. CFSD expects that 75% of the contractor's time will be spent with or involving the family.

### Progress Updates

The in-home services home visitor and the in-home services supervisor will regularly review individual case progress on each family being served and, if it is an open case, consult with the social worker on possible revisions to the Family Services Plan.

The CFSD referral form (Form CFS 050) allows for social workers to determine the frequency, intensity, and content of the updates on each family's progress and response to in-home services.

The social worker and In-Home contractor must maintain a close working relationship. In addition to home visitors submitting written family reports to referring social workers monthly, supervisors of home visitors must also update the local CFSD supervisors in their respective service areas regarding the current caseloads and available slots. It is recommended that there be a joint meeting monthly with social workers and In-Home Service contractors to staff cases.

### Termination of Services

The in-home services contractor should provide the following services:

- Notify the social worker in writing, two (2) weeks prior to the termination of services as possible (when the family has an open CPS case). The social worker may request the in-home services provider to extend the service period including an explanation (e.g., demonstrate reasonable efforts made for the court);
- Case closure should occur when the level of face-to-face service is less than once every six (6) weeks and/or when a family has relocated out of the contract service area, unless documented extenuating services warrant otherwise. Before a provider closes an open case the provider must notify the referring social worker. If the provider is closing a case which

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

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is not open, because the family cannot be engaged, then the provider is to notify the social worker.

- The provider is encouraged to conduct a termination interview, and the social worker may be invited to the closure interview (especially if the family has an open CPS case); and
- A copy of a termination summary must be submitted to the assigned social worker within 30 days of closure (when the family has an open CPS case).

Each termination summary shall include: An assessment of the family's problems and service needs, including strengths and weaknesses; a listing of the services provided; a summary of the family's progress in addressing the objectives in the family service plan, including the family's reaction to services; and a listing of any follow-up recommendations for additional service needs the family may have.

### Child Abuse and Neglect Reporting

An employee that contracts with the Department to provide direct services to children shall promptly report knowing or having reasonable cause to suspect that a child is abused or neglected to the Department. The in-home services provider must report suspected or known child abuse or neglect to the child abuse and neglect hotline (Central Intake). In-home services providers reporting known or suspected child abuse and neglect to the social worker does not substitute for the reporting requirements to Central Intake. Inform In-Home Service providers who report abuse/neglect situations to you (the social worker), that they must report this to Central Intake.

### References

Mont. Code Ann. § 41-3-101  
 Mont. Code Ann. § 41-3-201  
 Mont. Code Ann. § 41-7-102 et seq.  
 Mont. Code Ann. § 41-3-30

Rev. 10/03  
 Rev. 10/04  
 Rev. 10/05  
 Rev. 10/06

## Child and Family Services Policy Manual: Child Protective Services In-Home Services

**1.  DPHHS REFERRAL       DPHHS UPDATE/CHANGE**

Social Worker _____ Referral Date _____	
Phone, Office _____ Phone, Cell/ Other _____	
<b>CPS CASE STATUS</b>	
Family Case (CPS) Status: <input type="checkbox"/> Not Opened <input type="checkbox"/> Opened <input type="checkbox"/> Closed	If Open, Court Action: <input type="checkbox"/> None <input type="checkbox"/> Pending <input type="checkbox"/> Current Court Action

**2. CHILD'S CURRENT LIVING**

Birth Parent or Legal Guardian <input type="checkbox"/> Yes <input type="checkbox"/> No Non-Related Foster Parent: <input type="checkbox"/> Yes <input type="checkbox"/> No Kinship Foster Parent <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>PRIMARY BASIS FOR CPS INVOLVEMENT</b>	
<input type="checkbox"/> Support Child with Birth Family/Legal Guardians <input type="checkbox"/> Without effective preventive services, Foster Care is the Planned Arrangement for the Child <input type="checkbox"/> Maintain Child in Foster or Kin-Foster Home <input type="checkbox"/> Reunify Child with Family	
_____ <b>Signature of CFSD Social Worker</b>	
_____ <b>Describe safety precautions</b>	

**3. RECIPIENT OF IN HOME SERVICES**

<p><u>Recipient Role</u>    <input type="checkbox"/> Parent    <input type="checkbox"/> Relative    <input type="checkbox"/> Foster Parent</p> <p>First _____ Last _____ MI _____</p> <p>DOB _____ AGE _____ SSN _____</p> <p>Education/ Highest Grade Completed _____</p> <p>Race/Ethnicity    <input type="checkbox"/> Am Indian    <input type="checkbox"/> African Am.                                            <input type="checkbox"/> Asian        <input type="checkbox"/> Hispanic                                            <input type="checkbox"/> White        <input type="checkbox"/> Other</p> <p>Address _____</p> <p>Mailing Address, if different _____</p> <p>Employment _____</p> <p>Phone (Wk) _____ (Other) _____</p> <p>Household Structure  <input type="checkbox"/> Single Parent – no partner in home  <input type="checkbox"/> Married and living with spouse  <input type="checkbox"/> Living w/Partner  <input type="checkbox"/> Living w/Kin</p>	<p><u>Spouse/Partner of Recipient of In Home Services</u></p> <p>First _____ Last _____ MI _____</p> <p>DOB _____ AGE _____ SSN _____</p> <p>Education/ Highest Grade Completed _____</p> <p>Race/Ethnicity    <input type="checkbox"/> Am Indian    <input type="checkbox"/> African Am.                                            <input type="checkbox"/> Asian        <input type="checkbox"/> Hispanic                                            <input type="checkbox"/> White        <input type="checkbox"/> Other</p> <p>Address _____</p> <p>_____ Street _____ City _____ Zip _____</p> <p>Mailing Address, if different _____</p> <p>Employment _____</p> <p>Phone(Wk) _____ (Other) _____</p>
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**Child and Family Services Policy Manual: Child Protective Services  
In-Home Services**

**4. IF GOAL IS TO REUNIFY CHILD WITH FAMILY, FILL IN FOR SUBSTITUTE CARE GIVER**

<p><u>Substitute Care Giver</u>  <input type="checkbox"/> Foster Parent    <input type="checkbox"/> Kin    <input type="checkbox"/> Guardianship</p> <hr/> <p>First _____ Last _____ MI _____</p> <p>Address _____  <small>Street City Zip</small></p> <p>Mailing Address, if different _____</p> <p>Employment _____</p> <p>Phone(Wk) _____ (Other) _____</p>	<p><u>Spouse</u></p> <hr/> <p>First _____ Last _____</p> <p>Address _____  <small>Street City Zip</small></p> <p>Mailing Address, if different _____</p> <p>Employment _____</p> <p>Phone(Wk) _____ (Other) _____</p>
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**5. CHILDREN** (If more than six children, report on separate sheets)

(Last, First, MI)	SSN #	Sex M/F	Race: Am Ind. Asian Black White Other	DOB	Relationship to Primary Caregiver	Child in Home  <input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No

**6. CHECK THE REQUESTED SERVICES AND LIST EXPECTATIONS:**

**A. Supervised Visitation**

<p>Total Visitation Hours (a range of hours may be listed)          _____ hours per week          _____ hours per month</p> <p>Participants in Visitation _____</p> <p>Anyone who cannot participate in Visitation? _____</p> <p>Location Specifics _____</p> <p>Transportation Details (e.g., who will transport, departure/arrival sites) _____</p> <p>Special Considerations/Conditions _____</p>
--

**B. Participation in Family Decision Making**

<p>Date of Most Recent Meeting _____</p> <p>Date of Next Scheduled Meeting _____</p> <p>Treatment Agreement: Effective Dates: (_____ to _____)</p> <p>Treatment Agreement: <input type="checkbox"/> Attached <input type="checkbox"/> Forthcoming</p> <p>Comments/Considerations: ( e.g. Family has refused FGDM, Coordinator has deemed FGDM inappropriate)</p>
--

**C. Skill Building and Other Needs**

<p><input type="checkbox"/> Occupational Skill Building (GED, Vo-Tech, job readiness classes)</p> <p>_____</p>
<p><input type="checkbox"/> Parenting Skill Building (appropriate discipline, role modeling, age appropriate expectations, bonding)</p> <p>_____</p>

**Child and Family Services Policy Manual: Child Protective Services  
In-Home Services**

Family Behavior Skill Building (anger management, preventing conflict, communication, assertiveness)

\_\_\_\_\_

\_\_\_\_\_

Organizational Skills (budgeting, shopping, meal preparation, housekeeping, maintaining home, problem solving)

\_\_\_\_\_

\_\_\_\_\_

Transportation (arranging for or transporting, for reunification, planned visitations, family activities, support group, services)

\_\_\_\_\_

\_\_\_\_\_

Medical Needs

Immunizations	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____
Physical Checkups	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____
Mental Health Services	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____
Substance Abuse Services	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____
Other Medical Conditions	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____
Dental Needs	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____
Dental Check-Up	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not known, Please Determine	_____

Linking Other Resources (housing, public assistance, food share or hard services such as beds, other furniture)

\_\_\_\_\_

Parental Support Services

Community Parent Education Classes \_\_\_\_\_

Parent Support Group \_\_\_\_\_

Respite Care \_\_\_\_\_

Other, please describe \_\_\_\_\_

**D. Home Visiting**

**Home Visiting Total Hours (face-to-face), please fill in one:**

\_\_\_\_\_ hours per week

OR

\_\_\_\_\_ hours biweekly

OR

\_\_\_\_\_ hours per month

**Estimated Length of In-Home Services:**

\_\_\_\_\_ to \_\_\_\_\_  
Start Date End Date

**Child and Family Services Policy Manual: Child Protective Services  
In-Home Services**

<p><b>In-Home Providers will now provide a <u>written monthly report</u> to the Referring Social Worker.</b></p> <p><b>This is the minimum reporting requirement. More frequent reporting is acceptable, Social Workers can indicate the need for more frequent reporting.</b></p>	<p align="center"><b>Written Updates should include:</b></p> <hr/> <hr/> <p>Note if there is a need to report to SW more often than monthly.</p> <hr/>
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**7. SERVICES CURRENTLY BEING PROVIDED**

<input type="checkbox"/>	Family Group Decision Making _____
<input type="checkbox"/>	Mental Health Case Management _____
<input type="checkbox"/>	Therapy _____
<input type="checkbox"/>	CD Treatment _____
<input type="checkbox"/>	Other Medical Services _____
<input type="checkbox"/>	Dental Services _____
<input type="checkbox"/>	Support Group _____
<input type="checkbox"/>	Foster Care _____
<input type="checkbox"/>	Public Housing _____
<input type="checkbox"/>	Half-way House _____
<input type="checkbox"/>	Respite _____
<input type="checkbox"/>	Day Care _____
<input type="checkbox"/>	Public Assistance _____
<input type="checkbox"/>	Job Training _____
<input type="checkbox"/>	DD Service _____
<input type="checkbox"/>	Other _____

<b>Agency Name</b> _____	
Agency Person Taking Referral _____	Date _____
Received by: <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> In-Person <input type="checkbox"/> letter	
Services Requested: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied	
If Denied, State the Reason: <input type="checkbox"/> No Open Slots <input type="checkbox"/> Unable to Provide Requested Services	
<input type="checkbox"/> Other, please describe. If there are no open slots, please indicate expected service date )	
:	
Notice to Referring Worker of Acceptance/Denial:	
Notice Given by _____	Date _____
<input type="checkbox"/> Written <input type="checkbox"/> Verbal	

PLEASE ATTACH THE NEW INVESTIGATIVE SAFETY ASSESSEMENT FOR THIS FAMILY

Rev. 10/03  
Rev. 10/04  
Rev. 10/05  
Rev. 10/06

**Child and Family Services Policy Manual: Legal Procedure**  
**Child Abuse and Neglect Petitions**  
**General Requirements/Overview**

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**Background**

Whenever the Department intervenes with a family and removes a child from the parental home, a legal basis must exist for the removal and for the continued foster care placement. Filing a child abuse and neglect petition initiates the judicial process whereby the Department receives judicial approval of the Department's actions regarding the individual child. The type of relief granted by the court depends on the type of petition filed.

**NOTE:** With the exception of the affidavit filed in support of the initial petition in a child abuse or neglect proceeding (which must be completed in time to assure the petition is filed within 2 working days of the removal), the social worker must file all affidavits supporting petition in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.

The social worker must file all reports required for permanency hearings or status hearings no less than 5 working days prior to the scheduled hearing. The report must be filed with either the office of the attorney representing the department or with the court depending on the established local protocol.

The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this "strongly encouraged" is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

**Child Abuse and Neglect Petitions - Types**

The types of child abuse and neglect petitions, the relief granted under each petition, and the evidentiary standard for each relief:

- a) **Petition for Immediate Protection and Emergency Protective Services** - filed when the social worker must make an emergency removal of the child from the parent's home. An ex parte order of immediate protection is issued upon filing the petition and additional reliefs may be granted after the show cause hearing.

**Evidentiary standard:** Non-ICWA case when a

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child is placed in foster care: Probable cause that the child has been or is at risk of abuse, neglect, or abandonment. ICWA case when a child is placed in foster care: Clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

- b) **Petition for Temporary Investigative Authority** - specifically limited to investigation. When the court grants this petition the Department has judicial authority to conduct an in-depth investigation into the child's situation.

**Evidentiary standard:** Probable cause that the child has been or is at risk of abuse, neglect, or abandonment. ICWA case when a child is placed in foster care: Clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

- c) **Petition for Temporary Legal Custody** - filed when the social worker determines the child is or has been abused, neglected, or abandoned. An award of temporary legal custody to the Department temporarily transfers legal custody of the child from the parent(s) to the Department. A petition for temporary legal custody may be the initial petition filed in a case.

**Evidentiary standard:** Preponderance of the evidence establishes that the child is or has been abused, neglected or abandoned. ICWA case when a child is placed in foster care: Clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

- d) **Petition for Long-term Custody** – filed when other, more permanent options, are not appropriate for the child or not in the child's best interests. For the court to approve long-

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term custody, specific statutory requirements must be met including the requirement that the child must be placed in a planned permanent living arrangement.

**Evidentiary standard:** Preponderance of the evidence establishes that the specific statutory requirements are met.

- e) **Petition for Termination of the Parent-Child Legal Relationship** - filed when continuation of the parent-child relationship is not in the child's best interests and the statutory requirements are met. After termination of the parent-child relationship custody of the child is permanently transferred from the parents to the Department.

**Evidentiary standard:** Non-ICWA case: Clear and convincing evidence that the statutory requirement upon which the relief was requested has been met. ICWA case: Evidence beyond a reasonable doubt that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

- f) **Petition for Appointment of a Guardian** - guardianship is one option for permanency. The court may appoint a guardian when specific statutory requirements are met. A guardian may be appointed for a child for whom parental rights have not been terminated and for a child for whom parental rights have been terminated. The best interests of the child test is applied to guardianships.

**Evidentiary standard:** Not established by statute.

- g) **Petition for A Determination that Preservation or Reunification Services Need Not be Provided** - the social worker will request this relief when social worker determines one of the statutorily required conditions exists and that services to prevent the removal or services to reunite the child will not be successful.

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**Evidentiary standard:** Clear and convincing evidence that one of the statutorily required conditions is present in the case.

**NOTE:** This petition may not be filed in a case if the child who is the subject of the proceeding is an Indian child as defined by ICWA.

**Modification of or Combining Relief Request ed**

A petition which requests any combination of the types of relief request can be filed. The petition may be modified for different relief at any time within the discretion of the court.

**Social Worker Affidavit**

Each petition filed must be accompanied by an affidavit by the social worker alleging that the child appears to have been abused, neglected, or abandoned. The affidavit must also state the facts which form the basis for the petition.

With the exception of the affidavit filed in support of the initial petition in a child abuse or neglect proceeding (which must be completed in time to assure the petition is filed within 2 working days of the removal), the social worker must file all affidavits supporting petition in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.

The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

**Service of Process**

The parents, guardian, or other person having legal custody of the child named in the petition, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least five working days before the date set for hearing. **Note: Social workers (or other Division staff) may not personally serve the petition.**

Copies of all other petitions must be served upon the person or the person attorney of record by certified mail, by personal service, or by publication. If service is by certified mail, the county attorney or social worker must receive a return receipt signed by the person to whom the notice was mailed for service to be effective. Service of the notice is considered to be

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effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

The initial petition and the petition to terminate parental rights may be sent by publication if s/he may be served by publication. If a parent, etc., cannot be served personally.

If personal service cannot be made upon the parents, etc., the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

**Required Notice**

During the pendency of a child abuse and neglect proceeding, specific notices are required. The required notices are:

- a) A separate notice to the court stating any statutory time deadline for a hearing, along with the social worker's affidavit, must accompany the petition at the time of filing the petition with the district court.
- b) If the social worker makes an emergency placement, the social worker must provide the parents with notice of the removal, the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing, and notice that the parent, etc. having physical custody of the child may have a support person present during in-person meetings.
- c) County attorney must give legal notice of all judicial proceedings to foster parent(s), preadoptive parent(s) or relative(s) caring for the child;
- d) Service by the appropriate authority of a child abuse and neglect petition must be accompanied by a written notice advising the child's parent, etc., of the following:
  - the right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under ICWA (if applicable);
  - the right to contest the allegations in the petition; and

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- the time lines for hearings and determinations required under Title 41, chapter 3.
- e) If appropriate, orders issued under Title 41, chapter 3, must contain a notice provision advising a child's parent, etc., of the following:
- In a TIA, the parent, etc having physical custody of the child may have a support person present during in-person meetings
  - the court is required to hold a permanent plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;
  - if the child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and
  - completion of a treatment plan does not guarantee the return of a child.
- f) Treatment plans submitted to the court for approval must contain a notice provision advising parents of the following:
- time lines for hearings and determinations required under Title 41, chapter 3;
  - the state is required to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been

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removed from the child's home;

- if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and
- completion of a treatment plan does not guarantee the return of a child and completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

**Required Judicial Findings**

During the pendency of a child abuse and neglect proceeding, the court is required to make findings at specified phases of the proceeding.

Those findings are:

- a) Immediate protection and emergency protective services:
  - An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the child's best interests; and
  - The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing.
- b) Show cause hearing:
  - After the show cause hearing, the court shall make written findings on issues including but not limited to:
    - whether the child should be returned home immediately if there was an emergency

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removal, remain in temporary out-of-home care, or be removed from the home;

- why continuation of the child in the home would be contrary to the child's best interests and welfare if removal is ordered or continuation of removal is ordered;
- whether the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;
- financial support of the child; and
- whether another hearing is needed and, if so, the date and time of the next hearing.

**Note:** In some cases, the social worker has made the determination that the child may safely remain in the home but court intervention is required. In this instance, the court often will grant the social worker the right to place the child if, subsequent to the date of the order, the social worker determines the child may no longer remain safely in the home.

If the child is placed subsequent to receiving an order authorizing the placement, the social worker must obtain from the court a finding that continued residence of the child with the parent is contrary to the child's welfare. This finding must be issued by the court **after** the removal of the child from the home. An order which contains the finding that continued residence of the child with the parent(s) is contrary to the welfare of the child obtained **prior to** removal will not suffice for the "contrary to the welfare" requirement.

In addition, after placement the social worker must obtain a judicial finding that reasonable efforts were made to prevent the removal of the child from the parent(s) home. Federal regulations require that this judicial finding be made within 60 days of

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placement. Therefore, even if the court has authorized a placement, after the child is actually placed, a hearing must be held within 60 days of placement to obtain the finding that:

- a) placement of the child was in the child's best interests or;
- b) continued residence of the child with the parent(s) is contrary to the child's welfare;  
**AND**
- c) reasonable efforts have been made to prevent the placement.

c) Adjudication:

- Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues including but not limited to:
  - which allegations of the petition have been proved or admitted, if any;
  - whether there is a legal basis for continued court and Department intervention; and
  - whether the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

d) Temporary legal custody:

- The court may grant temporary legal custody if the court finds by a preponderance of the evidence that:
  - dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; **and**

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- unless there is a finding that reasonable efforts are not required, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.
  - If an extension of temporary legal custody is granted, the court shall specifically find that an extension is in the child's best interests.
- e) Permanency plan hearing:
- The court shall make findings on whether the permanency plan is in the best interests of the child; and
  - whether the Department has made reasonable efforts to finalize the plan.

**Statutory Time Frames**

The Child Abuse and Neglect statute contains specific time frames with which the social worker, county attorney, and court must comply during the life of an abuse/neglect action.

- a) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays of emergency placement of a child.
- b) A show cause hearing must be held within **20** days, including weekends and holidays, of the filing of the initial petition.

**NOTE:** The initial hearing for an ICWA case may not be held prior to 10 days after receipt of the notice of the hearing and ICWA provides for an extension of an additional 20 days upon request by the parent of the tribe.

- c) An order for Temporary Investigative Authority may not be for longer than 90 days and cannot be extended beyond 90 days.
- d) An adjudicatory hearing must be held within 90 days of a show cause hearing.

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- e) A dispositional hearing must be held within 20 days of the adjudicatory hearing (unless the adjudicatory hearing is a bifurcated hearing).
- f) The dispositional hearing may be held immediately after the adjudicatory hearing if all required reports are available and have been received by all parties or their attorneys at least five working days in advance of the hearing.
- g) An order for temporary legal custody can be in effect no longer than six months. An extension of temporary legal custody may not exceed six months. **Note:** Multiple six-month extensions of temporary legal custody may be approved if the court makes the required findings.
- h) A permanency plan hearing must be held:
  - within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary;
  - no later than 12 months after the initial court finding that the child has been subjected to abuse/neglect; or 12 months after the child's first 60 days of removal from the home, whichever comes first; and
  - within 12 months of the initial permanency plan hearing and every 12 months thereafter until the child is in a permanent placement of either adoption or guardianship.

**Placement Requirements**

The Child Abuse and Neglect statute contains provisions governing the placement of child in out-of-home care.

- a) Whenever a child is placed in out-of-home care, the social worker must consider the noncustodial parent as a placement option.
- b) Whenever a child is placed in out-of-home care and the noncustodial parent is not a placement option, the social worker must consider a member of the child's extended

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family as a placement option. After the noncustodial parent, extended family is the first placement preference for ICWA cases.

- c) If an extended family member requests custody of a child at the dispositional hearing or at the permanency hearing and, after investigation, the social worker does not recommend placement with a relative, the department must provide the reasons in writing to the court.
- d) The role of the court in determining a child's placement is to resolve conflicts between the parties if a dispute arises – if no conflict regarding the child's placement exists between the parties, the court cannot order a placement other than the placement proposed by the Department – the court is not considered a party to the action.
- e) When a child is adjudicated a youth in need of care based on **abandonment** or if the Department is awarded temporary or permanent legal custody of an **abandoned** child and the child is not placed with his/her noncustodial parent, placement priority shall be given to a member of the child's extended family if such placement is in the child's best interests.

If the department denies the request to place a child adjudicated based on abandonment with the child's extended family, the department must provide the family member who requested placement a written statement of the reasons for the denial.

- f) When the court appoints a guardian for an **abandoned** child, placement priority may be given to a member of the child's extended family if such placement is in the child's best interest.
- g) Placement with a fit and willing relative may be considered a permanent placement for a child.
- h) If the child who is to subject of the proceeding is an Indian child as defined by ICWA, the ICWA placement preferences for foster care and adoption must be followed.

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**Criteria for Case Dismissal**

Unless the petition has been previously dismissed, the court **shall** dismiss an abuse and neglect proceeding on the motion of a party, or on its own motion, in any case in which **all** of the following criteria are met:

- 1) a child who has been placed in foster care is reunited with the child's parents and returned home;
- 2) the child remains in the home for a minimum of six months with no additional confirmed reports of child abuse/neglect; and
- 3) the social worker determines and informs the court that the issues that led to the social worker's intervention have been resolved and that no reason exists for further social worker intervention or monitoring.

**References**

Mont. Code Ann. § 41-3-101.  
Mont. Code Ann. § 41-3-301.  
Mont. Code Ann. §§ 41-3-422 and 427.  
Mont. Code Ann. § 41-3-424.  
Mont. Code Ann. §§ 41-3-432, 433, 437, 438, and 439.  
Mont. Code Ann. §§ 41-3-440, 442, 443, 444, and 445.

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<b>Background</b>	<p>During the dependency of a child abuse and neglect proceeding, four types of hearings are required: show cause, adjudicatory, dispositional, and permanency plan. Each hearing must be held within a prescribed time frame. Specific judicial findings are required at the conclusion of each hearing. The hearings can be combined if the requirements of each are met during the combined hearing.</p>
<b>Show Cause Hearing</b>	<p>The show cause hearing is the first or initial hearing held on a child abuse and neglect petition. The show cause hearing must be conducted within <b>20 days</b>, including weekends and holidays, of the filing of an <b>initial</b> child abuse and neglect petition unless:</p> <ul style="list-style-type: none"> <li>• otherwise stipulated by the parties pursuant to Mont. Code Ann. § 41-3-434; or</li> <li>• an extension of time is granted by the court upon a showing of substantial injustice.</li> </ul> <p><b>NOTE:</b> The initial hearing for an ICWA case may not be held prior to 10 days after receipt of the notice of the hearing and ICWA provides for an extension of an additional 20 days upon request by the parent or the tribe.</p>
<b>Evidentiary Standards</b>	<p>During the hearing, the person filing the petition has the burden of presenting evidence required to support the relief requested in the petition and establishing:</p> <ul style="list-style-type: none"> <li>• probable cause for the issuance of an order for immediate protection emergency services;</li> <li>• probable cause for an order for temporary investigative authority;</li> <li>• preponderance of the evidence for an order of adjudication;</li> <li>• preponderance of the evidence for an order for temporary legal custody;</li> <li>• preponderance of evidence for order for long term custody;</li> <li>• clear and convincing evidence for a determination that preservation or reunification services need not be</li> </ul>

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provided;

- clear and convincing evidence for an order terminating the parent-child legal relationship.

**NOTE:** If the child who is the subject of the hearing is an Indian child as defined by ICWA, the ICWA evidentiary standards must be met. Those standards are:

- for a foster care placement, the court must make a determination, supported by clear and convincing evidence and the testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; and
- for termination of the parent-child relationship, the court must make a determination, supported by evidence beyond a reasonable doubt and the testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

### Evidence Presented

At the show cause hearing, the court may consider all evidence. The parents must be provided an opportunity to provide testimony. Hearsay evidence of statements made by the child who is the subject of the proceeding is admissible at the show cause hearing. The court may permit testimony by telephone, audiovisual means, or other electronic means.

### Appointment of Counsel

The court must appoint counsel for the parent during the show cause hearing, if the parent is indigent and requests appointment of counsel. For ICWA cases, indigent parents have an absolute right to appointment of counsel.

### Show Cause Requirements

At the show cause hearing, the court must explain the procedures to be followed in the case and explain the parties' rights, including

- the right to appointment of counsel if indigent or if appointment of counsel is required under ICWA; and
- the right to challenge the allegations.

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The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations; and

Inquiry must be made to determine whether or not the notice requirements of ICWA have been met, if applicable.

### Conclusion of the Show Cause Hearing

At the conclusion of the show cause hearing, the court must make specific required written findings including, but not limited to, the following:

- a) whether the child should be returned home immediately if there has been an emergency removal **OR** whether the child should remain in temporary out-of-home care **OR** whether the child should be removed from the home;
- b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the parents' home would be contrary to the child's best interests and welfare;
- c) whether the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;
- d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs; and
- e) whether another hearing is needed and, if so, the date and time of the next hearing.

In making his/her findings, the court may consider the following:

- a) terms and conditions for parental visitation; and
- b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child, if one has been entered.

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### Adjudicatory Hearing

The order after the show cause hearing must be in writing.

The adjudicatory hearing is the hearing at which evidence is presented to establish that the child has actually been abused, neglected, or abandoned. An adjudicatory hearing **MUST** be held prior to the adjudication of the child as a youth in need of care. In In the Matter of T.C. and W.C., Youths In Need of Care, 2001 MT 264, 37 P.3d 70 (2002), the Montana Supreme Court stated that a court may only make the finding that a child is a youth in need of care through an adjudicatory hearing as mandated by Mont. Code Ann. § 41-3-437.

Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements for adjudication have been met or if the parent(s), by prior stipulation, have agreed that the child meets the definition of "youth in need of care" by a preponderance of the evidence.

At the conclusion of the adjudicatory hearing, the court makes a determination of whether or not the child is a "youth in need of care." The adjudicatory hearing may be combined with the show cause hearing if all the requirements of both hearings are met.

Upon the filing of an appropriate petition, an adjudicatory hearing must be held within **90 days** of a show cause hearing. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

### Evidentiary Standard

The court may make an adjudication on any abuse/neglect petition if the court determines by a preponderance of the evidence that the child is a youth in need of care.

For ICWA cases involving the foster care placement of an Indian child, the court must make a determination, supported by clear and convincing evidence and the testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

For ICWA cases involving the termination of the parent-child relationship, the court must make a determination, supported by evidence beyond a reasonable doubt and the testimony of a qualified expert witness that continued custody of the child by

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the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

### Abandoned Children

In a case in which abandonment has been alleged, specific statutory requirements must be met. If a child is alleged to be abandoned, a foster parent, preadoptive parent, or relative of the child who is caring for, or a relative of the child who has cared for, the child who is the subject of the proceeding may appear at the adjudicatory hearing.

These persons may be allowed to intervene in the case to become a party to the action. The court may allow these persons to intervene if, after a pre-hearing during which the required evidence discussed below is presented, the court determines that the requested intervention is in the best interests of the child. If the intervention is granted, the intervening person(s) become intervenors in the proceeding. As an intervenor, they may participate in the adjudicatory hearing as well as receive notice and participate in all subsequent hearings.

During the adjudicatory hearing on a child alleged to be abandoned, the court shall hear offered evidence, including evidence offered by an intervenor, regarding any of the following:

- a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and
- b) whether the child was placed by the parents with another person so that person provided care for the child; or
- c) whether the parents allowed the child to remain with another person who provided care for the child.

If the child was placed by the parents with another person or the parents allowed the child to remain with another person, the court must hear evidence regarding:

- a) the intent of the parents in placing the child or allowing the child to remain with that person;

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- b) the circumstances under which the child was placed or allowed to remain with that other person including:
  - i) whether a parent requesting return of the child was previously prevented from doing so as a result of an order of protection or a conviction for partner or family member assault; and
  - ii) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

### Evidence Presented

During the adjudicatory hearing, the county attorney must present the facts which establish that the child has been abused, neglected, or abandoned and upon which the request for adjudication is based. The court must also hear evidence regarding the residence of the child, paternity (if in question), the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child.

Hearsay evidence of statements made by the youth is admissible according to the Montana Rules of Evidence (Title 25).

### Adjudication Requirements

Adjudication must determine the nature of the abuse and neglect. Adjudication must also establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

### Required Findings

Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court must make specific written required findings on issues including, but not limited to:

- a) which allegations of the petition have been proved or admitted, if any;
- b) whether there is a legal basis for continued court and Department intervention; and
- c) whether the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

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### Discretionary Findings

The court may also order:

- a) terms for visitation, support and other intra-family communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;
- b) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing;
- c) the Department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;
- d) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and
- e) the Department to continue efforts to notify noncustodial parent.

### Dispositional Hearing

The dispositional hearing must be discrete from the adjudicatory hearing. A dispositional order must be made after a dispositional hearing. The dispositional hearing **must** be separate from the adjudicatory hearing. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues.

The dispositional hearing is held after the adjudication and is the hearing at which the court listens to testimony regarding the plan and placement for the child. The dispositional hearing may be held prior to the entry of written findings of adjudication. At the end of the dispositional hearing, the court determines whether to grant the relief requested in the petition.

A dispositional hearing must be held on every child abuse/neglect petition filed within 20 days after an adjudicatory hearing has been entered unless:

- a petition is dismissed; or
- the parties have stipulated to the proposed disposition; or
- an extension has been ordered by the court.

Exceptions to the time limit may be allowed only in cases

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<b>Dispositional Hearing immediately following the Adjudicatory Hearing</b>	<p>involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.</p> <p>A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:</p> <ol style="list-style-type: none"> <li>a) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and</li> <li>b) the judge has an opportunity to review the reports after the adjudication.</li> </ol> <p><b>NOTE:</b> The social worker should work with his/her county attorney to identify the required reports for each case. The required reports include, at a minimum, the social worker's affidavit and the guardian ad litem's report.</p>
<b>Relative Request for Placement</b>	<p>If an extended family member requests custody of a child at the dispositional hearing or during the permanency hearing and, after investigation, the social worker does not recommend placement with a relative, the department must provide the reasons in writing to the court.</p>
<b>Hearsay Evidence</b>	<p>Hearsay evidence is admissible at the dispositional hearing.</p>
<b>Disposition</b>	<p>If the child is adjudicated a youth in need of care, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:</p> <ol style="list-style-type: none"> <li>a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;</li> <li>b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the social worker to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;</li> <li>c) grant an order of limited emancipation to a youth who is 16 years of age or older;</li> </ol>

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- d) transfer temporary custody to any of the following:
  - i) the Department;
  - ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care for the child; or
  - iii) a relative or other individual who is recommended by the Department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child (see Abandoned Children below).
  
- e) order a party to the action to do what is necessary to give effect to the final disposition, including under taking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the Department unless the Department **consents and informs the court that resources are available for payment;**
  
- f) order further care and treatment as the court considers the best interests of the child that does not require an expenditure of money by the Department unless the Department **consents and informs the court that resources are available for the proposed care and treatment.**

### Reasonable Efforts

The court will hear testimony during the dispositional hearing regarding the reasonable efforts made by the social worker to either prevent the out-of-home placement or to reunify the child with his/her parent(s). If the court finds that reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the social worker must make reasonable efforts to place the child in a timely manner in accordance with the child permanent plan. The social worker must also complete whatever steps are necessary to finalize the permanent plan of the child.

### Abandoned Children

If the court awards temporary legal custody **of an abandoned child** to someone other than the Department or a noncustodial parent, the court shall award temporary legal custody to a

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member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

- a) placement with the child's extended family member is in the child's best interests;
- b) the extended family member requests that the child be placed with the family member; and
- c) the extended family member is found by the court to be qualified to receive and care for the child.

If more than one extended family member satisfies the requirements above, the court may award custody to the extended family member who can best meet the child's needs.

If a member of the child's extended family requests that custody be awarded to them, the department shall investigate and determine if awarding custody of the child to the family members is in the best interests of the child. If the department determines that the request for custody should be denied, the reasons for the denial must be provided to the court.

### Permanency Hearing

The purpose of the permanency hearing is to present to the court the permanent plan for the child and receive judicial approval of the plan.

A permanency hearing must be held by the court or the foster care review committee, within the following time frames:

- a) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary;
- b) no later than 12 months after an initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first; and
- c) within 12 months of the initial hearing and every 12 months thereafter until the child is permanently placed in either an adoptive or guardianship placement. During this hearing, the court shall make a finding whether the Department has made reasonable efforts to finalize the permanency plan for the child.

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<b>Hearing Required</b>	A hearing must be held for the initial Permanency Hearing and any subsequent Permanency Hearing. Both Montana Code Annotated and the Adoption and Safe Families Act of 1997 require an <b>actual</b> hearing. Paper reviews, <i>ex parte</i> hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.
<b>Required Report</b>	<p>At least five working days prior to the hearing, the Department must submit a report to the court detailing the permanency plan for the child. The report must:</p> <ul style="list-style-type: none"> <li>a) address the social worker's efforts to effectuate the permanency plan for the child;</li> <li>b) address the options for the child's permanent placement;</li> <li>c) examine the reasons for excluding higher priority options; and</li> <li>d) set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.</li> </ul>
<b>Discretionary Report</b>	At least three working days prior to the permanency hearing, the guardian ad litem, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.
<b>Court Action</b>	<p>The court's order must be issued within 20 days after the permanency hearing if the court conducts the permanency hearing or within 10 days of receipt of recommendations if the foster care review committee conducts the hearing. The judge will review the plan and make findings on whether the plan is in the child's best interests and whether the social worker has made reasonable efforts to finalize the plan. The court will order the Department to take whatever steps are necessary to effectuate the plan.</p> <p>In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with statutory permanency options. The court may not order any service that requires an expenditure of money by the Department unless the court finds after notice and a hearing that the expenditure are reasonable and that the resources are</p>

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Statutory Permanency Options	<p>available for payment.</p> <p>Statutory permanency options include:</p> <ol style="list-style-type: none"> <li>a) reunification of the child with the child's parent or guardian;</li> <li>b) adoption;</li> <li>c) appointment of a guardian; or</li> <li>d) long-term custody if the child is in a planned permanent living arrangement (See Section 302-5, Long Term Custody for specific requirements).</li> </ol>
Combine with Other Hearings	<p>A permanency hearing may be combined with another hearing, such as a hearing for termination of parental rights if held within the time limits of the other hearing. The requirements for the other hearing must be met in addition to the requirements for a permanency hearing.</p>
IV-E Eligibility	<p>If a permanency hearing is not held within 12 months from the month the child is considered to have entered foster care and every 12 months thereafter, the child loses IV -E eligibility for the period of time between when the permanency hearing should have been held until and when the permanency hearing is actually held.</p>
Federal Requirements	<p>The Adoption and Safe Families Act of 1997 contains requirements for the permanency hearing which are not codified into the Montana Code Annotated. The social worker should include a discussion of these requirements in the report submitted to the court prior to the permanency hearing. The Adoption and Safe Families Act requires that the court determine the permanency plan for the child that includes whether and when, if applicable:</p> <ul style="list-style-type: none"> <li>• the child will be returned to the parent; or</li> <li>• the child will be placed for adoption, and the Department will file a petition for termination of parental rights; or</li> <li>• a petition will be filed for legal guardianship; or</li> <li>• the child will be placed in another permanent living arrangement (in cases where the worker has documented</li> </ul>

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to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian); **and**

- if the child has been placed in foster care outside the State in which the home of the parents is located, whether the placement continues to be appropriate and in the best interests of the child; **and**
- if the child has attained age 16, the services needed to assist the child to make the transition from foster care to independent living.

### CAPS

Indian Child

If there is a reasonable belief the child may be an Indian child, the ICWA policy must be followed. The tribe must be notified of the pending legal proceedings. Use DocGen D200, Request for Verification of Status to request enrollment information, and DocGen D105, Notification of Judicial Proceedings to notify the child's tribe of pending court action. See Section 305-1, Indian Child Welfare Act.

### CAPS

To ensure compliance with state and federal requirements mandating certain reviews and hearings within strict time frames after court determinations, after a court hearing has been held, the worker should enter court detail on CRTD. The worker should enter petition date, court hearing date, begin and end dates of court order, type of hearing (court event), reliefs granted (court disposition, including determinations issued from the bench prior to receipt of the written court order), parties to the hearing, and whether or not the court order has been received. Use "PPH" for the court event of permanency plan hearing. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The worker should also enter the review date, as CAPS will alert in advance of that date. CAPS will also alert in advance of the expiration date of the court order, if the end date of the court order has been entered.

### References

Mont. Code Ann. § 41-3-432  
 Mont. Code Ann. § 41-3-437  
 Mont. Code Ann. § 41-3-438  
 Mont. Code Ann. § 41-3-445  
 Mont. Code Ann. § 41-3-439  
 Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

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42 U.S.C. 670 et seq.  
45 CFR 1356.21

## Child and Family Services Policy Manual: Legal Procedure Immediate Protection and Emergency Protective Services

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### Legal Basis

The policy of the State of Montana is to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. To protect children from child maltreatment, the Child and Family Services Division has statutory authority to intervene in the child's life when the social worker determines that the child would be unsafe if the child continued to reside with his/her parents or legal custodian. In making the decision to intervene and place the child in an out-of-home placement, the child's health and safety are of paramount concern.

### Emergency Placement

If the social worker determines that a child is in immediate or apparent danger of harm, the social worker may use the authority of emergency protective services to immediately remove the child from the dangerous situation. **A substantiation of child abuse or neglect is not required to initiate emergency protective services or to make an emergency placement.**

### Child in Immediate Danger

Examples of cases which might require emergency removal include:

- a child left without appropriate supervision when the child is not physically, mentally, socially, or emotionally mature
- a child who has been physically abused and is in need of medical attention;
- the worker has reason to believe that retaliation to the child will occur;
- a child who appears to be in need of protection, but whose parents are likely to take the child and flee protective services authority;
- a child who has been physically or sexually assaulted and the child is not safe in the home; or
- a child is in danger because of the occurrence of partner or family member assault.

If the worker investigating the home is unsure whether or not an immediate removal of the child is necessary, the worker should

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contact his or her immediate supervisor. If the immediate supervisor is not available, another supervisor in that region or the Regional Administrator should be contacted for assistance.

### Cases Involving Domestic Violence

In cases involving domestic violence, the social worker must consider the situation of the victimized adult in addition to the safety of the child.

If the social worker determines that an adult member of the household is the victim of partner or family member assault, the social worker shall provide the adult victim with a referral to a domestic violence program. The form of the referral will depend on circumstances and will consider the safety of both the child(ren) and the adult victim.

If the social worker determines, after investigation, 1) that the child is in danger because of the occurrence of partner or family member assault against an adult member of the household; and 2) that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the social worker shall take appropriate steps for the protection of the child. The steps taken by the social worker may include:

- 1) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;
- 2) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and
- 3) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the social worker determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

**Note:** See Section 402-1, Placement Procedures.

### Procedure

When the child is removed from the home on an emergency basis, the worker shall:

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- prepare an affidavit and submit it to the county attorney as soon as possible and always within 48 hours, excluding weekends and holidays. The affidavit must allege that the child appears to be at risk of or to have been abused, neglected, or abandoned and must state the basis for the petition (the facts which led the social worker to make the placement and which support the social worker's determination that the child is or appears to be abused, neglected, or abandoned). When drafting the affidavit the social worker should identify the child(ren) by initials.  
**Note: The social worker must interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed; or**
- The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.
- if appropriate, obtain a voluntary parental agreement from the parent authorizing the Department to place the child in foster care. If the parent is willing to enter into a voluntary foster care placement agreement, the social worker must comply with the following requirements:
  - 1) the voluntary foster care placement may last no longer than 30 days;
  - 2) the parent must be informed that s/he may have another person present whenever the terms of the voluntary foster care placement agreement are discussed between the social worker and the parent ; and
  - 3) the voluntary foster care placement agreement must be executed in the presence of the judge of a court of competent jurisdiction if the child is an Indian child as defined by ICWA.
- notify the parent at the time placement is made of the decision to place the child in care. The notification must include the reason for removal, information regarding the show cause hearing and the purpose of the show cause

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hearing, and notification that the parent having physical custody of the child has a right to have a support person present during any in-person meeting with the social worker (see the Notification to Parents on page 12 of this section). The social worker should make every effort to notify the parents in person or by phone as soon as the child is removed from the home. These efforts must be noted in the case record. A copy of the Notification to Parents must be included in the case record. A copy of the Notification should be submitted to the county attorney with the affidavit;

- place the child with the child's noncustodial parent or extended family, when it is in the best interest of the child and when the home is approved by the Department. (see Sections 304-1 and 402-4);
- ask the parent if the child is an Indian; and
- gather information necessary to complete DPHHS-CFS-107, Part 1, Child's Social and Medical History.

**IV-E Responsibility** To protect future eligibility for the child, the child's IV -E eligibility shall be determined for the month in which the parental agreement was signed or the date the petition is filed **even if the child is in unpaid kinship care**. See Section 405-1, IV-E Foster Care.

**Legal Procedure**  
Forward Information to  
County Attorney

Following emergency removal, the county attorney must file a petition within 2 working days, excluding weekends and holidays. Therefore, the social worker must forward the necessary information to the county attorney within that same time limit. Notification that the parent having physical custody of the child has the right to have a support person present during any in-person meeting with the social worker must also be included in the petition for emergency protective services.

If the social worker has not substantiated child abuse or neglect, the county attorney will file a petition for immediate protection and emergency protective services and/or TIA; if the social worker has substantiated child abuse or neglect, the county attorney will file a petition for immediate protection and emergency protective services and temporary legal custody.

**Affidavit**

The affidavit is the workers facts of the case but must include

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the parents' statements if any were made.

The affidavit is the document used by the county attorney to determine whether to file a petition with the court. The affidavit contains the facts upon which the county attorney will decide what relief to request of the court. District court filing standards require social workers to refer to the child(ren) by initials.

If the county attorney decides that legal action is necessary, the affidavit is attached to the petition when filed. Preparation of the affidavit alone does not start a legal action. The county attorney starts the legal action by filing a petition with the court and the affidavit provides support for the facts alleged in the petition.

The worker should identify in the title whether it is an affidavit for TIA, temporary legal custody, guardianship, or permanent legal custody.

The affidavit should only include observations of the worker and facts determined as a result of the investigation and parents' statements. Only those facts within the personal knowledge of the worker or any person who will be called as a witness should be contained in the affidavit. Only statements of individuals who are parties, alleged perpetrators or potential witnesses should be included in the affidavit. Also, the worker should not include personal or subjective opinions or conclusions such as "I think the child was abused." Only the facts, such as "the child suffered a spiral fracture while in the exclusive care of the father" should be included. The worker's personal beliefs about the family should not be a part of the affidavit.

The original affidavit is forwarded to the county attorney and a copy retained in the file. The affidavit will be attached to the legal papers which are served on the parents, **so the name(s) of any reporter or individual who provided information on the alleged child abuse/ neglect incident should not be identified in the affidavit.**

If the child has been removed from the parental home, the affidavit must contain facts to support a judicial finding that continuation of the child's residence in the home would be contrary to the child's welfare or, in the alternative, that placement of the child in out-of-home care is in the child's best

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interest.

Either the petition or affidavit must contain information regarding statements made, if any, by the parents.

The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

### **Petition for Immediate Protection and Emergency Protective Services**

When a social worker removes a child because s/he has reason to believe the child is in immediate or apparent danger or harm and the social worker determines that the placement will be longer than two working days, excluding weekends and holidays, the Department must have a legal basis to continue the placement. The petition filed by the county attorney provides the legal basis for the continued placement.

A petition for immediate protection and emergency protective services will generally be the initial petition filed by the county attorney when the social worker places a child in an emergency protective placement. This petition may be combined with a petition for temporary investigative authority or temporary legal custody, depending on whether the social worker has evidence to show the child is at risk of abuse, neglect, or abandonment or evidence to show the child is abused, neglected or abandoned. The petition for immediate protection and emergency protective services may also be combined with a petition to terminate the parent-child relationship when a petition has been filed requesting a determination that preservation or reunification services need not be provided.

The petition for immediate protection and emergency protective services must contain facts to support a finding, based on probable cause, the child appears to be abused, neglected, or abandoned or the child is in danger of abuse, neglect, or abandonment. The petition must also contain facts establishing that continued residence of the child with the parents is contrary to the welfare of the child.

The petition for immediate protection and emergency protective services must state the specific authority requested. **The authority requested under a petition for immediate protection and emergency protective services does not**

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Immediate Protection and Emergency Protective Services**

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**constitute a court-approved treatment plan.**

The following relief may be requested in a petition for immediate protection and emergency protective services. If the court finds probable cause that the child is at risk or is being abused or neglected, these reliefs may be granted in an Order for Immediate Protection and Emergency Protective Services:

- a) the right of entry by a peace officer or social worker;
- b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may request and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- e) a requirement that the parent provide the social worker with the name and address of the other parent if known, unless parental rights to the child have been terminated, including the name and address of a putative father to serve the legal documents;
- f) a requirement that the parent provide the social worker with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
- g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the Department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment

**Other Relief  
requested in  
Petition for**

Relief other than those listed above may be requested in the petition for immediate protection and emergency protective services. However, if the following relief is requested, the court

## Child and Family Services Policy Manual: Legal Procedure Immediate Protection and Emergency Protective Services

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### Immediate Protection and Emergency Protective Services

cannot grant the relief until after the show cause hearing:

- a) inquire into the financial ability of the parent, guardian, or other person having physical or legal custody to contribute toward the care of the child and order a contribution; and
- b) require specified examinations, evaluations, or counseling.

### Order for Immediate Protection and Emergency Protective Services

The order the judge issues based on the filing of the petition for immediate protection and emergency services is called an "*ex parte*" order. This means the judge issues the order based on the petition and the information contained in the affidavit before a hearing on the facts at issue.

If the court determines that the petition and the affidavit contain facts which establish probable cause that the child has been or is at risk of being abused, neglected, or abandoned, the court may issue an order granting the relief requested in the petition for immediate protection and emergency protective services. The order also must:

- a) include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child if the *ex parte* is an order for removal; **and**
- b) require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing.

**Note:** In some cases, the social worker has made the determination that the child may safely remain in the home but court intervention is required. In this instance, the court often will grant the social worker the right to place the child if, subsequent to the date of the order, the social worker determines the child may no longer remain safely in the home.

If the child is placed subsequent to receiving an order authorizing the placement, the social worker must obtain from the court a finding that continued residence of the child with the parent is contrary to

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the child's welfare. This finding must be issued by the court **after** the removal of the child from the home. An order which contains the finding that continued residence of the child with the parent(s) is contrary to the welfare of the child obtained **prior to** removal will not suffice for the "contrary to the welfare" requirement.

In addition, after placement the social worker must obtain a judicial finding that reasonable efforts were made to prevent the removal of the child from the parent(s) home. Federal regulations require that this judicial finding be made within 60 days of placement. Therefore, even if the court has authorized a placement, after the child is actually placed, a hearing must be held within 60 days of placement to obtain the finding that:

- a) placement of the child was in the child's best interests or;
- b) continued residence of the child with the parent(s) is contrary to the child's welfare;  
**AND**
- c) reasonable efforts have been made to prevent the placement.

The social worker will obtain a certified copy of the order and copies of any supporting legal documents for the file.

A certified copy of the order, along with a copy of the petition and supporting documents (including a copy of the social worker's affidavit) must be personally served on the person(s) named in the order at least five days before the date set for hearing. If the person(s) cannot be personally served, the person(s) must be served by publication pursuant to Mont. Code Ann. § § 41-3-428 and 429.

### Criteria for Case Dismissal

Unless the petition has been previously dismissed, the court **shall** dismiss an abuse and neglect proceeding on the motion of a party, or on its own motion, in any case in which **all** of the following criteria are met:

- 1) a child who has been placed in foster care is reunited with the child's parents and returned home;
- 2) the child remains in the home for a minimum of six

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months with no additional confirmed reports of child abuse/neglect; and

- 3) the social worker determines and informs the court that the issues that led to the social worker's intervention have been resolved and that no reason exists for further social worker intervention or monitoring.

### **County Attorney Does Not File** Return Child

If a petition is not filed by the county attorney within 48 hours, a parental agreement is not signed, or a court order obtained, the child must be returned to his or her home.

### Advise County Attorney in Writing

If the social worker disagrees with the county attorney's decision not to file, the social worker should, in consultation with his/her supervisor, advise the county attorney in writing that the child is being returned to a potentially dangerous situation because the county attorney failed to file. A copy of this notice is placed in the child's file and should be sent to the district judge and to the social worker supervisor.

### **Abandoned Newborns**

Montana statute allows parents to surrender their newborn babies to an emergency services provider if the newborn is no more than 30 days old. If a parent surrenders a newborn to an emergency services provider, the emergency services provider must deliver the newborn to a hospital.

The hospital must call the local Child and Family Services office within one day of accepting the newborn.

Upon receipt of a call from a hospital regarding an abandoned newborn, the social worker shall, among other things:

- a) immediately assume the care, control, and temporary protective custody of the newborn;
- b) make a temporary placement of the newborn; and
- c) no later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court (generally a petition for emergency protective services, adjudication, and temporary legal custody based on abandonment with the request for a determination that no reasonable efforts to reunite must be provided) requesting appropriate relief with the goal of achieving permanent placement for the newborn at the

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earliest possible date;

**NOTE:** The social worker should work with the county attorney to determine the most appropriate relief to request. The county attorney will probably file a petition for immediate protection and emergency protective services combined with either temporary investigative authority or temporary legal custody based on abandonment.

### Non-Citizens

For specifics regarding worker responsibilities when a parent voluntarily surrenders a newborn, refer to Section 305-2, Abandoned Newborns.

To place children who are not U.S. citizens or lawful permanent residents of the U.S. the social worker must have permission of the United States Attorney General for the state to be awarded custody.

All non-citizen children in foster care who are not lawful permanent residents of the U.S. are in the legal custody of Immigration and Naturalization Services (INS) unless the U.S. Attorney General gives express consent for custody to be awarded to a state agency. An custody/dependency order issued by a state court regarding such a juvenile would be considered invalid without the consent of the U.S. Attorney General. The law applies as follows:

The youth is an immigrant who is present in the United States and

- has been placed under the custody of an agency or department of a State and been determined to be in need of long term foster care due to abuse, neglect or abandonment;
- has been judicially determined that it is not in his/her best interest to be returned to his/her or parent's previous country of nationality or country of last habitual residence; and
- the U.S. Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status.

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State courts do not have jurisdiction to consider the status of an alien in foster care without the consent of the U.S. Attorney General. Birth or adoptive parents do not acquire lawful permanent resident status or any other special status because the status is granted to the youth.

To obtain the U.S. Attorney General's consent send the request to:

District Director or  
Deputy District Director,  
Office of Examinations,  
U.S. Bureau of Citizenship and Immigration,  
2800 Skyway Drive  
Helena, MT 59602.

Enclose the following information:

- Youth's date and place of birth
- Date and manner of entry into the U.S.
- Current immigration status
- Information about the whereabouts and immigration status of the youth's parents and other close family members
- Evidence of abuse, neglect and abandonment of the youth
- The stated reasons why it would not be in the best interests of the youth to be returned to his/her parents' country of nationality or last habitual residence
- The type of court proceedings resulting in the state custody (i.e. juvenile delinquency, temporary care and protection, terminating parental rights)

Once the U.S. Attorney General's consent is received and the youth attains the status of qualified alien, s/he is entitled to federally funded benefits such as Medicaid and IV-E foster care payments if all other eligibility criteria is met.

### **Indian Child Welfare Act**

If there is reasonable belief the child may be an Indian child, ICWA policy must be followed (Section 305-1). The tribe must be sent a letter (DocGen D200) requesting verification of enrollment status. The worker must also notify the tribe of pending legal proceedings (DocGen D205).

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**NOTE:** Under ICWA, the worker must make **active efforts** to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal. Active efforts should involve and use the available resources of the extended family, the tribe, Indian social services agencies and individual Indian care givers. The worker must also have clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

### CAPS

Enter the removal service on SERN, using the SERM service code. After completing this screen, CAPS will take you to CREI (Client Removal Eligibility Information) to enter removal information. Also complete CPHL (Client Placement History List). Use PLAD (Placement Detail) for foster care placements and enter the placement service(s) on SERL. All placement services, **including non-paid kinship placements**, must be entered on CAPS no later than 60 days after the actual date of placement (Federal requirement).

To ensure compliance of federal requirements mandating certain dispositional reviews and hearings within strict timeframes after court determinations, after each court hearing (including continuances) the worker must enter court detail on CRTD as soon as possible. The worker will need to enter petition date, court hearing date, begin and end dates of the court order, type of hearing (court event), reliefs granted (court dispositions, including those dispositions issued from the bench prior to receiving a signed court order), parties to the hearing, and whether or not the court order has been received. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The worker should also enter the court review date to ensure a thirty day advance alert. In addition, CAPS is set up to alert the worker thirty days after a court date, if the court order has not yet been recorded and when the 12 month permanency reviews are due. CAPS will alert the worker in advance of the expiration date of each court order, based on the entered end date of the court order.

### References

Mont. Code Ann. § 41-3-101.  
Mont. Code Ann. § 41-3-301  
Mont. Code Ann. § 43-3-302.  
Mont. Code Ann. § 41-3-422.

**Child and Family Services Policy Manual: Legal Procedure  
Immediate Protection and Emergency Protective Services**

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Mont. Code Ann. § 41-3-424.

Mont. Code Ann. § 41-3-427.

Indian Child Welfare Act, 25 USC 1901, et seq.

**NOTIFICATION TO PARENT**

If you are the parent having physical custody of your children you may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

TO: \_\_\_\_\_ DATE: \_\_\_\_\_

FROM: \_\_\_\_\_, Social Worker; Telephone number \_\_\_\_\_

Child and Family Services Division Address: \_\_\_\_\_

Name(s) of Child(ren): 1. \_\_\_\_\_ 2. \_\_\_\_\_

3. \_\_\_\_\_ 4. \_\_\_\_\_

**REASONS FOR REMOVAL:**

On this date, after receiving a report of suspected child abuse, neglect, or abandonment, the Child and Family Services Division (CFSD) investigated the circumstances of the report. CFSD determined that the above-named child(ren) is (are) at risk of child abuse or neglect or is (are) being abused or neglected. After making this determination, CFSD removed your child(ren) from your home and placed him/her/them in emergency foster care. The reason(s) CFSD removed your child(ren) are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF SHOW CAUSE HEARING:**

The next step in the legal process is for a District Court Judge to schedule a Show Cause Hearing. You will be notified of the time, date, and place of the Show Cause Hearing. If you have any questions prior to the hearing, please call the CFSD Social Worker at the telephone number listed above.

**PURPOSE OF SHOW CAUSE HEARING:**

The District Court Judge is required to hold a Show Cause Hearing if your child(ren) are removed from your home for longer than 2 working days. At the Show Cause Hearing, the Social Worker and you will both have the opportunity to provide statements to the Judge. The Social Worker will explain the reasons that your child(ren) was (were) removed from your home and placed in emergency foster care. You will have the opportunity to tell the Judge why you believe CFSD should not have removed your child(ren). The Judge must consider all the information that you and the Social Worker present, as well as the statements you make during the hearing.

At the end of the Show Cause Hearing, the Judge will make two decisions. S/he will decide:

- 1) whether the Child and Family Services Division should have removed your child(ren) from your home; and
- 2) whether your child(ren) should remain in temporary foster care.

If the Judge decides that your child(ren) should remain in foster care, the CFSD Social Worker will work with you to develop a treatment plan. The treatment plan will outline the steps you will need to take for your children to be returned to you.

## Child and Family Services Policy Manual: Legal Procedure Temporary Investigative Authority

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<b>Authority Other Than Custody</b>	<p>When the worker believes it is necessary to have court approval to conduct an investigation the worker should request temporary investigative authority (TIA).</p> <p>A Temporary Investigative Authority does not require a substantiation of child abuse or neglect. The Court may grant a TIA if the child appears to be abused or neglected or is in danger of being abused or neglected. The petition must contain facts establishing probable cause that the child is or is in danger of being abused or neglected. A TIA is used when the social worker has "reasonable cause to suspect" that the abuse or neglect occurred.</p>
<b>Purpose of the Temporary Investigative Authority</b>	<p>The purpose of the TIA is to receive judicial approval to conduct an in-depth investigation into the allegations of child abuse or neglect. If the TIA is granted, the Court agrees to the necessity of a longer period of time to complete the investigation.</p> <p>The TIA should be used when the social worker does not have evidence to substantiate abuse or neglect. The Court may grant the TIA if the evidence establishes probable cause, after a show cause hearing, that the child appears to be at risk of abuse or neglect and further investigation is warranted. The purpose of the investigation is to determine if the child abuse or neglect actually occurred and to assess the safety of the child.</p> <p>If the initial investigation (prior to filing a petition) results in evidence/facts to determine that it is more probable than not (preponderance of evidence) that the abuse/neglect actually occurred, a petition for temporary legal custody should be filed instead of a petition for a TIA.</p>
<b>Limitations</b>	<p>TIA's are granted for a period of up to 90 days <b><u>with no extension.</u></b></p> <p>The TIA order does not give the Department legal custody of the child. The filing of a petition for TIA is merely a request to the court to grant the Department the authority to conduct an in-depth investigation.</p>
<b>Social Worker Action</b>	<p>The decision to file a petition for TIA should be discussed and made jointly with a supervisor. If the worker has been working with the family and determines that there is a need to file a TIA or other legal action, the parent should be notified that the worker is seeking legal action prior to filing, unless to do so</p>

## Child and Family Services Policy Manual: Legal Procedure Temporary Investigative Authority

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would place the child in jeopardy. This may be done personally, by telephone, or letter.

### Temporary Investigative Authority and Immediate Protection and Emergency Protective Services

No authority exists under a TIA to remove the child from his/her home. Therefore, if the social worker has removed the child from the parents' home based on probable cause that the child is being abused and neglected and the social worker's determination that the child is not safe in the parental home, a petition for immediate protection and emergency protective services combined with a TIA should be filed with the court.

### Indian Child Welfare Act

If a child has been placed in foster care and there is reasonable belief that the child may be an Indian child, the worker must follow ICWA policy, seek enrollment status information from the tribe, and notify the tribe of the pending legal proceedings. Use DocGen D200, Request for Verification of Status to request enrollment information, and DocGen D105, Notification of Judicial Proceedings to notify the child's tribe of pending court action. See 305-1, Indian Child Welfare Act.

### Procedure Affidavits

To obtain a TIA, the worker completes an affidavit alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation. The affidavit is forwarded to the county attorney with the request that s/he file a Petition for Temporary Investigative Authority.

An affidavit is a written statement of the facts made under oath by the social worker investigating the referral before an officer authorized by law to administer oaths (usually a notary public). See Section 302-1 for a more complete discussion of the affidavit.

The affidavit must include the facts upon which the social worker made the determination to request that the county attorney file the petition requesting a TIA.

With the exception of the affidavit filed in support of the initial petition in a child abuse or neglect proceeding (which must be completed in time to assure the petition is filed within 2 working days of the removal), the social worker must file all affidavits supporting petition in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.

The social worker is strongly encouraged to attach a current

## Child and Family Services Policy Manual: Legal Procedure Temporary Investigative Authority

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picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

### Contrary to the Welfare

If a foster placement has been made the affidavit must also contain facts to support a judicial finding that continuation of the child's residence in the home would be contrary to the child's welfare or, in the alternative, that placement of the child in out-of-home care is in the child's best interest.

In some cases, the social worker has made the determination that the child may safely remain in the home but court intervention is required. In this instance, the court often will grant the social worker the right to place the child if, subsequent to the date of the order, the social worker determines the child may no longer remain safely in the home. If the child is placed subsequent to receiving an order authorizing the placement, the social worker must obtain from the court a finding that continued residence of the child with the parent is contrary to the child's welfare. This finding must be issued by the court **after** the removal of the child from the home. An order which contains the finding that continued residence of the child with the parent(s) is contrary to the welfare of the child obtained **prior to** removal will not suffice for the “contrary to the welfare” requirement.

In addition, after placement the social worker must obtain a judicial finding that reasonable efforts were made to prevent the removal of the child from the parent(s) home. Federal regulations require that this judicial finding be made within 60 days of placement. Therefore, even if the court has authorized a placement, after the child is actually placed, a hearing must be held within 60 days of placement to obtain the finding that:

- a) placement of the child was in the child's best interests or;
- b) continued residence of the child with the parent(s) is contrary to the child's welfare; **AND**
- c) reasonable efforts have been made to prevent the placement.

### Legal Action County Attorney

The social worker should consult the county attorney to clarify the preferred procedure for initiating any legal action. This procedure may vary according to the preference of the attorney.

## Child and Family Services Policy Manual: Legal Procedure Temporary Investigative Authority

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### Criteria for Case Dismissal

Unless the petition has been previously dismissed, the court **shall** dismiss an abuse and neglect proceeding on the motion of a party, or on its own motion, in any case in which **all** of the following criteria are met:

- 1) a child who has been placed in foster care is reunited with the child's parents and returned home;
- 2) the child remains in the home for a minimum of six months with no additional confirmed reports of child abuse/neglect; and
- 3) the social worker determines and informs the court that the issues that led to the social worker's intervention have been resolved and that no reason exists for further social worker intervention or monitoring.

### CAPS

To ensure compliance of state and federal requirements mandating certain dispositional reviews and hearings within strict time frames after court determinations, after each court hearing (including continuances), the worker must enter court detail on CRTD as soon as possible. The worker will need to enter petition date, court hearing date, begin and end dates of court order, type of hearing (court event), reliefs granted (court dispositions, including those determinations issued from the bench prior to receiving the written court order), parties to the hearing, and whether or not the court order has been received. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The worker should also enter the review date to ensure a thirty day advance alert. In addition, CAPS is set up to alert the worker thirty days after a court date (if the court order has not yet been recorded) and when the twelve-month reviews are due. CAPS will also alert the worker in advance of the expiration date of the court order, if they have entered the end date of the court order.

### References

Mont. Code Ann. § 41-3-422.  
Mont. Code Ann. § 41-3-424.  
Mont. Code Ann. § 41-3-433.  
Indian Child Welfare Act, 25 U.S.C 1901 et seq.  
45 CFS 1356.21.

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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### Legal Basis

When a social worker conducts an investigation and determines that the child has been abused, neglected, or abandoned, the facts of the case may warrant initially filing a petition which, if granted, would affect the legal rights of the parent to the child. In this situation, the county attorney may immediately file a petition for temporary legal custody. Under temporary legal custody, the facts must establish by a preponderance of the evidence, that a child has been or is being abused, neglected, or abandoned.

If the social worker has placed the child in a protective placement and the evidence establishes that the child is abused or neglected, the initial petition filed by the county attorney will be a combination petition for immediate protection and emergency protective services and temporary legal custody.

The court cannot grant the Department temporary legal custody absent an adjudication of the child as a youth in need of care (See Section 301-2, Required Judicial Hearings).

### Rights

Temporary legal custody means the legal status created by an order of the court that gives a person or agency the right and responsibility for the care, custody and control of a child on a temporary basis.

A transfer of legal custody from the parents to the Department means the Department assumes the parental responsibility for the day-to-day care, maintenance and supervision of the child. A transfer of temporary legal custody is time-limited and provides the agency with substantial authority to determine and provide for the needs of the child.

Because the parents' rights have not been terminated, they retain a legal relationship to the child and should be involved in decision-making regarding the child. Unless the parents' consent is obtained, a court order shall be obtained to authorize the agency the right to consent to medical, dental and/or psychological care and any long-distance or out-of-state travel of the child(ren). If emergency medical treatment is required and the worker has no court order or parental consent, the worker should consult with the attending physician in the hospital emergency room.

### Other Uses

In addition to the use of temporary legal custody (to assure that the parent is working on a court-ordered treatment plan

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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designed to address the issues which led to placement and work toward reunification), a petition for temporary legal custody may be filed and the court may grant temporary legal custody in two additional limited situations. The social worker should consult with the supervisor and county attorney when considering the use of temporary legal custody under the following circumstances.

- 1) Temporary legal custody may be used in very limited situations when it is not in the best interest of the child to terminate the parental rights, e.g., where a teenager cannot live at home but has an established relationship with his or her parents, or where an older child cannot be placed adoptively and has a foster family willing to make a long-term commitment to the youth. However, temporary legal custody can only be granted for six-month periods. Therefore, if the above situation exists and the youth has not reached his/her majority, a petition should be filed for long-term custody if long term custody is appropriate for the youth. (See Section 302-5, Long-Term Custody). If the youth is not in a stable placement, the temporary legal custody must be extended every six months.
  
- 2) Temporary legal custody may also be used in very limited situations when the child may remain safely in the home with services and the social worker determines it is in the child's best interests that the parents have a court-ordered treatment plan identifying the services required for the child's safety. The granting of temporary legal custody to the department does allow the child to remain in the home if the social worker has determined the child's safety can be protected.

**Social Worker**  
Prior Authorization

The worker must obtain oral approval from a social worker supervisor before seeking a petition for temporary legal custody.

**Condition  
Precedent**

Before the social worker can request that the County Attorney file a petition for temporary legal custody, the social worker must have substantiated either abuse or neglect or substantiated risk of harm. The condition precedent for temporary legal custody is that the social worker has evidence/facts to demonstrate that it is more probable than not

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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that the child abuse or neglect **actually** occurred or more probable than not that a substantial risk of harm to the child exists.

### **CAPS**

Indian Child

If it is reasonably believed the child may be an Indian child, the ICWA policy must be followed. The tribe must be notified of the pending legal proceedings. Use DocGen D200, Request for Verification of Status to request enrollment information, and DocGen D105, Notification of Judicial Proceedings to notify the child's tribe of pending court action.

Request County  
Attorney to File

The worker prepares the affidavit, which is forwarded to the county attorney with a request that s/he file a petition for temporary legal custody.

**NOTE:** If the social worker determines the facts of the case support a request for a finding that reunification services should not be required, the social worker can request that the county attorney also file a petition for a determination that preservation or reunification services need not be provided (See Section 302-7). If the court determines that reasonable efforts to reunite the child with his/her parents are not necessary, a permanency hearing must be held within 30 days of that determination. (See Section 301-2, Required Judicial Hearings)

The affidavit in support of a petition for temporary legal custody is similar in format to that of the affidavit used to obtain an order for immediate protection and emergency protective services. The affidavit briefly reviews the factual history of the agency's involvement with the family and outlines the contacts with the family, the remedial services offered to the family and the proposed plan for family reunification (if any). The affidavit should reflect the factual chronology of the agency's intervention with the family. The affidavit should also contain information to inform the court of the facts to support the social worker's assessment of the parent(s) progress in addressing the behaviors which resulted in the agency's involvement with the case.

With the exception of the affidavit filed in support of the initial petition in a child abuse or neglect proceeding (which must be completed in time to assure the petition is filed within 2 working days of the removal), the social worker must file all affidavits

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supporting petition in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.

The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

### Contrary to the Welfare

If this affidavit is the first affidavit submitted to the court on the case, the affidavit must contain facts to support a judicial finding that continuation of the child's residence in the home would be contrary to the child's welfare or, in the alternative, that placement of the child in out-of-home care is in the child's best interests.

In some cases, the social worker has made the determination that the child may safely remain in the home but court intervention is required. In this instance, the court often will grant the social worker the right to place the child if, subsequent to the date of the order, the social worker determines the child may no longer remain safely in the home.

If the child is placed subsequent to receiving an order authorizing the placement, the social worker must obtain from the court a finding that continued residence of the child with the parent is contrary to the child's welfare. This finding must be issued by the court **after** the removal of the child from the home. An order which contains the finding that continued residence of the child with the parent(s) is contrary to the welfare of the child obtained **prior to** removal will not suffice for the “contrary to the welfare” requirement.

In addition, after placement the social worker must obtain a judicial finding that reasonable efforts were made to prevent the removal of the child from the parent(s) home. Federal regulations require that this judicial finding be made within 60 days of placement. Therefore, even if the court has authorized a placement, after the child is actually placed, a hearing must be held within 60 days of placement to obtain the finding that:

- a) placement of the child was in the child's best interests or;

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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- b) continued residence of the child with the parent(s) is contrary to the child's welfare; **AND**
- c) reasonable efforts have been made to prevent the placement.

### **County Attorney Action**

The county attorney prepares the Petition for Temporary Legal Custody and other supporting documentation and files the documents with the court.

### **Social Worker Action**

The worker should meet with the county attorney prior to the court hearing to discuss the testimony the worker will give in court.

### Preparing for Court Hearing

The worker may also be responsible for meeting with the state's witnesses and preparing them for the court hearing. The worker should advise the witnesses as to what will take place at the hearing, the types of questions that might be asked, and generally what is expected of the witness.

### **Court Action - Required Findings**

If a child is found to be a youth in need of care, the court may grant temporary legal custody if the court determines by a preponderance of the evidence that:

- a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and
- b) unless there is a finding that reasonable efforts are not required as allowed by statute, that reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

**Note:** The granting of temporary legal custody to the Division allows the social worker to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

If the order granting temporary legal custody is the initial court order sanctioning the child's removal from the home, the order must contain a judicial finding that continuation of the child's residence in the home would be contrary to the child's welfare

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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or, in the alternative, that placement of the child in out-of-home care is in the child's best interest.

If the hearing for granting temporary legal custody is the first hearing held after the child's removal from the home and if the hearing is held within 60 days of the child's removal, the order granting temporary legal custody must contain explicit documentation regarding the specific efforts made by the department to prevent the placement and must state that the determination regarding reasonable efforts to prevent placement was based on the facts of the case on a case-by-case basis.

If the judge grants the agency temporary legal custody, it may be in effect for no longer than six months with the option of six-month extension(s). The worker is responsible for keeping track of the court order's expiration date, evaluating the case and making a recommendation to the county attorney as to any further legal action that may be needed. It is strongly suggested that the next hearing date be scheduled while the parties are in the courtroom to avoid future conflicts and meet the time limit.

### **Temporary Legal Custody - expiration of order**

Before the expiration of a 6 month order of temporary legal custody, the county attorney shall petition for:

1. an extension of temporary legal custody, not to exceed 6 months; or
2. termination of the parent-child legal relationship and either:
  - a) permanent legal custody with the right of adoption; or
  - b) appointment of a guardian;
3. long-term custody when the child is in a planned permanent living arrangement;
4. appointment of a guardian; or
5. dismissal.

### **Continuance or Extension of Order for Temporary**

The court may continue an order for temporary legal custody pending a hearing on a petition provided for above.

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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<b>Legal Custody</b>	<p>The court may extend an order for temporary legal custody for a period of six months upon a showing that:</p> <ol style="list-style-type: none"> <li>1) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or</li> <li>2) continuation of temporary legal custody is necessary because of the child's individual circumstances.</li> </ol> <p>If an extension of temporary legal custody is granted, the court shall state:</p> <ol style="list-style-type: none"> <li>1) the reasons why the child was not returned home; and</li> <li>2) the conditions upon which the child may be returned home.</li> </ol> <p>The court must also specifically find that the extension is in the child's best interests.</p>
<b>Criteria for Case Dismissal</b>	<p>Unless the petition has been previously dismissed, the court <b>shall</b> dismiss an abuse and neglect proceeding on the motion of a party, or on its own motion, in any case in which <b>all</b> of the following criteria are met:</p> <ol style="list-style-type: none"> <li>1) a child who has been placed in foster care is reunited with the child's parents and returned home;</li> <li>2) the child remains in the home for a minimum of six months with no additional confirmed reports of child abuse/neglect; and</li> <li>3) the social worker determines and informs the court that the issues that led to the social worker's intervention have been resolved and that no reason exists for further social worker intervention or monitoring.</li> </ol>
<b>Child Support Enforcement</b> Social Worker Action	<p>The worker may request the county attorney to seek an order of financial support in all cases where the parents have an ability to pay for care. See Section 404-1.</p>
<b>CAPS</b>	<p>To ensure compliance with state and federal requirements mandating certain hearings and reviews within strict time frames after court determinations, after each court hearing (including continuances), the worker must enter all court detail</p>

## Child and Family Services Policy Manual: Legal Procedure Temporary Legal Custody

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on CRTD as soon as possible. Information entered includes petition date, court hearing date, begin and end dates of the court order, court event, court disposition (including determinations made from the bench prior to receiving the written court order), parties to the action, and whether or not a court order was received. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The worker should also enter a review date to ensure a thirty day advance alert. In addition, CAPS is set up to alert the worker thirty days after a court date (if the court order has not yet been recorded) and when the twelve month reviews are due. CAPS will alert the worker in advance of the expiration date of each court order based on the entered end date of the court order.

### Documentation

Social Worker

Copies of the following documents shall be in the county files:

- Affidavit
- Petition and supporting documents
- Court Order

### References

Mont. Code Ann. § 41-3-422.  
Mont. Code Ann. § 41-3-437.  
Mont. Code Ann. § 41-3-424.  
Mont. Code Ann. § 41-3-442.  
Mont. Code Ann. § 41-3-445.  
45 CFR 1356.21.  
Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

## Child and Family Services Policy Manual: Legal Procedure Guardianship

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<b>Guardianship: Definition</b>	<p>A legal guardian is a person who has qualified as a caretaker of a child/youth in the custody of the Department pursuant to court appointment. A legal guardianship is a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the child, custody of the child, and decision-making.</p> <p>A guardianship is a legally created relationship which can only be dissolved by the court. Guardianship is a permanency option for children from whom a permanency team has made the determination that neither reunification with the child's parents nor adoption is in the best interests of the child.</p>
<b>Who may Petition the Court for Guardianship</b>	<p>A petition for the appointment of a guardian may be filed either by the Department or by the child's guardian ad litem. Because a guardian ad litem may petition the court for appointment of a guardian, the petition for appointment of a guardian is distinguished from the other dispositional options in that only the Department can petition the court for temporary investigative authority, temporary legal custody, planned permanent living arrangement, or permanent legal custody.</p> <p>When the department petitions for guardianship the social worker must file the affidavit in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.</p> <p>The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this "strongly encouraged" is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.</p>
<b>When can a Petition for Guardianship be filed</b>	<p>The petition for appointment of a guardian may be filed if the child has been placed in the temporary or permanent legal custody of the Department. Termination of parental rights to the child is not required for the filing of a petition for appointment of a guardian. However, the petition may not be filed prior to a determination by the court that the child has been abused or neglected.</p>
<b>Department Consent</b>	<p>A petition for appointment of a guardian may be filed prior to the permanency hearing upon the determination by a permanency</p>

## Child and Family Services Policy Manual: Legal Procedure Guardianship

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team, with approval of the Regional Administrator, that a guardianship is in the best interests of the child and all the conditions precedent exist.

The petition for appointment of a guardian may also be filed in response to the permanency plan hearing (See 301-2), if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child.

### **Conditions Precedent to Appointment of a Guardian**

Before the court can appoint a guardian, the Department must have given written consent. The guardianship may be subsidized or nonsubsidized and the Department must consent to both subsidized and nonsubsidized guardianships.

Before the Department can consent to and petition the court for appointment of a guardian for a child in state custody, the court must make a finding of fact for each of the following conditions:

- the child(ren) have been adjudicated a youth in need of care;
- the Department has made reasonable efforts to reunite the parent and child(ren);
- further efforts to reunite the parent and child by the Department would likely be unproductive;
- reunification of the parent and child(ren) would be contrary to the best interests of the child(ren);
- the guardianship is in the best interests of the child;
- the child(ren) have lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child(ren);
- it is in the best interests of the child(ren) to remain or be placed with the potential guardian;
- either termination of parental rights to the child(ren) is not in the child's best interests or parental rights to the child(ren) have been terminated, but adoption is not in the child's best interests; and

## Child and Family Services Policy Manual: Legal Procedure Guardianship

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- if the child(ren) concerning whom the petition for guardianship has been filed is an Indian child(ren), as defined in the Indian Child Welfare Act (See Section 305-1), the child's tribe has received notification from the state of the initiation of the proceedings.

**NOTE:** If the child for whom the social worker is considering guardianship as the permanent placement is a Title IV -E eligible child and the plan is to provide a subsidy, the child must be either 12 years of age or in a sibling group, at least one of whom is at least 12 years old and the guardianship is in the best interests of the siblings.

### Effect of Decree of Guardianship

The entry of a decree of guardianship terminates the custody of the Department and involvement of the Department with the child, the child's parents, and the guardians except for the provision of a subsidy, if any.

The decree of guardianship awards to the legal guardian the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor child. A guardian has the following powers and duties:

- take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child;
- receive money payable for the support of the child to the child's parent, guardian or custodian; and
- facilitate the child's education, social or other activities and authorize medical or other professional care, treatment, or advice.

### Revocation of the Guardianship

The court may revoke a guardianship if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. The petition of revocation of the guardianship may be filed by the legal guardian, the Department, a court appointed guardian ad litem, or the child's parents (if the rights of the parents have not been terminated).

Notice of hearing on the petition must be provided by the

## Child and Family Services Policy Manual: Legal Procedure Guardianship

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moving party to the child's legal guardian, the Department, a court appointed guardian ad litem, the child's parent (if rights of the parent have not been terminated) and other persons directly interested in the welfare of the child.

The petition may include a request for appointment of a successor guardian. After notice and hearing on a petition for removal or permission to resign, the court may appoint a

successor guardian or may terminate the guardianship and restore temporary legal custody to the Department.

**NOTE:** The guardianship discussed in this section is established under Title 41, Child Abuse and Neglect. None of the requirements discussed in this section apply to a guardianship appointed pursuant to Title 72, chapter 5 (guardianships established under the Probate Code).

### References

Mont. Code Ann. § 41-3-422.  
Mont. Code Ann. § 41-3-442.  
Mont. Code Ann. § 41-3-444.  
Mont. Code Ann. § 41-3-445.  
Mont. Code Ann. § 41-3-607.  
Mont. Code Ann. § 72-5-231.  
Mont. Code Ann. § 41-3-421 (1999).  
Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

## Child and Family Services Policy Manual: Legal Procedure Long-Term Custody

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### Long-Term Custody

The social worker may request the county attorney file a petition for long-term custody when the child is in a planned permanent living arrangement. A planned permanent living arrangement may be a permanency option for the child if the other, more permanent options, are not appropriate for the child or not in the child's best interests. For the court to grant long-term custody of the child to the department, the court must find, by a preponderance of evidence, that specific statutory requirements have been met.

The social worker must file the affidavit supporting long term custody in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.

The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this "strongly encouraged" is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

At a permanency plan hearing (See 301-2), if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child, a petition for long-term custody may be filed if the child is in a planned permanent living arrangement. If the Department petitions for long-term custody, the court must find by a preponderance of the evidence, which is reflected in specific findings by the court, that the child meets one of the following criteria:

1. the child is being cared for by a fit and willing relative;
2. the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;
3. the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;
4. the child's parent is incarcerated and circumstances, including placement of the child and continued frequent contact with the parent, indicate that it would not be in

## Child and Family Services Policy Manual: Legal Procedure Long-Term Custody

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the best interests of the child to terminate parental rights of that parent; or

5. the child meets the following criteria:
  - a. the child has been adjudicated a youth in need of care;
  - b. the Department has made reasonable efforts to reunite the parent and child, further efforts by the Department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;
  - c. there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate and not to be in the child's best interests; and
  - d. the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child and it is in the best interests of the child to remain in that placement.

Termination of the  
Planned Permanent  
Living Arrangement

The court may terminate the long term custody upon petition of the birth parents or the Department if the court finds that the circumstances of the child or family have been substantially changed and the best interests of the child are no longer being served by placement with that family.

### References

Mont. Code Ann. § 41-3-422.  
Mont. Code Ann. § 41-3-445.

**Child and Family Services Policy Manual: Legal Procedure**  
**Termination of the Parent-Child Legal Relationship/Permanent Legal Custody**

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<b>Termination of the Parent-Child Relationship</b>	<p>If a court determines that the continuation of the parent-child legal relationship is not in the child's best interests, the parent-child legal relationship may be terminated. The termination of the parent-child legal relationship is to be used in those situations when a court has first determined that a child is abused or neglected. If the permanent plan for the child is adoption, the court must terminate the parental rights of the child's <b>mother and all fathers (e.g., legal, birth, putative)</b>.</p> <p>Termination of only one parent's rights does not negatively affect the parental rights of the other parent. If the rights of only one parent are terminated, custody of the child reverts to the other parent. (<u>In the Matter of J.B.</u>, 278 Mont. 160, 923 P.2d 1096, 1996.) Therefore, the worker should assess whether terminating the parent-child legal relationship as to one parent and not the other parent is in the child's best interests. In addition, the worker should consult with the supervisor and the county attorney in making this determination.</p>
<b>Evidentiary Standards</b>	<p>For a non-ICWA case, the facts upon which the termination of the parent-child relationship is terminated must be established by clear and convincing evidence. If there is a reasonable belief the child may be an Indian child, the ICWA must be followed. To terminate parental rights on an Indian child, the evidence must show, beyond a reasonable doubt, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The tribe must be notified of the pending legal proceedings. Use DocGen D200, <u>Request for Verification of Status</u>, to request enrollment information, and DocGen D105, <u>Notification of Judicial Proceedings</u>, to notify the child's tribe of pending court action.</p>
<b>County Attorney Action</b>	<p>The county attorney files the petition for termination of the parent-child legal relationship. The petition must contain the factual basis for the request to terminate the parent-child legal relationship. The county attorney also arranges for the court hearing and subpoenas the necessary persons and documents. The social worker may be asked to supply a potential witness list.</p> <p>The social worker must file all affidavits supporting the petition for termination of parental rights in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.</p>

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The social worker is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

**Service of Process**

Each parent named in the petition must be served with a copy of the petition for termination of the parent-child legal relationship. If the parent(s) cannot be personally served, the parent(s) must be served by publication.

If the parent(s) cannot be located or identified, the social worker must submit an affidavit to the county attorney stating that, after due diligence, the parent(s) cannot be located or identified. The affidavit must contain a description of the diligent efforts made by the social worker to locate or identify the parent(s). The affidavit constitutes support for filing a request with the court for an order for service by publication.

Before a termination of the parent-child relationship may be ordered, the court must determine whether or not the proper procedure was followed relating to service of process.

**Petition to Terminate  
Parent-Child Legal  
Relationship Required**

Under certain circumstances, the filing of a petition to terminate the parent-child legal relationship is required. The social worker must request and the county attorney must file a petition to terminate parental rights to the child in the following situations **unless an exception to this requirement applies:**

1. If a child has been in foster care under the physical custody of the state for 15 of the most recent 22 months or if the court has determined that preservation or reunification services need not be provided, a petition to terminate the parent-child legal relationship must be filed unless an exception applies. If the child was placed under a voluntary parental agreement, the time the child was in care under the parental agreement is included in the total time used to calculate 15 of the most recent 22 months.
2. If a hearing results in a finding of abandonment, a petition to terminate the parent-child legal relationship must be filed within **60** days of the finding.
3. A petition to terminate the parent-child legal relationship must be filed within **60** days of the finding if a hearing

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results in a finding that the parent has subjected the child to any of the following circumstances:

- a. subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect;
- b. committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
- c. committed aggravated assault against a child;
- d. committed neglect of a child that resulted in serious bodily injury or death; or
- e. had parental rights to the child's sibling or other child of the parent involuntarily terminated **and** the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

**Exceptions to filing a Petition to Terminate the Parent-Child Legal Relationship**

An exception to the requirement to file a petition to terminate the parent-child legal relationship can be made if one of the following applies to the child or the child's parents:

- a. the child is being cared for by a relative;
- b. the Department has not provided services considered necessary for the safe return of the child to the child's home; or
- c. the Department has documented a compelling reason why filing a termination petition would not be in the best interests of the child.

**Compelling Reason to not file the Petition to Terminate the Parent-Child Legal Relationship**

Compelling reasons for not filing a petition to terminate the parent-child legal relationship include but are not limited to the following:

- a. There are insufficient grounds for filing a petition;
- b. There is adequate documentation that termination of parental rights is not the appropriate plan and

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- not in the best interests of the child;
- c. The child is in a therapeutic placement which is longer than 15 months and cannot return home until s/he completes the treatment program;
  - d. Adoption is not the appropriate permanency goal for the child because:
    - 1) the child is an older teen who specifically requests that emancipation be established as his/her permanency plan;
    - 2) a significant bond exists between parent and child but the parent is unable to care for the child because of an emotional or physical disability, no adoptive family is open to continued parental contact, and the child's foster parents have committed to raising him/her to the age of majority and to facilitating visitation with the parent; or
    - 3) the child's tribe has identified another planned permanent living arrangement for the child;
  - e. The child is an unaccompanied refugee minor; or
  - f. There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights.

**Compelling Reason  
must be Case Specific**

The “compelling reason” not to file a petition to terminate the parent-child legal relationship must be determined on the individual facts of each case. When the compelling reason is because the Montana statutory circumstances to terminate the parent-child legal relationship do not exist the worker must immediately modify the case plan to work toward meeting those statutory requirements if termination of the parent-child legal relationship is in the child's best interests.

**Statutory Basis for  
Continued Placement**

A statutory basis for continuing foster care and agency involvement must exist for the child to remain in care beyond 15 months. Therefore, if the child's circumstances meet one of the exceptions to filing a petition to terminate the parent-child legal

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relationship, evidence must support and the court must grant one of the following:

- Temporary Legal Custody (for a maximum of two six-month periods;
- Long-term Custody if the child is in a Planned Permanent Living Arrangement; or
- Dismiss the petition.

**Exceptions Report filed with Court or Administrative Review Panel**

If a child has been in foster care for 15 of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the social worker must file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed. The review panel is the Foster Care Review Committee.

**Circumstances upon which a Termination of the Parent-Child Legal Relationship may be based**

Under Montana's child abuse and neglect statutes, a court may terminate the parent-child legal relationship if any of the following circumstances exist:

1. the parents have relinquished the child;
2. the child has been abandoned;
3. the parent is convicted of a felony in which sexual intercourse occurred and as a result of the sexual intercourse the child is born;
4. the parent is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and as a result of the sexual intercourse the child is born;
5. the parent has subjected a child to any of the following circumstances:
  - a. subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect;

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- b. committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
  - c. committed aggravated assault against a child;
  - d. committed neglect of a child that resulted in serious bodily injury or death; or
  - e. had parental rights to the child's sibling or other child of the parent involuntarily terminated **and** the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue;
6. the putative father meets any of the applicable criteria [See Section 302-7 or Mont. Code Ann. § 41-3-423];
7. the child is adjudicated a youth in need of care **and both** of the following exist:
- a. an appropriate treatment plan that has been approved by the court has not been complied with or has not been successful; and
  - b. the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

**Termination Upon Relinquishment**

If a parent or both parents wish to relinquish their parental rights, an order terminating their rights should be obtained based upon the relinquishment. See 303-2 regarding relinquishment and birth parent counseling. ICWA procedures must be followed for the relinquishment of an Indian child.

Parents' Rights

For the child to be legally free for adoption, the parental rights to the child of both **mother and father** must be legally terminated.

Presumption of Paternity

When a child is born within 300 days after the marriage is terminated by annulment, declaration of invalidity, divorce, separation, or the mother's death, the former husband is considered the legal father and his rights must be addressed in any court proceeding.

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**Unmarried Parent**  
Determine Parentage

If the biological father's identity and/or residency is unknown, the social worker shall obtain the following information from the mother:

- whether she was married at the time of conception of the child or at anytime thereafter;
- whether she was cohabiting with a man at the time of the conception or birth of the child;
- whether she has received support payments or promises of support from possible fathers with respect to the child or in connection with her pregnancy; and
- whether any man has formally or informally acknowledged his possible paternity of the child.

**Putative (Alleged) Father**

The "maybe" father of a child born to an unmarried mother, who is named by the mother as the father or is otherwise believed to be the father and who has not acknowledged his paternity, is considered a putative or alleged father.

In special limited circumstances a putative father's rights may be terminated for unfitness, failure to establish a legal parental or substantial relationship, or an irrevocable waiver of parental rights, as cited above. See Section 303-2, Relinquishment/Birth Parent Counseling.

The putative father shall be informed of his rights and responsibilities regarding the child. He must be served with a legal notice of the place, time and nature of all custody hearings. If the father is unknown, or cannot be located, the social worker submits an affidavit to the county attorney which states that, after due diligence, the putative father cannot be identified or located. The affidavit must state the diligent efforts made by the social worker to identify, locate, and personally serve the individual.

The county attorney will file the affidavit with the court along with a request for an order for service of process by publication. The clerk of court or the judge will issue an order for the service to be made upon the putative father by publication.

**Intent to Place an Infant Adoptively**

When a mother plans to relinquish her child immediately after

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birth (3 days, 10 days if ICWA case), to expedite the adoptive placement, the mother may file a petition with the court indicating her intention to place an expected child for adoption. Upon the filing of such a petition, the court shall issue a notice of intent to release a child for adoption. The notice **must** be served on the putative father at least 20 days before the expected birth of the child. The putative father may or may not declare his interest in the child to the court prior to the child's birth, but the putative father's rights must always be addressed by the court prior to granting permanent custody to the Department.

**Putative Father Registry**

In all cases, prior to a hearing to terminate the parent-child legal relationship, the worker must submit a written request to the DPHHS Vital Statistics Bureau (P.O. Box 4210, 111 N. Sanders, Rm 209, Helena, MT 59624) inquiring as to whether any man has asserted his interest in the child by registering with the putative father registry.

The request should include as much information as is available on the child and mother, including:

- their legal names and any other names that the child or mother is known to use;
- their birthdates; and
- their social security numbers.

Within five working days of the date that a request for a search of the putative father registry is received, the Bureau of Vital Statistics will search the registry and send a notarized affidavit to the worker documenting the results of the search. If any registrations are on file, certified copies of the registrations will be sent to the worker. If there is a birth certificate on file, or if the birth record shows a father's name and there is an acknowledgment of paternity on file, this information will be also be sent to the worker.

**Father Need Not be Named**

The worker must provide the notarized affidavit regarding the search of the putative father registry and any acknowledgments of paternity to the county attorney or the attorney representing the Department so these documents can be filed in support of the petition for termination of parental rights.

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The Bureau of Vital Statistics does not currently charge the Department a fee for conducting a search of the putative father registry.

The mother may not be compelled to testify to or divulge the identity of the biological father or putative father.

In the event the birth mother is unable or chooses not to provide identification of the biological father or his last known address, the social worker must inform the mother that it may be necessary to summon the father by publication and should explain that the failure to notify the father and terminate his rights could allow the father to come back into court at a later time to seek custody.

**Abandonment**

Abandonment occurs when a parent leaves a child under circumstances that make it reasonable to believe that the parent does not intend to resume care of the child in the future, or when a parent willfully surrenders physical custody of the child for a period of six months without manifesting to the child or custodian a firm intention to resume physical custody or to make permanent arrangements for the child or when the parent voluntarily surrenders a newborn who is no more than 30 days old to an emergency services provider.

It can also be established if the identity of the parent is unknown for a period of 90 days and reasonable efforts to identify and locate the parent has failed.

In cases of abandonment, a treatment plan is not necessary prior to termination of parental rights. It is necessary, however, to serve or meet the legal requirements documenting attempts to personally serve the parent with notice of the proceeding.

**NOTE:** When the Department has received permanent legal custody of a child based on abandonment, the social worker must give priority to a member of the child's extended family if:

- an extended family member has requested that the abandoned child be placed with him/her;
- if such a placement is in the child's best

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interests; and

- the social worker has determined that the extended family member is qualified to receive and care for the abandoned child.

**Termination Based Upon Failed Treatment Plan**

Most terminations of parental rights not based upon relinquishment or abandonment require that the Department must have tried to reunite the family by the preparation and implementation of a written treatment plan which has been approved by the court. (Treatment plans are discussed in more detail in Section 303-1, Treatment Plan/Stipulation.)

If the treatment plan fails and termination of the parent-child legal relationship is in the best interests of the child, the Department shall seek to terminate parental rights and an award of permanent legal custody.

To terminate the parental rights and obtain permanent legal custody, it is necessary to present clear and convincing evidence to the court that:

- the parent failed to comply with the court-approved treatment plan or that the plan was unsuccessful **and**
- the conduct or condition of the parent, which renders them unfit, is unlikely to change within a reasonable time.

**NOTE:** Termination is possible even if the parent completed the treatment plan if there are other extenuating circumstances that merit termination of parental rights.)

Before the court can consider whether or not the conduct/condition of the parents is likely to change, the court must make one of the following findings:

1. that continuation of the parent-child legal relationship will likely result in continued abuse or neglect; **or**
2. that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care.

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The court may consider a variety of factors in making the determination that the conduct or condition of the parents is unlikely to change. In considering these factors, the court must give primary consideration to the physical, mental, and emotional conditions and needs of the child.

Factors which the court will consider in these cases include but are not limited to:

- emotional illness, mental illness or mental deficiency of the parent of such duration or nature as to render the parent unlikely to meet the needs of the child within a reasonable time;
- history of violent behavior by a parent;
- excessive use of intoxicating liquor, narcotics or dangerous drugs which affects the parents' ability to care for the child; and
- present, judicially-ordered, long-term confinement of the parent.

**Termination  
Without Treatment  
Plan**

A treatment plan is not required if:

- two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time; or
- the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs. (Incarceration alone is not sufficient to forego a treatment plan. There must be testimony or evidence that reunification does not meet the best interests of the child, e.g., length of incarceration and age of child or lack of appropriate programs for inmate); or
- the death or serious bodily injury of a child caused by abuse or neglect by the parent has occurred; or
- the parents have relinquished the child pursuant to Mont. Code Ann. § § 42-2-402 and 42-2-412; or

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- the child has been abandoned by the parents as set forth in Mont. Code Ann. § 41-3-102(1); or
- the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse the child is born; or
- the parent has subjected a child to any of the applicable circumstances set forth in Mont. Code Ann. § 41-3-423(2); or
- the putative father meets any of the criteria listed in Mont. Code Ann. § 41-3-423(3).

**Legal Status of Child if Court does not Order Termination**

If the district court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court. This means that if the court does not grant the petition for termination of parental rights and the court order does not address the legal status of the child or does not dismiss the department's action and return the child to the parent(s), the department shall have temporary legal custody of the child until the court issues an order addressing the legal status of the child.

**Permanent Legal Custody**

Permanent legal custody is the legal status created by order of the court after the parental rights of both the **mother and father** have been terminated. Permanent legal custody grants permanent responsibility for care, custody and control of the child to a person or agency. The person or agency granted permanent legal custody of the child assumes all rights and responsibilities of a parent for the child.

**Use**

It is appropriate to request permanent legal custody of a child who cannot return home and who the Department expects to place for adoption.

**NOTE:** For children who cannot return home but cannot be placed for adoption, see Section 302-5, Long term custody or Section 302-4, Guardianship.

**Social Worker**

Any child for whom the Department plans to petition the court

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**Action**

Completed DPHHS-CFS-107

for termination of the parent-child legal relationship and permanent custody shall have a completed DPHHS-CFS-107 prior to filing of the petition. The social history may be the only information regarding the birth family that the child has access to later in life. After involuntary court action against the parents, the opportunity to gather relevant family history may be lost.

The worker should work with the family in gathering the information to complete Part 1, Child's Social and Medical History; Parts 2A, Birth Mother's Social and Medical History, and Part 3A Birth Father's Social and Medical History as soon as the child is placed in out-of-home care. A completed form provides useful information to health care providers and the foster family, as well as to the child in later years.

The case file must contain a notation signed by the supervisor that the supervisor has reviewed the necessary documentation and approved filing for permanent custody.

Documentation includes:

- affidavit documenting agency involvement and parents failed treatment plan, if applicable, or other reasons why permanent custody is appropriate;
- DPHHS-CFS-107, Birth Family Social and Medical History;
- verification of birth counseling or waiver;
- notarized copy of each relinquishment, if applicable;
- court-approved treatment plan, if applicable;
- a copy of death certificate if parent is deceased;
- copy of certified birth certificate for each child; and
- ICWA Form 250 for each child (See Section 305-1 for the mandated procedures regarding Indian children).

**Developing the Permanent Placement Plan**

As soon as possible after need for an adoptive home is identified, the permanency team, or in areas where such a team is not available, the child's worker, the worker's supervisor, the

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family resource specialist, the family resource specialist supervisor, a representative of the child's tribe if the child is Indian as defined by the Indian Child Welfare Act, and the permanency planning specialist should review the child's circumstances and needs and determine what action is necessary to identify an adoptive family and place the child adoptively. This plan must be presented to the court at the 12 month permanency plan hearing. See Section 301-2, Required Judicial Hearings.

**Adoption Referral** The child's social worker must provide a written adoption referral packet to a family resource specialist or family resource specialist supervisor. See Section 603-1, The Child's Adoption Referral and Circulation.

**Circulation** States may not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for the child. In **ALL** instances in which a prospective adoptive home has not been identified **within 30 days** of the date the permanent custody hearing is completed, the Child's Adoptive Profile Information must be circulated. Circulation within DPHHS and to other licensed adoption agencies is required. Circulation should be completed by the assigned family resource specialist. If the foster parent(s) have been determined to be an appropriate adoptive family for the child, it is not necessary to circulate the child's history. See Section 603-1, The Child's Adoption Referral and Circulation, for requirements of Treasure Book and AdoptUSKids, the national website ([www.AdoptUSKids.org](http://www.AdoptUSKids.org)) for web site referrals.

The Child's Adoptive Profile Information will be sent to all family resource specialists and permanency planning specialists and/or appropriate Tribal agencies via hard copies or agency E-mail using the E-mail address of *adoption list* and/or *tribal adoption list*. If the worker wants to have verification that the information was sent to tribal agencies to demonstrate compliance with ICWA, the Child's Adoptive Profile Information should be sent by certified mail. At the same time, a hard copy may be sent to the licensed adoption agencies listed below:

Catholic Social Services  
 25 South Ewing, PO Box 907  
 Helena, Montana 59624  
 Phone: (406) 442-4130  
[rmiller@in-tch.com](mailto:rmiller@in-tch.com)

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Intermountain Children's Home  
500 S. Lamborn  
Helena, Montana 59601  
Phone: (406)442-7972  
[twilac@intermountain.org](mailto:twilac@intermountain.org)

Latter Day Saints (LDS) Family Services  
2620 Colonial Drive, Suite D  
Helena, Montana 59601  
Phone: (406) 443-1660

Lutheran Social Services  
P.O. Box 1345  
Great Falls, Montana 59403  
Phone: (406) 761-4341

Missoula Youth Homes DFHFK  
P.O. Box 7616  
Missoula, Montana 59807  
Phone: (406)721-2754  
[erin@youthhomes.com](mailto:erin@youthhomes.com)

### **Court Action**

When permanent legal custody is sought, the child must be adjudicated as a youth in need of care. The child must have a court-appointed guardian ad litem. The court may appoint counsel for any indigent parent(s) who request counsel at any stage in the judicial proceeding. The court must appoint counsel for indigent parents upon the filing of a petition for termination of the parent-child legal relationship. If an Indian child is involved in the court proceedings, the parents must be appointed an attorney when the initial petition is filed. (See 305-1, Indian Child Welfare Act)

After a hearing on the petition for termination of the parent-child relationship, the court must find, established by clear and convincing evidence, that the statutory requirements have been met. The court must also find that termination of the parent-child legal relationship is in the best interests of the child.

Based on the evidence presented during the hearing, the court will issue Findings of Fact, Conclusions of Law and an Order. In the order, the court will terminate the parent-child legal relationship and:

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1. grant permanent legal custody with the right to consent to adoption to:
  - a. the Department;
  - b. a licensed child placing agency; or
  - c. to another individual who has been approved by the Department and has received consent to transfer of custody from the Department or licensed child placing agency that has custody of the child; or
2. grant permanent legal custody to the Department with the right to petition for appointment of a guardian.

**Following the Hearing**

When the court terminates parental rights and grants permanent legal custody to the Department, the social worker should ensure that the following documents are in the file:

- two certified copies of the petition;
- two certified copies of Finding of Facts, Conclusions of Law and Order;
- a certified birth certificate of the child;
- DPHHS-CFS-107, Birth Family Social and Medical History; and
- DPHHS-CFS-083, completed and signed by the social worker.

(Refer to Section 603-7, Post Placement Evaluation, for information regarding documents to be sent to the central office if the child will be adopted.)

**CAPS**

After the court hearing (including continuances), the worker should enter the information on CRTD screen. Necessary information to complete this screen includes petition date, hearing date, begin and end dates of court order (end date would be the child's 18th birthday), court event (PLC), court dispositions (termination of parental rights, permanent legal custody, right to place adoptively, etc.), whether or not the court

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order was received, and parties to the action. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable.

Details of the Review Hearing should be entered on CRTD.

**References**

Mont. Code Ann. §§ 41-3-422 and 41-3-445.  
Mont. Code Ann. §§ 41-3-601 through 612.  
Mont. Code Ann. §§ 42-2-401 through 422.  
Mont. Code Ann. §§ 42-2-501 through 503.  
Mont. Code Ann. §§ 42-2-601 through 620.  
Indian Child Welfare Act, 25 U.S.C. 1901 et seq.  
42 U.S.C. 670 Sec. 470 and 471.  
45 CFR 1356.21.

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**Reasonable Efforts**

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**Introduction**

Under the Adoption and Safe Families Act, the "reasonable efforts" requirements imposed on the states assure that states are meeting the mandates of the Act regarding the temporary nature of foster care and the right of each child to have a safe, permanent home. The "reasonable efforts" requirements have a threefold purpose:

1. To maintain the family unit and prevent the unnecessary removal of a child from his/her home when it can be done without jeopardizing the child's safety;
2. If temporary out-of-home placement is necessary to ensure the immediate safety of the child, to effect the expeditious reunification of the child and family when reunification is the appropriate permanency goal or plan; and
3. When reunification is not appropriate or possible to effect an alternate permanency goal in a timely manner.

**NOTE:** Under ICWA, the worker must make **active efforts** to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal. Active efforts should involve and use the available resources of the extended family, the tribe, Indian social services agencies and individual Indian care givers.

**Definition**

Reasonable efforts determinations must be made by the court on a case-by-case basis. Reasonable efforts include but are not limited to the following:

- provision of voluntary protective services pursuant to a written voluntary protective services agreement executed for the purpose of keeping the child safely in the home. A voluntary protective services agreement may include provisions for:
  - a family group decision making meeting and implementation of safety plans developed during the meeting;
  - a professional evaluation and treatment of a parent or child, or both;

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- a safety plan for the child;
- in-home services aimed at permitting the child to remain safely in the home;
- temporary relocation of a parent to permit the child to remain safely in the home; or
- a 30-day temporary out-of-home protective placement.
- development of individual written case plans specifying social worker efforts to reunify the family;
- placement of the child in the least disruptive setting possible (e.g., placement with the child's noncustodial parent or with extended family);
- provision of services pursuant to a case plan; and
- periodic review of each case to ensure timely progress toward reunification or permanent placement.

A general standard to apply is:

Only the services and activities that affect prevention of removal or the reunification plan are the services/activities to be evaluated in determining the reasonable efforts findings. The adequacy of services will be judged by their appropriateness in addressing the needs that caused the child(ren) to be removed from the home. While some services may be a good idea and some very important, the finding is determined based on the offer to provide the services that affect the reunification.

**NOTE:** The child's health and safety are of paramount concern in determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services.

**Social Worker  
Action**

During the hearing on the petition before the court, the social worker will provide the court with information about the specific reasonable efforts required for the appropriate phase of the proceeding. The reasonable efforts must be documented, with specificity, in the case record of the child.

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**Show Cause Hearing**

The court will make the first reasonable efforts finding at the conclusion of the show cause hearing. The court order must contain explicit documentation regarding the specific efforts made by the of to prevent the placement and must state that the determination regarding reasonable efforts was based on the facts on a case-by-case basis.

**Required Findings**

In the order granting or denying relief issued after the show cause hearing, the court **must** make a written finding regarding the reasonableness of agency efforts to:

- a) avoid the protective placement of the child; or
- b) to make it possible to safely return the child to the child's home.

**Petition for a Determination that Preservation or Reunification Services Need Not be Provided**

The Department may petition the court for a determination that preservation or reunification services need not be provided. This request can be combined with petitions for other types of relief (e.g. immediate protection and emergency protective services, temporary legal custody, termination of the parent-child legal relationship.) This determination may be requested at any time during an abuse and neglect proceeding.

**NOTE:** When the Department petitions for a determination that preservation or reunifications services need not be provided, counsel for an indigent parent must be appointed by the court if an indigent parent is not already represented by counsel.

If requested in the petition, the court may make a determination at the conclusion of the show cause hearing that reasonable efforts to provide reunification services are not required. A judicial finding that preservation or reunification services are not necessary must be supported by clear and convincing evidence. The court may make such a determination of the court finds, as established by clear and convincing evidence, that the parent has:

- a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect;

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- b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
- c) committed aggravated assault against a child;
- d) committed neglect of a child that resulted in serious bodily injury or death;
- e) had parental rights to the child's sibling or other child of the parent involuntarily terminated, and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue; or
- f) If the putative father has failed to do any of the following:
  - 1. contribute to the support of the child for an aggregate period of 1 year, although able to do so;
  - 2. establish a substantial relationship with the child. A substantial relationship is demonstrated by:
    - i) visiting the child at least monthly when physically and financially able to do so; or
    - ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and
    - iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.
  - 3. register with the putative father registry and the person has not been:

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- i. adjudicated in Montana to be the father of the child for the purposes of child support; and
- ii. recorded on the child's birth certificate as the child's father.

**NOTE:** The presence of one of the above-listed circumstances is the only circumstance under which the Court can make the determination that preservation or reunification services need not be provided.

**CAPS Entry of Order Determining Preservation or Reunification Services need not be provided**

To ensure compliance of federal requirements mandating certain dispositional reviews and hearings within strict time frames after court determinations, after each court hearing (including continuances) the worker must enter court detail on CRTD as soon as possible. The worker will need to enter petition date, court hearing date, begin and end dates of the court order, type of hearing (court event), reliefs granted (court dispositions, including those dispositions issued from the bench prior to receiving a signed court order), parties to the hearing, and whether or not the court order has been received. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The worker should also enter the court review date to ensure a thirty day advance alert. In addition, CAPS is set up to alert the worker thirty days after a court date, if the court order has not yet been recorded and when the 12 month permanency reviews are due. CAPS will alert the worker in advance of the expiration date of each court order, based on the entered end date of the court order.

**Adjudicatory Hearing**

The court must make findings about reasonable efforts at the conclusion of the adjudicatory hearing.

Required Findings

Before the court may adjudicate a child a youth in need of care, the court must make a written finding that the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

**Dispositional Hearing**

If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan of the child, reasonable

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efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

If the court finds that reasonable efforts are not necessary, a permanency hearing must be held within 30 days of that determination. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Title IV-E eligible children**

For Title IV -E eligible children, the reasonable efforts finding must be made and the explicit documentation on the efforts the Department made to prevent the placement contained in a court order issued **within 60 days** of the initial date of placement of the child. This means that the reasonable efforts finding and explicit documentation must be contained in the order issued after the Show Cause hearing.

**Permanency Plan Hearing**

The court also must address reasonable efforts at the conclusion of the permanency plan hearing. The court must make findings on whether the Department has made reasonable efforts to finalize the permanent plan for the child. The court shall order the Department to take whatever additional steps are necessary to effectuate the plan.

If the permanent plan for the child is long-term custody the court must specifically find (established by a preponderance of the evidence) that the Department has made reasonable efforts to reunite the parent and child. The court must make additional findings that further efforts by the Department would likely be unproductive and that reunification of the child with the parent or guardian would be contrary to the best interests of the child.

The court must make a finding whether the Department has made reasonable efforts to finalize the permanency plan for the child within 12 months of the initial permanency plan hearing and every 12 months thereafter until the child is permanently placed.

**Factors the Court may consider to determine whether or not reasonable**

Reasonable efforts are determined on a case-by-case basis. Some factors the court may consider in determining whether reasonable efforts were made include, but are not limited to:

- Would the child's health or safety have been

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<b>efforts were made</b>	<p>compromised had the agency attempted to maintain him/her at home;</p> <ul style="list-style-type: none"> <li>• Did the social worker provide services to ameliorate factors present in the child or parent that would inhibit a parent's ability to maintain the child safely at home such as physical, emotional or psychological factors;</li> <li>• Was the treatment plan customized to the individual needs of the family or was it a standard package of services;</li> <li>• Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome the obstacles; and</li> <li>• Are the services provided associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the county attorney filed for termination of parental rights and has the social worker registered the child on state and national adoption exchanges or implemented child-specific recruitment activities.</li> </ul>
<b>Synopsis of Required Judicial Determinations</b>	<p>From the initial order for immediate protection and emergency protective services through the order terminating parental rights, the court must make the following reasonable efforts judicial determinations:</p> <ol style="list-style-type: none"> <li>1. reasonable efforts were made to prevent the child from being removed from the home or to avoid the protective placement;</li> <li>2. reasonable efforts were made to reunify the child with his/her family if the removal could not be prevented;</li> <li>3. if reasonable effort were not made to prevent the child's removal from home or to reunify the child with his/her family, reasonable efforts were not required or that it was reasonable to make no efforts to avoid protective placement or reunify the parent and child; and</li> <li>4. if the permanent plan for the child is adoption,</li> </ol>

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guardianship, or some other permanent living arrangement other than reunification, reasonable efforts were made to make and finalize that alternate permanent placement.

**References**

Mont. Code Ann. § 41-3-302.  
Mont. Code Ann. § 41-3-423.  
Mont. Code Ann. §§ 41-3-432, 41-3-437, and 41-3-438.  
Mont. Code Ann. § 41-3-445.  
Adoption and Safe Families Act of 1997, 42 U.S.C. 671 (P.L. 105-89)  
45 CFR 1356.21

## Child and Family Services Policy Manual: Legal Procedure Treatment Plan/Stipulation

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**Treatment Plan** A written treatment plan to be submitted to the court for approval must be developed in those cases where the agency will be involved with the family for an extended period of time. A treatment plan must be developed after a petition has been filed.

**Definition** The **treatment plan** is a written agreement between the Department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child.

**Court-Ordered Treatment Plan** The court may order a treatment plan under the following conditions:

- a) the parent(s) admit the allegations of an abuse and neglect petition;
- b) the parent(s) stipulate to the allegations of abuse or neglect; or
- c) the court has made an adjudication that the child is a youth in need of care.

Parents may voluntarily agree to the provisions of a treatment plan prior to an adjudication. However, if the social worker presents a treatment plan to the parents prior to the adjudication of the child as abused or neglected, the parents must be informed of their right to refuse to sign the treatment plan.

**NOTE:** If a parent refuses to sign a treatment plan, but a judge has ordered compliance with it, the parent is obligated to comply with the court-ordered treatment plan or risk termination of their parental rights. Non-compliance with, or unsuccessful completion of the treatment plan, is one of the prerequisites for termination of parental rights. (See Mont. Code Ann. § 41-3-609 for criteria for termination other than a failed treatment plan.)

In many child abuse and neglect cases where the state is seeking involuntary termination of parental rights, a court-ordered treatment plan is one of the prerequisites for termination of parental rights. (See Section 302-6, Termination of the Parent-Child Legal Relationship/Permanent Legal

## Child and Family Services Policy Manual: Legal Procedure Treatment Plan/Stipulation

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Custody, for further information on termination of parental rights and exceptions to the requirement for a court-approved treatment plan.)

### **Purpose of Treatment Plans**

The purpose of the treatment plan is to define, for the parent(s), the conditions which must be met to enable the parent(s) to have the child safely returned to the home.

A written treatment plan should be developed in conjunction with the parents of the child. The plan provides direction and clarification for parents who are sometimes overwhelmed by the agency involvement and often unsure of the agency's expectations. As a therapeutic tool that outlines the actions necessary to achieve reunification of the family, the treatment plan specifies obligations for both the parents and the worker. (If necessary, plans may include other parties, such as live-in boyfriends or other adults residing in the child's home.)

Treatment plans also provide a record for the court and the social worker as to what efforts have been made to rehabilitate the parents.

Although the goal of a treatment plan is to reunite the child with the child's parent(s) or guardian, it is an important part of the process if termination of parental rights becomes necessary.

### **Content - Required Provisions**

Treatment plans **must** include the following:

- identification of the problems or conditions that resulted in the abuse or neglect;
- treatment goals or objectives for each condition or requirement established in the plan;
- if the child has been removed from the home, the conditions or requirements that must be established for the safe return of the child to the family;
- the projected time necessary to complete each of the treatment objectives;
- specific treatment objectives that clearly define the separate roles and responsibilities of all the parties addressed in the treatment plan. The objectives should

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be reasonable, measurable, attainable and designed to fit the reasonable capabilities and existing circumstances of the family involved; and

- the signature of the parent or parents or guardian, unless the plan is ordered by the court.

### **Discretionary Provisions**

The treatment plan **may** include but is not limited to any of the following remedies, requirements, or conditions:

- the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of the treatment plan;
- the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the State of Montana;
- the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;
- the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;
- the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of an investigation;
- the requirement that the child be placed in a temporary medical facility or a facility for protection of the youth;
- the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate; and
- the requirement that the parent(s) furnish the necessary information to complete the DPHHS-CFS-107, Parts 2A and 2B, Birth Parent Social and Medical History.

### **Required Notice**

Each treatment plan submitted to the court for approval must contain a notice provision advising parents:

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- a) of timelines for hearings and required determinations;
- b) that the Department is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;
- c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the Department is required to file a petition to terminate parental rights; and
- d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

### **Treatment Plan Provisions must be individualized**

The specifics of a treatment plan will differ depending on the circumstances of each case. The social worker should draft each plan on a case-by-case basis depending on the needs of the child and specific circumstances surrounding the family.

### **Judicial Considerations**

The adequacy of the provisions of a court-ordered treatment plan constitutes the issue on appeal for many of the district court decisions which are appealed to the Montana Supreme Court. The Montana Supreme Court has stated that "treatment plans, developed prior to a termination hearing, are intended to provide a framework for a parent to meet the needs of the child, regain custody, and preserve the parent-child relationship."

The Court has not specifically defined what constitutes an "appropriate" treatment plan because "no bright line definition is possible in light of the unique circumstances of each case." However, factors routinely considered by the Montana Supreme Court are:

- 1) whether the parent was represented by counsel and stipulated to the treatment plan; and
- 2) whether or not the treatment plan takes into consideration the particular problems facing both the parent and the child. In the Matter of A.C., 2001 MT 126, 305 Mont. 404, 27 P.3d 960 (2001).

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<b>Modification of Treatment Plan</b>	The treatment plan <b>may not</b> be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.
<b>Guidelines</b>	<p>Effective treatment plans:</p> <ul style="list-style-type: none"> <li>• reflect consensus between the worker and parent(s);</li> <li>• are short term and time limited;</li> <li>• are clearly written in plain language which states the intention of the plan and the consequences which may result if it is not followed or is unsuccessful; and</li> <li>• are flexible enough to accommodate additional problems or changes in the parents' circumstances.</li> </ul>
<b>Time-Limited</b>	If the treatment plan has been developed for a child and family in which the child has been removed from the home and placed in a foster care home or facility, the treatment plan should reflect the results of the required six month reviews. If the child has been placed in foster care for 12 months or more, the treatment plan should reflect the results of the permanency hearing. The court hearing must have occurred no later than 12 months after the date the child was considered to have entered foster care.
<b>Examples of Tasks for Parents</b>	The parents' portion of the plan must contain specific activities such as: regular visits with the child; regular appointments with the social worker; obtaining adequate housing; attendance at alcohol or drug treatment sessions at mental health or AA; participation in employment counseling or job training; attendance at parenting classes; regular meetings with therapist; and paying support to assist in meeting child's needs while in foster care.
<b>Examples of Tasks for the Agency</b>	The agency's portion of the agreement must contain specific activities such as: maintaining child in foster care until a permanent plan can be accomplished; acting as a referral person to the employment service, vocational rehabilitation, mental health, etc.; gathering information; assisting in transporting the parent to mental health, parenting classes, etc.; bringing the child for visits with parents; and providing all reasonable supportive services, such as homemaker services.

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Remember, the agency is under the same obligation to adhere to the treatment plan as is the parent(s).

### **Action**

The worker should obtain an authorization (release of information) from the parents as soon as possible to exchange information with other agencies.

According to the Montana Supreme Court, “a treatment plan is intended to be a good faith, joint effort by both the [social worker] and the parent to preserve the parent-child relationship and the family unit.” In the Matter of A.T. and J.T., 2003 MT 154, 316 Mont. 255, 70 P.3d 1247 (2003). Therefore, parents or other custodians of the child should be involved in all aspects of the development of the plan, including identification of the problems, consideration of treatment alternatives, and selection of specific treatment. Family Group Conference Meetings are also useful in helping families develop portions of the treatment plan.

The social worker should explain to the parents that non-compliance or partial compliance with the treatment plan may result in the loss of their child. The worker should advise the parent(s) to obtain legal representation. The worker should consult with all professionals and other persons who will be involved in the plan to clarify expectations and to define responsibilities and services which will be provided.

### **Monitoring And Evaluation Of Treatment Plan**

The worker should engage in systematic monitoring and periodic review of the treatment plan to assess the progress toward objectives and goals. Information gathered through the monitoring and evaluation process enables the worker and the family to modify the treatment plan or develop new phases of the plan as necessary.

The Montana Supreme Court has addressed whether or not a parent has complied with the treatment plan. The Court has addressed the issue of partial compliance and repeatedly held that “partial compliance with a treatment plan is insufficient to preclude termination of parental rights”. In the Matter of M.T., T.T., D.T., and B.W., 2002 MT 174, 310 Mont. 506, 51 P.3d 1141 (2002).

The Court has also stated “well-intentioned efforts toward successful completion of a treatment plan do not demonstrate either the completion or the success of the plan. In the Matter

## Child and Family Services Policy Manual: Legal Procedure Treatment Plan/Stipulation

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of J.W. and K.D., 2001 MT 86, 305 Mont. 149, 23 P.3d 916 (2001). Therefore, the Montana Supreme Court has also addressed the issue of parental compliance with the provisions of a treatment plan but no resulting change in behavior. The Court, in the above-cited case, made clear that “Indeed, a treatment plan can be unsuccessful even when the required tasks are completed.” In other words, not only must the parent comply with the treatment plan, but the treatment plan must also be successful in modifying the parent’s behavior.

### **CAPS**

The worker may use the related CAPS screens to develop a treatment plan. On PROB (Problem List), identify the concerns for the client(s). On TASK (Task List), identify all of the actions needed to be taken by all parties to resolve the concerns. On LINK (Problem - Task Link screen), match the tasks with the problems for each client. Use DocGen 334 to complete the process and print a treatment plan.

### **Exceptions to Required Treatment Plan**

See Section 302-6 for a discussion of those situations in which parental rights can be involuntarily terminated without a treatment plan.

### **Stipulations**

A stipulation is a voluntary agreement signed by the parent(s) in which the parent(s) agree to specific issues relevant to the child abuse and neglect proceeding. The signed stipulation is submitted to the court to support the petition filed by the Department.

The issues to which the parties in a child abuse/neglect proceeding may stipulate are limited. The parent may not stipulate to a treatment plan without an acknowledgment that the child is or has been abused or neglected. Subject to court approval, a parent may stipulate to any of the following:

- a) the child meets the definition of a youth in need of care by the preponderance of the evidence;
- b) a treatment plan, if the child has been adjudicated a youth in need of care;
- c) the disposition; or
- d) extension of the timeframes required in a child abuse or neglect proceeding except for the timeframe for a permanency plan hearing.

## Child and Family Services Policy Manual: Legal Procedure Treatment Plan/Stipulation

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**Issues related to Stipulations** to Stipulations must be utilized in a judicious manner because of possible complications associated with their use. The Supreme Court has issued a caution regarding the use of stipulations by stating “. . . the fundamental nature of the rights of a parent requires that the process by which a stipulation is drafted and signed needs to be closely scrutinized.” In the Matter of the Custody and Parental Rights of M.W. and C.S., 2001 MT 78, 305 Mont. 80, 23 P.3d 206 (2001).

The social worker must consider the following when assessing the appropriateness of a stipulation in a specific case:

- 1) If a parent is willing to stipulate that the child meets the definition of a youth in need of care by a preponderance of the evidence, an adjudicatory hearing must be held during which the stipulation is presented to the court. The adjudication **must** occur after an adjudicatory hearing. Therefore, a stipulation cannot be executed in lieu of an adjudicatory hearing; and
- 2) If the child who is the subject of the stipulation is an Indian child and the parents are willing to stipulate that the child is a youth in need of care, the parents must stipulate that the child meets the definition by clear and convincing evidence, not by a preponderance of the evidence. If the child is placed in out-of-home care and the stipulation provides the basis for an adjudication, the adjudicatory hearing must be held. During the adjudicatory hearing, the court must hear testimony from a Qualified Expert Witness that continued placement of the child with the parent(s) is likely to result in serious physical or emotional harm to the child.

### References

Mont. Code Ann. § 41-3-102 and 41-3-609.  
 Mont. Code Ann. § 41-3-434.  
 Mont. Code Ann. § 41-3-443.  
 42 USC 671 Sec. 471.  
 Indian Child Welfare Act, 25 USC 1901, et seq.

## Child and Family Services Policy Manual: Legal Procedure Relinquishment/Birth Parent Counseling

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<b>Relinquishment</b> Definition	A <b>relinquishment</b> is a written document by which the parent voluntarily surrenders his or her rights to and responsibilities for a child.
Use	Relinquishments may be used when a parent wishes to surrender his or her rights to a child, and the agency can place the child for adoption.
Do Not Accept	<p>A relinquishment shall not be accepted and is considered invalid if accepted under the following circumstances:</p> <ol style="list-style-type: none"> <li>1. The child is less than 72 hours old, or if an Indian child, the child is less than 10 days old. See 305-1, Indian Child Welfare Act;</li> <li>2. The parent is under medication which impairs his or her ability to understand the relinquishment or is under the influence of alcohol or other drugs;</li> <li>3. The parent is under undue duress. For example, the parent is acting at the insistence of a social worker or physician;</li> <li>4. The parent's mental or emotional state is such that he or she may not understand what they are doing; or</li> <li>5. It appears that the child cannot be stabilized in a permanent home within a reasonable amount of time due to the severity or combination of the following factors: <ul style="list-style-type: none"> <li>• age;</li> <li>• physical handicap;</li> <li>• emotional make-up;</li> <li>• severe mental retardation; and</li> <li>• strength of ties to the birth family.</li> </ul> </li> </ol>
<b>Circumstances under which relinquishment of an Indian child may be withdrawn</b>	When the relinquishment is of a child who is defined as an Indian child under ICWA the consent may be withdrawn for any reason prior to the entry of termination of the parent-child legal relationship or the final decree of adoption and the child returned to the parent(s). After the entry of the final decree of adoption, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress.

## Child and Family Services Policy Manual: Legal Procedure Relinquishment/Birth Parent Counseling

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If the parent alleges fraud or duress, the parent may petition the court to vacate the decree of adoption within two years of the date of the adoption decree. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the adoption decree and return the child to the parent. However, no adoption which has been effective for at least two years may be invalidated by alleging fraud or duress.

Unconditional  
Relinquishments

Relinquishments **shall not** include any conditions requested or imposed by the relinquishing parent.

**Birth Parent  
Counseling**

Prior to relinquishing her parental rights, a birth mother must be counseled. The counseling requirement may be waived by the court for good cause. Birth fathers are also encouraged to be counseled. Counseling must be for at least three hours and must include the following:

1. adoption procedures and options that are available to a parent through the Department, licensed child-placing agencies or direct parental placement, where appropriate;
2. the alternative of parenting rather than relinquishing the child and resources available to provide assistance or support for the parent and child, if appropriate;
3. the legal and personal effect and impact of terminating parental rights and of adoption;
4. information regarding contact and communication between the birth family and the adoptive family;
5. post-adoptive issues, including grief and loss;
6. the reasons for and importance of providing accurate medical and social history information;
7. operation of the confidential intermediary program; and
8. the fact that the adoptee may be provided a copy of his or her original birth certificate upon request after reaching age 18, unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate.

## Child and Family Services Policy Manual: Legal Procedure Relinquishment/Birth Parent Counseling

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Written Report	The counselor shall prepare a written report containing a description of the topics covered and the numbers of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. On request, the report must be released to the person counseled or others specified in Mont. Code Ann. § 42-2-409.
Only One Parent Wants to Relinquish	The parent wishing to relinquish should be advised of the legal rights of the other parent. The non-relinquishing parent has the right to attempt to assume custody and responsibility for the child if the other parent relinquishes. Therefore, the non-relinquishing parent must be given notice of any hearing to terminate parental rights and an opportunity to be heard on the issue of the custody of the child. If the non-relinquishing parent can establish that he or she is fit and able to properly care for the child and that it would be in the child's best interests, the non-relinquishing parent may gain custody of the child.
Termination based on unfitness, failure to establish relationship, etc	A court may terminate parental rights to a non-relinquishing parent, with whom the Department has not been involved, if the court makes a finding that the parent is unfit (Mont. Code Ann. § 42-2-608), that no legal parent-child relationship exists (Mont. Code Ann. § 42-2-609), that there was an irrevocable waiver of parental rights (Mont. Code Ann. § 42-2-611), or that a putative father failed to establish a substantial relationship with the child (Mont. Code Ann. § 42-2-610).
Minors	A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation because the child is a minor. A minor parent does <b>not</b> need parental approval to relinquish their rights to a child, but if making a direct parental placement without the Department's involvement, they must have an attorney advising them prior to relinquishment.
Accepting a Relinquishment	A relinquishment must be taken on the <u>Affidavit of Waiver of all Parental Rights, Relinquishment of Child and Consent to Adoption</u> form. Relinquishments from either parent may not be accepted prior to 72 hours after the birth of the child. Each parent shall sign a separate relinquishment. Copies of each relinquishment are distributed as follows: <ul style="list-style-type: none"> <li>• the original is filed with the petition;</li> <li>• one copy is given to the person signing; and</li> </ul>

## Child and Family Services Policy Manual: Legal Procedure Relinquishment/Birth Parent Counseling

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- one copy remains in the county file.

### Indian Child

If the child is an Indian child, the relinquishment must be signed in the presence of the judge of a court of competent jurisdiction and may not be accepted until **at least 10 days after the birth** of the child. See Section 305-1, Indian Child Welfare Act.

### Read the Relinquishment

The social worker must read the relinquishment in its entirety to the parent wishing to sign the relinquishment and determine if the parent understands it. The worker must attempt to answer all questions about the relinquishment. Should the parent appear confused about the relinquishment, the worker is encouraged to have the county attorney or the community social worker supervisor (CSWS) included in the discussion with the parent.

The social worker shall ask the following questions of the parent in the presence of a witness. (The witness and notary may be the same person.)

1. Do you understand this document you are about to sign?
2. Do you sign this document of your own free will without any pressure by anyone to do so?
3. Do you fully understand that you give up all rights to your child, to notification of the court hearing granting custody to the Department, and that you are consenting to the adoption of this child?
4. Do you wish to see an attorney about this document?
5. Are you currently taking any medicine, either under doctor's orders or without doctor's orders?
6. Have you been drinking today or have you taken any drugs today?

If the answers to any of these questions lead the social worker to believe the parent does not understand the relinquishment or is not competent to sign it, the signing should be postponed. A guardian ad litem may be appointed for the parent to ensure that he or she understands the consequences of signing a relinquishment.

## Child and Family Services Policy Manual: Legal Procedure Relinquishment/Birth Parent Counseling

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<p>Agreement Accepting Custody</p>	<p>The person relinquishing must also be advised of the obligation to provide a medical and social history on the child and birth family, including tribal affiliation, if applicable.</p>
<p>Parent's Court Appearance</p>	<p>The Department must enter into an agreement with the relinquishing parent in which the Department agrees to accept care, custody and support of the child until an adoption or other permanent arrangement for the child is finalized. The agreement is attached to the Relinquishment Form.</p> <p>The signing of a relinquishment does not preclude the appearance of the parent(s) at a hearing regarding the termination of his or her rights, if he or she chooses to attend or if the court determines the best interest of the child is served by requiring the parent to be present for the hearing. The attached relinquishment does, however, waive the right of the relinquishing parent of notice of subsequent court proceedings and hearings.</p>
<p>Report to Court, Birth Certificates</p>	<p>The worker should prepare a report to the court regarding relinquishment and a social and medical history, including the DPHHS-CFS-107, <u>Birth Family Social and Medical History</u>. The worker must obtain a certified copy of the birth certificate from the state where the child was born. If the child was born in Montana, birth certificates can be obtained from the Vital Statistics Bureau, PO Box 4210, 111 N. Sanders, Rm 205, Helena, Montana 59604.</p> <p>The worker submits the following to the community social worker supervisor:</p> <ul style="list-style-type: none"> <li>• the report to the court;</li> <li>• written report of birth parent counseling unless the counseling requirement is waived by the court for good cause;</li> <li>• social and medical history, including the completed DPHHS-CFS-107;</li> <li>• a notarized copy of the relinquishment;</li> <li>• a copy of the agreement with the Department for support and care of the child;</li> <li>• a certified copy of the birth certificate; and</li> <li>• enrollment information if the child is Indian.</li> </ul>

**Child and Family Services Policy Manual: Legal Procedure  
Relinquishment/Birth Parent Counseling**

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**CAPS**

Do not enter the relinquishment on CRTD until after the court hearing terminating parental rights. Use a court event of REL (relinquishment) and appropriate dispositions reflecting the court hearing (termination of mother's rights, termination of father's rights, permanent legal custody, etc).

**References**

Mont. Code Ann. § § 42-2-408 through 42-3-413  
Mont. Code Ann. § § 42-2-608 through 42-2-611

MONTANA \_\_\_\_\_ JUDICIAL COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF )  
\_\_\_\_\_, )  
A MINOR CHILD. )

CAUSE NO.

AFFIDAVIT OF BIRTH MOTHER'S WAIVER OF ALL PARENTAL RIGHTS, RELINQUISHMENT OF CHILD AND CONSENT TO ADOPTION

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\_\_\_\_\_, being first duly sworn upon oath, deposes and says:

1. I am the BIRTH MOTHER of the minor child, \_\_\_\_\_, who was born on the \_\_\_ day of \_\_\_\_\_, 20\_\_, in \_\_\_\_\_ City, \_\_\_\_\_ State. I am \_\_\_ years old.
2. After carefully considering the best interests of my minor child, I hereby relinquish care custody and control of the minor child to the Montana Department of Public Health and Human Services, \_\_\_\_\_ address \_\_\_\_\_, \_\_\_\_\_ phone # \_\_\_\_\_.
3. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody to the Department of Public Health and Human Services.
4. I knowingly, unequivocally and voluntarily give my consent to have any court of competent jurisdiction terminate my parental rights and award permanent legal custody with the right to consent to adoption to the Department of Public Health and Human Services.
5. I understand that upon my signature of this document, it is final and may not be revoked or set aside for any reason, except as provided for in Mont. Code Ann. ' 42-2-411, including failure of an adoptive parent to permit me to visit or communicate with the child.
6. I understand that this relinquishment will result in the extinguishment of all parental rights and obligations to this minor child, except for arrearage of child support unless waived by the person to whom they are owed.

7. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

8. I have received at least three hours of counseling explaining, among other things, the legal and personal consequences of an adoption, my options and legal rights, available resources, and the rights my child will have to access records or search for me.

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for execution of this document, except as may be allowed pursuant to Mont. Code Ann. ' ' 42-7-101 and 42-7-102.

11. To the best of my knowledge, this child does not fall under the provisions of the Indian Child Welfare Act.

12. I understand that I have the right to be represented by a lawyer who does not represent the adoptive parents. I understand that the expense for such legal advice is an expense that may be paid for by the adoptive parents pursuant to Mont Code Ann. ' ' 42-7-101 and 42-7-102.

13. I expressly waive my rights to notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the (the adoptive parents) .

14. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

15. I acknowledge that I have received a copy of this document and a copy of a written agreement by the Department to accept temporary custody and provide support and care to the child until an adoption is finalized.

16. By signing this document I understand that I am relinquishing all of my parental rights to the minor child, \_\_\_\_\_. My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ (place/city/state) \_\_\_\_\_, at \_\_\_\_\_ (time) p.m./a.m..

\_\_\_\_\_  
Relinquishing parent

State of Montana  
County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_; personally appeared \_\_\_\_\_ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

\_\_\_\_\_  
Printed name of Notary Public

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

I hereby verify that \_\_\_\_\_ was read the entire foregoing document and was asked specific questions regarding his/her understanding of the document and ramifications of signing the document. He/she was also asked whether legal counsel was desired; whether he/she was under the influence of any drugs, medication or alcohol; and whether he/she was signing under his/her own free will without undue pressure by anyone.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, the Department hereby accepts the relinquishment and accepts custody of \_\_\_\_\_, a minor child, born 20\_\_\_\_, to \_\_\_\_\_, residing at \_\_\_\_\_.

The Department agrees to support and care for \_\_\_\_\_ until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Department of Public Health and Human Services

\_\_\_\_\_  
Parent/Legal Custodian of Minor Child

\_\_\_\_\_  
Address

\_\_\_\_\_  
Parent/Legal Custodian of Minor Child

\_\_\_\_\_  
City, State

MONTANA \_\_\_\_\_ JUDICIAL COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF )  
\_\_\_\_\_, )  
A MINOR CHILD. )

CAUSE NO.

AFFIDAVIT OF BIRTH MOTHER'S WAIVER OF  
ALL PARENTAL RIGHTS, RELINQUISHMENT OF  
CHILD AND CONSENT TO ADOPTION -- WAIVER OF  
COUNSELING REQUIREMENT

\*\*\*\*\*

\_\_\_\_\_, being first duly sworn upon oath, deposes and says:

1. I am the BIRTH MOTHER of the minor child, \_\_\_\_\_, who was born on the day of \_\_\_\_\_, 20\_\_, in \_\_\_City\_\_\_, \_\_\_State\_\_\_. I am \_\_\_ years old.
2. After carefully considering the best interests of my minor child, I hereby relinquish care custody and control of the minor child to the Montana Department of Public Health and Human Services, \_\_\_address\_\_\_\_\_, \_\_\_phone #\_\_\_.
3. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody to the Department of Public Health and Human Services.
4. I knowingly, unequivocally and voluntarily give my consent to have any court of competent jurisdiction terminate my parental rights and award permanent legal custody with the right to consent to adoption to the Department of Public Health and Human Services.
5. I understand that upon my signature of this document, it is final and may not be revoked or set aside for any reason, except as provided for in Mont. Code Ann. ' 42-2-411, including failure of an adoptive parent to permit me to visit or communicate with the child.

6. I understand that this relinquishment will result in the extinguishment of all parental rights and obligations to this minor child, except for arrearage of child support unless waived by the person to whom they are owed.

7. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

8. I understand that I have the right to receive at least three hours of counseling prior to the execution of this relinquishment of my parental rights, unless waived by the court for good cause. I have been advised of this right and the requirements of Mont. Code Ann. ' 42-2-409, and request that the court waive the counseling requirement for the following reasons:

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for execution of this document, except as may be allowed pursuant to Mont. Code Ann. ' ' 42-7-101 and 42-7-102.

11. To the best of my knowledge, this child does not fall under the provisions of the Indian Child Welfare Act.

12. I understand that I have the right to be represented by a lawyer who does not represent the adoptive parents. I understand that the expense for such legal advice is an expense that may be paid for by the adoptive parents pursuant to Mont. Code Ann. ' ' 42-7-101 and 42-7-102.

13. I expressly waive my rights to notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the (the adoptive parents).

14. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

15. I acknowledge that I have received a copy of this document and a copy of a written agreement by the Department to accept temporary custody and provide support and care to the child until an adoption is finalized.

16. By signing this document I understand that I am relinquishing all of my parental rights to the minor child, \_\_\_\_\_. My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (place/city/state)\_\_\_\_, at \_\_\_\_\_ (time) p.m./a.m.\_\_\_\_\_.

\_\_\_\_\_  
Relinquishing parent

State of Montana  
County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; personally appeared \_\_\_\_\_ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

\_\_\_\_\_  
Printed name of Notary Public  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

I hereby verify that \_\_\_\_\_ was read the entire foregoing document and was asked specific questions regarding his/her understanding of the document and ramifications of signing the document. He/she was also asked whether legal counsel was desired; whether he/she was under the influence of any drugs, medication or alcohol; and whether he/she was signing under his/her own free will without undue pressure by anyone.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, the Department hereby accepts the relinquishment and accepts custody of \_\_\_\_\_, a minor child, born 20\_\_\_\_, to \_\_\_\_\_, residing at \_\_\_\_\_.

The Department agrees to support and care for \_\_\_\_\_ until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Department of Public Health and Human Services

\_\_\_\_\_  
Parent/Legal Custodian of Minor Child

\_\_\_\_\_  
Address

\_\_\_\_\_  
Parent/Legal Custodian of Minor Child

\_\_\_\_\_  
City, State

MONTANA \_\_\_\_\_ JUDICIAL COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF )  
\_\_\_\_\_, )  
A MINOR CHILD. )

CAUSE NO.

AFFIDAVIT OF BIRTH FATHER'S WAIVER OF ALL  
PARENTAL RIGHTS, RELINQUISHMENT OF CHILD,  
AND CONSENT TO ADOPTION

\*\*\*\*\*

\_\_\_\_\_, being first duly sworn upon oath, deposes and says:

1. I am the FATHER of the minor child, \_\_\_\_\_, who was born on the \_\_\_ day of  
, 20\_\_, in \_\_\_ City \_\_\_, \_\_\_ State \_\_\_\_\_. I am \_\_\_ years old.

2. After carefully considering the best interests of my minor child, I hereby relinquish care  
custody and control of the minor child to the Montana Department of Public Health and Human  
Services, \_\_\_ address \_\_\_\_\_, \_\_\_ phone # \_\_\_\_\_.

3. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody  
to the Department of Public Health and Human Services.

4. I knowingly, unequivocally and voluntarily give my consent to have any court of  
competent jurisdiction terminate my parental rights and award permanent legal custody with the right  
to consent to adoption to the Department of Public Health and Human Services.

5. I understand that upon my signature of this document, it is final and may not be revoked  
or set aside for any reason, except as provided for in Mont. Code Ann. ' 42-2-411, including failure of  
an adoptive parent to permit me to visit or communicate with the child.

6. I understand that this relinquishment will result in the extinguishment of all parental rights and obligations to this minor child, except for arrearage of child support unless waived by the person to whom they are owed.

7. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

8. I know that I may receive counseling related to relinquishment and adoption prior to executing this relinquishment, but decline counseling.

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for execution of this document, except as may be allowed pursuant to Mont. Code Ann. ' ' 42-7-101 and 42-7-102.

11. To the best of my knowledge, this child does not fall under the provisions of the Indian Child Welfare Act.

12. I expressly waive my rights to notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the Department of Public Health and Human Services.

13. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

14. I acknowledge that I have received a copy of this document and a copy of a written agreement by the of to accept temporary custody and provide support and care to the child until an adoption is finalized.

15. By signing this document I understand that I am relinquishing all of my parental rights to the minor child, \_\_\_\_\_. My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (place/city/state)\_\_\_\_, at \_\_\_\_\_ (time) p.m./a.m.\_\_\_\_\_.

\_\_\_\_\_  
Relinquishing parent

State of Montana  
County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; personally appeared \_\_\_\_\_ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA  
\_\_\_\_\_  
Printed name of Notary Public  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

I hereby verify that \_\_\_\_\_ was read the entire foregoing document and was asked specific questions regarding his/her understanding of the document and ramifications of signing the document. He/she was also asked whether legal counsel was desired; whether he/she was under the influence of any drugs, medication or alcohol; and whether he/she was signing under his/her own free will without undue pressure by anyone.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, the Department hereby accepts the relinquishment and accepts custody of \_\_\_\_\_, a minor child, born \_\_\_\_\_ 20\_\_\_\_, to \_\_\_\_\_, residing at \_\_\_\_\_. The Department agrees to support and care for \_\_\_\_\_ until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Department of Public Health and Human Services

\_\_\_\_\_  
Parent/Legal Custodian of Minor Child

\_\_\_\_\_  
Address

\_\_\_\_\_  
Parent/Legal Custodian of Minor Child

\_\_\_\_\_  
City, State

## Child and Family Services Policy Manual: Legal Procedure Non-Custodial, Unknown, or Cannot-be-Located Parent

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### Policy

The public policy of the State of Montana is to compel in proper cases the parent of a child to perform the moral and legal duty owed to the child and to ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family. To meet the intent of this public policy, noncustodial parents must be considered placement options for children in the child welfare system.

When a child must be removed from the home of the custodial parent because of child abuse or neglect, the non-custodial parent is the first placement option for the child considered by the social worker. In general, placement of the child with the noncustodial parent is more favored than placement with a member of the child's extended family. Placement with a non-custodial parent is presumed to be in the best interests of the child.

### Background

Unless the Department has documented evidence to indicate that the child should not be placed with the non-custodial parent because of safety concerns, the non-custodial parent should be the first placement option considered.

Legal/birth parents have the right to parent their children unless a court finding or circumstances negate that right. As a corollary, children have the right to be placed with their legal/birth parents unless that parental authority has been abused.

Under Mont. Code Ann. § 40-6-221, the legal parents of a minor child are equally entitled to parent the child. The circumstances under which one parent is entitled to solely parent the child are if the other parent: a) is dead; b) is unable or refuses to exercise parenting; or c) has abandoned the family.

The Montana Supreme Court cited to this statute in In the Matter of JB, 278 Mont. 160, 923 P.2d 1096, 1996, a termination of parental rights case. In this case, the Supreme Court determined that when the parental rights of one parent are terminated, the parent whose rights have not been terminated has legal custody of the child (absent an adjudication of youth in need of care based upon the parenting behavior of the parent whose rights had not been terminated).

Extended family members do not have priority over placement

## Child and Family Services Policy Manual: Legal Procedure Non-Custodial, Unknown, or Cannot-be-Located Parent

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with the child's noncustodial parent. Because birth parents have the legal right to parent their children, this right cannot be abridged by extended family members utilizing a "best interests of the child" argument.

In In Re the Matter of the Parenting of J.N.P., 2001 MT 120, 305 Mont. 351, P.3d (2001), the great-aunt and uncle of a child left in their care petitioned for a parenting plan. The district court dismissed their petition because no termination or suspension of parental rights had occurred. The extended family members appealed. The Montana Supreme Court held that Montana case law does not permit the destruction of a birth parent's fundamental right to the custody of his/her child based simply on the subjective determination of the child's best interest.

### Placement with Non-Custodial Parent

The non-custodial parent is the first placement option for the child unless the social worker has documented good cause to the contrary exists indicating placement with the non-custodial parent could not assure the child's safety. The worker must document that such placement is not in the child's best interests.

If the social worker determines the child will be placed with the non-custodial parent, the DPHHS-CFS-032, Noncustodial Parent Placement Agreement should be completed and executed. (See page 13 of this policy.)

After filing a petition for immediate protection and emergency protective services, the following relief may be included in the *ex parte* order issued by the court:

- a) the right to place the child with, among others, the noncustodial parent; and
- b) the requirement that the parent provide the social worker with the name and address of the other parent, if known, unless parental rights to the child have been terminated.

The court may also require the social worker to involve the noncustodial parent if the child is adjudicated a youth in need of care. Included in the provisions the court may order after the adjudicatory hearing are:

**Child and Family Services Policy Manual: Legal Procedure  
Non-Custodial, Unknown, or Cannot-be-Located Parent**

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- a) the court can require the social worker to evaluate the noncustodial parent as a possible caretaker if the social worker has not already done so; and
- b) the court can order the social worker to continue efforts to notify the noncustodial parent.

**Diligent Search**

The parental rights of both parents must be addressed upon initiation of court action. If a child abuse and neglect petition is filed under the Child Abuse and Neglect statute to initiate a proceeding under Mont. Code Ann. § Title 41, chapter 3, both parents must be named on all petitions.

When a social worker determines that court action is necessary to protect a child from the family which does not include both the child's legal parents, the social worker must make a diligent effort to identify and locate the noncustodial parent. A diligent search for the noncustodial parent, includes but is not limited to the following:

- a) Obtain information (name and address of non-custodial parent or putative/legal father) from the custodial parent;
- b) If the custodial parent refuses to provide information regarding the identity or address of the noncustodial parent, request that provision of the information be included in the order for immediate protection; and
- c) Search CAPS or contact Social Security. Social Worker may also access Child Support Parent Locator Service (contact the Child Support Enforcement Division for proper procedure). If the court has granted the department care and placement responsibility, the social worker may submit a request for information regarding the noncustodial parent (accompanied by a copy of the court order) to the local Office of Public Assistance for a search in TEAMS.

**Remember: The search for the noncustodial parent must occur at the initiation of the child abuse and neglect action.**

**Unknown or Cannot-be-Located**

Every effort must be made to personally serve the noncustodial parent. However, if a parent is unknown or cannot be located,

**Child and Family Services Policy Manual: Legal Procedure  
Non-Custodial, Unknown, or Cannot-be-Located Parent**

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**Parent**

the court may proceed with a hearing on certain, specified actions. Pending service by publication on the parent who is unknown or who cannot be located, the hearing may be held and the court may grant the following relief based on personal service on one parent:

- a) immediate protection;
- b) temporary investigative authority; and
- c) temporary legal custody.

To proceed with a hearing on the above-listed action, the known parent must be served personally and service of process by publication must be initiated on the parent who is not known or cannot be located. After the hearing, the court may issue an order that will adjudicate the interests of the parent served by publication.

**Social Worker Action**

The social worker initiates the publication process by completing a affidavit stating that, after due diligence, the parent cannot be identified or found. The affidavit must include information regarding the diligent efforts made by the social worker to either identify or locate the noncustodial parent. If appropriate, the affidavit for service of process by publication may be combined with any other affidavit filed by the social worker. (See sample affidavit on page 10 of this section.)

**Service by Publication**

The county attorney will request an order authorizing service of process by publication from the court. The social worker's affidavit regarding the action taken to identify or locate the noncustodial parent will support the county attorney's request.

The order for service of process by publication may be issued by either the judge or the clerk of the court. Service by publication must be made by publishing notice three times, once each week for three successive weeks:

- a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the noncustodial parent, based upon the last known address or whereabouts if known of the person, if inside the State of Montana; or

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- b) if the identify or location of the noncustodial parent is unknown or if the last known address is outside the State of Montana, in a newspaper in the county in which the action is pending.

**Putative Fathers**

The social worker must make reasonable efforts to resolve issues of paternity, if any, as early as possible in child abuse and neglect proceedings. Every effort must be made to obtain service of process of a petition on a putative father. If a putative father cannot be served personally, the same procedure is used to serve him by publication as is used to serve the unknown or cannot-be-located parent by publication. The process is initiated by an affidavit from the social worker outlining the diligent efforts made to identify and locate the putative father.

**Termination of the Parent-Child Legal Relationship**

Before a termination of the parent-child legal relationship may be ordered, the court must determine whether the required procedure was followed for service of process on the parents. This includes the procedure for service of process by publication on the unidentified or cannot-be-located parent and on any putative fathers.

**Good Cause to the Contrary**

If good cause to the contrary exists, the social worker may choose to consider placement with the non-custodial parent if the non-custodial parent requests consideration as a placement option. In this situation, documentation of good cause would result in immediate implementation of a Treatment Plan for the non-custodial parent to address current and past issues.

The circumstances under which the social worker may determine that good cause to the contrary exists to indicate that the child's safety could not be assured if the child were immediately placed with the non-custodial parent are limited to the following:

- a) Child Protective Services **history** which poses risk to the child;
- b) Parental rights **terminated** under a dissolution decree;
- c) Parental rights involuntarily terminated to a child other than the child who is the subject of the current proceeding;

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- d) Conviction within the last five years for a **felony** which indicates a risk to the child including, but not limited to:
- 1) child abuse or neglect;
  - 2) spousal abuse;
  - 3) crimes against children (including child pornography);
  - 4) crime involving violence; or
  - 5) drug-related offense.
- e) Non-custodial parent refuses placement;
- f) Documented mental illness which would impair the non-custodial parent's parenting ability; or
- g) Putative parent denies paternity.

**Good Cause to the  
Contrary does not Exist**

Placement of the child with his/her non-custodial parent is presumed to be in the best interests of the child. Therefore, if good cause to the contrary does not exist, the child shall be placed with the non-custodial parent. Without good cause, the social worker has no basis to support imposing requirements on the non-custodial parent such as:

- participation in a treatment plan addressing behavior of the non-custodial parent;
- a home study; or
- a psychological evaluation.

Although the initial plan for the child is generally reunification with the parent(s) from whom the child was removed, no statutory legal requirement exists which mandates that the child be returned to the parent from which the child was removed. The non-custodial parent can either participate in a plan to reunify the child with the custodial parent, seek custody of the child (if a custodial decree does not exist), or seek modification of the custodial decree.

The non-custodial parent may be the permanent placement

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option if such a placement is appropriate. However, if the permanent plan for the child is placement with the non-custodial parent, the safety of the child must be protected and the child's permanent placement with the non-custodial parent must be legally established.

The permanent placement of the child with the non-custodial parent may be established by the court at the end of the dispositional hearing. The social worker may recommend that the disposition for the child be that the court order the placement of the child with the non-custodial parent. The social worker should consult with the county attorney to determine the depth of information required to support this recommendation.

If the court approves placement of the child with the non-custodial parent, the court may so order and order would supersede any existing custodial order. If the court orders placement of the child with the non-custodial parent, the court would dismiss the proceeding and the social worker no longer provide reunification services to the parent from whom the child was removed and would no longer provide services to the non-custodial parent.

**Social Worker  
Action**

The social worker shall initiate a diligent search for the non-custodial parent upon initiation of the child abuse and neglect proceeding.

The worker shall, within 10 - 90 days of placement of the child:

- a) Identify putative and legal fathers or non-custodial parent:
  - 1) Obtain information (name and address of non-custodial parent or putative/legal father) from the custodial parent for contact and request a copy of the dissolution decree (if available);
  - 2) Determine the court of jurisdiction which granted the dissolution and request a copy of the decree from the Clerk of Court if the dissolution decree cannot be obtained from the custodial parent;
  - 3) Search CAPS, submit a request for

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information regarding the non-custodial parent to Office of Public Assistance to initiate a TEAMS search if the Division has care and placement responsibility via a court order, or contact Social Security. Social Worker may also access Child Support Parent Locator Service (contact the Child Support Enforcement Division for proper procedure); and

- 4) Obtain a copy of the death certificate if the other parent is deceased.
- b) Upon identification of name and address of the non-custodial parent:
- 1) Conduct Child Protective Services check; and
  - 2) Obtain criminal history information (if applicable).
- c) If non-custodial parent is not a placement option initiate contact with extended family who can provide support to the family and/or placement for the child (applies to emergency placement, short-term placement and long-term placement). (See Policy Section 303-1C, Placement in Kinship Care Home; Section 303-1D, Concurrent Planning and Placement; and Section 201-8F, Family Group Conference.)

**Documentation**

All social worker placement decisions must be supported by documentation in the case file and/or CAPS. The case file must contain documentation of the safety concerns and the good cause to the contrary to support the decision if the child is not placed with the non-custodial parent.

If the non-custodial parent is not a placement option and the social worker does not place the child with a relative, the social worker must document the reason(s) the child was not placed with relatives.

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**Interstate Compact on Placement** The worker must comply with the Interstate Compact on the Placement of Children if the non-custodial parent does not reside in Montana. (Refer to Policy Section 402-7, Interstate Compact on the Placement of Children or consult with the Interstate Compact Administrator in the State Office.)

**References**

- Mont. Code Ann. § 40-6-221.
- Mont. Code Ann. § 41-3-101 et seq.
- Mont. Code Ann. § 41-3-427.
- Mont. Code Ann. §§ 41-3-428 and 429.
- Mont. Code Ann. § 41-3-437 and 438.
- Mont. Code Ann. § 41-3-608.

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**SAMPLE SOCIAL WORKER AFFIDAVIT  
FOR SERVICE BY PUBLICATION**

MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF: )  
 (JOHN DOE AND JANE DOE), )  
 YOUTH IN NEED OF CARE. )  
 \_\_\_\_\_ )

No. \_\_\_\_\_

**AFFIDAVIT FOR  
SERVICE BY  
PUBLICATION**

STATE OF MONTANA )  
 ) : ss.  
 COUNTY OF \_\_\_\_\_ )

(Name), being first duly sworn on oath, states:

1. That (Name) is a Social Worker for the Department of Public Health and Human Services.

**OPTIONS FOR #2**

2. That (Name of Absent Parent), the natural (mother or father) of (Name of Youth) cannot be identified or found for service of process of the citation and Petition for (Immediate Protection) or (Temporary Investigative Authority) or (Temporary Legal Custody) in this matter.

**OR**

2. That the unknown putative father of (Name of Youth) cannot be identified or found for service of process of the citation and Petition for (Immediate Protection) or (Temporary Investigative Authority) or (Temporary Legal Custody) in this matter.
3. After due diligence, (Name of Absent Parent) or (Unknown Parent) cannot be identified, located or served.

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- 4. *(List efforts to identify and/or serve - use information from Social Worker Affidavit or report to the Court.)*
  
- 5. That the State of Montana has a valid cause of action which in the interest of the above-named youth must be fully pursued before this Court and that it is necessary to serve process upon *(Name of Absent Parent)* or *(Unknown Parent)* by publication.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Social Worker Name)

\_\_\_\_\_  
(Social Worker Title), DPHHS

State of Montana  
County \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; personally appeared \_\_\_\_\_ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that s/he executed the same.

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

\_\_\_\_\_  
Printed name of Notary Public

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

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DPHHS-CFS-032  
New 08/2002

**NONCUSTODIAL PARENT PLACEMENT AGREEMENT**

Agreement between the Child and Family Services \_\_\_\_\_ County,  
Division, \_\_\_\_\_

And, \_\_\_\_\_ (Noncustodial Parent)

Under the terms of this agreement, the undersigned agrees to provide care to the following children:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

The undersigned attests that:

1) My parental rights to the above-named child(ren) remain intact and that no court of competent jurisdiction has terminated the parent-child legal relationship between me and my child(ren).

2) I understand that the initial plan for my child(ren) will be reunification with the parent from whom, because of child safety issues, the child(ren) were removed.

3) I understand that the permanent plan for my child(ren) is the following:

\_\_\_\_\_ reunification with the children’s custodial parent. If this is the plan for my children, I will cooperate with my child(ren)’s social worker to effectuate this plan.

\_\_\_\_\_ no reunification with the children’s custodial parent. If this is the plan for my children, I will pursue obtaining custody of my children so the child abuse and neglect proceeding involving my children may be dismissed.

4) I understand that my child(ren)’s social worker will conduct a search to determine if I have a child protective services history which poses a risk to my child(ren).

5) I have not been convicted (within the last five years) of a felony which indicates that placement in my home poses a risk to my child(ren). A felony conviction which poses a risk to my child(ren) includes, but is not limited to, a conviction for:

- a) child abuse or neglect;
- b) spousal abuse;

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- c) crimes against children (including child pornography);
- d) crime involving violence; or
- e) drug-related offense.

6) If I do not reside in the State of Montana, I understand that my child(ren)'s social worker must comply with the requirements of the Interstate Compact on the Placement of Children, Mont. Code Ann. ' 41-4-101 et seq.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

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Noncustodial Parent

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Child Protective Services Worker  
Child and Family Services Division

## Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

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### Introduction

The Indian Child Welfare Act is a mandatory federal law and shall be implemented accordingly.

The underlying premise of the Act is that Indian tribes have sovereign rights and legal powers with respect to Indian children and, as governments, have a vital legal role to play in determining whether Indian children should be separated from their families and culture. The Act recognizes the authority of tribal and state courts to make decisions regarding the welfare, care, custody and control of Indian children.

ICWA has two primary provisions. First, it sets up requirements and standards for child-placing agencies to follow in the placement of Indian children. It requires, among other things, providing remedial, culturally appropriate service for Indian families before a placement occurs; notifying tribe(s) regarding the placement of Indian children and, when placement must occur, it requires that children be placed in Indian homes. Failure to follow these procedures can result in invalidation of the court's action. Second, the Act provides for Indian tribe(s) to reassume jurisdiction over child welfare matters, including developing and implementing juvenile codes, juvenile courts, tribal standards, and child welfare services.

Today, most Indian tribe(s)--including all tribes in Montana--are in a position to provide at least some services to their own children. Each reservation in Montana has a tribal court and tribal codes which guide the provision of child welfare services. In addition, the tribes have entered into contracts and agreements with the State of Montana to further clarify the role of tribal and state government in child protective services and ICWA compliance for Native American children both on and off the reservation. State social workers should be aware of the provisions of these contracts when working with Native American families.

### Definitions

An **Indian Child** is an unmarried person under 18 who is either a member of an Indian tribe(s) or eligible for membership in an Indian tribe(s) and the biological child of a member of an Indian tribe(s) **as determined by the tribe(s)**.

A **Parent** is any biological parent or parents of an Indian child, or any Indian person who has legally adopted an Indian child, including adoptions under tribal law and custom. "Parent" does

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not include the unwed father when paternity hasn't been acknowledged or established.

An **Indian Custodian** is

- an Indian person who has legal custody of an Indian child under tribal law or custom, or under state law; or
- an Indian person to whom temporary physical care, custody and control has been transferred by the parent of such child.

An **Indian Child's Tribe(s)** is

- the tribe(s) in which the child is a member or is eligible for membership;
- in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the tribe with which the Indian child has more significant contacts as determined by the court; or
- the tribe which recognizes the child as a tribal member.

An **Extended Family Member** is defined by the law or custom of the Indian child's tribe(s) or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. Extended family members include non-Indian relatives.

A **Qualified Expert Witness** is

- a member of the Indian child's tribe(s) who is recognized by the tribal community as knowledgeable of tribal customs pertaining to family organization and child rearing practices;
- a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social, cultural and child rearing practices of child's tribe(s); or

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- a professional person who has substantial experience in providing services to children and families and who possess significant knowledge of and experience with Indian culture, family structure, and child rearing practices in general.

All regional offices have a list of potential Qualified Expert Witnesses for Montana. The worker may also call ICWA Program Specialist at 444-9748.

A Qualified Expert Witness must testify at foster care placement proceedings and termination of parental rights proceedings.

If a petition requests placement of an Indian child in a temporary foster home, the district court cannot grant the petition unless the Qualified Expert Witness requirement is met.

**Domicile or Residence** means a place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which one returns when not working or attending school. Generally, the residence of the parent with whom the child customarily resides is the residence of the child. (See Mont. Code Ann. § 1-1-215.) Usually, the child's residence will be where he is physically living. However, if the child is physically residing off the reservation with relatives on a temporary basis, the residence may be the residence of the parent or custodian with whom the child customarily resides.

### Standard of Proof

Standard of proof depends on the underlying ICWA proceedings as follows:

- 1) Foster Care placement: "Clear and Convincing evidence"
- 2) Termination of Parental rights: "Beyond a reasonable doubt"

The proper evidentiary standard for determining "active efforts" under §1912(d) is the same standard applied to the underlying ICWA proceeding.

### Applicability

The Indian Child Welfare Act (ICWA) confers exclusive jurisdiction to tribal courts over any child custody proceeding involving an Indian child who resides or is domiciled on the reservation or is a ward of the tribal court. This means that only the tribal courts have the power to decide child custody matters concerning Indian children living on the reservation or who are

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wards of the tribal court. If the child who is the subject of a dependency and neglect proceeding is an Indian child living on the reservation or a ward of the tribal court, the state court must transfer the child and the proceedings to the tribal court of the appropriate tribe if requested to do so by the tribe and absent good cause to the contrary.

If it is determined that the Indian child is not domiciled or residing on the reservation and is not a ward of the tribal court, the state court has the power to proceed with the dependency and neglect proceeding within the guidelines established under the ICWA.

### Pre-Hearing Determinations

Is the child an Indian child?

The social worker shall first determine if the child is an Indian child as defined by ICWA or this manual. To assist in this determination, the worker must complete the ICWA checklist (see pgs 18-21 of this section). The checklist must be completed starting when a client is generated on CAPS. This must be completed for *all children, not only an Indian child.* Often this information is easily obtained from the family or by calling or writing the Indian tribe(s) thought to be the child's tribe(s), or the regional Bureau of Indian Affairs (BIA) office. For additional assistance the social worker may contact the DPHHS ICWA Program Officer in Helena. The worker must also send the DPHHS-CFS/ICWA-251 to designated tribal agents of notice. (See page 21 of this section for the DPHHS-CFS/ICWA-251.)

If the social worker has reason to believe that the child is an Indian child but the identified tribe does not respond to the request for information, the worker must request information regarding tribal affiliation from the BIA.

For involuntary proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana) notices shall be sent to the BIA at the following address: 316 North 26th Street, Billings, Montana 59101. All notices involving Confederated Salish and Kootenai tribe's children shall be sent to Portland Area Director, 911 NE 11th Avenue, Portland, Oregon, 97232.

If there is any possibility that the child may be an Indian child, but the fact cannot be verified informally either through the tribe or BIA, the social worker should request the county attorney to petition the court to seek formal verification of the child's status from the BIA. **The worker shall document in the case record**

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**all efforts to discover the child's Indian ancestry.**

Circumstances under which a state court has reason to believe a child involved in a child custody proceeding is an Indian include but are not limited to the following:

1. Any party to the case, Indian tribe(s), Indian organization or public or private agency informs the court that he or she is an Indian child.
2. Any public or state-licensed agency involved in child protection services or family support has discovered information, which suggests that the child is an Indian child.
3. The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.
4. The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.
5. An officer of the court involved in the proceeding has knowledge that he or she may be an Indian child.

This listing is not intended to be complete, but it does list the most common circumstances giving rise to a reasonable belief that a child may be an Indian.

Tribal Enrollment

Enrollment is not always required in order to be a member of a tribe(s). Some tribes do not have written enrollment records. Others have rolls that list only persons who were members as of a certain date. Enrollment is the common evidentiary means of establishing Indian status, but it is not the only means nor is it necessarily determinative. (United States v. Broncheau, 597 F.2d 1260, 1263, 9th Cir. 1979.)

Only a tribe (or BIA, if tribe does not respond) makes the determination of a child's enrollment status. **The worker does not make the determination of an Indian child's tribal Membership or eligibility status.**

Determining Jurisdiction

Once it has been determined that he or she is an Indian child, the child's domicile or residence or their status as a ward of the

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tribal court shall be determined.

If the child is a ward of a tribal court, the case must be transferred to the tribal court. Again, a phone call or letter to the child's tribe(s) may provide this information, although it should be verified in writing.

An Indian child living off the reservation may be considered to be legally domiciled on the reservation if his or her parents' or guardian's permanent residence is on the reservation.

If the child is living or "domiciled" on an Indian reservation, the state court has no power to act. The case must be dismissed, and the matter transferred to the tribal court.

If the child is domiciled or residing off the reservation, the state court has the jurisdiction to hear the case, but ICWA will still apply to the proceedings.

### Filing the Petition

Any case that could result in an involuntary foster care placement or termination of parental rights is covered by the ICWA.

The petition should include an allegation that the child is an Indian, a statement of the child's tribal affiliation, if known, and, if unknown, a request that the court seek verification of the child's eligibility for tribal membership and a determination of the child's tribe(s).

### Right to Notice and Right to Intervention

The Indian Child Welfare Act requires that notice of the proceedings be sent to: (1) the child's parents; (2) an Indian custodian; or (3) any tribe(s) that may be the child's tribe(s). The Act requires that the notice inform those receiving it of their right to intervene in the proceedings. **Notice of all proceedings shall be sent to the child's tribe(s) regardless of prior interest shown by the tribe(s). The tribe(s) may intervene at any time in the process of involuntary placement proceedings.**

A copy of each notice, together with a return receipt or other proof of service, must be filed with the court. The social worker should work with the county attorney to fulfill the notice requirements. Generally, the county attorney sends the notice to all the required parties, but it is the social worker's responsibility to coordinate this with the county attorney,

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thereby insuring this is done.

An ICWA notice should be sent to each biological parent, the Indian custodian, if there is one, and **any** tribe(s) that may be the child's tribe(s).

The notice shall be written in clear and understandable language and include the following information:

- the name of the Indian child;
- the child's birth date and birthplace;
- names and addresses of the child's birth family;
- his or her tribal affiliation;
- a copy of the petition, complaint or other document by which the proceeding was initiated;
- the name of the petitioner and the name and address of the petitioner's attorney;
- a statement of the right of the biological parents or Indian custodians and the Indian child's tribe(s) to intervene in the proceeding;
- a statement that if the parents or Indian custodians are unable to afford counsel, one will be appointed to represent them;
- a statement regarding the right of the natural parents or Indian custodians and the Indian child's tribe(s) to have, on request, 20 days (or such additional time as may be permitted under state law) to prepare for the proceedings;
- the location, mailing address and telephone number of the court;
- a statement of the right of the parents or Indian child's tribe(s) to petition the court to transfer the proceeding to the Indian child's tribal court;
- the potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians;

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and

- a statement in the notice to the tribe(s) that, since child custody proceedings are usually conducted confidentially, tribal officials should keep the information contained in the notice concerning the particular proceeding confidential and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act.

The more informative the notice, the less likely it will be subject to challenge. The notice may be served personally or sent by certified mail, return receipt requested. This notice under ICWA is in addition to the notice required by the state statutes.

ICWA Designated Agents for Notice:

Assiniboine and Gros Ventre Tribes (Ft. Belknap Reservation):  
Tribal Attorney, Box 249, Harlem, MT 59526; ICWA  
Coordinator, Route 1, Box 66, Harlem, MT 59526. (406) 353-  
2205.

Assiniboine and Sioux Tribes (Ft. Peck Reservation):  
Chairman, P.O. Box 1027, Poplar, MT 59255. (406) 768-5155.

Blackfeet Tribe (Blackfeet Reservation): Director, ICWA  
Program, P.O. Box 588, Browning, MT 59417. (406) 338-7806.

Chippewa-Cree Tribe (Rocky Boys Reservation): Chairman,  
Chippewa-Cree Business Council, RR1, Box 544, Box Elder,  
MT 59521. (406) 395-4478.

Confederated Salish and Kootenai Tribes (Flathead  
Reservation): Family Service Division, Box 278, Pablo, MT  
59855. (406) 675-2700.

Crow Tribe (Crow Reservation): Legal Department, Box 159,  
Crow Agency, MT 59022.(406) 638-3925 (So. Services)

Little Shell Tribe of Chippewa Indians of Montana: Tribal Chair,  
P.O. Box 1384, Great Falls, MT 59403. (406) 452-2892.

Northern Cheyenne Tribe (Northern Cheyenne Reservation):  
Director, Tribal Social Services, Box 128, Lame Deer, MT  
59043. (406) 477-8321.

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Web-site address for U.S. Tribes:

<http://www.indians.org/Resource/FedTribes99/fedtribes99.html>

For names/addresses of designated agents for tribes not listed above contact the CFSD Indian Child Welfare Program Officer in central office or that tribe's Area Bureau of Indian Affairs (BIA) Office.

Whenever an Indian child is removed from a foster care home or facility for the purpose of further foster care, pre-adoptive or adoptive placement, such placement shall be in accordance with the ICWA provisions, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. The ICWA requirements include notification to the tribe(s) of these changes.

Right to Appointed  
Counsel

Any indigent parent(s) (Indian or non-Indian) or Indian custodian has the right to court-appointed counsel in any proceeding that could result in foster care placement or termination of parental rights. If the district court does not appoint an attorney for indigent parent(s) of a n Indian child, the Secretary of Interior may be asked to pay for legal representation.

**Intervention**

An ICWA Intervention by an Indian tribe(s) means specifically that the respective tribal court and/or designated tribal entity has legal access to all DPHHS records in a monitoring capacity, as well as the right to make formal recommendations regarding CPS case plans, foster care placements, and family treatment issues.

When Child and Family Services takes custody of an Indian child in an involuntary proceeding, the social worker should contact the tribal social worker (of the tribe(s) where the child may be enrolled) to alert the worker that a notice of proceedings has been (or will be) sent on the child and to discuss the child's situation, including custody status, reason for court action, and all pertinent information regarding the child's need for care. The social worker should request assistance for identifying an appropriate placement for the child in accordance with the Indian Child Welfare Act. The social worker should request assistance in identifying a Qualified Expert Witness who can address the appropriateness of, and need for, placement of the child. All Regional and Tribal Social Service Offices will have a

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list of potential Qualified Expert Witnesses. The worker may also call CFSD ICWA Specialist at 444-9748.	
Right to Intervention	<p>Either parent, the Indian custodian and the Indian child's tribe(s) have the right to intervene and participate in the proceeding.</p> <p>If the tribe requests intervention, the tribe's designated representative shall be allowed to fully participate in staff discussions regarding the child's placement and case plan. All proposed plans developed without the designated representative being personally present shall be shared with the tribe's designated representative prior to implementation by DPHHS staff, unless an emergency placement is required.</p>
<b>Transfer</b>	<p>An ICWA Transfer of Jurisdiction by an Indian tribe means specifically that the respective tribal court assumes all legal authority of the CPS case, as well as the accountability and responsibility for the direct social work case management and record keeping. <b>DPHHS will transfer the entire case file, including all case notes</b> (and electronically transfer the case via CAPS) to tribal authorities upon receipt of a District Court order granting the transfer of jurisdiction. If transferred to tribal jurisdiction, the case should be closed.</p>
Request for Transfer to Tribal Court	<p>Even where the child is domiciled off the reservation and the state court has the jurisdiction to proceed, either parent, the Indian custodian or the Indian child's tribe(s) may request that the state court transfer the proceedings to the tribal court of the child's tribe(s). Unless either parent objects, or the tribal court declines the transfer or the court determines that good cause to the contrary exists for denying transfer, the state court must transfer the proceeding.</p>
<b>Good Cause: Transfer</b>	<p>Good cause to deny transfer may exist if:</p> <ol style="list-style-type: none"> <li>1. the proceeding was at an advanced state when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing;</li> <li>2. the Indian child is over 12 years of age and objects to the transfer;</li> <li>3. the evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses; or</li> </ol>

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4. the parents of a child over five years of age are not available, and the child has had little or no contact with the child's tribe(s) or members of the child's tribe(s).

**The Hearing**

Proof Requirements

In addition to the proof requirements of the state statutes, in a case involving an Indian child there must be a showing that continued custody by the parent(s) or Indian custodian is likely to result in serious emotional and physical damage to the child.

**Qualified Expert  
Witness  
requirement**

The requirement of testimony from a qualified expert witness assures that the involuntary placement of an Indian child into foster care or the termination of the parent-child legal relationship does not conflict with the specific cultural values of the child's tribe. 25 U.S.C. §1912 (e) and (f) of the Indian Child Welfare Act requires that the action proposed by the state be supported by the testimony of a qualified expert witness.

Removal of an Indian child from his or her family must be based on competent testimony from one or more experts qualified to speak specifically to the issue of whether continued custody by the parent(s) is likely to result in serious physical or emotional damage to the child. If the proceeding is related to foster care, the testimony of the qualified expert witness must establish the damage to the child by "clear and convincing evidence." If the proceeding is termination of parental rights, the testimony of the qualified expert witness must establish the damage to the child by evidence "beyond a reasonable doubt". In either case, there must be testimony of a "Qualified Expert Witness" (as defined on page 2), regarding this question.

All qualified expert witnesses are required to sign a confidentiality form (see page 24) of this section.

Potential Qualified Expert Witnesses should only be given the information which is necessary for them to testify in court regarding whether return of the children to the parent's custody is likely to result in serious emotional or physical damage to the child. If it is not necessary for the qualified expert witness to read the entire file in order to make this determination, then s/he should not be given access to the entire file. They should only be given the information necessary to provide a basis for the in-court testimony.

**All files or documents that the Qualified Expert Witness uses must be returned immediately after each hearing.**

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All regional offices have a list of potential Qualified Expert Witnesses or the worker can contact the ICWA specialist at 444-9748. *Failure to use an appropriate expert witness, could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of the Indian Child Welfare Act.* See In the Matter of the Adoption of H.M.O., 289 Mont. 509, 962 P.2d 1191, 55 St. Rep. 710 (1998). And In the Matter of K.H. and K.L.E., 294 Mont. 446, 981 P.2d 1190 (1999).

**Active Efforts**

**The state must also satisfy the court that active efforts have been made to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family and those efforts have proved unsuccessful.** The court must be informed as to what services were provided. This is best accomplished by including a description of the services and programs offered or provided for the family in the affidavit and by testifying about the services at the hearing.

ICWA requires specific evidentiary standards be applied to active efforts. The evidentiary standard to be applied is dependant on the underlying ICWA proceeding. If the proceeding involves foster care placement active efforts must be established by “clear and convincing evidence.” In proceedings to termination of parental rights active efforts must be established by “beyond a reasonable doubt.”

Active efforts for foster care placement must be made from the time social worker becomes involved with the family until the show cause hearing is held. See In the Matter of G.S., jr., and S.S., 2002 MT 245, 312 Mont. 108, 120, 59 P.3d 1063, 1072 (2002).]

**Emergency  
Removal  
Under ICWA**

Indian children subject to the exclusive jurisdiction of the tribal court who are temporarily off the reservation are still subject to the relevant emergency placement provisions of state law. However, ICWA requires that DPHHS terminate the emergency placement as soon as it is no longer necessary to prevent imminent physical damage or harm to the child. If it is not safe to return the child to the parents or Indian custodian, the worker should transfer the child to the jurisdiction of the child's tribe(s). If the transfer cannot be arranged within 48 hours, a petition for a TIA or emergency protective services must be filed in state court to provide court sanction of the emergency placement until the transfer can be arranged.

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Prior to making placements, workers are strongly encouraged to use a Family Group Decision-making process to determine the best placement for the child.

### **Voluntary Proceedings**

If a parent of an Indian child proposes to voluntarily place his or her child in foster care or relinquish his or her parental rights to the child, certain requirements of ICWA must be met.

#### Foster Care Placement

If the parent is voluntarily placing an Indian child in foster care, the parent must sign a parental agreement. However, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.

All Voluntary Parental Agreements are limited to 30 days.

The ICWA placement preference also applies to voluntary foster care placement.

Voluntary Parental Agreements authorizing placement involving Indian children are at the end of this section (pages 25-28).

#### Relinquishment

The relinquishment must be executed before a judge and accompanied by the judge's certification that the terms and consequences of the relinquishment have been fully explained to the parent and were fully understood by the parent(s).

The relinquishment of an Indian child may not be executed until at least ten days after the birth of the child.

The social worker shall notify the child's tribe(s) of the relinquishment. The parent's desire for confidentiality does not outweigh the worker's responsibility to notify the tribe(s).

When the relinquishment is of a child who is defined as an Indian child under ICWA, the consent may be withdrawn for any reason prior to the entry of termination of the parent-child legal relationship or the final decree of adoption and the child returned to the parent(s). After the entry of the final decree of adoption, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress.

If the parent(s) alleges fraud or duress, the parent may petition the court to vacate the decree of adoption within two years of the date of the adoption decree. Upon a finding that the

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consent was obtained through fraud or duress, the court must vacate the adoption decree and return the child to the parent(s). However, no adoption which has been effective for at least two years may be invalidated by alleging fraud or duress.

**Placement of  
Indian Children:  
Foster Care  
Placement**

ICWA Section 1915 sets forth the following list of people who must be given preference in the following order as a foster care placement for the child, in the absence of good cause to the contrary:

1. a member of the child's extended family, including non-Indian family members;
2. a foster home licensed, approved, or specified by an Indian child's tribe(s);
3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. an institution for children approved by the tribe which has a program suitable to meet the Indian child's needs.

**Good Cause:  
Preference Order**

An Indian child shall be placed with a person or facility listed above unless there is a good cause not to follow the preference order.

Good cause not to follow the preference order may be established in the following cases:

- if appropriate, the request of the biological parent(s) or the child (if the child is of sufficient age) shall be considered;
- the extraordinary physical or emotional needs of the child require a specific placement outside of the preference order; or
- the unavailability of suitable families for placement despite a diligent search.

**Note: If the Indian child's tribe has established a different order of preference by resolution or tribal code, the social worker making the placement shall follow the tribally established order of preference if the placement is in the least restrictive setting appropriate to the particular needs of the child.**

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**Placement of  
Indian Children:  
Adoptive  
Placement Process**

ICWA Section 1915 sets forth the following list of people who must be given preference in the following order for an adoptive placement for the child, in the absence of good cause to the contrary:

1. a member of the child's extended family;
2. other members of the child's tribe(s); or
3. other Indian families.

**NOTE:** The Montana Supreme Court, In the Matter of C.H., 57 St. Rep. 300,2000 Mont.64, 299 Mont 62,997 P.2d 776,(2000), stated that the placement preferences under ICWA must be strictly applied and that the ICWA must be liberally construed in favor of a result that is consistent with the preferences.

Failure to follow the placement preferences without good cause, could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of the Indian Child Welfare Act. Note: When an Indian child is placed adoptively, the social worker must complete the DPHHS-CFS/ICWA-250.(See page 22 of this section)

**An adoption of a Confederated Salish and Kootenai Indian child in State District Court is not valid without the consent of CSKT Tribal Court. Pursuant to Public Law 280 and Tribal Ordinance 40A.**

**Confidentiality:**  
Disclosure Exceptions

Child protective services records may be disclosed to an agency of an Indian tribe(s) or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act. This allows the worker to contact relatives of the child for possible placement as an alternative to regular foster care.

**CAPS**

When entering an Indian client on CAPS, the worker must identify the client as American Indian by entering the code "AI" in the 'ethnicity' field on CLID. This will automatically take the worker to the ICWD screen to enter tribal affiliation information. If the enrollment number is known, enter it in the 'enrollment number' field. If the worker has not yet received the enrollment information from the tribe(s), s/he may temporarily enter "enrolled" in the 'enrollment number' field. However, the worker

## Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

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must return to that screen when they receive the information and enter the enrollment number. If there is no enrollment number for the child because the child is recognized by the tribe(s) as Indian or a descendent of an enrolled member, enter “recognized” or “descendent” in the “enrollment number” field.

CAPS has a DocGen for Request for Verification of Status (D200) and a DocGen for Notification of Judicial Proceedings (D105) to be used for complying with the ICWA requirements. When using these DocGen’s, save the completed documents to the mainframe.

### References

Indian Child Welfare Act, 25 USC 1901, et seq.  
Guidelines for State Courts, 44 Fed. Reg. 67584, November 26, 1979.

Mont. Code Ann. § 41-3-102  
Mont. Code Ann. § 41-3-109  
Mont. Code Ann. § 41-3-205  
Mont. Code Ann. § 41-3-301  
Mont. Code Ann. § 41-3-302  
Mont. Code Ann. § 41-3-422  
Mont. Code Ann. § 41-3-423  
Mont. Code Ann. § 41-3-432  
Mont. Code Ann. § 41-3-427  
Mont. Code Ann. § 41-3-437  
Mont. Code Ann. § 41-3-444  
Mont. Code Ann. § 41-6-609  
Mont. Code Ann. § 42-2-102  
Mont. Code Ann. § 42-6-109

**State of Montana**  
**ICWA CHECKLIST**  
**To be used in all cases**

How to determine if the child is American Indian as defined by ICWA

**Definition of an Indian Child:**

An "Indian child" means any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe:

REGARDING: \_\_\_\_\_ DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ Date: \_\_\_\_\_  
(name of youth)

1. To determine if the child is American Indian:
  - a. Ask child is s/he is American Indian? **Yes**  **No**   
If yes, what tribe \_\_\_\_\_
  - b. Ask if mother of child is American Indian **Yes**  **No**   
If yes, what tribe \_\_\_\_\_
  - c. Ask if father of child is American Indian **Yes**  **No**   
If yes, what tribe \_\_\_\_\_
  - d. If known, ask paternal grandparents if American Indian **Yes**  **No**   
If yes, what tribe \_\_\_\_\_
  - e. If known, ask maternal grandparents if American Indian **Yes**  **No**   
If yes, what tribe \_\_\_\_\_

2. If you determined the child may be an American Indian, identify possible tribal affiliation:
  - a. Which tribe or tribes \_\_\_\_\_  
Note: If tribe unknown, contact BIA @ 247-7988.
  - b. Date ICWA-251 sent to the tribe(s) \_\_\_\_\_
  - c. Date of response from tribe \_\_\_\_\_
  - d. If tribe unknown, date of response from BIA \_\_\_\_\_  
Note: If the child might be American Indian, you must fill out the ICWA-251.

Make a courtesy call to social service staff of tribe in question and inform them that you mailed the form to them. If you have questions about where to send documents, call ICWA specialist @ 444-9748.

3. Is the child American Indian as defined by ICWA? **Yes**  **No**

Note: Court orders may be invalidated in cases involving an Indian child where there was non-compliance with the major Provisions of the ICWA. Therefore, when in doubt, it is better to consider the child an Indian child until it is established with reasonable certainty that the child is not eligible for membership in a tribe.

**REQUIRED**

**Worker Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Supervisor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

If it is determined the child is not American Indian, ICWA is not longer applicable, therefore, you may stop here.

**ACTIVE EFFORTS**

Any party seeking to effect a foster care placement of, or termination of parental rights to an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Active efforts are based on the offer of services.

Active efforts for foster care placement must be made from the time social worker becomes involved with the family until the show cause hearing is held. See in the matter of G.S., jr., and S.S., 2002 MT 245, 312 MT. 108,120,59P.3d 1063,1072(2002).

**Order of preference in the absence of good cause shall be given to:**

- a. A member of the child's extended family, including non-Indian family members.
- b. A foster home licensed, approved, or specified by an Indian child's tribe.
- c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- d. An institution for children approved by the tribe that has a program suitable to meet the Indian child's needs.
- e. If placement is not ICWA compliant, good cause not to follow the preference order must be documented.

[Tribal Resolution can change the preference order. The Department is required to follow the Tribes designated order of preference according to 25 USC §1915(c)]

**VOLUNTARY PARENTAL AGREEMENT**

**(check box after completed)**

*As of October 1, 2003 all parental agreements have a 30 day limit.*

- 1. The parent signed the parental agreement.
- 2. The parent signed the agreement before either a state district court judge or tribal court judge.
- 3. The child is at least 10 days old before mother signed agreement.
- 4. The judge before whom the parent signed the agreement has certified in writing that the terms and consequences of the agreement were fully explained to the parent in detail, and in a language understood by the parent, and that the parent understood the explanation.

*Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.*

**REQUIRED**

**Worker signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Supervisor signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**VOLUNTARY RELINQUISHMENT**  
(check box after completed)

- 1. The biological mother signed the relinquishment before either a state district court judge or tribal judge.
- 2. The biological father signed the relinquishment before either a state district court judge or tribal judge.
- 3. The child was at least 10 days old before mother signed relinquishment.
- 4. The child was at least 10 days old before father signed relinquishment.
- 5. The judge before whom the birth mother signed the relinquishment has certified in writing that the terms and consequences of the relinquishment were fully explained to the birth mother in detail, and in a language understood by the birth mother, and that the birth mother understood the explanation.
- 6. The judge before whom the birth father signed the relinquishment has certified in writing that the terms and consequences of the relinquishment were fully explained to the birth father in detail, and in a language understood by the birth father, and that the birth father understood the explanation.
- 7. Child's tribe was sent notice of the relinquishment.

**INVOLUNTARY PROCEEDINGS**  
(check box after completed)

- 1. The active efforts made to provide remedial services are documented in the case record.
- 2. Description of active efforts made to provide remedial services are included in the affidavit which was submitted to the court.
- 3. Contacted all identified family members about possible foster care placement.
- 4. Qualified expert witness contacted.
- 5. Legal notice sent to the child's tribe by registered mail with return receipt.
- 6. Notification sent to parents.
- 7. Social worker affidavit contained information regarding Tribal membership.

**REQUIRED**

Worker signature: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ADOPTIONS**  
**(check box after completed)**

After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated.

- 1. ICWA-250 completed.
- 2. Order of preference for adoptive placement used in the absence of good cause to the contrary.

**Preference order:**

- a) Member of child's extended family;
- b) Other members of the child's tribe; or
- c) Other Indian families.

**Note: An adoption of a Confederated Salish & Kootenai Indian child in State District Court is not valid without the consent of CSKT Tribal Court. Pursuant to Public Law 280 and Tribal Ordinance 40A.**

**[Tribal Resolution can change the preference order. The Department is required to follow the Tribes designated order of preference according to 25 USC §1915(c)]**

*Note: failure to follow the placement preferences without good cause could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of ICWA.*

**REQUIRED**

**Worker signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Supervisor signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

STATE OF MONTANA

Department of Public Health and Human Services

**REQUEST FOR VERIFICATION OF STATUS**

Date: \_\_\_\_\_

Name of Tribe: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REGARDING: \_\_\_\_\_ DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
(name of youth)

Dear \_\_\_\_\_:

The Department of Public Health and Human Services has received a report of child abuse or neglect concerning \_\_\_\_\_. We have reason to believe that this child may be of American Indian descent. The parents are believed to be \_\_\_\_\_ and \_\_\_\_\_.

The maternal grandparents are believed to be \_\_\_\_\_. The paternal grandparents are believed to be \_\_\_\_\_.

Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., we are hereby requesting a verification of this child's status as either a member or eligible for membership in the Tribe. Please advise whether this child is:

- a.) Enrolled as a member in the \_\_\_\_\_ Tribe(s),
- b.) Eligible for membership/enrollment in the \_\_\_\_\_ Tribe(s),
- c.) Is considered a member of the \_\_\_\_\_ Tribe(s)  
Because s/he is a biological descendent of an enrolled member and/or has significant contacts or identification with the \_\_\_\_\_ Tribe(s).

Your prompt attention to this matter is requested.

Sincerely,

Department of Public Health and Human Services

DPHHS office use only. Date returned receipt signed: \_\_\_\_\_.

(note: staple return receipt to this document).

Copies to: Tribal Indian Child Welfare Act Contact Person  
Tribal Court Judge  
Tribal enrollment office  
DPHHS case file



**STATEMENT OF CONFIDENTIALITY**

I, \_\_\_\_\_, the undersigned, having agreed at the request of the Montana Department of Public Health and Human Services, Child and Family Services Division (the Department) to testify as a Qualified Expert Witness on behalf of the child or children who are the focus of \_\_\_\_\_ County Cause No. \_\_\_\_\_, understand the following:

That, in the course of preparing for and providing testimony in the above-referenced matter, I will be provided with, have access to, or become aware of, confidential case file information and information regarding child abuse and neglect which is confidential and is not available to the public; and

That said confidential case file information and information regarding child abuse and neglect is strictly confidential, and the distribution, dissemination, or discussion of said information is limited by Montana law at §41-3-205 of the Montana Code Annotated, the violation of which is punishable as a misdemeanor crime.

Based upon the foregoing, I hereby agree as follows:

1. That I will not discuss the above-referenced case outside of the courtroom with any person other than an employee or official of the Department or the County Attorney or Deputy County Attorney who is representing the Department in this case, without prior permission from the Department or the County Attorney's Office;
2. That I will not provide to any person, organization, or entity, access to or copies of any documents, papers, files, or records provided to me by the Department or by the County Attorney's office in connection with this case, without prior permission from the Department or the County Attorney's Office;
3. That, at the conclusion of my testimony in this case, I will return to the Department or the County Attorney's office any documents, papers, files, or records provided to me by the Department or the County Attorney's office in connection with this case; and
4. That I will keep in the strictest confidence any information I receive or become aware of as a result of my participation in this case, regardless of the source of said information, and regardless of whether the case continues to be pending, or whether the case has concluded.

My signature on this document indicates that I have read this document in its entirety, that I fully understand everything stated in this document, and that I specifically understand that my failure to uphold my promises stated in this document may constitute a violation of Montana law, and may subject me to criminal prosecution.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

(Name), District Court Judge  
\_\_\_\_\_ Judicial District  
Street Address or P.O. Box  
City, State and Zip Code  
Phone Number

(Form I-1)

(Rev. 9/05)

MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF )  
(JOHN DOE), )  
YOUTH IN NEED OF CARE. )  
\_\_\_\_\_ )

Cause No. DN-\_\_\_\_\_  
(Companion to Cause No. DN-\_\_\_\_)

**BIRTH MOTHER'S CONSENT  
TO FOSTER CARE  
PLACEMENT**

STATE OF MONTANA )  
: ss.  
County of \_\_\_\_\_ )

(*Birth mother's full name*), being first duly sworn upon oath, deposes and says:

1. I am the birth mother, born on (*date*), residing at (*current address*), of the minor child, (*child's name*), who was born on (*date*) in (*city, state*). I am (*age*) years old.

2. I am an enrolled member of the \_\_\_\_\_ Tribe of the State of \_\_\_\_\_, and my child is a member of or is eligible for membership in this tribe.

3. After carefully considering the best interests of my child, I hereby consent to the placement of my child by the Montana Department of Public Health and Human Services, Child and Family Services Division (the Department), in foster care for a period of no more than 30 days. It is my understanding that my child will be placed with (*name of foster parent and foster parent's address*).

4. I understand that I may withdraw my consent to foster care placement at any time, and that if I do withdraw my consent, my child will be returned to my custody at that time.

5. The consequences of consenting to foster care placement have been explained to me. I fully understand the consequences of consenting to foster care placement, and no threats or promises have been made to induce me to grant my consent to foster care placement.

6. I do not intend to waive any of my rights under the Indian Child Welfare Act of 1978 by signing this consent.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at (*place/city/state*),  
at (*time*\_\_ *a.m./p.m.*).

\_\_\_\_\_  
Birth Mother

**JUDGE'S CERTIFICATION**

Pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), I, the Honorable \_\_\_\_\_, District Court Judge of the Montana \_\_\_\_\_ Judicial District Court, \_\_\_\_\_ County, do hereby certify that the terms and consequences of the foregoing consent to foster care placement have been fully explained in detail to the parent, either in English or in another language understood by the parent, that the terms and conditions of the consent were fully understood by the parent, and that the consent to foster care placement was executed in writing and recorded before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
DISTRICT COURT JUDGE

(Name), District Court Judge  
\_\_\_\_\_ Judicial District  
Street Address or P.O. Box  
City, State and Zip Code  
Phone Number

(Form I-2)

(Rev. 9/05)

MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF )  
(JOHN DOE), )  
YOUTH IN NEED OF CARE. )  
\_\_\_\_\_ )

Cause No. DN-\_\_\_\_\_  
(Companion to Cause No. DN-\_\_\_\_)

**BIRTH FATHER'S CONSENT  
TO FOSTER CARE  
PLACEMENT**

STATE OF MONTANA )  
: ss.  
County of \_\_\_\_\_ )

(*Birth father's full name*), being first duly sworn upon oath, deposes and says:

1. I am the birth father, born on (*date*), residing at (*current address*), of the minor child, (*child's name*), who was born on (*date*) in (*city, state*). I am (*age*) years old.

2. I am an enrolled member of the \_\_\_\_\_ Tribe of the State of \_\_\_\_\_, and my child is a member of or is eligible for membership in this tribe.

3. After carefully considering the best interests of my child, I hereby consent to the placement of my child by the Montana Department of Public Health and Human Services, Child and Family Services Division (the Department), in foster care for a period of no more than 30 days. It is my understanding that my child will be placed with (*name of foster parent and foster parent's address*).

4. I understand that I may withdraw my consent to foster care placement at any time, and that if I do withdraw my consent, my child will be returned to my custody at that time.

5. The consequences of consenting to foster care placement have been explained to me. I fully understand the consequences of consenting to foster care placement, and no threats or promises have been made to induce me to grant my consent to foster care placement.

6. I do not intend to waive any of my rights under the Indian Child Welfare Act of 1978 by signing this consent.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at (*place/city/state*),  
at (*time*\_\_ *a.m./p.m.*).

\_\_\_\_\_  
Birth Father

**JUDGE'S CERTIFICATION**

Pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), I, the Honorable \_\_\_\_\_, District Court Judge of the Montana \_\_\_\_\_ Judicial District Court, \_\_\_\_\_ County, do hereby certify that the terms and consequences of the foregoing consent to foster care placement have been fully explained in detail to the parent, either in English or in another language understood by the parent, that the terms and conditions of the consent were fully understood by the parent, and that the consent to foster care placement was executed in writing and recorded before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
DISTRICT COURT JUDGE

## Child and Family Services Policy Manual: Legal Procedure Abandoned Newborns

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<b>Philosophy</b>	The public policy of the State of Montana includes ensuring that all children have a right to a healthy and safe childhood in a nurturing permanent family. Implicit in this policy statement is the proposition that unwanted infants have the right to life and a nurturing environment. Montana statute creates a "safe haven" for abandoned newborns. Under the "Safe Haven" statute, parents may surrender their newborn babies to an emergency services provider with anonymity, confidentiality, and freedom from prosecution.
<b>Definitions</b>	<p><b>Emergency Services Provider:</b></p> <ul style="list-style-type: none"> <li>• a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or</li> <li>• any law enforcement officer who is in uniform or is otherwise identifiable.</li> </ul> <p><b>Newborn:</b> an infant who a physician reasonably believes to be no more than 30 days old.</p> <p><b>Surrender:</b> to leave a newborn with a emergency services provider without expressing an intent to return for the newborn.</p>
<b>Parent's Action</b>	<p>A parent may deliver his/her newborn to an emergency services provider. The parent has no obligation to provide the emergency services provider with any information regarding the parent or the infant. No criminal prosecution may be initiated involving the abandonment of the newborn if the infant exhibits no evidence of intentional infliction of injury.</p> <p>The surrendering parent or the non-surrendering parent must file a petition for commencement of a parent proceeding (in accordance with Mont. Code Ann. § 40-4-211) within 60 days of the surrender of the infant if either parent wants to reassume custody of the infant.</p>
<b>Emergency Services Provider Action</b>	If a parent decides to surrender a newborn to an emergency services provider, the emergency services provider must accept the newborn and take action necessary to protect the physical health and safety of the newborn. The emergency services provider must also make a reasonable effort to complete the Safe Haven for Abandoned Newborns Checklist/Information

## Child and Family Services Policy Manual: Legal Procedure Abandoned Newborns

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(See Page 5 of this policy section).

If a parent surrenders a newborn to an emergency services provider other than a hospital, the emergency services provider must deliver the newborn to a hospital. When the emergency services provider delivers the infant to the hospital, the provider will also provide the hospital with the completed checklist (if the parent was willing to provide the requested information).

### **Hospital Action**

When an emergency services provider transfers a newborn to a hospital, the hospital must accept the newborn. A physician at the hospital will examine the infant and the hospital will provide whatever medical treatment deemed necessary.

**NOTE:** The Department must reimburse the hospital for any medical treatment provided the infant.

The physician will determine the infant's birthdate if the birthdate is unknown.

If the physician has reason to suspect the infant has been abused or neglected or if the physician believes the infant is older than 30 days, the physician must, as a mandatory reporter, make a report of suspected child abuse/neglect to the Department as soon as possible.

### **Social Worker Action**

The hospital must call the local Child and Family Services office no later than the first business day after taking possession of the newborn if there is no indication of child abuse or neglect.

Upon receipt of a call from a hospital regarding an abandoned newborn, the social worker shall:

- a) immediately assume the care, control, and temporary protective custody of the newborn;
- b) if a parent is known and willing, immediately meet with the parent;
- c) make a temporary placement of the newborn;
- d) immediately request assistance from law enforcement to investigate and determine, through the national center for missing and exploited children and any other national and state missing

## Child and Family Services Policy Manual: Legal Procedure Abandoned Newborns

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children information programs, whether the newborn is a missing child;

- e) no later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date;

**NOTE:** The social worker should work with the county attorney to determine the most appropriate relief to request. The county attorney may file a petition for immediate protection and emergency protective services combined with either temporary investigative authority, temporary legal custody based on abandonment, or termination of the parent-child relationship. The court cannot terminate the parents rights prior to 60 days after surrender of the infant because the parent(s) have 60 days to petition for custody of the newborn.

- f) within 30 days, make reasonable efforts to identify and locate the parent who did not surrender the newborn. If the identify and address of the non-surrendering parent are unknown, the county attorney must provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

The social worker should place the infant with prospective adoptive parents as quickly as possible. If available, the prospective adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, and age.

### **Waiver of Reasonable Efforts and Search for Extended Family Members**

The social worker is not required to attempt to reunify the newborn with the newborn's parents.

The social worker is not required to search for relatives of the newborn as a placement or permanency option. In addition, the social worker is not required to implement other placement requirements which give preference to relatives if information regarding the identify of the newborn or the newborn's parents is not available.

**Child and Family Services Policy Manual: Legal Procedure  
Abandoned Newborns**

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**Medicaid Eligibility** The newborn will be deemed Medicaid eligible because a newborn who is voluntarily surrendered is presumed to have been born in Montana unless the surrendering parent otherwise informs the emergency services provider. A Montana birth certificate may be issued based on the presumption of birth in Montana.

**References** Mont. Code Ann. § 40-4-211  
Mont. Code Ann. § 40-6-401 et seq.  
Mont. Code Ann. § 41-3-102

**SAFE HAVEN FOR ABANDONED NEWBORNS  
CHECKLIST/INFORMATION**

If a parent wishes to surrender his/her infant to an emergency services provider, the provider must make a reasonable effort to provide and obtain information. If the parent is willing to provide information, please note the information in the appropriate space. The checklist should accompany the baby to the hospital. The checklist should also accompany the baby when the baby leaves the hospital with the Child and Family Services social worker.

**Information to obtain from the parent, if possible:**

Any relevant family or medical information, including information regarding any tribal affiliation  
Information Received:

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The parent's name if s/he is willing to provide it  
Information Received: \_\_\_\_\_

The identify of the other parent (after informing the parent that Child and Family Services is required to make a reasonable attempt to identify the other parent and to obtain relevant medical and family history from the other parent)

Information Received: \_\_\_\_\_  
\_\_\_\_\_

Ascertain whether the newborn has a tribal affiliation and, if so, with which tribe

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Information Received: \_\_\_\_\_  
\_\_\_\_\_

**Information to provide the parent, if possible:**

Provide the parent the brochure entitled "**WHAT IS THE 'MONTANA SAFE HAVEN NEWBORN PROTECTION ACT'?**";

By surrendering the newborn s/he is releasing the newborn to the Department of Public Health and Human Services, Child and Family Services Division, to be placed with an adoptive family;

S/he has 60 days to petition (ask) the court to return the baby if the parent wants to regain custody of the baby;

The parent may call the HELPLINE 1-866-820-KIDS (5437) to obtain more information regarding available services, including how to receive counseling or medical attention;

Information s/he provides will remain confidential;

Child and Family Services can provide confidential services to the parent; and

The parent may call his/her Child and Family Services office to plan for the baby by signing a relinquishment of parental rights to the baby to be used at a hearing to terminate parental rights.

## Child and Family Services Policy Manual: Legal Procedures Limited Emancipation

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<b>Definition</b>	<b>Limited emancipation</b> means a status conferred on a youth by a court in accordance with Mont. Code Ann. § 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.
<b>Circumstances Necessary for Limited Emancipation</b>	<p>A youth age 16 or older, the youth's parents or the Department, may request an order of limited emancipation. Limited emancipation will be granted only if the court finds that:</p> <ul style="list-style-type: none"><li>• limited emancipation is in the youth's best interests;</li><li>• the youth desires limited emancipation;</li><li>• there exists no public interest compelling denial of limited emancipation;</li><li>• the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;</li><li>• the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;</li><li>• the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and</li><li>• if considered necessary by the court, the youth will undergo periodic counseling with an appropriate advisor.</li></ul>
<b>Disposition</b>	<p>A court order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon a youth who is age 16 or older. These may include but are not limited to one or more of the following:</p> <ul style="list-style-type: none"><li>• the right to live independently of in-house supervision;</li><li>• the right to live in housing of the youth's choice;</li><li>• the right to directly receive and expend money to which the youth is entitled and to conduct his or her own</li></ul>

## Child and Family Services Policy Manual: Legal Procedures Limited Emancipation

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financial affairs;

- the right to enter into contractual agreements and incur debts;
- the right to obtain access to medical treatment and records upon the youth's own authorization; and
- the right to obtain a license to operate equipment or perform a service.

### Reports to Court

An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

### Limitations

The court upon its own motion, or on the motion of the county attorney or any parties to the dispositional hearing may modify or revoke the order of limited emancipation upon a showing that:

- the youth has committed a material violation of the law;
- the youth has violated a condition of the limited emancipation order;
- the best interests of the youth are no longer served by limited emancipation.

### References

Mont. Code Ann. § 41-3-102  
Mont. Code Ann. § 41-3-406  
Mont. Code Ann. § 41-1-501

## Child and Family Services Policy Manual: Substitute Care for Children Philosophy

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<b>Definition</b>	<b>SUBSTITUTE CARE</b> is full-time care of a child in an out-of-home setting for the purpose of providing food, shelter, security, safety, guidance and, if necessary, treatment to children who are without the care and supervision of their parents or guardians. Out-of-home care, foster care and substitute care are used interchangeably throughout this section of the manual.
<b>Philosophy</b>	<p>Placement of a child out of his or her home should occur only after careful consideration of the alternatives, and a determination that the safety of the child is threatened due to immediate or apparent danger of maltreatment. The safety of the child is the primary consideration. Every effort should be made to avoid multiple placements.</p> <p>A child is entitled to a permanent home of his or her own. Generally, the child's home with his/her birth parents is the best home for the child.</p> <p>When agency intervention into the family becomes necessary in order to protect the child, placement of the child as close as possible to the home of the birth parents provides the child maximum opportunity for visits with his/her birth parents while services are provided to the family.</p> <p>The goal should be to reunify the family, or if that is not possible, to promptly implement a permanent placement plan. The Department is committed to the expedited permanent placement of children who are placed in substitute care.</p>
<b>Sibling Placement</b>	Siblings are to be placed together whenever possible; if placement with siblings is determined not to be in the best interests of the child, the reasons must be documented and submitted to the supervisor for approval.
<b>Placement of Indian Children</b>	To ensure compliance with the Indian Child Welfare Act, the placing worker should ask if the parent or the child is of Indian descent. When placing an Indian child, the social worker must follow the order of placement identified in the Indian Child Welfare Act. (Refer to Section 305-1, Indian Child Welfare Act.)
<b>Least Restrictive Placement</b>	<p>Children are to be placed in the least restrictive, most appropriate setting necessary to meet the needs of the child. These settings include:</p> <ul style="list-style-type: none"> <li>• a member of the child's immediate family;</li> </ul>

## Child and Family Services Policy Manual: Substitute Care for Children Philosophy

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- other relatives or friends, as appropriate;
- a licensed youth foster family;
- a licensed youth group home;
- a licensed child care agency.

### **Kinship Care**

A child will be placed with the child's family (or other kin as defined in Section 402-4, Placement in Kinship Care Home) when it is in the best interest of the child, and when the home is approved by the Department.

### Placing Worker Responsibility

Kinship care is the first option that should be considered and assessed when a child is being placed in out-of-home care. When the child is placed in kinship care, the Department should support both the birth parents and kinship care providers in their respective roles. It is the responsibility of the placing worker to ensure that a Kinship Care Agreement tailored to meet the specific case is completed and signed as required by Section 402-4, Placement in Kinship Care Home.

### **Parental Involvement**

Birth parents will be involved to the extent possible in planning for their child's out-of-home placement. This may include family preservation services, family group decision-making meetings, preparing the child for placement, maintaining contact with the child during placement and planning for timely permanency for his/her child.

### **Child's Involvement**

The child should be involved, consistent with age and maturity, in the child's placement process. This includes preparation prior to placement, contact with his or her sibling during placement and development of a life story book.

### **References**

Mont. Code Ann. § 41-3-101  
 Mont. Code Ann. § 41-7-102  
 Mont. Code Ann. § 42-2-601  
 Mont. Admin. R. 37.50.101, et.seq.

## Child and Family Services Policy Manual: Substitute Care for Children Types of Substitute Care

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### Types of Licensed Youth Care Facilities

Substitute care for children and youth is provided in various types of licensed Youth Care Facilities (YCF). A Youth Care Facility is a facility that is licensed by the Department and in which substitute care is provided to youth. The term includes youth foster homes; youth group homes (including shelter care) childcare agencies, transitional living programs, and youth assessment centers. The type of facility and related services should be selected on the basis of the child's needs.

#### Youth Foster Home

A **youth foster home** is a YCF in which substitute care is provided for one to six children or youths other than the foster parents' own children, stepchildren or wards. Youth foster homes provide substitute care for the majority of children who cannot otherwise be assured adequate parental care in their own homes. These are children, who can accept other family ties, participate in family life, attend community schools and live in the community.

NOTE: CFSD staff may not become newly licensed to provide foster-care for children in the department's custody unless the employee is determined to be the most appropriate **kinship** placement for a child.

If a person hired by the department is a licensed foster parent at the time they are hired and have foster children in the custody of the department in their home, the individual may continue to be licensed until the children have left their home. They may not accept placements of additional children who are in the custody of the department.

CFSD staff may not provide respite care for children in the custody of the department.

#### Concurrent Planning Home

A **concurrent planning home** is a youth foster home that has been specifically prepared to meet the challenges of working toward reunification of a child with the birth family while making a commitment to adopt the child if reunification is unsuccessful. A concurrent planning home is licensed as a youth foster home and is also approved as an adoptive home.

#### Youth Shelter Care

**Shelter care** is short-term, emergency foster care provided in a youth care facility. Shelter care should be used only as a temporary measure. A shelter care placement should not exceed 30 days. The regional administrator or designee may grant a 15-day extension.

## Child and Family Services Policy Manual: Substitute Care for Children Types of Substitute Care

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Youth Group Home Therapeutic Youth Group Home	<p>A <b>youth group home</b> is a youth care facility in which substitute care is provided for 7 to 12 children (or 4 to 12 children in therapeutic youth group homes). The group home provides a homelike dwelling and environment for children, using childcare staff as the primary caretakers.</p> <p>The youth group home has characteristics of both youth foster homes and childcare agencies. Group home care is selected for children whose adequate adjustment to family life is unlikely, but intensive residential treatment in a childcare agency is unnecessary.</p> <p>A youth group home may be licensed as therapeutic when the program offers treatment services provided by in facility clinical and treatment staff.</p>
Child Care Agency	<p>A <b>childcare agency</b> is a youth care facility in which substitute care is provided to 13 or more children in a residential setting. Maternity homes are also licensed as childcare agencies.</p>
Transitional Living Programs	<p>A <b>transitional living program</b> is a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.</p>
Youth Assessment Centers	<p>A <b>youth assessment center</b> is a staff-secured location that is licensed to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.</p>
<b>Special Types of Substitute Care Facilities</b> Specialized Youth Foster Home	<p>A <b>specialized foster home</b> is a licensed foster home in which care and treatment is provided for children who have problems that cannot be adequately addressed in regular foster care. (Section 406-1.)</p>
Therapeutic Youth Foster Home	<p>A private, nonprofit corporation under the direction of a board of directors and licensed as a child placing agency may contract with the Department to provide therapeutic foster care. The mental health managed care company governs admission to these homes. (Section 406-2 and 406-3)</p>
<b>References</b>	<p>Mont. Code Ann. § 41-5-103 Mont. Code Ann. § 52-2-601 Mont. Code Ann. § 52-2-602</p>

**Child and Family Services Policy Manual: Substitute Care for Children  
Types of Substitute Care**

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Mont. Admin. R. 37.37.101

Mont. Admin. R. 37.97.102

Mont. Admin. R. 37.37.301

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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### Decision To Place

Social Worker  
Responsibility

Placement of a child in a setting outside of the home is appropriate when a child's life or health is seriously threatened by remaining in the home. Out-of-home placement may also be used as part of a specific treatment plan. The worker and supervisor are responsible for placement decisions for abused and neglected children or children adjudicated youth in need of care.

The worker will consult the family resource specialist for assistance in identifying the most appropriate licensed placement available. Other professionals such as probation officers, physicians, nurses and school personnel may be consulted when making placement decisions. These decisions include not only placement and type of care, but also what services are needed for the child and the family.

When the decision has been made to place the child, consideration should first be given to a placement with the non-custodial parent, extended family or kinship care home approved by the Department. When selecting an out-of-home placement for the child, the child's safety and well being must be of paramount consideration. Placement should be based upon consideration of the best interests of the child. Factors to be considered in selecting a placement are:

- an assessment of services the child will need, based on the physical, educational and psychological needs of the child;
- the child's race and the role racial identity has played in the child's life (if the child is Indian, the requirements of ICWA must be met; see Section 305-1, Indian Child Welfare Act);
- placement with siblings is based on the needs of the individual child. If placement with siblings is determined not to be in the best interests of the child, the reasons must be documented and submitted to the supervisor for approval;
- the location of the child's family and the need to maintain contact with family members;

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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- identification of the child's religion and the role that religion has played in the child's life;
- other factors particular to the child and the child's circumstances.

If it is necessary to place a child in a setting that is not optimal, consideration should be given to moving the child to a more appropriate placement as soon as possible.

### CAPS CPS/APS

If consideration is being given to placing the child with an unlicensed kinship provider, the placing worker shall conduct a CPS/APS check first in CAPS and then by checking with the county CFSD office in the county(ies) where the family has resided. If the provider or other family member is listed as a person in CAPS, the placing worker must check with the CFSD office in the appropriate county to determine if there is information available which would preclude placement.

In instances in which a child is placed with a kinship family prior to the completion of a CPA/APS check, the social worker is responsible to see that these checks are completed within 3 working days after the placement is made.

### **Criminal Background Check** Unlicensed Kinship Placement

In an unlicensed kinship placement (refer to Section 402-4, Placement in a Kinship Care Home) the placing social worker has the responsibility for ensuring that a criminal records check via fingerprints and an on-line motor vehicle check of all adults residing in the home is completed prior to the placement of a child in an unlicensed home unless the placement is made on an emergency basis.

In instances in which a child is placed with a kinship family prior to the completion of criminal records and motor vehicle checks, the motor vehicle check must be completed within three days of the placement and the criminal records checks must be completed as outlined below. A check of the violent offender and criminal history registries (if such registries are available in state in which adults in the kinship home have lived) must be completed within 3 days.

The kinship provider and other adults in the home are required to provide completed fingerprint cards to the department as soon as possible but not more than 10 days after the placement is made.

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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- If all adults in the home **have returned** completed fingerprint cards to the department within 3 days of the placement, the placing social worker must ensure that a criminal records check via fingerprints is promptly requested.
- If all adults in the home **have not returned** completed fingerprint cards to the department within 3 days of the placement, the placing social worker must ensure that a name based criminal records check is requested prior to the end of the third day **and** that the violent offender and criminal history registries are checked.

A criminal records check via fingerprints must be requested as soon as the fingerprint cards are returned even if a name based check has been completed. A request for a name based check may be made via e-mail

If a criminal records check determines that there is a criminal history, the worker shall determine if the offenses include a felony conviction at any time for any of the following crimes:

- child abuse or neglect;
- child sexual abuse;
- partner or family member assault;
- any crime against children (including child pornography);
- a crime involving violence, including rape, sexual assault or homicide.

If the criminal records check reveals that a household member has been convicted of one or more of these crimes, placement shall not be made.

In addition, placement shall not be made if the criminal records check reveals a felony conviction for any of the following crimes within the past five years:

- physical assault;

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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- battery;
- or a drug related offense, including alcohol related convictions.

If criminal history exists, but does not meet the above criteria for automatic denial, the child may be placed in the kinship home if the worker, after assessing the criminal history and in conjunction with his/her supervisor, determines that the placement is appropriate for the child.

Placing worker visit to kinship home

The placing worker must make a visit to the kinship home within 48 hours of the time the child is placed with the kin providers, excluding weekends and holidays. The purpose of the visit is to assess the safety and appropriateness of the home for the child. A visit by the placing worker is required even if the family has been referred to an FRS and will be pursuing licensure as a kinship foster home.

The visit must be documented in the child's file.

Licensed kinship care home

If the family wishes to become licensed, a referral must be made to the appropriate FRS within three working days. Referral may be made via e-mail.

Youth Court Probation or Juvenile Parole Responsibility for Youth in Need of Supervision and Delinquent Youth

Following an adjudication of a youth in need of supervision or delinquent youth, but prior to placement at Pine Hills School, juvenile probation is responsible for supervising the youth, including preparation of eligibility material and completion of forms for placement.

Upon discharge of an adjudicated delinquent youth from Pine Hills School, juvenile parole of the Department of Corrections is responsible for supervision of the youth. If the youth was adjudicated a youth in need of care prior to an adjudication of youth in need of supervision or delinquency, the juvenile parole officer will be responsible for supervision of the youth. The child protective services worker who had the youth on his or her caseload prior to the youth's involvement with juvenile corrections should provide consultation to the parole officer.

**Voluntary Services Agreement**

The department may enter into a written voluntary services agreement with a parent or other person responsible for the child's welfare which allows the department to place the child for up to 30 days in a temporary out-of-home placement.

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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This agreement is not a treatment plan but a contract, which authorizes the Department to place the child(ren) in substitute care at the request of the parent or other person responsible for the welfare of the child. The agreement does not give the Department legal custody of the child but merely grants the Department permission to place the child.

The worker informs the parent or other person responsible for the child's welfare who is considering entering into a voluntary protective services agreement that the parent or other person may have another person of the parent's or responsible person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent or other person responsible for the child's welfare and the department.

In a voluntary placement, the parent may revoke the agreement at any time and the child must be returned within two working days of the termination unless the department files an abuse and neglect petition. If court action is necessary to assure protection of the child and placement is considered vital for the child's protection, the worker shall seek an appropriate court order.

Voluntary protective placements may be appropriate when abuse or neglect has taken place, but does not pose a serious threat to the safety of the child and the parent(s) are willing to sign a treatment plan.

A voluntary placement may also be appropriate when:

- the parent(s) is temporarily absent from the home (i.e., hospitalized); or
- the parent feels unable to provide adequate care for the child because of temporary stress, a written plan to address the problems is developed within 30 days and the parent is willing to work with the agency to address the problems.

Voluntary placement agreements should not be used as legal authority to place a child in a residential treatment facility unless approved by the regional administrator.

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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Even when parents agree to place their children voluntarily, a petition should be filed if any of the following conditions exist:

- abuse or neglect that does pose a serious risk to the safety of the child (this may include life threatening abuse, multiple injuries, extensive burns, head or central nervous system injury, sadistic injury, severe malnutrition with inability to immediately correct the cause, incest, or injuries which imply violent outbursts, or lack of impulse control);
- escalated or continued abuse after the initial intervention;
- the parent's behavior is dangerous to the child (e.g., sociopathic, psychotic, suicidal, homicidal);
- parents consistently deny problems and/or refuse treatment services; or
- the child is rejected or unwanted.

### **Emergency Placement**

When a child is in imminent risk of harm and emergency protective services are necessary to protect the child, the criteria and procedures to be followed are contained in Section 302-1, Immediate Protection and Emergency Protective Services. If placement will be made with an unlicensed kinship provider, refer to Section 402-4, Placement in a Kinship Care Home.

### **Documentation for Legal Authority To Place**

All placements must be supported by one of the following:

- documentation of an emergency placement. Foster care maintenance payments are limited to 48 hours for emergency placements;
- petition and court order. Petition for temporary investigative authority, temporary, or permanent legal custody must be filed with the court within 48 hours of placement and a certified court order obtained granting the Department the right to place the child in protective custody;
- an Affidavit of Waiver of all Parental Rights.

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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Relinquishment of Child and Consent to Adoption  
(waiver or relinquishment) signed by the parents  
relinquishing all rights and responsibilities to the  
Department; or

- a CFS-12, Parental Agreement or consent adjustment signed by the custodial parent.

### CAPS

If the child is not already a client in CAPS, the child must be made a client and the placement entered on CAPS. See Appendix A.

### Placement Changes: Notice to Parent

Changes in foster care placements for the same child occur for a variety of reasons. The agency's policy is to keep such changes to a minimum.

- if parental rights have not been terminated, whenever possible the parent should be notified within three days of a change in the placement of their child. The notification may be made verbally and should be documented in the case record;
- if a parent's whereabouts is unknown, a reasonable effort to notify the parent shall be made and recorded in the case record;
- if parental rights have been terminated, the parents are not notified.

### Placement Changes: Notice to School -- Definitions

**Sending district** means either the school district in which the child's parent(s) reside (if the Department does not have permanent custody) or the school district of the location of the court, which granted permanent custody to the Department. When the Department is granted permanent custody of the child, the address of the district court in which the order was granted is **always** used to determine the sending district.

**NOTE:** If the parent is in an institution and the institution is in a different county than the county in which the parent resided previous to going to the institution, their residency does not change. The county in which the parent resided prior to going to the institution continues to be the parent's county of residence.

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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**Receiving district** means the school district in which the child is to be enrolled or is enrolled following placement by the Department.

### OPI FFP-14

When a child is placed by the Department in out-of-home care in a school district other than the school district in which the child's parents reside, the social worker must complete Part I of the Office of Public Instruction (OPI) form FFP-14 Request for Out of District Enrollment in order for the child to be enrolled in school. The superintendent of the receiving school district must sign the FFP-14 prior to the time the child may attend school.

The OPI Form FFP-14 is completed and provided to the school in which the child is to be enrolled or is enrolled when:

- a child is removed from the custodial parent either by court order for Temporary Investigative Authority or Temporary Custody or Parental Agreement for Substitute Care; or
- a child has been removed from the custodial parent by court order or parental agreement and:
- the parent(s) from whom the child was removed moves to a new address;
- the parent(s) address is unknown and the parent(s) cannot be located;
- the child's out-of-home placement changes; or
- the department is granted permanent custody of the child by court order.

The OPI Form FFP-14 should not be completed when the parent from whom the child has been removed is incarcerated in jail, a pre-release center or county jail or is receiving in-patient medical or mental health services in a private hospital or state institution, or is otherwise on a leave of absence from the parent's district of residence.

### CAPS

CAPS screen EDHL should be completed to record school changes and the appropriate medical screens (MEDS, MMHD,

## Child and Family Services Policy Manual: Substitute Care for Children Placement Procedures- Voluntary and Involuntary Placements

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MDTD) should be completed to record relevant medical information.

### **Voluntary Placements**

There are some circumstances where a parent may seek to voluntarily place their child in substitute care. If the Department is involved with the family or is going to make foster care payments, the worker should evaluate whether such care is appropriate before agreeing to place the child at the parent's request. This type of placement should not be accepted unless accompanied by the development of a specific treatment plan for the return of the child to the home. The elements of the plan will depend upon the circumstances leading to the request for placement. The plan should be as extensive as is necessary to reunite the family.

### **Indian Children**

If a voluntary placement of a child who meets the definition of an Indian child as defined under ICWA is planned, the voluntary agreement for foster care must be signed before a judge and accompanied by the judge's certificate that the terms and consequences were fully explained in detail and were fully understood by the parent. The court must also certify that the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood. A consent given within 10 days after birth of an Indian child is not valid.

### **References**

Mont. Code Ann. § 41-3-101  
Mont. Code Ann. § 41-3-302  
Mont. Code Ann. § 52-2-601  
Mont. Code Ann. § 52-2-603  
Mont. Code Ann. §§ 52-5-126 and 127.

**Child and Family Services Policy Manual: Substitute Care For Children  
Foster Care Case Plan – DocGen 427, Parts A and B**

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**Foster Care Case Plan Required**

A case plan is required for every child for whom the department has placement and care responsibility **or** for whom the department is making a foster care.

The department is awarded placement and care responsibility through a court order.

When the department has placement and care responsibility a current case plan is required if:

- The child has been removed from his/her custodial parent and is placed with someone else; or
- The child is on a trial home visit;
- The child has run away.

If the department had placement and care responsibility through the child's 18<sup>th</sup> birthday and the department is continuing to make foster care payments, a current case plan is required.

**DocGen 427, Part A, Foster Care Case Plan**

The foster care case plan that is used by the department is the DocGen 427, Part A.

The DocGen 427, Part A, when completed in an accurate and thorough manner, includes the federally mandated requirements that must be reviewed by the Foster Care Review Committee.

**Child Assessment by Foster Care Provider**

Prior to the development of the Foster Care Case Plan, request that the foster care provider complete a DPHHS-CFS-107 Child Assessment to provide up-to-date information on the child's behaviors and needs. Concerns or conditions that are identified as "untreated" or "unaddressed" may require special attention in the child's case plan.

**CAPS Screens**

Prior to completing the DocGen, the following screens must be COMPLETED or UPDATED to reflect current information:

<b>ACTD</b>	<b>ADDD</b>	<b>CLID</b>	<b>CREI</b>
<b>CRTD</b>	<b>EDHL</b>	<b>IARD</b>	<b>ICWD</b>
<b>MDTD</b>	<b>MMHD</b>	<b>PERD</b>	<b>PLAD</b>
<b>PLSH</b>	<b>RELL</b>	<b>SERL</b>	<b>SPND</b>

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**If current information is not entered into CAPS prior to running the DocGen 427, required information will not be included on the case plan.**

**System Generated Information**

If the above screens are completed and current, CAPS generated information includes;

- The child's CAPS ID#, name, social security numbers, birth date, tribal affiliation (if any),
- enrollment status and enrollment number;
- The names and addresses of the child's parent(s) and siblings;
- Current placement information and placement history;
- Current court information and court history;
- FCRC review history;
- Special needs;
- Current school information and school history;
- Health information; and
- Limited contact history.

**Time Frames  
Initial Plan**

A case plan must be completed with 30 days for a child placed under a voluntary placement agreement and within 60 days for a child placed under a court order.

**Updated Plan**

The plan must be updated by updating required CAPS screens or a new plan developed when a child moves to a new placement setting. The case plan must also be updated whenever a change in the permanent plan for the child occurs. At a minimum, the case plan must be updated at least every six months and a new DocGen 427 run.

The CSWS must read and sign off approving the case plan.

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<b>Foster Care Case Plan, Required Elements</b>	<p>The case plan must:</p> <ul style="list-style-type: none"> <li>• be developed jointly with the parent(s) or guardian of the child;</li> </ul>
<b>Parental Involvement</b>	<p>Parent(s) or guardian(s) must be offered the opportunity to participate in the development of the case plan. If the parent(s) or guardian(s) are unwilling or unable to participate in the development of the case plan, the reason for the lack of participation must be noted in the plan;</p>
<b>Placement Setting</b>	<ul style="list-style-type: none"> <li>• Describe the placement setting of the child and the plan for assuring that the child receives safe and appropriate care in that setting;</li> </ul>
<b>Least Restrictive Close Proximity to Parents(s)</b>	<ul style="list-style-type: none"> <li>• Demonstrate that the child's placement is the least restrictive (most family-like) setting available and that the placement is in close proximity to the home of the parent(s) when the case plan goal is reunification.</li> </ul>
<b>Best Interests Special Needs</b>	<ul style="list-style-type: none"> <li>• Demonstrate that the placement is in the best interests of the child and that the special needs of the child are being met.</li> </ul>
<b>Out-of-state Placement Annual Visit</b>	<ul style="list-style-type: none"> <li>• Document that a child who is placed in another state is visited periodically but not less than every 12 months by a social worker from either the sending (Montana) or receiving state (state in which the child is placed).</li> </ul>
<b>Prevention and Reunification Services</b>	<ul style="list-style-type: none"> <li>• Describe the services offered and provided to prevent removal of the child from his/her home <b>and</b> the services offered and provided to improve the conditions in the parents' home and facilitate the safe return of the child to his/her home;</li> </ul>
<b>Services Provided to Child and Foster Parents</b>	<ul style="list-style-type: none"> <li>• Describe the services that are being provided to the child and his/her foster parents and why these services are appropriate to address the needs of the child while in foster care.</li> </ul>
<b>Steps to Achieve Permanent Placement</b>	<ul style="list-style-type: none"> <li>• Include, when reunification is not possible, a description of the steps that are being taken to find an adoptive family, a fit and willing relative, a legal guardian or another</li> </ul>

## Child and Family Services Policy Manual: Substitute Care For Children Foster Care Case Plan – DocGen 427, Parts A and B

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- planned permanent living arrangement and to finalize the adoption or establish legal guardianship.
- Agency Responsibility**
- Demonstrate how the agency that is responsible for the child plans to carry out the voluntary placement agreement entered into or the judicial determination made with respect to the child.
- Health and Education Information**
- include as available and accessible, the health and education records of the child, including:
    - the names and addresses of the child's health and educational providers;
    - the child's grade level performance, the child's school record;
    - assurances that the child's placement in foster care takes into account the proximity to the school in which the child is enrolled at the time of placement;
    - a record of the child's immunizations;
    - the child's known medical problems;
    - the child's medications, and
    - any other relevant health and education information concerning the child determined to be appropriate by the state agency.
- Transitional Plan/Independent Services**
- Include for a youth age 16 or over, a written transitional living plan which describes the programs and services which will help the youth prepare for the transition from foster care to independent living.
- Case Plan Review**
- The updated case plan (DocGen 427) for every child under the care and supervision of the department or for whom a foster care payment is being made must be reviewed periodically (at least every six months) either by a court or by a Foster Care Review Committee in order to review the:

## Child and Family Services Policy Manual: Substitute Care For Children Foster Care Case Plan – DocGen 427, Parts A and B

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- safety, history and specific needs of the child;
- continuing necessity for and appropriateness of the placement;
- Extent of compliance with the case plan;
- the extent of the progress which has been made toward alleviating or mitigating the reasons the child was placed in foster care; and
- To project a likely date by which the child may be returned to and safely maintained his/her home or permanently placed.

If the Foster Care Review Committee will be reviewing the case, a copy of a current case plan must be provided to the Foster Care Review Committee (FCRC).

### DocGen 427 Part B

The FCRC reviews the case plan every six months for each child under the supervision of the department or for whom foster care payments are being made by the department. The completed DocGen 427, Part B, is the document used to the record FCRC's findings.

A majority of the committee must be present, including at least three of the required members, to conduct an official review or the review must be postponed (See Section, 409-1 Child and Family Services Policy Manual for FCRC membership). If a majority is not present the review must be postponed (See Section 409-1 Child and Family Services Policy Manual for FCRC membership). All members present must date and sign Part B and set a continuance date. A signed copy of the continuance (Part B) must be placed in each child's case record.

When a review is conducted, the completed and signed DocGen 427, Part B is the report of the committee's findings and must be maintained in the file along with Part A.

A copy of the current foster care case plan (Parts A and B) is provided to the child (if appropriate) and to the parent(s). A copy is kept in the child's file under "Case Plans."

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Foster Care Case Plan – DocGen 427, Parts A and B**

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- References**
- 42 USC 671 (15) and (16)
  - 42 USC 672
  - 42 USC 675
  - 45 CFR 1356.21
  - Mont. Code Ann. § 41-3-1115.
  - Mont. Admin. R.11.7.501 through 11.7.504

## Child and Family Services Policy Manual: Substitute Care for Children Concurrent Planning and Placement

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### Philosophical Basis

The public policy of the State of Montana is to achieve a permanent placement for each child in the state foster care system as quickly as possible. Optimally, children are best raised in their birth families. Providing intensive services to the birth family immediately after the child has been placed in out-of-home care enhances the potential for reunification.

If reunification is not possible, attention to the birth family's issues and the impact of those issues on the child will enhance the child's success in adapting to his/her new family. Priority of placement should be: reunification with family, adoption (preference order: kin, foster/resource family, stranger family), guardianship (preference order: kin, foster/resource family) or other planned permanent living arrangement.

Combining efforts to develop a permanent placement for the child (such as adoption, guardianship or other planned permanent living arrangement following the placement preferences) with efforts to reunite the child with his/her birth parents can be very effective in providing a permanent, life-long family for the child.

### Definitions

**CONCURRENT PLANNING:** A case plan that includes the development and implementation of two simultaneous plans, reunification and an alternative permanent plan. The simultaneous plans are intended to achieve a permanent outcome for a child in the shortest possible period of time.

Plan A: intended to safely reunify the birth parents with their child(ren).

Plan B: placement for the child through adoption, guardianship, or other planned permanent living arrangement.

**CONCURRENT PLACEMENT:** The **planned** placement of a child with a resource family. A concurrent placement does not occur by default.

**CONCURRENT FAMILY:** A resource family approved by the Department both as a foster family and an adoptive (or guardianship) family that will support the placing agency and the child's birth family toward the goal of reunification while simultaneously committing to becoming a permanent family for the child if reunification is unsuccessful.

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A concurrent family will be given priority for adoption, guardianship, or other planned permanent placement if the child cannot return home or be placed with appropriate kin and if the permanency team determines that the family is able to meet the best interests criteria of the child.

**NOTE:** If the child has been placed with a child placing agency and the child-placing agency has conducted the adoptive home study, the placing worker **must** obtain a copy of the adoptive home study and the child's permanency team **must** be involved in the permanency placement decision.

**Parent-Child Interaction Plan:** A plan (based on the child's age and developmental level) that insures **frequent, meaningful contact** between the parent(s) and child.

### Summary of Concurrent Planning Process

Concurrent planning requires that the social worker identify and work toward developing an alternative permanent plan for the child at the same time the social worker and parents are working toward the child's return to the parents. The steps of the concurrent planning process and placement are:

- Step 1. The social worker conducts a diligent search for the absent parent and other relatives.
- Step 2. The social worker begins the process of **concurrent planning** for the child within the first 90 days of placement. Concurrent planning requires that the social worker develop two plans for the child:
  - a. Reunification Plan (Plan A) (which may be part of a treatment plan) should include identification of:
    - short-term goals;
    - immediate tasks;
    - who does what, when and how;
    - specific time lines;
    - visitation schedule;
    - frequency of informal reviews; and
    - **must include** an explanation of the circumstances that may lead to the implementation of Plan B.

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- b. Other Permanency Plan (Plan B) such as adoption, guardianship or other planned permanent living arrangement.

**Note: If child has been in care for 90 days or more, the child must have a concurrent plan.**

### **Diligent Search for Absent Parent and Relatives**

Immediately upon placement or as soon thereafter as possible, the social worker **must** initiate a diligent search for relatives of the child on both the paternal and maternal sides of the family. This includes immediate efforts to identify and contact legal and/or putative fathers so the social worker can conduct an objective assessment of the viability of the non-custodial parent as a placement option for the child.

The case record of the child **must** contain documentation of the social worker's actions to identify and assess the viability of placement with the non-custodial parent and relatives. Tools the social worker may use to assist in the diligent search for relatives include, but are not limited to:

1. The social worker may use a family group decision-making meeting to obtain names and addresses of other extended family members.
2. Development of a genogram with the family to identify family members and their relationships;
3. Development of an ecomap with the family to identify individuals, agencies, churches, service providers, etc., that serve as a support or source of conflict to the family;

Contact must be made with the non-custodial parent and relatives named at the FGDM, on the genogram or ecomap, or otherwise reported to the social worker to determine their:

- a) willingness to serve as a respite family for the child;
- b) willingness to serve as a permanent placement for the child; or
- c) knowledge about the existence of other relatives of the child.

Contact must be documented on ACTD.

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### Concurrent Placement Assessment Process

**NOTE:** A diligent search for relatives is also required under ICWA if the child is an Indian child. (See Section 305-1, Indian Child Welfare Act.)

During the initial stages of the case, the social worker must make an overall assessment of the case facts and history utilizing input from the family and significant others. The assessment highlights the family's strengths and problems. The primary issue(s) - the condition(s) that, if not corrected, will prevent reunification - must be identified during the assessment phase.

A major factor in determining whether reunification is likely is the parent(s)' acknowledgment of the need for change in their behavior and their willingness to work with the social worker toward meeting the goals of the treatment plan. Therefore, of primary importance during the assessment phase (and throughout the life of the case) is the social worker's assessment of the parent(s)' willingness and ability to address those issues which led to the placement of the child and their ability to work as a team member.

The presence of one (or more) of the following could be considered a barrier to reunification and may indicate that concurrent placement may be appropriate for the child:

- substance abuse
- mental, physical, developmental disabilities
- severe family dysfunction (birth and extended family)
- history of multiple placements for the child
- family history of violence and involvement with the agency.

**NOTE:** If the social worker determines reunification is unlikely, that determination does not mean that reunification services are discontinued. Services are to be delivered in a timely, focused and intensive manner.

The social worker may determine that the child's situation is appropriate for concurrent planning but that resources are not available to make a concurrent placement.

If the assessment indicates there is a poor prognosis for reunification based upon identified barriers and that necessary

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resources are available, the social worker should request a permanency team meeting to discuss the appropriateness of a concurrent placement.

A resource family must be committed to supporting the reunification of the child with parents and be able and willing to adopt the child if reunification isn't appropriate. The permanency team will determine if a concurrent placement should be considered. It is also the function of the permanency team to approve a specific resource family for a specific child.

### Full Disclosure

The social worker must **fully disclose** the assessment results and the case plan including the concurrent plan and, if applicable, the concurrent placement, to the parents, extended family members, resource family, foster family, county attorney, guardian ad litem, and the court.

The social worker must discuss with the parents the negative impact of foster care placement upon the child. It is recommended that the extended family be included in this discussion through a FGDM or other family meeting with the parent(s)' consent. The discussion should include the:

- need to achieve a safe, stable environment for the child;
- child;
- parent(s)'s rights and responsibilities;
- parent(s)' behavior that resulted in the out-of-home placement of their child; and the consequences of that behavior;
- statutory time lines which affect the amount of time the parents can work toward completing the treatment plan established for reunification; and
- notification that, as a general rule, the agency is required to file a petition for termination of parental rights if the child remains in foster care for 15 consecutive months or is in foster care for 15 of the most recent 22 months;
- harmful effects of substitute care on the child which result from the process/impact of multiple moves on attachment and the child's security;
- inability of the child to form secure attachments to a nurturing adult when the child does not have a stable, permanent adult in his/her life;

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- occurrence of developmental problems in the child when breaks occur in a child's attachment (e.g., removal from home, multiple moves in foster care, etc.);
- definition of concurrent planning and placement for the birth family;
- importance of what parents **do**, not what parents **say**;
- need to develop a **concurrent plan** to assure the child a permanent home as quickly as possible and to assure the child's proper attachment and development;
- need to begin to implement the **concurrent plans** (A and B)
- appropriateness of concurrent placement;
- alternatives to reunification available to the parent(s) including placement with non-custodial parent, kinship care placement or voluntary relinquishment and the assessment determines that it is appropriate:
  - a) a **concurrent placement** will be developed;
  - b) a **concurrent family** will be recruited for the child;
  - c) the parents and social worker with the support of the concurrent family will work toward reunification of the child(ren) and parents; but
  - d) if reunification or placement with kin is not possible, the **concurrent family** will be given priority to become the child's permanent family.

**NOTE:** The appropriateness of the child/family for concurrent placement is assessed within 90 days of the initial placement and at each subsequent permanency meeting.

**Intensive Visitation** During the assessment phase and while the parent(s) are working toward reunification, *maximum* visitation opportunities between the parent(s) and child must be available. Therefore, the social worker should ensure that intensive visitation is available before the child is placed in a concurrent placement.

A visitation plan (based on the child's age and developmental level) that ensures **frequent, meaningful contact** should be

## Child and Family Services Policy Manual: Substitute Care for Children Concurrent Planning and Placement

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developed. If the child is placed in a concurrent placement with a resource family, Plan A for the parents must include a visitation plan. The visitation plan defines, among other things, the length and frequency of visits between the child and the parent(s). Intensive visitation is defined as at least two times per week (frequency) and no less than two hours per visit (length). The frequency of visits should correlate with the child's age and sense of time; for example, in the case of an infant, parental visitation would ideally occur daily but should occur at least every two or three days.

Intensive visitation between parent(s) and child is necessary for the following reasons:

- frequent visitation increases the chance that the child will return home;
- frequent visitation maintains the parents' and child's attachments to each other;
- frequent visitation keeps the child foremost in the parent's thoughts and concerns. Parents will be more likely to work (and work quickly) toward reunification when visiting frequently with the child.

### **Concurrent Placement Implementation**

If the social worker determines that concurrent placement is appropriate for the child, and the FRS for the family concurs with the placement, the social worker will obtain approval from his/her Community Social Work Supervisor to initiate concurrent placement.

Throughout the life of the case, the social worker will document the parents' efforts toward meeting the objectives and goals of Plan A. If the parent(s) have made significant progress and need more time to complete the treatment plan objectives, the social worker will document the need for more time and obtain court approval for the extension of the plan (if necessary).

### **Identification and Selection of Resource Family**

If the social worker determines the appropriate resources are available (e.g. intensive visitation services, etc,) the social worker must work with the Permanency Team and the Family Resource Specialist to identify and select the resource family for the child. The concurrent family must acknowledge and accept that the goal of Plan A is to reunite the child with his/her birth parents and must be willing to work with the social worker to achieve that goal. The family must understand and agree that

## Child and Family Services Policy Manual: Substitute Care for Children Concurrent Planning and Placement

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the child will be permanently placed with them only if reunification is not possible and no appropriate relative family is identified and it is determined that it is in the best interest of the child to remain with the concurrent family.

The concurrent family is both licensed by the Department as a foster family and approved by the Department as a potential adoptive or guardianship family. The selection of the family is based on the family's ability to meet the child's needs and the elements of concurrent planning. Other factors to be considered when selecting a concurrent family for the child include, but are not limited to the:

1. family's ability to understand the conceptual basis for concurrent planning;
2. family's ability to participate as a member of the team;
3. family's ability to accept and relate to birth parent(s);
4. family's willingness to support reunification with the birth parent(s);
5. birth parents' personality match with the resource family
6. amount and location of expected visits with birth family;
7. if reunification does not occur, the family's willingness to agree to some ongoing communication if the child is adopted or has a guardianship established; and
8. nature of child's legal situation.

### **Services provided to Concurrent Family**

The social worker should ensure that appropriate support services are available for the concurrent family. These support services may include, but are not limited to, ongoing support services from social workers and family resource specialists, intensive supervision of the placement by the social worker and provision of support groups for the concurrent family.

### **References**

Mont. Code Ann. § 41-3-423  
 Mont. Code Ann. § 41-3-443  
 42 U.S.C. 620 et seq.  
 (P.L. 105-89), Adoption and Safe Families Act  
 25 U.S.C. 1901 et seq., Indian Child Welfare Act

## Child and Family Services Policy Manual: Substitute Care for Children Placement in Kinship Care

<b>Definition</b>	<p>A <b>kinship care home</b> is an unlicensed home in which substitute care may be provided to children placed by the department when such care is provided by.</p> <ul style="list-style-type: none"> <li>• a member of the child's extended family;</li> <li>• a member of the child's or family's tribe;</li> <li>• the child's godparents;</li> <li>• the child's stepparents; or</li> <li>• by a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.</li> </ul> <p>A <b>kinship foster home</b> is a licensed youth foster home) in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren or wards.</p> <p>The care may be provided by:</p> <ul style="list-style-type: none"> <li>• a member of the child's extended family;</li> <li>• a member of the child's or family's tribe;</li> <li>• the child's godparents;</li> <li>• the child's stepparents <b>if the child is placed with the stepparent by the department;</b> or</li> </ul> <p>a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.</p>
<b>Emergency Placements</b>	<p>In emergency removal situations the policy and procedures to be followed are outlined in Section 302-1, <u>Immediate Protection and Emergency Protective Services</u>, of this manual.</p>
<b>Placing Worker Responsibility</b>	<p>When a social worker and his or her supervisor decide a child must be placed, the child will be placed with the child's family (or other kin) <b>when it is in the best interest of the child and the</b></p>

## **Child and Family Services Policy Manual: Substitute Care for Children Placement in Kinship Care**

**home is approved by the Department.** The worker should proceed with the same care he or she takes when placing a child in any foster care placement. Although the placing worker carried the authority and responsibility for making an agency placement, the worker will want to consult with the parents and other family members, whenever feasible.

The department must give preference to the use of kinship caregivers when placement with kin is in the best interests of the child and the caregiver's home meets the requirements for the type of care the kin wishes to provide. Kinship care is intended to:

- preserve the continuity of family relationships and connections for children;
- minimize the loss of family;
- reduce the trauma of placement
- provide permanency for children within their families; and
- support families so they can protect and nurture their children.

### **Best Interests of the Child**

The placing worker must determine if placement with kin is in the best interests of the child. The worker will document in the case record the reason(s) the worker believes that placement is in the best interests of the child. The best interests should regularly be assessed to determine if the placement continues to be in the best interests of the child. If it is determined that the placement is not the optimal placement for the child, a more appropriate placement should be sought.

### **Selection of Family**

The process for selecting a kinship provider will vary depending on the situation and local agency practice. The Department encourages placing workers to involve the birth family, kinship family and other relatives and interested persons in the selection of the home. A family group decision-making meeting or use of family preservation services may help to determine the best placement for the child.

When selecting a kinship placement for the child, the child's safety and well being must be of paramount consideration. Placement should be based upon consideration of the best interest of the

## Child and Family Services Policy Manual: Substitute Care for Children Placement in Kinship Care

child. Factors to be considered in selecting a placement are:

- the services the child will need, based on an assessment of the physical, educational and psychological needs of the child and the ability of the kinship provider to meet these needs;
- the child's race and the role racial identity has played in the child's life (if the child is Indian, the requirements of ICWA must be met; refer to section 301-5, Indian Child Welfare Act);
- placement with siblings is based on the needs of the individual child. If placement with siblings is determined not to be in the best interests of the child, the reasons must be documented and submitted to the supervisor for approval;
- the location of the child's family and the need to maintain contact with other family members;
- identification of the child's religion and the role that religion has played in the child's life;
- other factors particular to the child and the child's circumstances.

The worker should also consider the following factors when determining whether a particular kinship home should be approved for a child:

- the nature and quality of the relationship between the child and the prospective kinship provider;
- the ability and desire of the prospective kinship provider to protect the child from further abuse or neglect and any family dynamics in the home related to the abuse or neglect of the child;
- the safety of the home and the ability of the prospective kinship provider to provide a nurturing environment for the child;
- the nature and quality of the relationship between the child

## Child and Family Services Policy Manual: Substitute Care for Children Placement in Kinship Care

and the prospective kinship provider;

- the willingness of the kinship family to accept the child into their home;
- the nature and quality of the relationship between the birth parents and the prospective kinship provider, including the birth parent's preferences about placement of the child with kin;
- the prospective kinship provider's ability and willingness to cooperate with CFSD; and
- the existing support system of the prospective kinship family.

If it is determined that the child has been placed in a setting that is determined not to be optimal, consideration should be given to moving the child to a more appropriate placement as soon as possible.

### Review of Options Licensing v. Approval

The worker must discuss with the kinship family that is selected for placement the options of licensed or unlicensed care, the services to be provided and the financial assistance available.

If the family chooses to be approved and not licensed, the worker is responsible for assessing the family's ability to provide for the child's safety and well-being. Consideration must be given to the family's ability to meet the child's needs on both a short and long-term basis.

The placing worker must make a visit to the kinship home within 48 hours of the time the child is placed with the kin providers, excluding weekends and holidays. The purpose of the visit is to assess the safety and appropriateness of the home for the child. A visit by the placing worker is required even if the family has been referred to an FRS and is pursuing licensing.

The visit must be documented in the child's file.

### Release of Information and Background

The worker will obtain a signed copy of the DPHHS-CFS/LIC -018, Release of Information and will ensure that a criminal background, Montana motor vehicle and protective services check is completed on each adult member of the household for a family

## Child and Family Services Policy Manual: Substitute Care for Children Placement in Kinship Care

### Checks

under consideration for placement.

If the family chooses to become licensed, it is the responsibility of the social worker to conduct a protective services check and to refer the kin family to the appropriate FRS within three working days. A referral may be made via e-mail.

### Criminal Background Check

The purpose of the criminal check is to determine whether any adult in the home has been convicted of a crime, which might affect their ability to provide safe care. If a child is placed with a kinship family prior to the completion of a criminal records check, a check of the violent offender and criminal history registries (if such registries are available in states in which adults in the kinship home have lived) must be completed within 3 days.

Fingerprint cards must be provided to each kinship applicant and adult member of the applicant's household. The applicant should be provided information on the local process for obtaining fingerprints. The applicant should be advised if there is a fee charged for taking the prints, how this cost is to be paid and the expectations for returning completed fingerprint cards.

The kinship provider and other adults in the home are required to provide completed fingerprint cards to the department as soon as possible, but not more than 10 days after the placement is made. The applicant should return the completed fingerprint card to the placing worker within 3 days if a child has been placed in a kinship home. If a child has been placed in a kinship home and all adults in the **home have not returned** completed fingerprint cards within 3 days of placement, the placing social worker must ensure that a name based criminal records check is requested prior to the end of the third day. A request for a name-based check may be made via e-mail.

### Name-based Check

**A criminal records check via fingerprints is still required** even if a name based check is completed and must be requested as soon as the fingerprint cards are returned.

The placing worker will ensure that the fingerprint card is reviewed for accuracy and completeness prior to being sent to the Department of Justice.

There is cost of \$10 for a Montana fingerprint check only (for applicants who after the age of 18 have lived in **Montana, Alaska,**

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**Idaho, Nevada, Oregon, Utah or Wyoming)** or a cost of \$34 for a Montana and Federal fingerprint check (for applicants who after the age of 18 have lived in a state other than those listed above **or have lived on a reservation**).

**NOTE: Felonies committed on reservations are federal crimes. As with any criminal check, all crimes may not have been reported and may not appear on a criminal record.**

Payment in the form of check or money order made out to Criminal Records and Identification must accompany the request for a fingerprint check unless the Department has agreed to cover the cost of the fingerprint check. If the Department has agreed to cover the cost of the fingerprint checks, a memo should be attached to the fingerprint card(s) indicating this.

**The Department will only cover the costs of fingerprint checks if court action has been initiated on behalf of the child(ren) to be placed.**

Fingerprint cards are to be sent to the Department of Justice, Criminal Records and Identification, P.O. Box 201403, Helena, MT, 59620.

If the family lives or has lived on a reservation, a check with tribal law enforcement should also be conducted.

A child shall not be placed in a kinship home in which there is anyone residing who has at any time been convicted of a felony for any of the following:

- child abuse or neglect;
- child sexual abuse;
- partner or family member assault;
- any crime against children (including child pornography); or
- for a crime involving violence, including rape, sexual assault, or homicide.

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In addition, no child shall be placed in a kinship home where there is anyone residing who has been convicted of a felony for any of the following if the offense for which they were convicted occurred within the past 5 years:

- physical assault;
- battery; or
- a drug related offense, including alcohol related convictions.

If the results of the criminal records check reveal a conviction for one of the crimes listed above within the past five years, the child must be moved to another placement.

If the results of the criminal checks reveal convictions that do not fall into the above categories that does not mean the applicant must be approved. The worker must assess the criminal history and the potential effect on the child.

### **Exceptions**

If the prospective kinship provider (or other adult household member) is missing ALL of their fingers, a criminal check by name must be completed. If the applicant (or other adult household member) is missing some, but not all of their fingers, a fingerprint check must be completed. The person taking the fingerprints will note on the fingerprint card the fingers that are missing.

In rare instances, useful fingerprints cannot be obtained from an individual.

If the FBI rejects fingerprint cards on the same individual twice, a national name based check can be conducted on that individual. (The cards will have a white paper stapled to them.) The requesting worker should fax the person's name, date of birth and social security number to the DOJ (444-0689) and request that a name based check be completed based on the FBI rejections. DOJ will fax the results of a name-based search to the person making the request.

If after three attempts to obtain useable fingerprints from an individual to whom the FBI rejections do not apply, a name check must be used to obtain the criminal record. Since a national name based check will not be completed if the request is not the result of

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FBI rejections, an attempt must be made to obtain criminal records from all states in which the applicant has lived.

In both of the above situations, information must be attached to the results of the check explaining why a fingerprint check was not used.

### Protective Services Checks

The placing worker shall conduct a CPS/APS check by checking first on CAPS and then with the county CFSD office in the county(ies) where the family has resided within three days of the time the child is placed in the kinship home. If the provider or other family member is listed as a person in CAPS, the placing worker **must** check with the CFSD office in the appropriate county to determine if there is information available which would preclude placement.

If the provider or other family member has lived in another state or states, the placing worker must check with that state or states to determine if there is CPS information available, which would preclude placement.

If the applicant or other household member has received services for substantiated abuse or neglect, the worker must justify why placement of the child in that particular home is in the child's best interests. The written approval of the regional administrator must be obtained in order to continue the placement or to place the child in the home.

### Montana Motor Vehicle Check

Motor vehicle checks may be completed on-line and must be completed within three days of the time a child is placed in a kinship home. The worker may contact the local FRS or FRS supervisor to find out whom in the region has access and can complete these checks.

### Kinship Care Agreement

The placing social worker and the family must sign a DPHHS-CFS-055, Kinship Care Agreement. If the social worker and family use a family group decision-making meeting, the written agreement developed may supplement the Kinship Care Agreement.

It is important that there be written understanding among the kinship care family, the child's parents (and the child when appropriate), the social worker and his or her supervisor as to

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what will be done by each of the parties to protect and care for the child, resolve concerns, and reunite the family.

### Placement Prior to Completion of Required Checks

Kinship Care Agreement

At the discretion of the Department and pending receipt of the results of a criminal, protective services or motor vehicle background check, the placing worker may enter into a written agreement with the kinship family in which the kinship parent(s) affirm that no one residing in the home has been convicted of a crime involving harm or threatened harm to a child and that no one residing in the home has a prior history of child abuse or neglect. This self-affirmation signed by the parties in the DPHHS-CFS-055, Kinship Care Agreement and the worker's documentation that the placement is in the best interest of the child will suffice for the worker's initial approval of the kinship home.

CPS/APS and motor  
vehicle checks

The placing social worker is responsible to ensure that CPS/APS and Montana motor vehicle checks are completed within 3 working days of the child's placement in the kinship home.

Criminal records checks

The kinship providers should be advised of the local fingerprinting process and informed that they have 3 days following placement to be fingerprinted and to return the completed fingerprint cards to the department. Failure to return the completed cards to the department within the 3 days may result in the child's removal from the kinship home.

- If all adults in the home have returned completed fingerprint cards to the department within 3 days of the placement, the placing social worker must ensure that a criminal records check via fingerprints is promptly requested.
- If all adults in the home have not returned completed fingerprint cars to the department within 3 days of the placement, the placing social worker must ensure that a name based criminal records check is requested prior to the end of the third day and a criminal records check via fingerprints requested promptly when the fingerprint cards are returned.

A name based criminal records check is obtained through the Department of Justice. The requesting worker must send the name, date of birth and social security number of the person for whom a check is being requested to:

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Criminal Records  
P.O. Box 201403  
Helena, MT 59620-1403

The request must indicate that it is for CFSD and indicate to what address the results are to be sent.

**References**

Mont. Code Ann. § 41-3-101  
Mont. Code Ann. § 52-2-102

Rev. 10/03  
Rev. 04/04  
Rev. 10/04  
Rev. 10/05

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DPHHS-CFS-055

(New 01/2002)

**State of Montana****Department of Public Health and Human Services**

Child and Family Services Division

### KINSHIP CARE AGREEMENT

Agreement Between \_\_\_\_\_  
(Agency)

and \_\_\_\_\_  
(Kinship Provider(s))

Regarding the Placement of: \_\_\_\_\_  
(Child(ren))

#### **AGENCY RESPONSIBILITIES:**

1. The social worker, in consultation with family members, has a responsibility for overall planning for the child(ren). The social worker has the responsibility to ensure that placement of the child is in the child's best interests.
2. The Department shall provide Medicaid eligible child(ren) with a Medicaid card as soon as possible following placement.
3. The Department will assure that payment is made for approved medical treatment of eligible children. Non-Medicaid services to be paid by the Department must be pre-approved by the Department except in emergency situations.
4. The Department, supervising agency and/or child's legal parent must give prior approval for any medical treatment or care.
5. The Social Worker will provide you with all relevant information about the child, including the expected length of placement.
6. Whenever possible, the social worker will provide advance notice to you before the child(ren) is/are removed from your care.
7. The social worker will recognize you as a member of the decision-making team and a vitally important component of the plan for the care of the child placed in your home.
8. If the Department receives a referral alleging abuse or neglect of a child placed in your home, the Department will investigate the allegation.

#### **KINSHIP PROVIDERS' RESPONSIBILITIES:**

1. I/We understand that the Department has the responsibility to reunite the child(ren) with the birth or legal family, and I/we agree to participate in the reunification process as requested by the Department.
2. I/We understand that I/we have no legal right to the child(ren) placed in my/our care without the

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explicit consent of the Department. If the permanent placement of the child with a family other than the birth or legal parents becomes the plan for the child, we understand that the continued placement of the child in our home will be reassessed.

3. I/We will respect and support the child's connection with his/her birth or legal parents and significant others.
4. I/We agree to participate as members of the decision-making team and will be involved in the development of the case planning for the child(ren), including participation on the foster care or citizen review board committee.
5. I/We will be responsible for the care of the child(ren) placed in our home. I/We will share information with the Department concerning the child's progress at our home and at school.
6. I/We will be responsible for seeking emergency medical treatment and notifying the Department as soon as possible.
7. I/We will report to the placing worker within 48 hours (excluding weekends and holidays) any change of address, major sickness in the family or changes in family composition.
8. I/We will not take money for the care of the child except with the knowledge of the Department.
9. I/We will respect the child's cultural traditions and religious beliefs.
10. I/We agree to hold confidential any information pertaining to the child and the birth or legal parents.
11. I/We will comply with orientation/training requirements established by the Department.
12. If I/we cannot continue to keep the child(ren) or properly care for him/her/them, I/we will notify the placing agency so they will be able to make other plans for the child. I/We further agree to allow the placing agency adequate time (at least 72 hours/three work days) to arrange alternate placement of the child except in emergency situations or other situations where it is not in the child(ren)'s best interest to remain in our home.
13. I/We will cooperate with any investigation of abuse or neglect involving a child placed in our home.
14. I/We shall report any incidents of known or suspected child abuse or neglect to the Department of Public Health and Human Services at 1-866-820-KIDS (5437).
15. I/We understand that I/we must secure the permission of the Department before making plans for taking the child(ren) out of the county, state or country. Travel authorization is as follows:

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16. I/We certify that:

No one residing in my/our household has been convicted of felony child abuse or neglect, child sexual abuse, partner-family member assault, any crime against children including child pornography, or for a crime involving violence, including rape, sexual assault or homicide.

No one residing in my/our household has ever been convicted of any crime involving serious harm to child(ren).

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No one residing in my/our household has a felony conviction within the past 5 years for physical assault, battery or a drug related offense, including an alcohol related conviction. No one residing in my/our household has been the subject of a deferred prosecution involving any of the crimes listed above.

No one residing in my/our household has ever been investigated for alleged child or adult abuse or neglect.

Comments, if any: \_\_\_\_\_

- **The Department will be conducting a criminal records check including a motor vehicle check and a child and adult protective services check of your validity in these statements.**
- **If you have been convicted in the past, are currently charged with a crime, or have been investigated for child or adult abuse or neglect, do not sign this document before discussing the conviction, charges or investigation with the social worker.**
- **If you have not already done so, you are responsible for getting completed fingerprint cards to the department within 10 days of the date \_\_\_\_\_ were placed with you. You have until \_\_\_\_\_ to return completed fingerprint cards to the department.**

**Failure to get completed fingerprint cards to the department on or before this date may result in the removal of \_\_\_\_\_ from your home.**

**THE SOCIAL WORKER AND KINSHIP FAMILY AGREE:**

1. Contact between the Social Worker and the Kinship Family will be as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Visitation and contacts between the child(ren) and the birth or legal family will be as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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3. Ongoing medical or psychological needs of the child(ren) will be met in the following manner (i.e. scheduling, transportation, information, etc):

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4. The following support services may be necessary to ensure stability for the child's placement and are subject to management approval and funding availability:

Respite Plan: \_\_\_\_\_

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Clothing Allowance: \_\_\_\_\_

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Diaper Allowance: \_\_\_\_\_

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Supplemental Services Allowance Plan: \_\_\_\_\_

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Other: \_\_\_\_\_

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At the discretion of the Department, the child(ren) may be moved upon receipt of a report of neglect or sexual or physical abuse in your home. The removal of the child(ren) does not mean the Department believes you are guilty. The removal of the child(ren) is a procedure used by the Department for the protection of the child(ren) until the validity of the report can be checked out.

I/We agree to report any problems regarding care of this child(ren)

to the Social Worker: \_\_\_\_\_

Name

Phone

OR...

If unable to contact the Social Worker, I/we will contact his/her

Supervisor: \_\_\_\_\_

Name

Phone

I/We have read, understand and agree to perform my/our outlined responsibilities and abide by the contents of this agreement.



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**Prepare the Child for Placement** A child removed from his or her home must be prepared for placement with a foster care provider. Preparation for placement should include pre-placement visits between the foster care provider and child when possible. When appropriate, the child may participate in the placement decision.

**NOTE:** Foster care provider in this section includes foster parents (regular and therapeutic), therapeutic family foster care programs, and youth group homes (regular and therapeutic).

**Proximity** If the child is not placed in close proximity (the same county) as the parent(s)' home, the reasons why the placement is in the best interests of the child must be documented in the case record.

**Information provided to the Foster Care Provider**  
General Case Plan Foster care providers need to know the general case plan for the child. The social worker should ensure that the foster care providers are given information regarding problems and behavior of the child, reasons for placement, life experiences of and medical and psychological information on the child. They should also be given information regarding the rate of payment for the child and other support services, which will be available for the child.

**Information on Child for Placement Purposes** When placing a child in a foster home (non-therapeutic), the social worker must provide the foster family with a completed Information on Child for Placement Purposes-Part A, with Part-B included if other information needs to be provided to the foster parent(s). Maintain a copy of the form in the child's case file. In addition to providing information on the child to the foster family, the social worker must indicate if the foster family license and preference information correspond with the child's information in the areas of the number of children in the foster home, age range, gender of the child, and with the behaviors or conditions which the foster family will consider or accept in their home.

If the child does not match any of these areas, the social worker will contact the FRS/FRSS to determine if there is a different placement, or if the FRS would recommend using the home. If after hours, the social worker will notify the FRS on the next working day of the placement. Within the first working day after placement, the social worker must provide the FRS or FRS supervisor with a completed DPHHS-CFS-035 Request to FRS

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for License Change and a copy of the Information on Child For Placement Purposes for every child who does not match the foster parent license criteria. If the FRS or FRS supervisor determine that the license for the foster home should not be modified for the child's placement, the FRS will notify the social worker and foster parent(s) immediately, and the FRS and social worker will work to either resolve the issue regarding the placement, or move the child as soon as possible.

### Placement Stabilization Plan

If a foster parent or social worker determines that the foster family will need assistance in addressing the behaviors, conditions, or circumstances of the child, a DPHHS-CFS-207 Placement Stabilization Plan must be completed outlining a plan to address each concern. If concerns arise during placement that the foster family needs assistance to address, a Placement Stabilization Plan should be developed to help the foster family.

### Assessment of Physical, Developmental and Mental Health Needs

#### Medical -EPSDT Exam

If the child has not received a medical exam during the CPS investigation, an exam is required prior to placement in the foster home or within the first 30 days after placement. An EPSDT (Early Periodic Screening, Diagnostic, Treatment) exam should be requested of the physician in order to establish any ongoing or future treatment needs. All EPSDT recommendations must be followed to insure the health of the child. The medical exam serves five main purposes:

- providing immediate medical treatment, if necessary (including treatment for sexually transmitted diseases);
- gathering evidence for court action;
- reassuring the child that he or she is all right and previous abuse, neglect, or sexual assault can be overcome;
- reassuring foster parents or facilities in regard to child's general health status and communicability factors, if any; and
- establishing preventative and treatment needs to prevent future complications.

Once a child has an established EPSDT history and becomes a

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resident of another state, that state must provide any and all necessary medical treatment for his/her diagnosis even if the state does not provide the service under that state's Medicaid program as long as the child is under 21 and Medicaid eligible in that state.

Mental Health  
-Child Assessment  
by Foster Care  
Provider

Within 45 days of removal of the child from the parent, the social worker will request that the foster care provider complete a Child Assessment by Foster Care Provider (DPHHS-CFS-107, Part E) on the child. The Child Assessment by Foster Care Provider will be utilized in the development of the child's case plan. Each time a child is moved out of a foster home (non-therapeutic), the foster parent must complete a Child Assessment by Foster Care Provider unless a Child Assessment by Foster Care Provider has been completed within the last 30 days by the foster parent. The assessment should be used to provide updated information to the next foster care provider. A foster care provider may also complete a Child Assessment by Foster Care Provider to describe new concerns or issues presented by the child.

The social worker will utilize the Child Assessment by Foster Care Provider to determine if the child's behaviors warrant a mental health assessment. In particular, the section on the child's "Emotional/Behavioral Strengths, Conditions, and/or Concerns" should be reviewed, and the child should be referred for a mental health assessment if indications that the child may need mental health support.

Strengths and  
Difficulties  
Questionnaire  
(Optional)

For children placed who are not actively involved with the mental health system (therapist, psychologist, psychiatrist), a Strengths and Difficulties Questionnaire (SDQ) may be completed on the child to help assess for mental health needs. The SDQ may be completed by the foster or kinship parent, and/or the biological parent, and scored by CFSD to determine if the child needs to be assessed by a mental health professional. Children who are 12 or older may also complete the SDQ for additional information. If the SDQ indicates that the child requires further assessment, refer to an appropriate mental health professional. Contact the Residential Specialist for a copy of the questionnaire.

**Developmental  
Screening and**

Within 2 days of substantiation, children under the age of 3 placed in foster care must be referred to the local

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<b>Assessment after placement</b>	<p>developmental disability Part C program for assessment for developmental disabilities.</p> <p>Children ages 3 and older must receive a developmental assessment through one of the following methods:</p> <ul style="list-style-type: none"> <li>• Headstart assessment (preferred for ages 3 to 5)</li> <li>• Neuro-psychological evaluation</li> <li>• Educational evaluation</li> </ul> <p>Assessment by the Developmental Disability contractor for the region.</p> <p>Request a copy of the assessment of the child for the case file.</p> <p>If the developmental assessment indicates that the child requires services for developmental disability or requires further assessment, the social worker is responsible to make referrals to the appropriate services to the local developmental disability provider, and ensure that the child receives the services as available.</p>
Therapeutic Family Foster Care and all Youth Group Homes	<p>Medical care required of Therapeutic Family Foster Care and all Youth Group Homes are:</p> <ul style="list-style-type: none"> <li>• reasonable assistance in obtaining psychological, medical and dental care for children;</li> <li>• an annual Well Child (EPSDT) screening for all Medicaid eligible children; and</li> <li>• notification of the placing social worker when medication changes are made. Changes in therapist and/or psychiatrist should be a team decision, with the social worker having the final determination when DPHHS has custody.</li> </ul>
Authorization for STD/HIV/AIDS Testing	<p>Testing for Sexually Transmitted Diseases and HIV/AIDS may only be completed with the appropriate consents to the testing. Consent must be given by the parent or guardian unless the Department has permanent legal custody of the child. The Department may consent only when the Department has permanent legal custody and the test is ordered by a physician. A minor may give "self-consent" to receive services for the prevention, diagnosis, and treatment of sexually transmitted diseases, including HIV/AIDS.</p>

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**NOTE: The authorization by district court for medical treatment or evaluation in the initial court order (either TIA or TLC) is sufficient to test for sexually transmitted diseases during the initial investigation.**

### **CAPS**

MMHD or MEDS should be used to record information from the medical exam.

### **Contact**

Child and Foster Care  
Provider  
In-State Placements

To assure safety and assess that the needs of the child are being met in foster care, the social worker must maintain contact with the child and the provider. The frequency of the contact shall be determined by the vulnerability of the child and protective capacities built into the placement. Vulnerability of the child is determined by age and factors that relate to the inability of the child to self protect which include but are not limited to developmental disability, or extremely provocative behavior. The protective capacities in a placement include other professionals having routine contact with the child. For example, an infant who is irritable and placed in a foster home without additional services is vulnerable. The foster family's protective capacities must be assessed and documented.

At a minimum, the child should be seen monthly, with at least one visit quarterly in the foster home/facility where the child resides. Exceptions to this minimum may be made based on child 's vulnerability and other protective capacities. These exceptions must be documented in the case file.

The social worker should include time in the visits to spend one-on-one time with any child who is verbal. Documentation of all visits must be in the child's file.

If a foster or kinship parent identifies any new behaviors or concerns presented by the child in which they need assistance, a "Placement Stabilization Plan" should be developed between the social worker and the foster care provider.

In addition, Therapeutic Family Foster Care programs and all Youth Group Homes are required to provide case/treatment plans, monthly progress reports, quarterly case/treatment plan reviews, and a discharge summary within 10 days after discharge. Monthly progress reports are to include progress on case plan goals, incident reports, updates on medical and dental care, medication changes, and report youth personal

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account information over \$50. The social worker should be involved in the development and review of the youth's case/treatment plan.

Out-of-State Placements	In out-of-state placements, a worker from either the sending or receiving state must visit the child in the home or facility of the foster care provider at least once a year and submit a report on the visit to the supervisor in the sending state. This requirement may be met by submitting the request for the required visit through the Interstate Compact on the Placement of Children at the time the ICPC-100A is submitted. If the request for the required visit is not made at the time initial ICPC-100A is submitted, an ICPC request for the required visit should be submitted not later than 60 days prior to the end of the year to allow sufficient time for the other state to respond with a courtesy contact and report. See section 402-7, Interstate Compact on the Placement of Children.
Social Worker Contact with Birth Parents	The social worker is also expected to maintain contact with the birth parents. The parameters of the contact will be outlined in the case plan.
Visitation Parent/Child	<p>It is a fundamental right for children in foster care to have visits with their parents. Visitation provides an opportunity for the child and parent to reconnect and to maintain the parent/child relationship without which successful reunification is unlikely to occur. In addition to maintaining the parent/child relationship, visits between the parent and child:</p> <ul style="list-style-type: none"> <li>• reduce the sense of abandonment that children</li> <li>• experience due to placement;</li> <li>• provide an opportunity for assessing the parent/child relationship;</li> <li>• provide an opportunity for parents to practice parenting skills (e.g., demonstrate skills they have learned in parenting classes); and</li> <li>• provide the parents an opportunity to assess their own ability to parent.</li> </ul>

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Reduction or denial of visits

The child's social worker is responsible to complete a DPPHS-CFS-208, Parent-Child Interaction Plan with the parent(s) of children in placement. It is the responsibility of the social worker to ensure that visits between parents and children are scheduled. It is not the responsibility of the parent to request visits in order to see their child.

In rare circumstances, if the child's worker believes that the child's health, safety and well-being can not be protected during visits, justification of the concerns must be reviewed with the supervisor. The social worker must obtain supervisory approval that is documented in the case record, and as necessary, approval from the court, prior to a reduction or denial of visits. The social worker must provide written notification to the parent(s) advising them of the reduction or denial of visits within five days of receiving supervisory (and if necessary) court approval. If the parent is present in court when the judge agrees to the reduction or termination of visits, the worker does not need to send a letter of notification.

Supervision of visits

The initial visit between a parent and child must be supervised and should be supervised by the social worker whenever possible. The DPPHS-CFS-209 Summary of Parent-Child Interaction must be used to record the activities and interactions at the visit.

- A determination as to whether subsequent visits need to be supervised to ensure the safety of the child must be made and the justification for the type and level of supervision included in the written visitation plan. Factors to be considered in determining the need for supervised visits include:
  - the age of the child;
  - the severity and chronicity of the abuse/neglect;
  - the potential for abduction of the child;
  - emotional reactions of the child;
  - the risk of inappropriate or unpredictable behavior by the parent; and

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- the progress of the parent(s) learning new parenting skills.

While the safety and well-being of the child may be the primary reason to have visits supervised, a determination may be also be made that supervision of at least some visits is warranted in order to:

- facilitate interactions between the parent and child;
- model positive parenting;
- mediated conflict between the parent and child; or
- assess and evaluate the parent/child interaction.

Visits may be supervised by the social worker or other department staff person, in-home service provider or other contracted party; by the foster care provider; relative of the child or other person determined by the child's social worker and supervisor.

The DPHHS-CFS-209 Summary of Parent-Child Interaction must be used to record the activities and interactions during all supervised visits between a parent and child

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Location of visits	<p>Visitation should take place at a location that ensures the safety of all parties and will produce the most interaction between the parent and child.</p> <p>Factors to be considered when choosing the site for a visit include:</p> <ul style="list-style-type: none"> <li>• what site provides the greatest opportunity for positive interaction conducive to the child's development?</li> <li>• what are the parent(s)' attitudes and feelings toward the foster parents and what is their ability/willingness to handle contact with the foster parent?</li> <li>• what are the foster parents' attitudes and feelings toward the birth parents and how does this impact their willingness and capacity to work with the child's parent(s)?</li> <li>• what sites will protect the child's physical safety and emotional stability?</li> <li>• what are factors that preclude visitation in the child's or foster parents home?</li> <li>• what is the goal of the visit and where can this goal best be met?</li> </ul> <p>Visits which involve parents in routine parenting activities such as preparing meals, feeding and diapering, attending school functions and medical appointments, helping children with homework or school projects, etc., should be incorporated into the visitation plan.</p>
Sibling Visitation	<p>If siblings in foster care have not been placed in the same home, or if there are some siblings that remain in the parent(s)' home when others are placed in foster care, the social worker must ensure that visits between the siblings occur. The frequency and plan for visits should be discussed at FGDM meetings, at permanency staffings and at FCRC meetings. Sibling visits may be combined with parental visits, visits with relatives or with other significant people as determined appropriate by the social worker.</p>

## Child and Family Services Policy Manual: Substitute Care for Children Supervision of Out-of-Home Placements

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Visitation with other persons significant to the child

When relatives, other than parents or siblings, or other persons significant to the child request to visit the child, these persons may accompany the parent to visits with the consent of the parent(s) and the social worker. Separate visits for persons significant to the child may be arranged if there is a determination that visits would contribute to the child's well-being. Factors that may be considered when determining the appropriateness of visits include the person's support of the department's case plan and the attitudes and feelings toward the child's parents, including reunification with the parent(s).

### **Documentation**

Information regarding visits or other contacts between the worker and child or foster care provider, between the worker and the birth parents, and between the child and his/her parents should be recorded.

### **Travel** In-State

Unless the Department has permanent legal custody of the child or court approval to authorize travel, all non-routine travel should be authorized by the child's parents. If the parent refuses to approve the plan for travel and the worker feels the trip is in the best interests of the child, the worker may seek authorization for travel from the court.

### Out-of-State

For out-of-state travel, the custodial parent's authorization shall be obtained in writing. For non-routine, inter-county travel within the state, written authorization is preferable but a verbal authorization will be accepted, if documented in the case file.

The community social worker supervisor must approve out-of-state travel of children placed with a foster care provider by the Department. The community social worker supervisor may approve travel without parental consent for children in permanent legal custody of the Department.

The social worker will submit a request to the community social worker supervisor for travel authorization for the foster child. The request shall include:

1. child's name
2. birth date
3. type of custody
4. names of foster care providers

## Child and Family Services Policy Manual: Substitute Care for Children Supervision of Out-of-Home Placements

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5. names of parents
6. tentative itinerary and approximate length of travel
7. a copy of the parent's authorization or court order

A sample request may be found on page 12 of this section.

### Out-of -Country

For out-of-country travel, the custodial parent's authorization shall be obtained in writing unless the department has permanent legal custody. If the parent refuses to sign the authorization, the social worker must obtain an order from the court that specifically allows for the out-of-country travel. If the department has permanent legal custody, a court order is not needed.

The regional administrator must approve out-of-country travel of children placed by the Department, even when the Department has permanent legal custody.

The social worker will submit a request to the regional administrator for travel authorization for the foster child. The request shall include:

1. child's name
2. birth date
3. custody status
4. names of foster care providers
5. names of parents (if parental rights have not been terminated)
6. specific itinerary and anticipated length of travel
7. a copy of the parent's authorization or court order, when required;
8. if the child will not be traveling with the foster care provider, information regarding the persons or group with whom the child will be traveling; and
9. specific information as to how any necessary medical care will be paid for. (It may be necessary to purchase travel insurance in order to ensure that medical costs will be covered.)

A sample request may be found on page 14 of this section

### CAPS

The worker should print the DocGen 337, Travel Authorization and submit it to the community social worker supervisor for approval at the same time the request for approval is submitted.

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A copy of the DocGen may be found on page 12 of this section.

### **Travel Approval**

The community social worker supervisor must sign the authorization. A copy of the signed authorization must be provided to the foster care provider for the travel. A copy of the signed authorization shall be filed in the case file.

### **Unplanned Absence**

When a child is in a Youth Care Facility (YCF) and has an unplanned absence, payment should be closed if the child will not be returned, or if after five days the child has not been returned to the YCF, unless an exception has been granted. Exceptions may be granted by the regional administrator or designee and the reasons for the exception documented in the case record.

### **Social Worker Responsibility**

If a child is on the run, the social worker still has case management responsibilities for the child and must pursue all avenues to locate the child.

Foster Care Reviews/hearing must continue to be held if a child is on runaway status, unless the court order giving the Department placement and care responsibility expires prior to the time for the scheduled review, or an order is issued terminating the Department's placement and care responsibility.

If a child is on runaway status for any length of time and placement and care responsibility continues to be with the Department, the time-frame for Foster Care Reviews/hearings is not impacted and all required reviews and hearings should be held.

### **Planned Absence**

#### **Payment Suspension**

When a child has a planned absence for five days or less from a YCF (i.e., return home for visit), the payment may continue.

If a child is absent from the YCF for more than five days (i.e., summer camp, summer visit to a relative) which does not affect the court order, it is considered a suspension. If the suspension covers an entire month, the worker should request OPA to open Ribicoff Medicaid for that month.

Situations of more than 5 but less than 30 days absence are reviewed on a case-by-case basis with the supervisor and Regional Administrator to determine what action should occur.

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When the youth returns to the YCF, the payment shall be resumed at the full amount.

### Driver's License

A worker may not sign for a youth's driver's license. The Department will not assume responsibility for youth seeking driver's licenses. If the Department does not have permanent legal custody, the worker must seek written authorization from the child's parent allowing the child to obtain a driver's license.

Based on written permission from the child's parent (or the permanent legal custody status of the child), the child's foster care provider may sign for a driver's license. **The foster care provider may want to consult with their insurance agent prior to the time the child obtains a driver's license to determine what the specific requirements of their policy are.** The foster care provider is responsible for the youth's driving actions. The foster care provider is responsible to have proper and adequate insurance coverage for both the vehicle and liability damages, as they are not covered by the state foster care provider insurance policy.

### Children's Clothing and Belongings

When a child moves, all of the child's clothing and belongings, including purchases from clothing allowances, etc., must be moved with the child to the new placement. Therapeutic Family Foster Care programs and all Youth Group Homes must give the social worker a final inventory of the child's clothing and belongings at the time of discharge.

### Hospitalization and Medical Emergencies

Parental Agreement

The worker shall seek written authorization from the parent for obtaining emergency medical services for the child when he or she is placed. If the parent has signed a parental agreement, the standard form includes an authorization for emergency medical services. Based upon the written authorization of the parent, a worker may authorize emergency medical services if the parent cannot be contacted to authorize the services. The parent shall be notified as soon as possible in cases of emergencies.

Court Order

When a petition is filed, the worker should request of the county attorney that the petition include a request for authority to consent to emergency medical treatment. When the court order is issued, the worker should review the order to determine if the Department has been given authorization to consent to medical treatment. If the court order does not specifically provide

## Child and Family Services Policy Manual: Substitute Care for Children Supervision of Out-of-Home Placements

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authorization to consent to medical treatment, the worker should request the county attorney obtain an amended order.

**In no case shall the social worker sign for emergency medical treatment without written parental consent or a court order granting the Department authority to consent to medical treatment.**

<b>Other Medical Care and Hospitalization</b>	<p>When non-emergency medical care or hospitalization is recommended by a physician for a child with a foster care provider, whenever possible, the parents shall be consulted before any services are provided. The parent shall sign any consent for non-emergency medical services or hospitalization unless a court order has been issued which gives the Department the right to consent to medical treatment or which terminated parental rights.</p> <p>If the Department has permanent legal custody, the worker may consent to necessary medical services or hospitalization recommended by the child's physician. If there is a question regarding either the necessity for such services or the risk to the child, the worker shall discuss the case with his or her supervisor before authorizing the provision of services. A second medical opinion or consultation may be appropriate.</p>
<b>Parent Cannot be Found</b>	<p>In those circumstances where attempts have been made to notify the child's parents concerning any non-emergency medical services or hospitalization have been unsuccessful, the worker shall obtain the approval of his or her supervisor before consenting to medical services or hospitalization. <b>In no case shall the social worker sign for treatment without written parental consent or a court order granting the Department authority to consent to medical treatment.</b></p>
<b>Searches, Urinalysis and Breathalyzer Testing</b>	<p>Therapeutic Family Foster Care (TFFC) programs and all Youth Group Homes should inform the child and social worker at intake of the program's search, urinalysis, and breathalyzer policy. In addition, all urinalysis and breathalyzer testing and all searches must be reported to the social worker at least monthly, including results of the testing and searches.</p>
Consent for Urinalysis and	<p>Urinalysis and breathalyzer testing may only be conducted with proper written authorization with children in care. Those who</p>

## Child and Family Services Policy Manual: Substitute Care for Children Supervision of Out-of-Home Placements

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Breathalyzer Testing	<p>may authorize testing are:</p> <ul style="list-style-type: none"> <li>• the parent/guardian if they retain custody;</li> <li>• DPHHS social worker if DPHHS has Permanent Legal Custody; or</li> <li>• district court may order the testing.</li> </ul> <p>“Over the counter” kits for urinalysis and breathalyzer testing are prohibited.</p>
Searches	<p>TFFC programs and all Youth Group Homes must have reasonable cause to search a child or his/her room, and must clearly document the reasonable cause, the search, and any contraband (including what happened to the confiscated contraband). Strip searches, body cavity searches, video surveillance and routine opening of personal correspondence are prohibited.</p>
Polygraph Testing	<p>Polygraph testing may only be conducted with written consent from the parent for polygraph testing of his/her child as a component of treatment or therapy (provided that parental rights are intact). If a parent consents and the child is a teenager, the consent of the child is also advised. The Department shall not consent for polygraph testing even when the Department has permanent legal custody of the child. If polygraph testing is believed necessary for treatment or other purposes, district court must order the polygraph testing.</p>
<b>Medicaid</b>	<p><b>Medicaid will only pay for medically necessary service.</b> The DPHHS Health Policy and Services Division determines the definition of medically necessary services, not the physician. If a worker has a question as to whether Medicaid will provide payment for a particular medical service, treatment or travel, the worker and foster care provider may refer to the recipient booklet entitled, <u>Medicaid - Your Health Care Program and What You Need to Know</u> (DPHHS-MA-65). Copies of this booklet are available at the county Office of Public Assistance (OPA).</p>
Travel	<p>Medicaid travel reimburses only necessary covered services from the nearest provider, and is limited to the least costly means to meet the child’s needs. Reimbursement is only available when there is no other way of reimbursing the travel.</p>

**Child and Family Services Policy Manual: Substitute Care for Children  
Supervision of Out-of-Home Placements**

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**If emergency transportation is needed, call the Medicaid Transportation Hotline (1-800-262-1545) as soon as a medical appointment is made and before the travel occurs.**

Routine local transportation is part of the daily rate for all Therapeutic Family Foster Care programs and Youth Group Homes.

**General  
Information**

Medicaid information regarding the coverage of any service may be obtained by calling 1-800-362-8312 or accessing the division's web site at: <http://www.dphhs.mt.gov/hpsd>. If the worker is unable to get the necessary information, they may call the Health Policy and Services Division at 444-4540.

**Mental Health  
Services**

Financial eligibility will be determined by the OPA. Clinical assessments must be provided by a licensed mental health professional to determine the mental health needs. Travel is approved by Mountain Pacific Quality Health in the same manner as authorizing Medicaid travel.

For information on Mental Health covered services, or if you have problems accessing services, call 1-888-866-0328 toll free.

**References**

Mont. Code Ann. § § 50-16-1007 and 41-1-402  
Mont. Admin. R. 37.50.310-37.50.320  
Montana Constitution, Article II

SAMPLE REQUEST FOR AUTHORIZATION FOR TRAVEL OF FOSTER CHILD

I, (name of worker), hereby request authorization for (name of child) to travel with his/her foster care provider.

The pertinent information follows:

1. Name of child: \_\_\_\_\_
2. Birth date of child: \_\_\_\_\_
3. Department's legal authority: \_\_\_\_\_
4. Names of Foster Care Provider: \_\_\_\_\_
5. Names of Parents: \_\_\_\_\_
6. Tentative itinerary and approximate length of travel: \_\_\_\_\_  
\_\_\_\_\_
7. Emergency contact: \_\_\_\_\_

A copy of the parents' authorization (or court order) authorizing the travel is attached.

Social Worker: \_\_\_\_\_

Date: \_\_\_\_\_

TRAVEL AUTHORIZATION

Montana Department of Public Health and Human Services hereby gives permission for <FOSTER/ADOPTIVE PARENTS>, the foster care provider / adoptive parents of:

<CHILD NAME>

<CHILD DOB>

<CHILD SSN>

to travel. This authorization covers a time period from \_\_\_\_\_ to \_\_\_\_\_ while they travel to \_\_\_\_\_

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Please consider this authorization for the above named foster care provider /adoptive parents to seek emergency medical care and surgery for child or children listed above, if necessary. Providers will need to obtain a Montana Medicaid Provider number prior to billing. If surgery is needed or if there is a need for further clarification, please contact me or my supervisor at the above phone number or at (406) \_\_\_\_\_ to have a worker contacted after hours, weekends or holidays.

\_\_\_\_\_ Date \_\_\_\_\_  
<WORKER NAME>, <WORKER TITLE>

\_\_\_\_\_ Date \_\_\_\_\_  
<SUPERVISOR NAME>, Supervisor

SAMPLE REQUEST FOR AUTHORIZATION FOR OUT-OF-COUNTRY TRAVEL OF FOSTER CHILD

I, (name of worker), hereby request authorization for (name of child) to travel to \_\_\_\_\_ with \_\_\_\_\_.

The pertinent information follows:

1. Name of child: \_\_\_\_\_
2. Birth date of child: \_\_\_\_\_
3. Department's legal authority: \_\_\_\_\_
4. Names of Foster Care Provider: \_\_\_\_\_
5. Names of Parents: \_\_\_\_\_
6. Dates of travel and specific itinerary (attach copy of itinerary if more room is needed):  
\_\_\_\_\_  
\_\_\_\_\_

7. Information regarding the persons or group with whom the youth will be traveling if the youth will not be traveling with his/her foster parent:

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8. Describe the plan for payment of medical expenses while youth is traveling:

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A copy of the parent's authorization (or court order) authorizing the travel is attached.

Social Worker: \_\_\_\_\_

Date: \_\_\_\_\_

TRAVEL AUTHORIZATION

Montana Department of Public Health and Human Services hereby gives permission for

<CHILD NAME>

<CHILD DOB>

<CHILD SSN>

to travel to \_\_\_\_\_ with

\_\_\_\_\_

between the dates of \_\_\_\_\_ and \_\_\_\_\_.

\_\_\_\_\_ Date \_\_\_\_\_  
Shirley K. Brown  
Division Administrator

## Child and Family Services Policy Manual: Substitute Care for Children Request for Courtesy Supervision and Case Transfer

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### Request for Placement Approval

Foster Care Placement

When a social worker and his or her supervisor decide it is in the best interests of a child to be placed with a family in another county, the sending (placing) supervisor starts the process by making the request through Centralized Intake and by contacting the community social worker supervisor of the receiving county directly. The sending supervisor must send a summarized case history to the receiving community social worker supervisor. The case history should be sent via E-mail when possible.

Pre-adoptive Placement

If placement with a pre-adoptive family is planned, the FRS for the family should be contacted and approval sought from the FRS or FRS supervisor. No child should be placed with a pre-adoptive family without the knowledge and participation of the family's FRS. See section 603-5 for details regarding the pre-placement process.

The CSWS should also be notified of the planned placement.

Once the child is placed with the pre-adoptive family, responsibility for supervision of the placement transfers to the family's FRS.

### CAPS

The sending social worker, after having updated all relevant CAPS screens, should share the case with the receiving community social worker supervisor through the AXED screen. The receiving social worker supervisor will respond to the request within 10 working days.

### Request for Courtesy Supervision

After the receiving county's supervisor agrees to the move, the social worker from the sending county sends written information on the case. **At a minimum, material sent should include:**

- **all pertinent dictation;**
- **parental placement agreement or legal documents;**
- **case plan DocGen DFS 427, Foster Care Review, Parts A and B;**
- **DPHHS-CFSD-107 Birth Family Social and Medical History, including a current Part E Child Assessment by Foster Care Provider;**

## Child and Family Services Policy Manual: Substitute Care for Children Request for Courtesy Supervision and Case Transfer

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- **DPHHS-CFSD-026 Master Checklist**;
- **DPHHS-CFS-206 Information on Child for Placement Purposes, Part A (and Part B if completed); and**
- **other pertinent information, including school reports and psychological evaluations.**

In an emergency situation, the child may be placed in a **licensed** home prior to sending the written information, but only with the approval of both the sending and receiving counties' supervisors. Information should be sent as soon as it is available.

The request for courtesy supervision and/or case transfer should be recorded on CNTL by the sending social worker.

**NOTE:** Placement of a child into a group home or child care agency remains the responsibility of the sending social worker, in coordination with the facility staff. Specific requests for time-limited intervention, investigation or ancillary services may be made to the community social worker supervisor in a receiving county on a case-by-case basis and will be accepted as staff time is available. Should the placement in the group home or child care agency disrupt, the responsibility for case planning remains with the county that placed the child.

### **Foster Home Selection**

If the placing social worker has a potential placement identified in the receiving county, information pertinent to placement of the specific child in the home should also be sent to the receiving county. If the potential placement is not in a licensed foster or approved adoptive home, the request from the sending worker must clearly specify if the request is for approval of an unlicensed kinship placement or if the request is for the home to be licensed for foster care or approved to adopt.

The receiving county community social worker supervisor and family resource specialist supervisor will determine what action needs to be taken to determine if the prospective home is an appropriate placement for the child.

When selecting a foster or kinship home for a child, the child's safety and well being must be of paramount consideration. No child shall be placed in an unlicensed kinship home where there is anyone residing who has received services for substantiated

## Child and Family Services Policy Manual: Substitute Care for Children Request for Courtesy Supervision and Case Transfer

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abuse or neglect **unless a written exception is granted by the regional administrator.**

No child shall be placed in an unlicensed kinship home where there is anyone residing who has a felony conviction for any of the following:

- child abuse or neglect
- child sexual abuse
- partner or family member assault;
- any crime against children (including child pornography);  
or
- for a crime involving violence, including rape, sexual assault, or homicide.

In addition, no child shall be placed in an unlicensed kinship home where there is anyone residing who has a felony convictions for any of the following if the offense for which they were convicted occurred within the past 5 years:

- physical assault;
- battery; or
- a drug related offense, including felony alcohol related convictions.

The child may be placed in a foster home that meets the requirements for a provisional license (Mont. Admin. R. 37.97.106(2)), **however a provisionally licensed home is ineligible to receive IV-E payments for an otherwise IV-E eligible child.** Prior to placement the community social worker supervisor in both counties must agree to the placement.

### Receiving County's Responsibilities CAPS

When the receiving county has received the case information, the community social worker supervisor has agreed to the placement and the receiving county social worker has been notified of the child's move, the receiving county becomes the county of service **and the county responsible for supervision of the placement.** The sending county is not to provide "long

## Child and Family Services Policy Manual: Substitute Care for Children Request for Courtesy Supervision and Case Transfer

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distance" supervision. An exception to this can only be made if the regional administrator(s) for both the sending and receiving counties agree to grant an exception.

If the case has not already been shared with the receiving county social worker on CAPS, the sending worker must share the case. Acceptance of the case should be recorded on CNTL by the receiving county social worker.

The sending county social worker remains the primary worker for the case. The assigned social worker in the receiving county is responsible for providing services for the child, updating CAPS screens, the DPHHS-CFSD 107 Birth Family Social and Medical History, the DPHHS-CFSD-026 Master Checklist, and the case plan (DFS 427A) and providing information needed for FCRC. See sections 409-1, Foster Care Review Committee.

The receiving county social worker must notify the sending county social worker of services that are recommended or requested by the foster parents or needed by the child prior to the services being offered **if the sending county will be responsible for payment for the services.**

### Problem Resolution

If the placement of a child from one county to a second county is not mutually agreed upon by the social workers and their immediate supervisors, the issue will be referred to the respective regional administrators, and then, if needed, to the division administrator for resolution.

### Courtesy Supervision Parents

If the parents of a child(ren) in a foster care placement (or intact family for whom the Department has an open case) move to another county, the worker for the parents must contact Centralized Intake and the CSWS in the county to which the parents have moved and request that a worker be assigned to the case.

The social worker from the sending county must send written information on the case. **At a minimum, material sent should include:**

- **the treatment plan;**
- **all pertinent dictation;**

## Child and Family Services Policy Manual: Substitute Care for Children Request for Courtesy Supervision and Case Transfer

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- parental placement agreement or legal documents;
- case plan DocGen DFS 427, Foster Care Review, Parts A and B;
- DPHHS-CFSD-107 Birth Family Social and Medical History including a current Part E Child Assessment by Foster Care Provider;
- DPHHS-CFSD-026 Master Checklist; and
- other pertinent information such as psychological or chemical dependency evaluations, etc.

The case is shared between the two assigned workers, but the worker in the county in which there is court jurisdiction remains the primary worker. The secondary worker makes recommendations to the primary worker regarding the direction of the case plan. If there is disagreement, the problem resolution procedure will be followed.

An exception to requesting courtesy supervision can only be made if the regional administrator for both the county from which the parent(s) have moved and the county to which they have moved agree to grant an exception.

### References

Mont. Code Ann. § 1-1-215  
Mont. Admin. R. 37.97.106

**Child and Family Services Policy Manual: Substitute Care for Children  
Interstate Compact on the Placement of Children (ICPC)  
Placement of Children Into or Out of State**

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<b>Purpose</b>	The ICPC is the best means Montana has to ensure protection of and services to children who are placed across state lines. The Compact, a uniform law that has been enacted by all states of the United States, the Virgin Islands, and the District of Columbia, establishes orderly procedures for the interstate placement of children and fixes responsibilities for those involved in placing the child. Montana enacted ICPC in 1975.
<b>Policy</b>	All applicable cases of child placement into or out of the state shall be in compliance with ICPC. <b>This includes all applicable placements of children in the custody of DPHHS.</b>
Safeguards Offered by the Compact	<p>In order to safeguard both the child and the parties involved in the child's placement, the ICPC does the following:</p> <ul style="list-style-type: none"> <li>• provides the sending agency the opportunity to obtain a home study of the proposed placement <b>prior</b> to the placement;</li> <li>• allows the prospective receiving state to ensure that the placement is not "contrary to the interests of the child" and that its applicable laws and policies have been followed before it approves the placement;</li> <li>• guarantees the child legal and financial protection by fixing these responsibilities with the sending agency or individual;</li> <li>• ensures that the sending agency, court, or individual does not lose jurisdiction over the child once he moves to the receiving state; and</li> <li>• provides the sending agency the opportunity to obtain supervision and regular reports on the child.</li> </ul>
ICPC Administrator	Each state party to ICPC has an administrator appointed by the Governor of that state. The Montana ICPC Administrator is located in the DPHHS central office at (406) 444-5900.
Role of Administrator	The compact administrator's office serves as a central clearing point for all referrals for interstate placements. The compact administrator or deputy authorizes the requested investigation of the proposed placement and determines whether the placement is contrary to the interests of the child.

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Interstate Compact on the Placement of Children (ICPC)  
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Type of Placements  
Covered by ICPC

The Compact applies to the following four situations in which children may be sent to other states:

- placement prior to adoption, including private agency and independent adoptions;
- placement into foster care, such as foster homes, group homes, residential treatment facilities, and institutions, including parental placements into such facilities;
- placements with parents and relatives when a parent or relative is not making the placement; and
- placement of adjudicated delinquent youth in institutions in other states.

The ICPC must be used when considering pre-placement visits. Visits of 30 days or less (i.e., Christmas vacations, spring break) are exempt from ICPC compliance.

Exclusion

Not all placements of children into other states are subject to the Compact. The Compact does not include placements into medical or mental health facilities (non-residential treatment facilities) or into boarding schools. Article VIII (a) also specifically excludes from Compact coverage the placement of a child made by a parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or a child's non-agency guardian, when the placement is to another of the persons mentioned in this sentence.

Who Must Use the ICPC

Sending agents are required to use the Compact when they "send, bring, or cause a child to be brought or sent to another party state." These "sending agents" are the following:

- a state which is party to the Compact, or any officer or employee of a party state;
- a subdivision, such as a county or city, or any officer or employee of the subdivision;
- a court of a party state; or

**Child and Family Services Policy Manual: Substitute Care for Children  
Interstate Compact on the Placement of Children (ICPC)  
Placement of Children Into or Out of State**

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- any person (including parents and relatives), corporation, association, or charitable agency or organization of a party state.

Montana Tribes must use ICPC for placing and receiving children across state lines in accordance with Title IV -E contracts and agreements with the Department.

**Requests for home studies in contested divorce custody cases in which the state child protection agency is not involved do not go through ICPC.**

### Other Compacts

Several other compacts deal with children. The one most frequently encountered and confused with the ICPC is the Interstate Compact on Placement of Juveniles (ICJ), (Mont. Code. Ann. § 41-6-101 et seq.). This deals with the placement of juveniles who are adjudicated delinquents and need probation or parole supervision when placed with a parent or relative in another state and the return of runaways to their state of residency. ICPC is required for the placement of adjudicated delinquents in any type of out-of-state foster care placement, including residential treatment in another state.

### Procedures for Making Compact Placement

Sending Agent

The sending agent in Montana:

1. provides written notice of intent to place to Montana's Compact Administrator by requesting an evaluation of the placement resource on a **signed ICPC 100-A form** (DPHHS-DFS 19C- Interstate Compact Application Request to Place Child or Evaluation of Facility), and
2. sends **three copies** of the following to the Montana Compact Administrator:
  - a. a cover letter or memo outlining what services are being requested in the receiving state;
  - b. the child's social study;
    - i. for DPHHS adoptions, a DPHHS-DFS 107 form, with additional information that is pertinent for the placement request added;

**Child and Family Services Policy Manual: Substitute Care for Children  
Interstate Compact on the Placement of Children (ICPC)  
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- ii. for non-DPHHS adoptions, a DPHHS-DFS 107 form, Parts 1 and 2, or the equivalent;
- c. court documents, if custody is held by someone other than the parent, or, in the case of the parent(s) making an adoptive placement, a document giving parental authority to the receiving agent; and
- d. a DPHHS-DFS 19E- Financial/Medical Plan, which shows IV-E eligibility and the proposed financial and medical arrangements for the child, when a relative, foster care, and adoptive placement of a child in DPHHS custody is being requested.

**CAPS**

When the placing worker has access to CAPS, the DPHHS-DFS 19C (100A) and DPHHS-DFS 19E forms should be produced through the completion of the Interstate Compact Placement Detail (ICPD) screen on CAPS and the generation of the appropriate document by the worker. The 19C form is produced from DocGen 350 and the 19E form is produced from DocGen 352. These forms should be signed by the worker and submitted with the other required materials to Montana's Compact Administrator.

## Sending State

The compact administrator in the sending state:

- reviews the documents for completeness and may return incomplete documents or those with an insufficient number of copies;
- signs the ICPC 100-A; and
- forwards the ICPC 100-A and two copies of the documents to the receiving state compact administrator.

## Receiving State

The compact administrator in the receiving state:

1. reviews the material for completeness and compliance with receiving state law;
2. if the application is incomplete or not in compliance, may:

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- a. deny the placement;
- b. negotiate a solution to the problem;
- c. return the request to the sending state for completion; or
- d. hold the request and advise the sending state that additional information is needed.

3. if the application is complete, forwards one copy to appropriate party for local action.

### **CAPS**

The Montana Compact Office enters all ICPD screens for new requests when the sending agent does not have access to CAPS. All individuals entered by the Compact Office are entered in CAPS as people and the worker should make the individual a client, when applicable.

### Home Evaluation

When requested, the worker in the receiving state completes a written evaluation of the proposed placement, which contains a child protective services check, criminal records check, and recommendation on placement of the child, and sends three copies of the evaluation to the receiving state compact administrator. The administrator then decides whether the placement request will be approved and forwards the completed application (ICPC 100-A), along with two copies of the written report, to the sending state compact administrator.

The evaluation should be completed within 60 days of receipt of the request from the sending state by the receiving state ICPC administrator unless there are circumstances beyond the control of the receiving state (for example, delays in fingerprint checks). If these circumstances exist, then the receiving state has an additional 15 days to complete the study (75 days total) if the items causing the delay were requested within the first 15 days of receiving the request.

If the evaluation cannot be completed in the 60 days but is completed within 75 days, it should include a statement of why the study required the additional time. This information will be utilized for Federal reporting.

Foster and adoptive parent training does not have to be

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completed within the 60 or 75 day window, only the home evaluation.

Sending State

When the completed ICPC 100-A is received from the receiving state, the sending compact administrator notifies the sending agent in writing.

**CAPS**

The Montana Compact Administrator enters the approval or denial of the 100A form on the Interstate Compact Action Detail (ICAD) screen in CAPS. This is done when the approved or denied 100A form of a Montana child is received from another state or when the Montana Compact Administrator approves or denies a placement into this state.

**NOTE:** Placement may not occur until the 100-A is signed by the receiving compact administrator or his verbal approval is granted. The local worker only makes a recommendation about the placement; he cannot legally approve or deny the placement.

The receiving state can refuse to provide services to children placed without ICPC approval and may request that the children be returned to the sending state. Adoptions have been overturned because of failure to comply with ICPC.

**Priority Placement Requests**

Under Article VII of the ICPC law the ICPC Administrators have the authority to promulgate rules to carry out the terms and provision of the Compact. Regulation Seven, which became effective October 1, 1996, and was incorporated into Montana rule on January 21, 1997, provides provisions for obtaining expedited home studies for certain parent and relative placements. Regulation Seven was amended at the 2001 meeting of the ICPC Administrators to prohibit the use of the regulation when the child has already been placed with the proposed placement resource in the receiving state in violation of ICPC and for requests for foster care and adoptive home studies.

Types of Placements

Regulation Seven applies to the following circumstances:

1. a. the proposed placement recipient is a parent, step-parent, grandparent, adult brother or sister, or adult uncle or aunt of the child; **and**

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- b. (i) the child is under two (2) years of age, (ii) is in an emergency shelter, or (iii) has spent a substantial amount of time in the home of the proposed recipient; **or**
2. the receiving state compact administrator has possessed a properly completed ICPC packet for more than thirty (30) business days and the sending agent has not received approval or denial of the ICPC 100-A form.

Procedures for  
Priority Placement  
Requests

The Priority Placement Request procedure is as follows:

- The court shall make a finding that a priority placement is necessary and, within two (2) business days of the finding, forward the order to the sending agent. The order should include the finding and the name, address, telephone number, and, if available, the fax number of the judge and the court;
- Within three (3) business days of receiving the court order, the sending agent will transmit the order, a completed ICPC 101 form (located in CFSD public folders), and, if not already submitted, a completed ICPC 100-A form (DPHHS-DFS 19C) and supporting documentation to the sending state compact administrator;
- Within two (2) business days after receiving a complete priority home study request, the sending state compact administrator will transmit the request by overnight mail to the receiving state compact administrator. If the sending state compact administrator determines the request to be incomplete, he has two (2) business days to request the additional information. At this point the time line does not apply until the additional information is received;
- A decision on the proposed placement shall be made by the receiving state compact administrator within twenty (20) business days following receipt of a complete priority home study request. If the receiving state compact administrator or the local office determines the request to

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be incomplete, the receiving state compact administrator has two (2) business days, upon making this determination, to contact the sending state compact administrator and request the needed information. At this point the time line does not apply until the additional information is received. The ICPC 100-A form with an approval or denial should be faxed to the sending state compact administrator once a decision has been made;

- The home study in the receiving state can be completed on the ICPC 102 form (located in CFSD public folders), if this is deemed appropriate by the local supervisor;
- If the receiving state compact administrator does not make a decision on the request within the twenty (20) business days, the sending state court may request assistance from the receiving state court in obtaining the home study;
- When DPHHS is the sending agent, the local office is responsible for keeping the court informed of the status of the priority request; and
- If a receiving state determines that it is unable to complete the home study and make a decision within the time frame, the receiving state compact administrator shall notify the sending state compact administrator by fax of this inability, the date on or before a decision will be reached, and a full explanation of the circumstances which are delaying compliance.

**After Placement**

After placement occurs, the following procedure is followed:

- the sending agent signs and sends the ICPC 100-B form (DPHHS-DFS 19D - Interstate Compact Report on Date or Placement Status) to the sending state compact administrator;
- the sending state compact administrator signs the ICPC 100-B form and sends it to the receiving state compact administrator; and
- the receiving state compact administrator arranges for any

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requested supervision or services to be carried out by the local agency.

Reports After Placement Children placed out of state should be visited in the home or institution by a supervising worker at least every 6 months and 3 copies of a progress report detailing the visit should be sent to the receiving state compact administrator. The receiving state compact administrator will send all reports to the sending state compact administrator, and the sending state compact administrator will then forward the reports to the sending agent.

**CAPS** When the placing worker has access to CAPS, the DPHHS-DFS 19D (100B) form should be produced by the worker by entering the placement date or compact closure reason and date on the Interstate Compact Action Detail (ICAD) screen and generating DocGen 351. When a progress report is received in the sending state, the date of the progress report should be entered in the "Progress Report Received Date" field on the ICAD screen.

**Sending Party Responsibility**  
Financial Responsibility When a compact has been signed by a sending state compact administrator and receiving state compact administrator and a placement occurs, the sending party is then obligated by law (Mont. Code Ann. § 41-4-102) for the costs of sending the child to the receiving state, the costs of returning the child to the sending state, and other costs incurred if the child needs foster care and/or medical care.

Changes After Placement When a child moves from one out-of-state placement to another, a new ICPC request is required. When a placement is terminated, the sending agent is responsible for notifying the sending state compact administrator of the change on a signed ICPC 100-B form.

Correspondence Between Sending Party and Receiving Party All correspondence should be sent in **triplicate** through the compact office in the state originating the correspondence. If, for reasons of urgency, it is necessary that correspondence be sent directly to the sending or receiving agent, **two** copies should be sent to the compact administrator in the originator's state, with a note that a copy has already been sent to the sending or receiving agent.

Confidentiality Any information provided to the Montana ICPC Administrator will be handled according to the Department's confidentiality

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policy.

**References**

Mont. Code Ann. § 41-4-101, et. seq.

Mont. Admin. R. 37.50.901

Public Law 109-239

Rev. 10/03

Rev. 10/06

## Child and Family Services Policy Manual: Substitute Care for Children Foster Child – Income or Resources

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**Purpose** This section clarifies the circumstances and time frames under which the Department will become payee for income or resources available to children in out-of-home care.

**Income Sources** In all cases, the placing worker asks the parent or guardian about possible income sources available to the foster child. These sources may include:

- Social Security Benefits (S.B.) - death and survivor benefits, retirement benefits, disability benefits;
- Supplemental Security Income (SSI);
- Veterans Administration Benefits;
- Railroad Retirement Benefits; or
- Trust Income.

When the Department is partially or fully funding the cost of out-of-home care and the child will be in placement for 60 days or longer, the placing worker must apply for the Department to become payee. The central office address (P.O. Box 8005, Helena, MT 59604) will be used on all requests to become payee so it receives all monthly checks and correspondence.

All funds received will be utilized in accordance with DPHHS policy 403-2, Trust Accounts. All paperwork to continue eligibility for benefits will be completed in the central office, with the assistance of field staff, when appropriate. DPHHS field offices should notify the Social Security Administration when a child enters a new placement, enters or leaves a placement funded more than 50% by Medicaid, or leaves foster care.

**CAPS** CAPS DocGen D336, [Social Security Notification Letter](#), can be used to provide this notification. Children lose their eligibility for SSI cash assistance when they are placed in a correctional facility such as Pine Hills School so the Social Security Administration should be notified immediately of these placements.

If the child will be in care for less than 60 days, the placing worker is responsible for requesting a prorated amount of money from the parent or guardian to help defray the cost of

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care.

- Exceptions** The placing worker and his or her supervisor may choose not to apply for the resources if, in doing so, the parent or guardian would be financially unable to provide a suitable home environment for the child when he or she returns home. Justification for not applying for available income must be approved by the regional administrator. The worker's written request and supervisor's and regional administrator's approvals must be filed in the child's case record.
- Children with SSI** The Department will become payee for a child's Supplemental Security Income if the Department has been granted custody, supervision, or control of the child and is funding the child's cost of care. If the Department is not funding the cost of care, it should be noted in the case notes that the child is receiving SSI benefits and SSI Medicaid. Children in foster homes and groups homes qualify for the Montana State Supplemental Payment. Department Form 108 should be submitted to the Social Security Administration to initiate this payment.
- In cases where DPHHS does not make foster care payments, SSI may be paid directly to the foster parent or institution providing care to the child. In these instances it should be noted in case notes that the child is receiving SSI benefits. If the child is denied benefits in the future, it is our responsibility to appeal the decision on behalf of the child.
- SSI Resources** Children receiving SSI benefits may have resources up to \$2,000.00. Resources = current balance minus income received in the current month.
- SSI/ IV-E Eligibility** Children receiving SSI benefits at the time of removal are not eligible for IV-E. This eligibility is denied based on the fact that the child received SSI benefits in the month the petition was filed or the parental agreement was signed.

## Child and Family Services Policy Manual: Substitute Care for Children Trust Accounts

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<b>Lump Sum Payments</b>	Lump sum payments of back benefits and parental contributions received on behalf of a child will be applied against the child's cost of care for the months for which the benefits or contributions were intended. Any remaining funds can be held in a trust account. This excludes any lump sum payments which must comply with the dedicated account policy of the Social Security Administration.
<b>Use of Available Funds in Trust Accounts</b>	<p>Funds in trust accounts which exceed the child's cost of care should be directed toward the long-term goal of developing healthy, well-adjusted adults. These funds are intended to be used first to benefit the child through the purchase of clothing and other items that meet the child's personal needs. Remaining funds may be used for the child's anticipated future needs such as higher education, medical bills, or expenses related to the transition out of foster care.</p> <p>Efforts should be made to manage the account so that, at age 18, a youth does not receive a lump-sum payment he or she may immediately spend inappropriately.</p>
<b>Resources</b>	Resources are defined as real and personal property owned by a person. This includes bank accounts, vehicles, land, cash value of life insurance, trusts in which the applicant or their representative has unrestricted access, to list a few. Money received is considered income in the month received and a resource the following month so, in determining the amount of resources in a child's account at any given time, subtract income (from the current month) from the account balance.
<b>Maximum Trust Account Balance</b>	The maximum trust account balance is a specified balance that cannot be exceeded if the child is going to maintain eligibility for certain programs. Balances over \$2,000 will result in loss of SSI eligibility. Trust accounts with balances exceeding \$10,000 will result in loss of IV-E foster care eligibility
<b>Trust Account Plan CAPS</b>	<p>Before any withdrawals can be made from a trust account, a trust account plan must be established. A plan is established by the completion of the Trust Account Plan Detail (TAPD) screen on CAPS.</p> <p>On this screen the worker details how funds in excess of the child's cost of care will be utilized. The screen must be approved by the primary worker's supervisor and regional administrator.</p>

## Child and Family Services Policy Manual: Substitute Care for Children Trust Accounts

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**A plan should only be established if the child has income in excess of the cost of care or had a trust account prior to February 1997.** This includes children who have been excepted, in accordance with this policy, from the application of funds to cost of care.

### Withdrawal

Funds are withdrawn from a child's trust account when the primary\_worker for the child completes the Trust Account Expenditure Detail (TAED) screen on CAPS and obtains the approvals of their supervisor and regional administrator. Regional administrator approval is not required when the expenditure has already been approved in the trust account plan. **No expenditures can be made until a trust account plan has been completed and received the necessary approvals.**

To ensure an exact accounting of the money expended, the Department prefers that a service be provided and a bill incurred before a payment is made. Bills and receipts should be retained in the child's case record in the field office.

It is the worker's/supervisor's responsibility to ensure that money requested from a child's account is used appropriately and for the purposes intended. Purchases made for the child belong to the child, not the foster home.

### Closure of Trust Accounts CAPS

When a child receiving income leaves state care, the worker should notify the Social Security Administration of the foster care closure date. This can be done by printing CAPS DocGen D336, [Social Security Notification Letter](#). Funds should be disbursed out of the trust account through completion of the TAED screen after all overpayments to the Social Security Administration have been resolved and the final month of cost of care is reimbursed.

### Adoptions

When the [Order of Adoption Summary Decree](#) is received, the central office adoption specialist notifies the Social Security Administration that:

- the child has been legally adopted;
- DPHHS no longer wishes to be payee; and
- any remaining balance in the trust account will be forwarded to the adoptive parents.

## Child and Family Services Policy Manual: Substitute Care for Children Trust Accounts

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The central office adoption specialist notifies the adoptive parents that:

- the child has been receiving benefits from the Social Security Administration;
- the Social Security Administration has been notified of the adoption finalization;
- any remaining trust account balance will be forwarded to the adoptive parents; and
- the child may be eligible for continued benefits and the adoptive parents may want to contact the Social Security Administration to become payee on these benefits.

### Social Security, VA Benefits

Since Social Security benefits are paid in arrears, benefits received the month the child is adopted should be applied against the prior month's cost of care. Social Security recipients always have continued eligibility following adoption, provided eligibility was established prior to the decree of adoption. The child is eligible to receive Social Security benefits until age 18, or 19 if still in high school, or until marriage. A child receiving VA benefits remains eligible until age 18 or until 22 if enrolled in an educational program.

### SSI

The trust accounts of SSI recipients who are adopted should not be closed until a determination of continued eligibility, which is based on the adoptive parents' income, has been made. Any SSI benefits received by DPHHS after the adoption on behalf of children deemed ineligible will be returned to the Social Security Administration. After any overpayments have been returned to the Social Security Administration, the trust account should be closed through the worker's completion of the TAED screen. Subsidy payments are frequently approved for children whose SSI benefits are terminated.

## Child and Family Services Policy Manual: Substitute Care for Children Child Support Enforcement Referrals

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<b>Background</b>	<p>Montana law provides for the collection of child support when youth in the custody of the department are placed in out-of-home settings. Parents are expected to contribute toward the costs of such care to the fullest extent possible without undue hardship on the family.</p>
<b>Child Support Enforcement Services</b>	<p>The Child Support Enforcement Division (CSED) will provide the following services:</p> <ul style="list-style-type: none"> <li>• Enforce Montana District Court orders for child support entered after 10/01/1993 for IV -E children and court orders entered after 7/1/1997 for non IV -E children;</li> <li>• Establish an order for child support, if none exists, for IV -E and IV -A children;</li> <li>• Locate absent parents; and</li> <li>• Establish paternity (IV -E and non IV -E, if CSED has jurisdiction)</li> </ul> <p>CSED will seek support from each parent on behalf of the eligible children, even when the parents live together or when one parent lives in a state other than Montana. Referrals made for non IV -E/IV -A children may not be pursued by CSED, unless they already have an open child support case or existing order for support.</p>
<b>Roles of CFS Staff</b>	<p>Social workers must make an electronic referral by entering the data into the CAPS/SEARCHES interface on all children in paid foster care.</p> <p>Financial specialists will act as Child Support enforcement designees, which includes identifying which cases are appropriate for parental contribution, applying policy, and referring to Child Support Enforcement. Financial specialists are also responsible for monitoring and identifying cases for field staff to refer to Child Support. The financial specialist will provide oversight for the referral process and will make decisions regarding good cause claims not to pursue child support. Financial specialists will provide documentation to the Child Support office to validate good cause claims.</p> <p>Social work supervisors will decide good cause claims when there is a disagreement between the social worker and the</p>

## Child and Family Services Policy Manual: Substitute Care for Children Child Support Enforcement Referrals

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financial specialist. The supervisor will review the documentation and inform both the social worker and the financial specialist of the decision. The decision will be documented on ACTD by the financial specialist.

### Submitting Child Support Referral

A CSED referral must be made on each child who will be in the paid care and custody of DPHHS for more than 90 days. The social worker will receive an alert that states “Child Support referral must be done by (date)”, but should wait until the IV -E Unit has determined if the child will be IVE eligible. The worker will receive an alert that states “IV -E eligibility has been added for client.” Once the IV -E unit makes this determination, submit the CSED referral.

**When referring a child whose placement is being paid using IV-A Emergency Assistance, the referral must state IV-A funding is being used and the expiration date.**

Prior to entering the child support referral, the social worker needs to ensure that the following screens are updated on CAPS for parents, all putative fathers, and the child(ren):

For the parents/putative parents:  
PERD, ICWD, EMPL, ADDL, AKAD, and MEDS(height, weight, hair color, and eye color)

For the child:  
SERL, CELL, RELL, ICWD, MEDS

The child support referral begins on the SIID screen for the child. A separate child support referral will be submitted for each child in paid foster care. To add an application, enter an “A” on the select line and enter. The next screen that appears is CSED. The information at the top of the screen is defaulted to the current assigned worker. The relationship information is from the client’s RELL screen. The worker must enter the signature on assignment of rights information at the bottom of the screen. The IV -E field cannot be entered as it is imported from the CELL screen.

Once the signature information is entered, the worker is brought to the CSCD screen and must answer the series of questions listed with Y (yes), N (No) or U (unknown). Certain questions require an answer based on answers to prior questions. If the worker knows that the parents were married, the date of

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marriage is required to allow child support to determine paternity.

The next screen(s), CSFD, is information regarding the father/putative fathers that is imported from other screens on CAPS. The information on this page is not correctable from this screen. The worker would need to refer back to whichever CAPS screen is applicable for the question.

The following screen, CSF2, is additional information about the father(s). The good cause reason field is an F12 lookup and is a required field. If good cause reasons exist for not pursuing the support order against the parent, SEE GOOD CAUSE portion of this policy. The two comment fields at the bottom of the screen are free-form text fields for the worker to enter additional information about the father(s) situation and general comments such as “potentially dangerous”, explanation of good cause reason, or if the family is receiving IV -A with the expiration date. When there is more than one father/putative father listed, the worker will not be able to press Enter to get to the next screen and must press F8 to go to the next father.

Upon completion of the father(s)' information, the next screen is the mother's screen, CSMD. This is similar to CSFD and is not an updatable screen.

The following screen, CSM2, is the mother's additional information screen. It is identical to the father's CSF2 screen.

The final screen is PRID, which lists medical and life insurance information. The medical information is imported from the MEDS screen and cannot be added on this screen. The life insurance information can be added by pressing F11. Once this screen is complete, the worker is returned to SIID screen.

To electronically send this to Child Support (ELECTR status), the worker must enter an “E” on the line in front of completed. A referral may be modified or deleted until it is in the ELECTR status. An application cannot be put into ELECTR status until the referral has been approved if good cause reasons of “do not pursue” are entered on either the father or the mother.

### **Good Cause**

Good cause for not pursuing a support order against a parent may be claimed under the following circumstances:

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Child Support Enforcement Referrals**

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1. It is not in the best interest of the child. Pursuing or collecting child support is reasonably anticipated to result in:
  - a. physical or emotional harm to the child for whom support is sought; or
  - b. the child was conceived as a result of incest or forcible rape.
2. The case plan is to return the child home within 90 days from removal.
3. Parental rights have been terminated.
4. Legal proceedings for adoption of the child are pending before a court of law; or the Department is assisting the parent(s) to resolve the issue of whether to keep the child or relinquish him or her for adoption and such discussions have not continued for more than three months.
5. The parent is deceased. Do not claim good cause if it is likely that support can be collected from an estate.

**Claiming Good Cause**

The good cause determination is based on the corroborative evidence provided on behalf of the child's parent(s). The placing worker must:

1. State the circumstances upon which the claim is based;
2. Provide corroborative evidence within 20 days from the day the claim was made; and

NOTE: If additional time is required, the financial specialist shall allow a reasonable additional period of time.

3. Upon request, the social worker will provide additional corroborative evidence if available. The CSED liaison may provide assistance.

**Proof of Good Cause**

A good cause claim may be corroborated with the following types of evidence:

1. Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;

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2. Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;
3. Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative;
4. Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child;
5. Written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child;
6. A written statement from a public or licensed private social agency that the recipient is being assisted by the agency to resolve the issue of whether to keep or relinquish the child for adoption; or
7. Sworn statements from individuals other than the recipient with knowledge of the circumstances which provide the basis for the good cause claim.

**NOTE:** In the process of obtaining information to support the good cause claim, it may become necessary to contact the absent parent or putative father. In that case, notify the caretaker relative prior to making the contact.

### **Determining Good Cause**

The financial specialist will determine if pursuing child support is against the best interests of the child based on the evidence provided by the placing worker. The determination will be made within thirty (30) days from the day the claim is made. This time period may be extended only when the agency documents a need for additional time because information cannot be obtained within the time period or the claimant cannot provide evidence within this time period.

The following guidelines are provided to assist the Financial Specialist in the determination process:

1. A finding of good cause for reasonably anticipated physical or emotional harm to the caretaker relative

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must be of such nature or degree that it reduces the relative's capacity to adequately care for the child.

Consideration will be given to the following:

- a. The present emotional state of the individual subject to emotional harm;
- b. The emotional health history of the individual;
- c. Intensity and probable duration of the emotional impairment;
- d. The degree of cooperation required; and
- e. The extent of the involvement of the child in the pursuit of support.

Should the placing worker's statement, along with the supporting evidence, not provide a sufficient basis for making the determination, the Financial Specialist will contact the social worker to obtain additional information.

### **Good Cause Decision**

The final determination that good cause does or does not exist will be documented by the financial specialist:

1. On ACTL for the child, press F11 to add a detail screen. On ACTD screen, enter the date the decision was made, the activity type would be correspondence (COR), the purpose would be decision point and monitor (DPT and MNT), and the goal would be well being (WEL). In the summary, the financial specialist should list the findings and the basis for the good cause decision, specifically listing what documents were used and the dates of the documents.
2. If the good cause claim is approved, the financial specialist will send the supporting documentation to the servicing Child Support office.
3. Good cause determinations must be re-evaluated every 6 months. At the time of review the financial specialist will submit a new referral on CAPS and enter the new good cause determination. If the perpetrator of abuse is in prison after the good cause claim was made, it may no longer be valid.  
NOTE: If CSED has an existing case against a parent

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and receives a referral marked "good cause" for that parent, any action currently in process in that case (including the collection of current support) will stop.

### CSED Offices

Eastern Region and  
South Central Region(Except Stillwater, Sweet Grass, Wheatland,  
Judith Basin, and Fergus Counties)  
2121 Rosebud Drive  
Suite E  
Billings, MT 59102  
(406)655-5500

North Central Region  
201 1<sup>st</sup> St So., Suite 1A  
Great Falls, MT 59405  
(406)727-7449

Southwestern Region (Plus Stillwater, Sweet Grass, Wheatland,  
Judith Basin, and Fergus Counties)  
17 W. Galena  
Butte, MT 59701  
(406)497-6600

Western Region  
2675 Palmer, Suite C  
Missoula, MT 59808  
(406)329-7910

OR Contact the Foster Care Liaison at (406) 497-6621 or  
tgreen@mt.gov.

### Change in Circumstances

IV-E Eligibility

An additional referral will need to be made if the child has become IV-E eligible or loses IV-E eligibility since the previous referral was made. The worker will again return to the SIID screen and add an "A" where the previous "E" was. Then follow the above steps to complete the referral.

Exit Reasons/  
Stop Collections

If the referral was sent electronically, CSED receives the Exit/Court reason automatically via the CAPS/SEARCHS interface the day after the code is entered on CAPS. It is important for the social worker to enter the proper exit reason for placements as this allows child support to stop collections.

Exit reasons that let child support know to stop current collections are: AFN, AGE, COR, DED, EMP, JOC, POG, POP, RTH, RUN, and SAD. However, if the code is changed after the

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initial entry, Child support is not notified or the change. Court reasons for stopping current collections are: AFD, DIS, FRT, MRT, PLC, PRT, and RPA.

Hard Copy Referrals	If the case was referred by hard copy form (as were some of the older foster care cases), CSED does not receive the Exit/Court reason because a link has not been established between CAPS and SEARCHS. In these circumstances, the social worker should advise CSED of the Exit/Closure reason to ensure timely termination of any outstanding actions they have.
Absent Parent	When the social worker receives the alert “Absent parent received from SEARCHS”, a new CSED referral will need to be submitted including the absent parent.
Rejected Referrals	If for some reason, the CSED referral is rejected by Child Support, an alert will go to the social worker and the financial specialist that states “CSE referral for client has been rejected” and on the SIID screen the status will be reverted to “Inwork”. The social worker can make the appropriate changes and resubmit or delete the application if necessary.
Non-paid to Paid Placements	When a child changes from an initial non-paid placement to a paid placement, the social worker will be required to submit a CSED referral. Again as stated on page 1, wait until the IV -E unit has determined if the child will be IV-E eligible. The worker will receive an alert that states “IVE eligibility has been added for client.” Once the IVE unit makes this determination, submit the CSED referral.
<b>Payments</b>	All child support payments are payable to the Child Support Enforcement Division, P.O. Box 5955, Helena, MT 59604. Child support is credited to each individual child and used to abate the cost of that child's foster care.
<b>References</b>	Titles IV-B and IV-E of the Social Security Act Sections 45 CFR 232.40 thru 45 CFR 232.43, 45 CFR 302.52 Mont. Code Ann. §§ 41-3-446 ARM 37.49.301

## Child and Family Services Policy Manual: Substitute Care for Children

### IV\_E Foster Care

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#### Overview

Title IV-E is a Federal entitlement program under the Social Security Act, for children in foster care who meet specific eligibility requirements. For those children in foster care who are determined IV-E eligible, the Federal government will contribute approximately 72% of their maintenance costs. In addition, the Federal government will participate in allowable administrative costs at the rate of 50%.

The Federal reimbursement for IV-E eligible children makes up a large portion of Montana's foster care budget as well as the administrative budget for the Child and Family Services Division. Early eligibility determination and ongoing compliance are of great financial benefit to the children, and this Division. The following policy covers initial eligibility determination and continuing compliance to maximize Federal Title IV-E funds for Montana's Children.

#### Process

The placing worker completes the placement on CAPS. This placement will generate an electronic alert on CAPS to the eligibility unit at central office. An eligibility specialist (ES) will then generate an EA-1, "Application For Foster Care Eligibility/Medicaid" from CAPS and begin the eligibility determination process. The ES will initiate communication with the financial specialist (FS) in the region of removal. The FS in the region will be responsible to provide the eligibility unit copies of all court documents, including reports to the court and treatment plans that will support IV-E compliance. The eligibility unit at the central office location will maintain the hard copy official compliance file. If the compliance documents do not contain information specific to the child's deprivation status during the month of removal, additional information may be requested by E-mail or hard copy. The ES will then begin inquiry into the State's automated systems to gain the information necessary to determine IV-E eligibility.

Upon determination of IV-E eligibility, the ES will send a request to the appropriate Office of Public Assistance for Medicaid processing and will be responsible to place IV-E funding on the CELL screen in CAPS. The will be an ongoing responsibility of the ES. If we are out of compliance because court deadlines,

**Child and Family Services Policy Manual: Substitute Care for Children**  
**IV\_E Foster Care**

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permanency hearings, etc. are not met, the ES will remove IV-E funding eligibility until we are back in compliance. The ES will control all IV-E funding usage on a case by case basis. This funding usage information will be forwarded to Public Assistance for appropriate Medicaid program action. The ES will receive alerts from CAPS indicating placement moves, address changes, etc. in order to maintain this service.

Upon determination of IV-E ineligibility, the ES will send this determination to the appropriate County Office of Public Assistance with a request for Medicaid determination.

CAPS will continue to send address changes to TEAMS for Medicaid card mailing address purposes.

The process for funneling the appropriate documents as soon as possible to the regional financial specialist will be developed within each region.

All annual IV-E eligibility redeterminations will be generated and completed by the ES.

Questions regarding this process should be directed to your regional financial specialist or the IV-E Eligibility Unit Supervisor at Central Office.

IV-E 000	
Child And Family Services Division  IV-E FOSTER CARE	SECTION:  GENERAL
	SUBJECT:  INTRODUCTION

## **INTRODUCTION:**

A foster child is any child in an out of home placement (cannot be a prison) who is under the supervision and control by court order or written agreement of:

- Department of Public Health and Human Services (DPHHS); or
- A private not for profit child placing agency with whom DPHHS has entered into an agreement for licensing compliance purposes, i.e. Casey Family; or
- Tribal Court, Department of Corrections, State of Montana, and District Court Juvenile Probation.

The responsible state agency and/or private organization (as described above) must assume full or partial financial responsibility and be given placement and care authority for the child or the child cannot be determined to be Title IV-E eligible. Because of this financial responsibility, it is imperative that all avenues be pursued to obtain federal participation in the foster care funding.

**Title IV-E is a section of the Social Security Act that defines the legal and licensure criteria to qualify for the approximate 72% federal share in the foster care payments and 50% share for administrative purposes, 45 Code of Federal Regulations (CFR) 1356 outline the regulations in order to satisfy the requirements under the Act.**

**The AFDC state plan in effect on July 16, 1996 is the guiding document for the financial eligibility.**

**After a child has met all of the financial and legal criteria, the child is considered to be IV-E eligible and that eligibility will be entered on CAPS CELL screen. The information on eligibility is reported as our penetration rate or percentage of IV-E eligible children as compared to the entire foster care population. This percentage is used to determine the portion of foster care expenses which can be attributed to IV-E and claimed to the Administration for Children and Families. The department's success in meeting the criteria established for federal funding participation (FFP) will determine the amount of funding available for the state foster care budget. For every child whose IV-E cannot be determined there is a potential loss of 72% in benefits for the child for that foster care episode; in addition to the loss in benefit funds there is a loss of FFP sharing in administrative costs as well.**

IV-E 000	
Child And Family Services Division  IV-E FOSTER CARE	SUBJECT:  INTRODUCTION

**In order to access the Title IV-E administrative funds the financial and legal criteria must be met. In order to use IV-E funds for maintenance payments, there is an additional requirement that the foster care provider be fully licensed.**

This manual has 4 sections. Section (000) includes basic information including the income standards; Section 100 contains the financial requirements; Section 200 the legal requirements and Section 300 the placement requirements.

Public Law 104-193 signed by President Clinton on August 22, 1996 effectively ended the AFDC entitlement program for cash assistance but specifically required states to use the AFDC state plan in effect on July 16, 1996 as the guiding document to establish Title IV-E financial eligibility criteria. You will note the reference used in various sections of this manual is the 1996 AFDC State Plan since that is the document from which the policy is derived. You may find in your research that different regulations may exist in the CFR but policy in this manual is written to the advantage of a child's eligibility within the parameters of the State Plan.

IV-E 001	
Child And Family Services Division  IV-E FOSTER CARE	<b>SECTION:</b>  GENERAL
	<b>SUBJECT:</b>  CONFIDENTIALITY

### **GENERAL RULE**

The Department of Public Health & Human Services (DPHHS) may share client information for purposes directly connected with the administration of the public assistance programs with other federal programs and certain entitled entities. Confidential information concerning the applicant or recipient, without notice to or permission of the individual, may be provided and used for the following purposes:

1. Reporting child abuse and neglect to the appropriate agency or authority;
2. Conducting child support activities;
3. Establishing eligibility and administering (including audits, investigations, prosecutions, etc.) for federal programs or federally assisted programs which provide assistance (cash, in-kind, or services) directly to individuals based on need.

Requests for information about current or past recipients which do not meet the above criteria must be submitted in writing to the Central Office. When there is a question about a breach of confidentiality, the Central Office will refer the request to the Office of Legal Affairs.

### **AGENCY PERSONNEL**

Agency personnel who conduct the eligibility process shall be employed and classified in accordance with the employment and classification standard of the State of Montana and the DPHHS.

### **VOLUNTEERS AND ENTITIES UNDER CONTRACT**

Volunteers, consultants or others who are not employed by DPHHS may not determine eligibility; however, they may assist in related activities such as:

- obtaining necessary information; and
- helping applicants complete the application form.

These staff are bound by the same standard of confidentiality and are restricted from disclosing confidential information.

IV-E 001	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  CONFIDENTIALITY

**RELEASE TO LAW ENFORCEMENT**

The child's current address may be released to a federal, state or local law enforcement officer who can demonstrate that location or apprehension of the child is their official duty and furnishes the child's name and specifies that the child:

1. is fleeing to avoid prosecution, custody or confinement after a conviction for a felony;
2. is violating a condition of parole or probation; or
3. has information necessary for the officer to conduct their official duties.

**EMERGENCY SITUATIONS**

When information is necessary to provide emergency medical or another critical need, the information must be released. As soon as possible, the person must be notified that the information was released.

**RELEASE TO RECIPIENT**

The child's representative may review all case file information, which was considered when making the eligibility determination.

**RELEASE TO OTHERS**

Case file information may be released in situations other than those already described only if the head of household, the spouse or other person authorized by the household provides a written authorization to release information which includes:

1. the date the authorization expires;
2. the name of the person or agency to whom the information will be released;
3. information which can be released
4. a dated signature of the authorizing individual.

		IV-E 002
Child And Family Services Division  IV-E FOSTER CARE	SECTION:	GENERAL
	SUBJECT:	MONTHLY INCOME STANDARDS

**Reference:** AFDC State Plan in effect July 16, 1996

**GENERAL RULE;**

The tables of standards contain the income amount for filing units according to the number of members in the unit and whether the unit has a shelter obligation.

There are two sets of income standards:

- gross monthly income standard; and
- net monthly income standard.

The filing unit's countable income must be tested against the gross monthly income (GMI) standard and (after specified disregards) the net monthly income (NMI) standard for the specific circumstances. If the net countable income is equal to or less than the net monthly income standard, the child meets the financial criteria for Title IV-E. The child must still meet all of the legal requirements found in Section 200 before they can be determined to be IV-E eligible.

**FILING UNIT:**

The filing unit size is the number of adults and /or children required to be included when determining IV-E eligibility.

**SHELTER OBLIGATION:**

A filing unit has a "shelter obligation" if the specified relative is expected to meet any portion of the shelter costs for their place of residence.

Shelter costs are:

1. rent or homeowner's costs to include mortgage payments, taxes, and home insurance;
2. mobile home lot rent;
3. heating fuel;
4. lights and water

The filing unit's eligibility will be based on ~~without shelter~~ standards if the shelter obligation is the responsibility of another person(s) or agency (with the exception of government subsidized housing assistance) who is not the specified relative nor considered in any way in the eligibility determination.

<p>Child And Family Services Division</p> <p>IV-E FOSTER CARE</p>	<p>SUBJECT:</p> <p>MONTHLY INCOME STANDARDS</p>
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GROSS MONTHLY INCOME STANDARDS TO BE USED

No. Of Persons in <u>Household</u>	With Shelter Obligation <u>Per Month</u>	Without Shelter Obligation <u>Per Month</u>
1	616	224
2	823	361
3	1,032	496
4	1,241	629
5	1,449	751
6	1,658	868
7	1,867	984
8	2,074	1,093
9	2,176	1,195
10	2,276	1,295
11	2,364	1,382
12	2,451	1,469
13	2,529	1,547
14	2,601	1,621
15	2,673	1,693
16	2,736	1,756

Child And Family Services Division  IV-E FOSTER CARE	<b>SECTION:</b>  GENERAL
	<b>SUBJECT:</b>  MONTHLY INCOME STANDARDS

NET MONTHLY INCOME STANDARDS TO BE USED

<u>No. of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	333	121
2	445	195
3	558	268
4	671	340
5	783	406
6	896	469
7	1,009	532
8	1,121	591
9	1,176	646
10	1,230	700
11	1,278	747
12	1,325	794
13	1,367	836
14	1,406	876
15	1,445	915
16	1,479	949

		IV-E 003
Child And Family Services Division  IV-E FOSTER CARE	SECTION:	GENERAL
	SUBJECT:	ACRONYMS AND GLOSSARY

A

ACF--Administration for Children and Families (Federal)

ARM--Administrative Rules of Montana

AFFIDAVIT—A written or printed declaration or statement of acts, made voluntarily, and confirmed by the oath or affirmation of the party making it , taken before a person having authority to administer such oath or affirmation.

ALERT--An action to forewarn the worker to reevaluate the case circumstances.

ALIEN--A person residing in the United States of America who is not a citizen.

ALIEN SPONSOR CONTRIBUTION--The amount of income of the sponsor and his/her spouse that is deemed to the alien, whether available or not.

ALIEN SPONSOR--A person or any public or private agency or organization who executed an affidavit of support (Form I-134) or similar agreement so that an alien could enter the United States.

APPLICATION DATE--The first day of the month in which the petition was filed leading to the removal of the child from the home or the first of the month in which the voluntary placement agreement is signed by the parent(s) who placed the child.

AVAILABLE--For resources, the condition of having unrestricted access to property which can be converted into cash and used for the needs of the filing unit. For income, the fund is actually available and there is a legal interest in a liquidated sum with the legal ability to make such a sum available for support and maintenance.

B

BIA--Bureau of Indian Affairs

BENDEX--SSA's Beneficiary Data Exchange System, which provides the amount of RSDI and Title II benefits paid to people entered on the system. Also, BENDEX provides data on pensions and wages.

BONA FIDE--Good faith; without fraud or deceit.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

BUDGETING--Calculating the Title IV-E financial eligibility of the child.

BUSINESS EXPENSES--The costs directly related to the production of income.

C

CFR--Code of Federal Regulations

CSE--Child Support Enforcement

CSED--Child Support Enforcement Division

CWS--Child Welfare Services

CARE AND CONTROL--The physical care, guidance or maintenance of a child or children provided by a responsible parent or caretaker relative.

CARETAKER RELATIVE--A person who meets the definition of a specified relative and is exercising the care and control of the child or children.

CASE--Documents or computer data relating to the child's foster care episode.

CASE FILE--The record maintained for each child during the foster care episode.

CASE MANAGEMENT--A series of steps which assist the case manager to formulate and develop a program for the child or family.

CASE MANAGER--The individual assigned to a family who receives case management services.

CASH VALUE--For resources: the amount that would be received if the resource were sold or converted to cash.

CHILD SUPPORT--Voluntary or court ordered payment by an absent parent for the purpose of meeting the needs of the child or children.

COLLECTIBLES--Any item of value which may or may not be part of a collection, such as paintings, coins, stamps, etc.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

COMMINGLED--Countable and exempt funds in a bank, Bureau of Indian Affairs managed account, or other account which are combined.

COMPENSATION--Money, real or personal property, food, shelter or services received by an individual in exchange for goods or services provided by that individual.

COMPLETE THE PROGRAM--An 18 year old foster care child enrolled in high school or an equivalency program is considered to have completed the program if the institution has awarded a diploma or certificate of completion.

CONFIDENTIAL INFORMATION--Family or child information that may only be shared for purposes of establishing eligibility, determining amount of assistance, and providing services, with related federally mandated and assisted programs and agencies under contract to the Department or operating with a Memorandum of Understanding.

COUNTABLE INCOME--The total of earned and unearned income, not excluded by policy, received or anticipated to be received by the filing unit for the month of application.

CURRENT MARKET VALUE (CMV)--The amount for which the property can be expected to sell on the open market in the community.

CURRENTLY AVAILABLE PROPERTY RESOURCES--Assets which a family or child has a legal right and reasonable practical ability to liquidate.

CUSTODIAL PARENT--Natural/Adoptive parent who has the legal responsibility for providing maintenance, physical care and guidance of the child or children.

## D

DOR--Department of Revenue

DPHHS--Department of Public Health and Human Services

DEEMING--Considering a portion of income and resources of one (1) person as the income and resources of a second person, whether or not actually available.

DEPENDENT CHILD--Means a child:

- under age 18 or an 18 year old who is a full-time secondary school student or in the equivalent level of vocation or technical training and who may reasonably be expected to complete the program in or before the month of his/her 19th birthday, and is living with a specified relative.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

DEPRIVATION—The ongoing lack of parental care and control of a child because of death, continued absence from the home, mental or physical incapacity or unemployment or the parents. Deprivation is required to exist from only one birth or adoptive parent. Example: If father does not live in the home, deprivation is absent parent. If father is a trucker and absent for periods of time due to his work schedule, this is not considered an absent parent; evaluate for unemployment deprivation.

DISABILITY--The physical or mental impairment of an individual which may be either temporary or permanent.

DISREGARD--A dollar amount designated for a specific purpose (work expense, child care expense) which is deducted from the filing unit's income.

DOCUMENT--Used as a noun, indicates a written record of the circumstances of an event or fact. Used as a verb, indicates the act of entering in the case file actual proof or statement of proof that the contents of the record are accurate.

## E

EA--Emergency Assistance is TANF funds used by CFSD as approved in the AFDC state plan in effect in 1996.

EARNED INCOME--Employee payments received in cash or in-kind for wages, tips, commissions, or net profit from activities in which the individual is engaged as self-employed; the gross income before deductions for personal or employment expenses or garnishments.

EARNED INCOME TAX CREDIT (EITC)--An amount of money which has been either deducted from the taxes owed or paid as a refund resulting from filing a Form 1040 or 1040A Tax Return for a calendar year. EITC is disregarded as income and as a resource in the month following receipt.

ENCUMBRANCE--A claim or legal debt(s) against a resource which is supported by a written document and which must be paid when the resource is sold.

ENUMERATION--The act of assigning a Social Security Number (SSN).

EPSDT--Early and Periodic Screening, Diagnosis and Treatment services for individuals under age twenty-one (21) covered by Medicaid.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

EQUITY VALUE--The current market value less any encumbrances (legal debts such as mortgages, loans, penalties, cost of sale, etc.) against the property as of the date of evaluation.

EVIDENCE--Something that furnishes proof (a document or a statement attesting to the validity of a particular event).

## F

FC--Foster Care

FICA--Federal Insurance Compensation Act

FAIR MARKET VALUE (FMV)--The amount of money which the sale of property would bring on the open market in the community where the property is located.

FILING UNIT--Those individuals whose income and resources must be considered in eligibility determination.

IV-E ELIGIBLE-- A status in which CFSD can obtain administrative federal participation for a child who meets all of the financial and legal requirements. In order to receive federal participation for maintenance payments, the child must also be placed in a fully licensed foster care placement.

FOSTER CARE—Full-time, 24 hour care of a child in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction and, if necessary, treatment to children who are removed from or without the care and supervision of the ir parents or guardian.

FOSTER HOME—A home in which substitute care is provided for one to six children in a family setting.

FULL-TIME STUDENT--A dependent child attending school a minimum of six (6) hours a day or the number of hours the institution states is considered full-time.

## G

GARNISHMENT--A legal action to deduct a specified amount of money from an employee's wages or unemployment compensation to satisfy a creditor.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

GENERAL EQUIVALENCY DIPLOMA (GED)--Training provided to individuals who require a high school education or its equivalent to obtain appropriate employment. The training prepares the individual for the GED test for a high school equivalency certificate.

GOOD CAUSE--An acceptable reason for an individual's action which overrides the penalty of that action and applies to termination or refusal of employment or cooperation with child support.

GROSS EARNED INCOME--The total money the person is entitled to receive prior to any deductions including garnishment.

GROSS MONTHLY INCOME (GMI) STANDARDS--The levels of gross income for each filing unit based on size and circumstances which cannot be exceeded if the child is to be determined financially IV-E eligible.

GROUP HOME—Facility offering substitute care of 7 to 12 children / youth.

## H

HOME--The principal place of residence; the family setting in which the child lives with a caretaker relative who provides the day-to-day care and control of the child. For resource purposes: a home is the current place of residence which is owned by the caretaker relative and which includes any building and the land upon which it is located, the land that appertains to the home and all the buildings and/or mobile homes located thereon.

HOUSEHOLD FURNISHINGS--Furniture, appliances, clothing and personal items owned by the filing unit.

## I

IEVS--Income and Eligibility Verification System

IIM--Individual Indian Monies

INA--Immigration and Naturalization Act

INS--Immigration and Naturalization Service

IRS--Internal Revenue Service

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

INCAPACITY--A physical or mental defect, illness or impairment which is sufficiently serious as to eliminate or substantially reduce the parent-s ability to care for or support the child(ren) for a period expected to last at least thirty (30) days.

INCARCERATION--The condition of being in prison or city/county jail, or juvenile facility.

INCOME--Money received from any source.

INCOME-PRODUCING PROPERTY--Property that is, in and of itself, producing income. For example, rental property is considered income-producing.

INDIAN LAND--Property owned jointly by the tribe or property which can be sold only with the permission of other individuals, the tribe or the Bureau of Indian Affairs.

INDIVIDUAL RETIREMENT ACCOUNT (IRA)--A tax-deferred pension or plan which sets aside money now for the needs of the person after retirement.

INELIGIBLE for IV-E--A status which represents a child for whom CFSD cannot claim administrative or cost-of-care reimbursement as the child does not meet one (1) or more of the specified financial, legal or licensure requirements.

INITIAL DETERMINATION—The initial assessment of a child’s financial eligibility for IV-E foster care.

IN-KIND INCOME--The receipt of good(s) or service(s) instead of money for the activities of an individual which must be evaluated to determine a value. This value is considered earned income and must be counted in the determination of eligibility.

INMATE OF A PUBLIC INSTITUTION--An individual who is involuntarily incarcerated in a prison, county, city, tribal jail or juvenile facility until permanent release, bail, probation or parole. An individual released from prison or jail due to a medical emergency who would otherwise be incarcerated but for the medical emergency is considered to be an inmate of a public institution unless he is admitted to a hospital, nursing facility, institution for mental disease or intermediate care facility for at least 24 hours or longer.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

INSTITUTION--An establishment that furnishes (in single or multiple facilities) food, shelter and treatment or services to four (4) or more persons who are unrelated to the proprietor and provides some treatment or service which meets some need beyond the basic provision of food and shelter.

INSURANCE SETTLEMENTS--The money received by a person or persons from a company for damage of property or person. Insurance payments to repair or replace damaged property are considered as excluded resources and are excluded for three months. Insurance payments for personal injuries are considered as income.

J

JOINTLY OWNED PROPERTY--Presumed to be owned in equal shares by each of the persons holding a legal interest, unless otherwise specified in a legal document such as a deed or divorce decree. A court-ordered right of ownership takes precedence over any contrary verbal claim or stipulation on any document.

K

KEOGH--A tax deferred pension or plan for a self-employed individual to set aside money now for the needs of the individual after retirement.

KINSHIP PROVIDER—A licensed or unlicensed home in which substitute care is provided by relatives, members of the child/family’s tribe, godparents, or stepparents or by whomever a child, child’s parents and family ascribe a family relationship and in which the child has had a significant emotional tie to the provider that existed prior to the agency’s involvement with the child/family.

KNOWLEDGEABLE SOURCE--A person who has a considerable degree of familiarity of an individual or subject which has been gained through experience of or association with the individual or subject; a person who is professionally aware of the value of the property in the community.

L

LIEAP--Low Income Energy Assistance Program

LEGAL RECORDS--Documents of transactions conforming to or permitted by law.

<p>Child And Family Services Division</p> <p>IV-E FOSTER CARE</p>	<p><b>SUBJECT:</b></p> <p>ACRONYMS AND GLOSSARY</p>
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LOAN--A transaction in which money is given to another and must be repaid.

LUMP SUM PAYMENT--Earned or unearned nonrecurring income considered as a resource in the month received.

### M

MA--Medical Assistance

MCA--Montana Codes Annotated

MAINTENANCE PAYMENT—A payment made on behalf of a child to cover the cost of and the cost of providing food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel for a child's visit with family or other caretakers.

MEDICAID--The program for the payment of covered medical expenses for persons who are eligible.

MINOR--An individual who is under the legal age of eighteen (18).

MISTICS—The electronic database containing the unemployment and wage information for Montana wage earners. This system does not contain information on federal wage earners or individuals who are paid in cash but the wage information is not reported by the employer.

MONTH RECEIVED--The benefit month in which the money may be available to the applicant or participant or in which the person will receive the money in-hand. SSA and SSI payments are exceptions to this definition, when the payment is made at the end of a month (usually because of holiday mail) for use during the following month.

### N

NADA--National Automobile Dealers Association

NET INCOME--Includes all non-excluded earned income, less applicable disregards, and all non-excluded unearned income.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

NET MONTHLY INCOME (NMI) STANDARDS--(Need Standard) - Levels of net countable income for each size filing unit which cannot be exceeded if the unit is to be financially eligible.

NET PROFIT--Gross revenue less allowable business expenses.

O

OPA--Office of Public Assistance

P

PJUSTICE--Department of Justice/Motor Vehicles

PAYMENT--The act of giving a check or warrant to the payee or the legal representative.

PERJURY--A willful false statement of a material fact; swearing to what is untrue; or, incompletely answering all questions under oath.

PERMANENT LEGAL CUSTODY—Grants permanent responsibility for care, custody and control of the child to a person or agency.

PERSONAL PROPERTY--All things owned or possessed by the assistance unit.

PLACING WORKER-- a social worker, juvenile parole officer, contracted IV-E tribal social worker or probation officer responsible for placing a child into foster care.

PROGRAM REQUIREMENT--Specifications as to how eligibility factors are to be met.

PROPERTY RESOURCES--Real, personal, tangible or intangible assets owned by the filing unit members. Property resources include, but are not limited to real property, vehicles, mobile homes, cash, stocks, bonds, savings accounts, the cash value of life insurance, and recreational equipment.

PUBLIC (NON-MEDICAL) INSTITUTION--An institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

PUTATIVE--Commonly accepted or supposed, as in putative father.

IV-E 003	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  ACRONYMS AND GLOSSARY

Q

QUALIFIED ALIEN -- An alien legally admitted to the US whose status may include refugee, asylee, deportation withheld, parolee, conditional entry, Cuban/Haitian, Amerasian, battered spouse or child, Canadian Indians, enrolled Indians, or aliens lawfully admitted for permanent residence.

R

REDETERMINATION --The reassessment of a child's financial and legal eligibility and whether or not deprivation still exists in the specified caretaker relative's home

REAL PROPERTY--Land and buildings or immovable objects permanently attached thereto.

REFUGEE--An alien who has been admitted to the United States under the classification of refugee. This person is required to carry a Form I-94 endorsed to show refugee status. Employment is permitted.

REMOVAL FROM THE HOME—The removal of a child may be either a physical or a constructive removal. A physical removal is when the child is physically removed from the home in which the child is living at the time the petition is filed or the parental agreement is signed. A constructive removal is when the child remains in the home in which the child is living but the custody is removed from a party not living in the home. In either situation the child must be living or have lived with a specified relative within 6 months of the petition filing date or the parental agreement.

REASONABLE EFFORTS—(Standard) Only the services and activities that prevent removal of the child from his/her home or affect the reunification plan are the services/activities to be evaluated in determining the reasonable efforts findings.

RESIDENT--A person who states intent to reside in Montana.

RESOURCES--All real and personal property owned by a person.

<p>Child And Family Services Division</p> <p>IV-E FOSTER CARE</p>	<p><b>SUBJECT:</b></p> <p>ACRONYMS AND GLOSSARY</p>
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S

SDX--State Data Exchange

SEOG--Student Education Opportunity Grant

SSA--Social Security Administration

SSI--Supplemental Security Income

SSDIB--Social Security Disability Insurance Benefits

SSIG--State Student Incentive Grant

SSN--Social Security Number

SHELTER COSTS--The amount of money required to provide housing (rent, mortgage payments, motel rates, etc.) and/or utilities (water, sewer, heat, electricity).

SPECIALIZED FOSTER HOME—A licensed foster home in which care and treatment is provided for children who have problems that cannot be adequately addressed in regular foster care.

SPECIFIED RELATIVE/SPECIFIED CARETAKER RELATIVE--One of the following individuals living with the dependent child:

- Father, mother, grandfather, grandmother, brother, sister, uncle, aunt, first cousin, nephew, niece; or persons of preceding generations denoted by prefixes of "grand", or "great"; first cousin once removed; or
- Stepmother, stepfather, stepbrother and stepsister;
- One who legally adopts a child or his parent, as well as the natural and other legally adopted children of such persons; and
- Spouses of any person mentioned above even though the marriage may be terminated by death or divorce.

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STEPPARENT--The spouse of the natural or adoptive child's parent.

STRIKE--Any concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement, and any concerted slow-down or other concerted interruption of operations by employees.

STUDENT--A dependent child attending school.

T

TANF--Temporary Assistance for Needy Families

TAX YEAR--The year on which the income taxes are based; usually the calendar year.

TEAMS--The Economic Assistance Management System, which assists in the determination of eligibility and/or grant.

TEMPORARY LEGAL CUSTODY—The legal status created by an order of the court that gives a person or agency the right and responsibility for the care, custody and control of a child on a temporary basis.

TERMINATION--To close a case and/or remove an individual from program eligibility.

TERMINATION OF PARENTAL RIGHTS—The legal rights of legal parents are terminated by a court of competent jurisdiction.

TRANSFER--The act of moving the right, title or interest in property from one (1) person to another by sale, gift or exchange. Also includes transfers to joint tenancy or to tenancy in common. In addition to selling and giving away property, the transfer of property rule applies to actions such as establishing a trust, contributing to a charity or other organization, removing one's name from a joint bank account, forgiving a debt without obtaining fair market value or decreasing the extent of ownership interest in any resource.

TRANSFER, DATE OF--The date delivery is made on a valid transfer.

TRIAL HOME VISIT—A trial home visit is a preliminary step to closing the foster care episode for a child. The child remains in foster care for the duration of the visit up to 6 months unless the visit is specifically ordered for a longer period of time. If the visit is unsuccessful and the child is again placed in foster care within the 6 months or within the

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time specified by the judge's order, it is not considered a new removal because the department or tribe has continued to have placement and care authority for the duration of the trial home visit.

TRUST--A property interest held by one person for the benefit of another.

TRUSTEE--The person(s) given the authority, by a written contract, to manage money set up in a trust.

### U

UC or UIB--Unemployment Compensation or Unemployment Insurance Benefits

UNEARNED INCOME--All money received that is not earned by providing goods or services. Unearned income includes, but is not limited to gifts, Social Security Income benefits, Veterans' benefits, Workers' Compensation payments, Unemployment Compensation payments, and returns from capital investments which the individual himself is not actively engaged.

UNPAID PRINCIPAL--The amount which remains to be paid on an agreement to buy or sell.

UTILITIES--The services provided for water, sewer, electricity, and heating fuel.

### V, W & Z

VOLUNTARY PARENTAL AGREEMENT—A voluntary agreement between the custodian of the child and the department granting the department placement and care authority of the child for a temporary period of time. For IV-E purposes, this agreement cannot continue for more than 180 days. The agreement can be terminated at any time by the parent

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**References:** AFDC State Plan effective July 16, 1996

**GENERAL RULE**

In order to access IV-E benefits, a determination must be made whenever a child is removed from the home via legal proceedings or parental agreement. The DFS/CSED EA 1 (EA-1) form will be used to request the initial determination and the redetermination of eligibility.

Department staff shall not discriminate against any child in any aspect of the foster care program for reasons of race, color, national origin, age, religion, sex, political beliefs, or handicap.

**DATE OF APPLICATION/ELIGIBILITY**

The “application date” and the month, for which eligibility is determined, is the first day of the month in which the petition was filed leading to the removal of the child from the home or the first of the month in which the voluntary placement agreement is signed by the parent(s) who placed the child.

Example: Child was removed from the home on April 15th. Parents signed the voluntary placement agreement on April 5th. Financial eligibility must exist for the month of April.

Example: The petition was filed on March 29th, child was removed April 5th. Financial eligibility must exist for March.

**FINANCIAL ELIGIBILITY REQUIREMENTS**

If any of the information below is contained in the family file located in the Human and Community Services county office, copies may be requested to be FAXED in order to facilitate the eligibility process. **It is important to follow through on this request because of the financial implications (page 1 of Section 000) to the department if the IV-E eligibility process is not completed.** The child must:

- be living with a specified caretaker relative, this is a person who meets the definition found on page 12 of Section 003, and meets all IV-E financial criteria or would meet the criteria if application is made for the month the parental agreement is signed or the court proceedings are initiated which cause the removal of the child; or

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- be living with the specified relative within 6 months prior to the date the agreement is signed by the parent or the judicial proceedings are initiated causing the removal of the child; and
- have been eligible in the month the court proceeding were initiated or the agreement was signed if the child had been living with them; or
- be living in a foster family home or child care institution with their IV-E eligible parent whose costs are covered by the IV-E foster maintenance payments being made with respect to the child's minor (IV-E) parent. Verification of minor parent's eligibility for IV-E must be placed in the child's file.
- be less than 18; or
- if 18, the youth must be anticipated to complete a program or graduate from a secondary school by the month of their 19th birthday. The eligibility file must contain hard copy verification of estimated school graduation or program completion and age verification such as birth certificates, baptismal certificates or school records.
- be a US Citizen or Qualified Alien. The file must contain hard copy verification, which may include birth certificates, baptismal certificates or school records.
- be deprived of parental support. Copies of documentation verifying deprivation either by death, physical/mental incapacity, absence, or unemployment (two parent family) must be in the file

## CASE FILES

**The eligibility case (compliance) files are required to contain all of the financial and legal information used to conclude that the child is either IV-E eligible or not IV-E eligible.** The files will be managed and located in the IV-E eligibility unit and must also contain the ongoing court orders and other documents used to make the annual redeterminations of eligibility and to substantiate any IV-E payments. The file must contain:

- Income verification from the source of the income. This includes verification of deemer's income, and any unearned income such as child support. TEAMS or MISTIC screens may be copied for verification.
- Resource information verifying parent's statement that countable resources do not exceed \$10,000.00. Verification can include print copies from PJUSTICE, stock certificates, safety deposit boxes etc. If there is no parent statement or information on PJUSTICE it is assumed there are no resources.
- Social Security Number (SSN) is not required for IV-E eligibility but is required to access Medicaid. TEAMS verified SSN may be copied from SSDO screen and placed in the child's file.
- School attendance must be verified if the student if the youth is 18 and is still in school.
- SSI eligibility can be verified with a copy of SDI1 screen.
- Copies of the work sheets (IV-E budget computation FA-327, Deeming Worksheet FA-329), statements supporting payments to dependent members out of the household, copies

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of child support/alimony orders for members out of the household, copies of income taxes claiming dependents and any other verification used to explain the calculations.

- Copies of the initial application (CFS EA-1) and all redetermination requests.
- All of the legal requirements of Section 200.

## CHILD SUPPORT

IV-E eligibility requires a child support referral of both parents unless parental rights have been terminated or good cause exists for each parent. The placing worker will make the electronic referral as part of the case management once the IV-E eligibility is determined. If the child is placed in a Trial Home visit, the Child Support Enforcement agency will close the current child support case although they will continue to collect arrearages. If the child goes back into care, a new referral must be made.

Good Cause Criteria: Good cause may be claimed provided it may be "against the best interests of the child" because of:

- Physical or emotional harm to the child or caretaker relative; or
- At least one of the following circumstances exists:
  - The child for whom support is sought was conceived as a result of incest or forcible rape;
  - Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or
  - The applicant or recipient is currently being assisted by a public or licensed private social services agency to resolve the issue of whether to keep the child or relinquish him/her for adoption, and the discussions have not gone on for more than three (3) months.

In order to claim good cause, corroborative evidence must be provided regarding the circumstances upon which it is based and corroboration must have been made within 20 days of the date of the claim. The corroborative evidence may be one of the following:

- Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;
- Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;
- Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative;
- Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child;
- Written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child;

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- A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish him for adoption;
- Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances that provide the basis for the good cause claim.

**DETERMINING GOOD CAUSE:** The CFS placing worker or eligibility staff (in instances of non-CFS staff placing the child) will determine that pursuing cooperation may be "against the best interests of the child" based on the evidence provided on behalf of the child. The determination will be made within thirty (30) days from the day the claim is made. The following guidelines are provided to assist the placing worker or eligibility staff in the determination process. Consideration will be given to the following:

- The present emotional state of the child subject to emotional harm;
- The emotional health history of the child;
- Intensity and probable duration of the emotional impairment;

The final decision will be issued in writing and placed in the child's file.

### **EFFECTIVE DATE**

In addition to verifying the child meets the financial criteria, the child must also meet all of the legal requirements (Section 200) before any IV-E funds can be expended on the child's behalf. The child becomes eligible for IV-E benefits effective the first day of the month in which all of the eligibility criteria (financial and legal) are met.

### **ONE CHILD/ ONE CASE**

Each child determined IV-E eligible or ineligible must have his own number and case file containing all of the required information used to determine the child's eligibility or to document the reason the child is ineligible. In instances where several children are removed at the same time, copies of the court documents must be made for each child's case file in order to satisfy the legal requirements. If siblings are removed at separate times, each removal must be sanctioned by a court order that is specific to the child being removed. A child removed later cannot be added to an existing order involving siblings removed at a prior date. Reasonable efforts must be specific to the child being removed and the judicial determination must meet the 60day requirement. Income and resources for one sibling cannot be counted against another for ongoing financial eligibility.

The only exception to the "one case/ one child" is the minor parent (a foster care youth) who is placed in the same foster care home as their child. The child is not the subject of abuse and neglect nor does the state have placement and care authority over the child. This child will not

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have a foster care case file so information regarding the child will be contained in the minor parent's foster care case file. The Title IV-E payment will include the needs of the parent as well as the child. The amount is negotiated by the worker and the foster care provider and the payment rate will be provided to you by the placing worker.

### INITIAL DETERMINATION PROCESS

1. Review the EA-1 and supporting information documenting the relationship of the child to the adult with whom the child was living. In instances where the child is unknown to TEAMS, you will need to request copies of the birth certificate and any other documents necessary to prove this relationship. The file will need copies of the petition (this refers to the petition filed with the court for a removal order, emergency protective order or any other order in which the judge sanctions the removal of the child), court orders (temporary investigative orders, temporary legal custody, permanent legal custody or tribal orders which serve a similar function), affidavits (reports to the court) and permanency hearings if the case requires a 30day hearing. Copies of required information should be provided from either OPA or the placing worker **within 10 days** of the request. **If the information is not received within the 10 days, make a follow-up call or send a reminder email requesting the information. If the information is not received in a timely manner, pend the IV-E eligibility process and send the EA-1 over to OPA for a Medicaid determination and authorization. Continue to pursue the required information in order to finalize the IV-E determination process.**
2. Research TEAMS to determine if the child was an "in" participant in a case with the specified relative from whom the child was removed for the month in which the petition (leading to the removal of the child) was filed. If a case is found, follow the instruction in Section 104 and 105 to review all income and resource data to insure that the income, less the appropriate disregards, meets the income criteria. Insure that
3. resources do not exceed \$10,000.00. If no case is found on TEAMS, search by parent's SSN on MISTICS for reported income. Refer to Section 104 for guidance.
4. If no case is found on TEAMS, review PJUSTICE for vehicle resources. If no current vehicle data is found on PJUSTICE and there is no parent statement, we assume there are no resources. Do not count vehicles owned by adults whose income will be deemed or adults who are not the birth or adoptive parent. Copy screens as verification of vehicle resource.
5. If IV-E eligibility cannot be determined within 30 days of receiving the EA-1 (even though you requested the information) because documents have not yet been received from the courts and submitted or a permanency hearing has not been held, refer the EA-1 to the OPA office in the county in which the child was removed for a Medicaid determination and the issuance of a Medicaid card. **Receipt of a different Medicaid program is only to insure**

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**that the child receives timely medical services and it does not mean the child is denied IV-E eligibility. Gathering of the missing documents must continue to be pursued so that IV-E can be determined in accordance with department policy.**

6. Deny IV-E if all of the information is available but the child does not meet all of the financial requirements outlined in the 100's Section. Sign the EA-1, in the comment section, explain the reason for the denial (example: Family net income after disregards is \$710.00, standard for a family of 4 is \$671.00) make a copy for your file and **immediately** forward it to the OPA office, in the county where the child was removed, for a Medicaid determination and authorization of a Medicaid card. This child cannot become IV-E eligible with additional information nor can the child become eligible if the income decreases to below the standard. **All of the financial eligibility factors must exist for the month in which the petition was filed that lead to the removal of the child. Place the information or a copy of the information, that verifies your decision the child is not IV-E eligible, in the child's case file. This must include a budget sheet for every case unless the child is ineligible because of excess resources.**
  
7. Deny IV-E if the initial order for the child does not meet the required language in the court order. The initial order must include contrary to the welfare of the child or best interests of the child, give placement and care authority to the department or an entity with a IV-E agreement with the department or if determination, that reasonable efforts were made or not required to prevent the removal, was not made within 60 days of the removal as outlined in Section 200. Sign the EA-1 and explain in the comment section the reason for the denial (Example: The judicial determination regarding the reasonable efforts is in a court order dated XXXXXX which is not within 60 days of removal) and immediately forward the EA-1 to the OPA office, in the county where the child was removed, for a Medicaid determination and authorization of a Medicaid card. None of these documents can be amended to make the child eligible in the future. Place copies of all documents that verify the child is ineligible for IV-E in the child's case file.
  
8. Often hearings are not held because of conflicts with the courts and the hearing is continued. Continuance orders do not substitute for court orders since there can be no order if there was no court hearing. If a permanency hearing is scheduled for October 1 and the hearing is continued until November 15, it is possible that the 30 day or 12 month requirement will not be met in order to continue to use Title IV-E funds for the foster care payment. Close the IV-E eligibility on CELL and send an e-mail to the OPA Medicaid worker to authorize a different Medicaid program. Place a copy of the order in the child's case file and a copy of the email requesting the Medicaid change. Once the hearing is held, review for IV-E payment eligibility. If the IV-E payment can be made, notify the OPA Medicaid worker to authorize the IV-E Medicaid, authorize the Title IV-E payment. Place necessary copies in the child's case file.

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9. For specific information and explanations of the various court documents review Section 200 of this manual.

## **REDETERMINATION PROCESS**

1. Review the EA-1 for income or resource changes as they pertain to the child's income and resources only. Do not count child support collections as income to the child. If the child is receiving Social Security Benefits or income that exceeds the income standard, deny IV-E eligibility and state the reason in the comment section of the EA-1. If the income level drops to within the Net income standard, review the child's IV-E eligibility again.
2. Request that social worker provide information about the status of the child's parents in relation to the home the child was removed from. Example: The parents were separated at the time the child was removed and father was absent from the home. Have the parental rights been terminated on one parent? Is father still absent from the home, if he has moved back to the home, what deprivation exists now? Does the household income exceed the standards for unemployment or is one parent incapacitated? If no deprivation currently exists, the child is not financially eligible for IV-E from the time the deprivation ended. If IV-E payments were made for the period of time in which there was no deprivation, those payments must be corrected
3. If it is determined that the child is not financially eligible for IV-E, deny IV-E on the EA-1, give the reason in the comment section, make a copy of the EA-1 for your records and forward the EA-1 on to OPA for a Medicaid determination and authorization. Set an alert to review this case in 12 months. Place copies of all documents that verify the child's ineligibility in the child's case file.
4. If the child is determined to be financially IV-E eligible, review all of the legal documents to insure that the child also meets all of the legal requirements of Section 200. Place copies of all documentation to support the eligibility determination, including the budget sheet, in the child's case file
5. If all of the financial and legal requirements are met, enter IV-E eligibility on CELL. Do not authorize any IV-E payments unless the child meets the placement requirements in Section 300. Copies of all information used to determine eligibility must be included in the child's IV-E case file. Continue to monitor the file for continuous IV-E eligibility.

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**Reference:** AFDC State Plan in effect on July 16, 1996

To be determined IV-E eligible, a child must live or have lived with a specified relative within 6 months of the date the petition sanctioning the removal is filed with a court of competent jurisdiction or the parental agreement is signed; must be deprived of parental support, must meet the gross and net salary standards and meet the legal requirements outlined in Section 200.

### **SPECIFIED RELATIVE**

A child's specified relative may be any relation by blood, marriage or adoption who is within the fifth degree of kinship to him/her. A specified caretaker relative may be one of the following:

- Father, mother, grandfather, grandmother, brother, sister, uncle, aunt, first cousin, nephew, niece; or
- Stepfather, stepmother, stepbrother, stepsister; or
- Great grandparent/aunt/uncle, great-great grandparent/aunt/uncle, great-great-great grandparent/aunt/uncle; or
- First cousin once removed (Example: The child's aunt is Pat; Pat's child is John (cousin); John's child is Bill. Bill is the child's first cousin once removed) or
- One who legally adopts the child or his/her parent as well as the natural and other legally adopted children, and other relatives of the adoptive parents; or
- Spouses of anyone named in the above groups even after the marriage is terminated by death or divorce.

To establish the "living with" requirement review information gathered by the placing worker about the family (report to the court). The requirement is met if the relative the child is living with is responsible for the supervision, discipline, nurturing, meal preparation, purchase and care of clothing, helping with school work, providing transportation, assigning chores, teaching common tasks and values and monitoring the child's health needs

The child is considered to be "living with" his relative even though:

- The child is under the jurisdiction of the court (i.e., receiving probation services or protective supervision); or
- The child is temporarily hospitalized for medical treatment which may include in-patient psychiatric services; or
- The child is not currently living with a specified caretaker relative but has lived with the specified caretaker relative within 6 months of the parental agreement or the date the petition was filed leading to the removal of the child.

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- The child is away from home for the purpose of attending school, including boarding school.

**EXAMPLES:**

(1) Tom leaves his son Teddy with his neighbor for the weekend. Two months later Tom has not returned. The neighbor contacts CFSD and explains the situation. CFSD petitions for temporary custody and is granted responsibility for placement and care. The neighbor's home is licensed for foster care and CFSD leaves Teddy there. Since Teddy had been living with his father (specified relative) within 6 months of the date the petition was filed, this satisfies the requirement of **Living with a specified caretaker relative**. Father's household income and resources will be assessed.

(2) Jane leaves her daughter Lisa with her grandmother and does not return. Grandmother keeps Lisa for 7 months but then requests she be removed and placed in foster care. CFSD is granted responsibility for placement and care. Although the court removes custody from Jane, Lisa is physically removed from her grandmother's home and is placed in licensed foster care. Lisa can be determined eligible for IV-E because she was living with a specified caretaker relative, her grandmother, at the time the petition was filed. The living with requirement has been met and only the child's income and resources are assessed because grandparents are not required filing unit members.

**NOTE:** The 9<sup>th</sup> Circuit Court of Appeals ruled in *Rosale vs Thompson* that the child did not have to be "living with" the custodial relative at the time of removal. They ruled that the intent of congress was if the child lived with any relative that met the definition of a specified caretaker relative, the child could be eligible for AFDC. If the child is eligible for AFDC, the child is financially eligible for IV-E.

(2) Laura and her daughter Sally live in the home of the Laura's mother. Laura leaves the home and does not return. Four months later, Sally's grandmother contacts CFSD. The court gives CFSD responsibility for placement and care. The grandmother is licensed for foster care and Sally remains there. Since the child was living with a specified caretaker relative within 6 months of the date the petition was filed, the **IV-E Living with** criteria is met. Only the child's income and resources will be assessed since grandparents are not responsible for their grandchildren.

(4) A child, whose grandmother has been her legal guardian for years, is removed from grandmother's home. The **Living with** criteria is met because grandmother is a specified caretaker relative. Only the child's income and resources would be assessed since guardians are not financially responsible for their wards.

(5) Infant is legally removed while mother is still in the hospital after giving birth. Child

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is presumed to be living with the mother even though the child has never left the hospital. Infant, mother and other members of mother's household who meet the definition of required filing unit members (this includes siblings and the father of the child) must be evaluated for income and resources.

**SSI:**

Children who are receiving SSI benefits at the time of placement may be determined to be IV-E eligible. All financial and legal requirements must be met to be determined IV-E eligible and the placement must meet the requirements of Section 300 must be met to use IV-E funds for placement costs. SSI benefits will be reduced \$1 for each \$1 of Title IV-E federal funds used for the maintenance payments. The child is considered to be dually eligible and the child must maintain the resource limit of \$2,000.00 or they lose their eligibility for SSI benefits. Children may also be determined SSI eligible after the IV-E determination and are subject to the same limitations for resources. Copies of all information (including the budget sheet) used to determine eligibility or ineligibility must be placed in the child's case file. If the child is IV-E eligible, sign the EA-1 and place in the child's file. If the child is ineligible, sign the EA-1 and state the reason the child is not IV-E eligible and place the EA-1 in the file. The child will continue to receive SSI Medicaid whether or not the child is IV-E eligible and foster care payments are made with IV-E funds. This is due to a hierarchy system on TEAMS in which SSI is the most preferable Medicaid program.

**DEPRIVATION:**

A child must be deprived of parental support or care due to death, absence from the home, physical or mental incapacity, unemployment as defined in this section or had the parental rights terminated. If the child was denied IV-E because there was no deprivation, this child cannot later become eligible when parental rights are terminated; however, a child who was determined to be IV-E eligible at placement, subsequently lost eligibility because deprivation no longer existed, can have their eligibility restored when the parental rights are terminated. Example: At the time of removal the child's father was absent from the home, after placement the parents reconciled so there was no longer a deprivation of absent parent nor was there any other deprivation since neither parent was incapacitated and their income exceeded the standards. Parental rights were terminated so the child regains the IV-E eligibility previously determined. Determining the existence of deprivation is made only in relation to the child's natural or adoptive parents and their presence/absence in the home from which the child is removed.

Deprivation must exist in the month the petition is filed to remove the child in order for the initial determination of IV-E eligibility. Deprivation must continue through the foster care placement in order to maintain continuous eligibility. The deprivation may change from one form to another for example a parent may have been absent at the time the petition is filed but subsequently moved back into the home the child was removed from but the 2 parent's family

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did not exceed the limit for a household of two and therefore met the deprivation of unemployed parent.

Example: Child is removed from grandmother's home. Neither parent lived with grandmother at the time the petition is filed so the child is deprived due to absent parents, even though the parents may live together at a different location.

For each annual determination of continuing IV-E eligibility, or at any other time that information becomes available, deprivation in the home the child was removed from must be evaluated.

Example: In the Example given above, if both parents move into grandmother's house, deprivation of absent parent no longer exists and other deprivation should be evaluated.

**DEPRIVATION WAIVER:** Eligibility is continued for a temporary period while the effects of unemployment, incapacity and continued absence are being overcome. For a temporary period of 3 months after the family no longer meets the deprivation of an absent, unemployed or incapacitated parent, the deprivation factor is waived. All other factors of eligibility must be met.

**DEATH OF A PARENT:** If either parent of a child is deceased, the child is deprived of parental support or care, and may, if (s)he is in need and otherwise eligible, receive IV-E benefits. Place verification of death and the relationship of the deceased to the foster care child in the child's file. A death certificate is the primary verification. When a death certificate is not available, other sources of verification may be used such as:

- Retirement, Survivors, and Disability Insurance (RSDI) Record of Lump Sum Death Payment or Survivor's Benefit Notice;
- Veterans Administration Death Payment Correspondence;
- Insurance Company Death Settlement Correspondence;
- Veterans Administration Record of Widow's or Survivor's Benefits;
- Bureau of Vital Statistics; Newspaper Death Notice;
- Social Security Records; Hospital Records; Institutional Records or
- Military Service Records

**PHYSICAL OR MENTAL INCAPACITY OF A PARENT:** Incapacity of a parent exists when a parent has a physical or mental defect, illness, or impairment. It must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to provide support or care. The existence of incapacity must be:

- Supported by a physicians diagnosis ; AND
- Expected to last for a period of at least thirty (30) days according to the physician's prognosis.

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This information can be provided by a medical professional working under the general authority or guidance of a psychiatrist or physician if the psychiatrist or physician is willing to sign the diagnosis. Place a copy of the medical statements verifying the incapacity and estimating the length of time the incapacity is anticipated to last in the child's file. Examples of "permanent" incapacitated status are:

- A parent who receives SSI or Social Security disability/blindness payments or
- A parent who is sixty-five (65) years of age or over. Place verification of the parent's age in the child's file.

**ABSENCE OF A PARENT:** Is defined by a parent who does not live in the same home as the child but whose absence is not due solely because of active duty in the uniformed services of the United States. A convicted felon living in prison or a pre-release is considered an absent parent.

**TERMINATED PARENTAL RIGHTS:** A child is considered deprived of parental support if a parent's rights are terminated by a court which determines that remaining in the home would be detrimental to the child's well being.

**UNEMPLOYED PARENT:** A child is considered deprived of parental support if the two (2) parent family's income meets the family size GMI and NMI for the eligibility month; or the income may exceed the standard if the income is intermittent and the excess income is temporary (met the definition for the prior two (2) months and expected to meet it the next month).

**FILING UNIT:** Once it is established that the child is living or has lived with a specified relative within the previous 6 months and that deprivation exists, the financial eligibility of the filing unit must be determined. To do this, the income and resources of the specified relative's household in which (s)he was living at the time the petition is filed or the parental agreement is signed must be assessed. This household unit is called the filing unit and must include the foster child, and if otherwise eligible, any natural or adoptive parent and any blood-related or adopted brother or sister who are under age 19, not receiving SSI and are living in the same household. Verify that each eligible child included in the filing unit is actually:

- Related to the specified relative, and
- Living with the specified relative; or
- Lived with a specified relative within 6 months of the parental agreement or the initiation of the court proceedings leading to the removal of the child.

The primary verification for relationship is the birth certificate/ adoption papers or baptismal certificate. Utilize other documents if necessary.

**HOUSEHOLD MEMBERS NOT INCLUDED:** The following household members whose income and resources **are not to be included** when determining eligibility or household size are:

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- Step-sibling(s), step-children or step-parents;
- The dependent child of a minor if the application is being made on behalf of the minor;
- Siblings 19 years of age and over; and
- Required filing unit members who are SSI recipients.

**CASE #1:** Household composition: mother, her two children, and her step-child.

If application is for  
mother's children:

Filing Unit: mother and her two children.

If application is  
for the step-child:

Filing Unit : is the stepchild only.

**Required members of the filing unit cannot be excluded in order to determine eligibility for the rest of the filing unit.**

**CASE #2:** Household composition: mother and her child, spouse and his child, two children-in-common.

If application is for  
child(ren)-in- common

Filing Unit: Mother and her child, spouse and his child, and the two children-in-common.

If application is for  
the other child(ren)

Filing Unit: The applicant child, that child's parent and siblings (children- in common).

**CASE #3:** Household composition: mother and her child, mother's minor daughter and her child, mother's half-sister and her child, and mother's brother.

If application is for  
child or minor daughter.

Filing Units: Mother and her child and her minor daughter (not grand-daughter).

If application is for  
minor daughter's child

Filing Unit: Minor daughter and child. Mother's income is deemed to her minor daughter because parents are responsible for their minor children.

If application is for  
Mother's half sister's child

Filing Unit: Mother's half-sister and her child.

NOTE: Evaluate members for relationship to the applicant. Mother's brother is not a required member of either unit unless he is under the age of 18.

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**CASE #4:** Household composition: Pregnant mother and her child and father of the unborn - no marriage.

If application is for child

Filing Unit: Mother and her child.

NOTE: Since there is no marriage, there is no deeming because spouses are responsible for each other. Assess any contributed income.

**CASE #5** Household composition: mother and her child, spouse and child in common. Spouse is incapacitated. He and his child are receiving disability benefits (**Not SSI**).

If application is for child-in-common

Filing Unit: Mother, spouse, mother's child and child in-common. Spouse is incapacitated. Since his disability benefits are not SSI they must be counted in full.

If application is for mother's child

Filing Unit: Mother and mother's child. Since the child in common is a sibling, the child-in-common must be included and his benefits counted. The spouses's disability benefits must be deemed to Mother.

**CASE #6** Household composition: Child and grandmother who is the child's legal guardian.

If application is For the child

Filing Unit: Child only, since guardians are not financially responsible for the person for whom guardianship is established

**CASE #7** Household composition is grandmother and child.

If application is For the child:

Filing Unit: Child only since grandparents are not financially responsible for grandchildren under state law.

**AGE:** To be IV-E eligible, the child must be under the age of 18 regardless of whether (s)he attends school or makes satisfactory grades in school; or an 18 year old who is a full-time student in a secondary school or in the equivalent level of vocational or technical training, who has agreed to stay in foster care because (s)he is expected to complete the program in or before the month of his 19th birthday. Eligibility continues for the 18 year old through the month of

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graduation or completion of the program. IV-E eligibility must be terminated when the youth turns age 18 if (s)he is not expected to complete the program in or before the month of his 19th birthday. Children may be ~~A~~home schooled@rather than enrolled in public or private schools and if the home schooling average weekly hours are within plus or minus five (5) hours of the public schools schedule of 30 hours of class time per week, consider this a full-time student.

If the 18-year-old is enrolled in a program, the attendance hours may vary but should closely approximate 30 hours/week on average to qualify the 18-year-old as a full-time student. Request verification on attendance hours and other requirements from the institution providing the instruction

**STRIKERS:**

A child is ineligible for IV-E if the child's natural or adoptive parent, with whom the child is living, is participating in a strike (as defined below) on the last day of the month in which the petition is filed leading to the removal of the child.

Strike--Temporary concerted stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. Also includes a work stoppage by reason of the expiration of a collective bargaining agreement.

Wildcat or Outlaw Strike--A strike not sanctioned by a union and one which violates a collective bargaining agreement.

Slowdown--A deliberate reduction of output without an actual strike to force concessions from an employer.

Sympathy Strike--Strike of employees not directly involved in a dispute, but who wish to demonstrate employee solidarity or bring additional pressure upon the employer involved.

Sit-down Strike--Strike during which employees remain in the work place but refuse to work or allow others to do so.

General Strike--Strike involving all organized employees in a community or county.

Walkout--Same as strike.

Lockout--Is not considered to be a strike.

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Child And Family Services Division  IV-E FOSTER CARE	<b>SECTION:</b>  FINANCIAL
	<b>SUBJECT:</b>  VERIFICATION AND DOCUMENTATION

**References:** AFDC State Plan in effect on July 16, 1996

### **GENERAL RULE**

Certain nonfinancial and financial criteria must be verified and/or documented to determine IV-E eligibility. Following is a list of items, which must be verified and/or documented if applicable, and copies of this documentation must be placed in the child's eligibility case file.

In cases where the child(ren) is included in a household receiving federal assistance (e.g. Food Stamps, TANF, Medicaid) it will be necessary to obtain copies of verification from the family's case file for each child's case file. Depending upon the circumstances of the case, documentation in the file may not be limited to the below referenced documents.

### **AGE**

Birth certificates, baptismal certificates, or school records; hard copy verification is required to be placed in the child's eligibility file.

### **BUDGET WORK-SHEETS**

IV-E Budget Computation Worksheet FA-327, Deeming Worksheet FA-329, statements supporting payments to dependent members out of the household, copies of child support/alimony orders for members out of the household, copies of income taxes claiming dependents and any other verification used to explain the budgeting process.

### **CITIZENSHIP/QUALIFIED ALIEN STATUS**

Birth certificate, baptismal certificate, INS documentation, SAVE, US passport, certificate of birth, report of birth abroad and SOLQ; hard copy verification is required to be placed in the child's eligibility file to verify citizenship/alien status.

### **DAY CARE**

Verification from the provider confirming rate of pay, child(ren) or adults receiving care and anticipated hours of use. Copies must be placed in child's case file.

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### **DEPRIVATION**

Documentation verifying deprivation either by death, physical/mental incapacity, absence, or unemployment. Copies of document must be placed in child's case file.

### **DEEMER'S INCOME**

Pay stubs, employer statements, MISTICS, SEARCHS, BENDEX, (TEAMS screens SDII and BEII) tax records for adult household members who are not required filing unit members but whose income must be deemed to the filing unit; copies of verification of income data must be included in the child's eligibility file.

### **HOUSEHOLD COMPOSITION**

Hard copy verification only required if household composition is questionable.

### **INCOME**

SEARCHS, MISTICS (TEAMS screens SDII and BEII); copies of verification and how income was derived must be included in the child's eligibility file.

### **LIVING WITH A SPECIFIED RELATIVE**

Birth certificate, adoption papers, baptismal certificate, marriage license, divorce decree, and death certificate are required to verify relationship. If specified relative is not the natural/adoptive parent, documentation must exist to verify specified relative within the fifth degree of kinship. Verify that child was living with caretaker relative within the past 6 months if currently living with a non-relative. Hard copy verification is required to be placed in the child's eligibility file.

### **RESOURCES**

PJUSTICE to verify automobile ownership.

### **SCHOOL ATTENDANCE**

School attendance records (including home schooling) for all children over 16 if student is employed and all 18 year olds.

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**SOCIAL SECURITY NUMBER**

Not required for IV-E eligibility but is required for Medicaid eligibility. Proof of application for a number; placing worker statement; SSA interface will verify. Copy of the card is not required.

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	<b>SUBJECT:</b>  CITIZEN / ALIEN	

**References:** 42 CFR 435.406 & .408

**GENERAL RULE:** To be IV-E eligible, the child must have verification that (s)he is a United States (U.S.) citizen, National or qualified alien.

**U.S. CITIZEN:**

A United States citizen is someone born in:

- One of the 50 states;
- The District of Columbia;
- Puerto Rico;
- Guam;
- The U.S. Virgin Islands; or
- The Northern Mariana Islands

Individuals born in the United States are U.S. citizens. This principle applies even to children whose parents are present in the U.S. illegally.

**U.S. NATIONALS:**

A U.S. National is someone born in American Samoa or Swain's Island.

**NATURALIZATION:**

Children who are not U.S. citizens by birth may acquire citizenship by naturalization. Citizenship acquired by naturalization can be verified in the county where naturalization occurred. Each county Clerk of Court has an index of all individuals naturalized in that county. If the person's record cannot be located or the county of naturalization is not known, verification can be obtained from INS, which maintains an index of all naturalized individuals.

**CHILD CITIZENSHIP ACT OF 2000**

A child born outside of the U. S. to citizen parents or adopted from abroad by U.S. citizen parents automatically becomes a citizen of the U.S when all of the following conditions have been fulfilled on or after February 27, 2001:

- At least one parent of the child is a U.S. citizen, whether by birth or naturalization.

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- The child is under 18 years of age.
- The child is lawfully admitted for permanent residence to the U.S. and is residing in the legal and physical custody of the citizen parent.

#### **DERIVATIVE CITIZENSHIP:**

Children can derive citizenship from their parent(s). For example, a child born abroad to a U.S. citizen might acquire foreign citizenship depending on the laws of that country.

#### **PERSON BORN ABROAD:**

If the child has not gained citizenship under the Child Citizenship Act of 2000, have the worker contact INS to complete the necessary paperwork and provide status verification.

#### **FOREIGN ADOPTION BY U.S. CITIZEN:**

If an adopted child has not gained citizenship under the Child Citizenship Act of 2000, determine if the child has been granted U.S. citizenship by application to INS. If the birth certificate shows a foreign place of birth and the child cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S citizenship.

#### **VERIFICATION**

Hard copy verification is required to be in the case file. Use any of the following documents to verify U.S. citizenship or National status:

- Birth certificate
- U.S. Passports;
- Report of Birth Abroad of a Citizen of the U.S.;
- Certification of Birth (form FS-545);
- U.S. Citizen I.D. Card;
- Naturalization Certificate (form -550 or -570);
- Certificate of Citizenship (form N560 or -561);
- Northern Marianas Card (form I-873); or
- Statement provided by U.S. consular official certifying the individual is a U.S. citizen.

#### **QUALIFIED ALIEN**

The alien child must have documentation of his/her alien status; if the child is not a U.S. citizen or U.S. National, his/her alien status must be evaluated. Alien status is normally documented by Immigration and Naturalization Services (INS), or the written decision of an immigration judge. If a child is a qualified alien it is not important to know whether the child entered the US before or after August 22, 1995 unless the child is placed with an unqualified alien. In those cases, no federal IV-E funds can be used for foster care payments until the 5-year residency is met.

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### QUICK REFERENCE GUIDE

IF ALIEN IS:	S/HE POTENTIALLY ELIGIBLE IF:	REQUIRED DOCUMENTATION IS:
Lawfully Admitted Permanent Resident <b>(LAPR)</b>	Meets 40 Quarters requirement; or  American Indian born in Canada with at least 50% Native American blood (see below); or  Enrolled member of a federally-recognized Indian tribe under section 4(e) of the Indian Self Determination and Education Assistance (see below).	Form <b>I-94</b> alien registration form; or a temporary unexpired <b>I-551</b> stamp on a Canadian passport.
Refugee	Eligible for 7 years from date of entry.	INS Form <b>I-94</b> endorsed to show entry as refugee under Section 207 of the INA and date of entry to the U.S.;
Asylee	Eligible for 7 years from date of entry/date granted asylum	INS Form <b>I-94</b> annotated with stamp showing asylum granted under section 208 of the INA;
Deportation withheld	Eligible for 7 years from date of entry/date withholding granted.	Form <b>I-94</b> alien registration form
Parolee	Paroled into the U.S. under section 212(d)(5) of the INA for at least one year.	INA Form <b>I-94</b> endorsed to show granting of parole under Section 212(d)(5) of the INA and a date showing granting of parole for <u>at least</u> one year
Conditional Entry	Granted conditional entry under Section 203(a)(7) of the immigration law in effect before April 1, 1980.	INA Form <b>I-94</b> endorsed Refugee Conditional Entry
Cuban/Haitian Entrant	Eligible for 7 years from date of entry/status.	Form <b>I-94</b> alien registration form.
Amerasian Immigrant	Was a resident of Vietnam as of December 22, 1987.  Eligible for 7 years from date of entry.	INS form <b>I-94</b> .
American Indian born in Canada	Is at least 50% Native American blood; or  <b>NOTE:</b> Does <b>not</b> have to meet 40 Qtrs of work requirement.	birth or baptismal certificate issued on a reservation; tribal records; a letter from the Canadian Department of Indian Affairs; or a Canadian Certificate of Indian Status (Form IA-236)
Enrolled member of an Indian Tribe	Enrolled member of a federally-recognized Indian tribe under section 4(e) of the Indian Self Determination and Education Assistance Act.  <b>NOTE</b> Does <b>not</b> have to meet 40 Qtrs of work requirement	Documents verifying membership; or  collateral contact with the tribal government for confirmation of the individual's membership.

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Battered Spouse/Child	File petition or application or evidence of a prima facie case is established by INS.	<b>I-94</b> alien Registration; and Evidence relating to the petition, application or established case by INS. (If this evidence is not produced, the <b>I-94</b> does not need to be verified through SAVE).
Veteran or Active Duty Military Personnel	An honorable discharged veteran of the U.S. Armed Forces:  A Hmong or other Highland Laotian veteran who fought on behalf of the U.S. Armed Forces during the Vietnam conflict (considered veterans for purpose of determining qualified alien status);  An active duty member of the U.S. Armed Forces who is not on active duty for training purposes only (i.e., Reserves, National Guard); or  The spouse, unmarried child or unremarried surviving spouse of an alien Veteran or alien Active Duty Military or Personnel as described above	Acceptable documentation of veteran status is the original copy of the veteran's most recent discharge papers issued by the branch of service in which the applicant was a member  Acceptable documentation of active military status is the original copy of the applicant's current orders posting the applicant to a military, air, or naval base.
Victim of a Severe Form of Trafficking	Victim of a severe form of trafficking as determined by HHS.  Eligible for 7 years from date of entry.	Adults receive a certification form from HHS.  Children receive a letter from HHS.

**SPONSOR DEEMING:**

Income of the sponsor and spouse, of the qualified alien family who entered the U.S. after August 22, 1996, must be deemed if the sponsor is:

- citizen of the U.S. or an alien who is lawfully admitted to the U.S. for permanent residence;
- 18 years of age or older;
- Residing in any of the 50 states or the District of Columbia; and
- Is the person petitioning for the admission of the alien under section 213 of INA.

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	SUBJECT:	INCOME

**References:** ARM 37-49-502

**GENERAL RULE:** Count all income, which is not excluded, to test gross and net monthly income for IV-E eligibility.

**EARNED INCOME** is income earned by providing goods or services. This information will be obtained from the parent(s), TEAMS, MISTICS or the specified relative from whom the child is removed.

**TEAMS**

Will be the first source of information. Determine who the child was living with at the time the child was removed. Was the child receiving federal benefits at the time of removal?

- Log on to TEAMS
- When reaching SYSE screen, type CLIN in NEXT field at the bottom of the screen
- Type in the child's SSN or if unavailable, type in child's last name, middle initial (if available) and first name
- CLPR will display all of the cases associated with the child. Select a case in which the child is coded "IN" for the month in which the petition was filed. If no case was open in that month review the previous or subsequent month for an open case.
- If open case is found, note the case number. F3 back to SYSE.
- On SYSE screen type in case number and month that petition was filed or parental agreement was signed, type SEPA in NEXT field.
- Review "SEPA" screen to see if the child was an "IN" participant for the month of eligibility and the relationships of others in the case.
- Follow the rules for filing unit inclusion to determine if the adults and other children in the case are required filing unit members. This can be determined by the relationships of the adults to the children ( if you are unsure what the 2 letter code means, highlight the code and press F1 for help.)
- DEPR screen will code the deprivation that exists in the household. Two parent families may not show deprivation on TEAMS if both parents are fully employed. To determine if the child is deprived, income from both parents must meet the IV-E GMI and NMI standards.
- If both adults are the natural or adoptive parents of the child go through the remainder of the screens to insure citizenship, income and resources (Your key to determine this is whether the children are listed as CH, which means the child is

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- the child of the PI (primary information person) and if there are no absent parent screens completed for the child it means that there is no absent parent.
- If one of the adults is coded NR (not related) you will know that the adults are not married to each other so there will be no deeming and you will also know that one of the adults is not the child's natural or adoptive parent;
  - If one of the adults is the parent and the other adult is coded SP (spouse) it will show that the parent of the child is married so an assessment must be done to deem the income and exclude any resources owned by the spouse.
  - If the adult in the case is not the parent of the child, only the child's income or resources will be evaluated.
  - For further clarification of the case, type CANS in the NEXT field and you will access case notes.

### **MISTICS**

Is the database, owned by the Department of Labor, that houses all of the wage information provided by Montana employers. This database does not include wages paid by federal employers. Once the system is accessed:

- Click on MISTICS Screens button
- Select Wages
- Select UI Wages
- Enter the parent's or parents' Social Security Numbers (this database will not search by last name, first name).
- Select the quarter in which the parental agreement or petition filing date
- Divide the wage information by 3 for monthly earnings.

### **UNEARNED INCOME**

Is income derived from all other sources, other than earnings, and is evaluated in the same manner as earned income. This information can be provided by parent statement or found on TEAMS UNIN screen if the parent received federal benefit during the month of eligibility. A copy of this screen will serve as verification of income. If the unearned income is self-declared by the parent, request supporting documents from the parent verifying the amounts received in the month of eligibility. The following are examples of unearned income to be evaluated for eligibility.

- Child Support Payments--For continuing eligibility, do not count child support payments, which have been diverted to the department, as income to the child in foster care.
- Deemed Income--Count the deemed portion of the income of stepparents, sponsors of aliens, parents and legal guardians of minor parents and spouse to spouse in family groups living together.

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- Self-Declared Unearned Income – this is income, which the parent states is received in the month of eligibility. This could include interest, rental income, alimony, etc.

**EXCLUDED INCOME** is income that can be disregarded (not counted) when determining initial and ongoing eligibility for a specific period of time.

Dependent Child Income – can be excluded for 6 months unless the child is a full-time student. For a youth who is not a full-time student, the first month would be the month of eligibility and the disregard would continue for the next 5 months.

**LUMP SUM**

The receipt of a lump sum payment by a filing unit, in the month of eligibility, is added to all other countable monthly income and tested to the appropriate income standards. If the lump sum is earned, disregards may be applied. The receipt of a lump sum payment by an individual whose income is deemed to the filing unit is counted as his/her income in the month received and a resource thereafter. Some examples of lump sum earned or unearned income are:

- Inheritance, and
- Lottery winnings

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	SUBJECT:	RESOURCES

**GENERAL RULE** The IV-E resource limit is \$10,000.00. Countable resources are generally self-declared bank and savings accounts, bonds, properties, vehicles viewed on PJUSTICE or resources listed on TEAMS for the month of eligibility. Money received is considered income in the month of receipt and a resource the following month. Resources are considered available both when actually available and when the individual has a legal interest in a liquidated sum and has the legal ability to make such sum available.

#### **IV-E RESOURCE**

If the child has IV-E foster care payments made on his/her behalf the child is entitled to IV-E Medicaid even though the resources may exceed the Medicaid limit of \$3,000.00. This is because the IV-E limit is \$10,000.00.

#### **MEDICAID RESOURCE**

A child who meets all of the IV-E requirements except placement, will have Medicaid other than IV-E and have resource limit of \$3000.00. This is because the child is not in a IV-E eligible placement and is not entitled to IV-E benefits.

#### **SSI RESOURCE**

The SSI child's resource limit is \$2,000.00. If the child is dually eligible, (s)he may have resources up to \$2,000.00 (not the \$10,000.00 allowed for IV-E) and retain the SSI/ IV-E eligibility. If the resources exceed \$2,000.00 the child no longer meets the SSI eligibility criteria.

#### **JOINTLY OWNED RESOURCES**

Must be evaluated for accessibility (available for use) to the parent and may be considered inaccessible and excluded until full ownership is established. Remember that resources jointly owned by a parent and the spouse, who is not the birth or an adoptive parent, must be assessed as to degree of ownership. Ownership of the funds in a joint account must be determined by:

- looking at the source of the funds,
- the intent with which a joint account was opened, or
- the nature of the account as a joint tenancy.

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## **TRUSTS**

Funds placed in trust accounts must be evaluated as to their availability for support and maintenance. The parent/guardian has the obligation to develop potential sources of income to a state of availability. When the parent/ guardian has unrestricted access to the trust, regardless of the stated use of the funds, the trust principal must be treated as a countable resource. If the parent/guardian's access to the trust principal is restricted (e.g., only the trustee or court, etc., can invade the trust principal), the trust principal is not a countable resource.

Example: As part of their grandchildren's inheritance a trust was established for college by their grandparents, but the children cannot access this money until their 19th birthday. The family attorney is the custodian of the fund. These funds are not available as a resource to the filing unit and must be excluded.

Example: A child was severely injured in an automobile accident and was awarded a substantial settlement. The settlement was to be used only for medical expenses deemed necessary by the court appointed trustee of the account. These funds are not available as a resource to the filing unit and must be excluded.

Example: The grandparent established a college account for her grandchild making her daughter (the child's mother) the sole signer and distributor of the funds. There is no age or any other requirement attached to the distribution of the fund. These funds are a available and a resource to the filing unit and must be assessed.

## **EXCLUDED RESOURCE**

The following resources owned by the filing unit are to be excluded:

1. The HOME which is the usual residence of the child;
2. One VEHICLE if the equity value does not exceed \$1500. Apply any amount in excess of \$1500 to the \$10,000. Determine the equity value of any other vehicle owned and apply the amount to the resource limitation.
3. One BURIAL PLOT for each member of the filing unit.
4. BONA FIDE FUNERAL AGREEMENTS for each member of the filing unit not to exceed \$1500 of equity value per agreement unless the agreement is irrevocable. Irrevocable agreements which meet the following criteria are totally excluded:
  - The price of all major services is specified.
  - The total dollar amount of the agreement is specified.
  - The parent was neither a minor nor legally declared incompetent when the agreement was signed.
  - The funeral home representative indicates in writing that the money is not refundable under any circumstances.
5. BASIC MAINTENANCE ITEMS essential to day-to-day living such as clothes, furniture and other similar items of limited value including home computer, satellite TV dish or hunting and fishing equipment;

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6. EQUIPMENT/ITEMS/PROPERTY essential for SELF-EMPLOYMENT (necessary to the production of income);
  - tools/equipment such as those needed by a carpenter, mechanic, cosmetologist, etc.;
  - stock (such as office supplies) or raw materials;
  - property essential for the production of income;
  - office equipment such as furniture, typewriters, calculators, etc.; business (commercial) checking account
  - business loans for the purchase of capital assets;
  - inventory,
  - machinery/equipment, and
  - any other items needed to produce income.
  
7. REAL PROPERTY for which the family is making a good faith effort to sell. The applicant must present evidence to verify that the property is on the market for sale; the property is being offered for sale at the "highest offer"; and no reasonable offer has been refused.

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Child And Family Services Division  IV-E FOSTER CARE	SECTION:	FINANCIAL
	SUBJECT:	BUDGETING

**References:** AFDC State Plan in effect July 16, 1996

**GENERAL RULE** For the month of eligibility (the month in which the petition is filed leading to the removal of the child or the parental agreement is signed), all financial eligibility factors are evaluated for the filing unit.

### **GROSS INCOME**

The countable gross income of the filing unit must be equal to or below the Gross Monthly Income (GMI) Standards found in Section 002. Test gross monthly income (GMI) for the month of eligibility. If the GMI exceeds standards, deny IV-E eligibility.

### **DISREGARDS**

The disregards are deducted from the monthly gross income of each wage earner to establish the net monthly income. The allowable disregards are:

- **\$90 STANDARD** The first \$90 of monthly earnings of each full-time and part-time employee is deducted as a work expense allowance. This deduction is for mandatory payroll deductions, transportation and other work-related expenses.
- **\$30 PLUS 1/3** An additional \$30 plus 1/3 of the balance is disregarded from each wage earners earned income.
- **DEPENDENT CARE** The dependent care disregard is available for each dependent child or incapacitated adult who is a member of the filing unit. Use projected expenses that do not exceed \$175 per child or incapacitated adult per month. However, if a child is under age 2 for any portion of the month of determination, use projected expenses that are not to exceed \$200 for this child per month. Subtract from adjusted earned income the estimated monthly day care costs for the month (not to exceed maximum). Document the case file.

### **LIMITS ON DISREGARDS**

Sometimes\ the earned income disregards cannot be applied in the determination of IV-E eligibility. The earned income disregards cannot be applied if the if any of the following apply:

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- The individual member terminated employment or reduced earned income. Such termination or reduction must have occurred within thirty (30) days prior to the month of determination and must have been without good cause; or
- The individual refused to accept employment in which he/she is able to engage. Such refusal must have occurred within thirty (30) days prior to the month of determination and must have been without good cause.

### **ESTABLISHING GOOD CAUSE**

Use the following regulations to establish if good cause exists. Good cause exists for terminating or reducing earnings if:

- The parent is physically or mentally impaired determined by a physician or licensed or certified psychologist, or another member of the assistance unit requires the individual's presence in the home on a continuous basis and there is no other appropriate member of the unit available to provide care.
- The parent is physically or mentally incapacitated (determined by a physician or licensed or certified psychologist). This incapacity (either by itself or in conjunction with age) prevents the individual from continuing employment.
- The parent is sixty-five (65) years of age or older.
- The parent has an illness or injury serious enough to temporarily prevent continued employment (determined on the basis of medical or other sound evidence).
- There is a breakdown in transportation or child care arrangements.
- Working conditions are poor - risks to health, safety, and lack of worker's compensation coverage.
- Other conditions and circumstances exist which prevent continuation of employment or make continuation of employment inadvisable.

Good cause for refusing employment exists if:

- Wages offered are lower than state minimum wage;
- Physical or mental problems significantly impair the parent's ability to perform required duties of the job;
- Transportation is not available and distance to and from employment prohibits walking;
- Working conditions are so poor as to constitute health or safety risks;
- Employment provides no worker's compensation protection; and
- Suitable childcare is not available.

### **NET INCOME**

Net Monthly Income (NMI) is the amount to be evaluated after all disregards and excluded income have been subtracted from the gross income. NMI must be compared to the NMI

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standards for filing unit size found in Section 002. If the NMI is more than the standard, deny IV-E eligibility.

### **CALCULATING MONTHLY INCOME**

In instances where the income verification is provided by the parent instead of TEAMS or MISTICS, the income must be converted to a monthly amount. The information below demonstrates how to convert weekly, bi-weekly or twice a month pay-periods into a monthly income amount.

Factoring for  
weekly  
pay periods:

**EXAMPLE:** If a filing unit earned \$62.31 in weekly gross wages, multiply this amount by 4.3 for a total of \$277.93 which is the gross monthly wage for the client.

Factoring for  
bi-weekly (every  
two week) pay  
periods:

**EXAMPLE:** If a filing unit earned \$320.67 every two weeks (every other Friday) in gross wages, multiply this amount by 2.15 for a total of \$690.44 which is the gross monthly wage for the client.

Calculating monthly  
income for pay  
periods twice a  
month:

**EXAMPLE:** If a filing unit earned \$6.00 per hour, 40 hours per week and they were paid twice a month on the 1st and 15th. Determine the monthly income by multiplying the hourly rate x 2080 (hours in a year) and divide that answer by 12 to determine monthly income.

### **INCOME TO BE DEEMED**

Income of certain individuals who are part of the household but who are not a required filing unit member, must be considered as a condition of eligibility. The resources owned exclusively by these individuals are excluded. Once the amount of the income is determined, it is deemed to the filing unit and counted as unearned income. Income of the following individuals must be deemed to the filing unit to determine IV-E eligibility:

- The parent(s) of a minor with child if IV-E eligibility is being determined for the minor's child;
- The spouse of a minor when the minor is being removed from the home;

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- A stepparent who is not the birth or adoptive parent of the child whose IV-E eligibility is being determined; and
- Sponsors of certain aliens as identified in IV-E 104

### **LUMP SUM PAYMENTS**

The receipt of a lump sum payment by the deemed individual is considered his/her income in the month received (therefore it is to be deemed to the filing unit) and a resource thereafter.

### **EIC**

The receipt of EIC (Earned Income Credit) by an individual whose income is deemed is excluded as earned income and a resource.

### **INCOME DEEMING PROCEDURE:**

- Assess the family to determine required filing unit members and those who are not required filing unit members.
- Determine the number of dependents claimed by the person whose income is to be deemed. This number is determined by counting the individual plus all others in the home who are dependents of this individual but not in the filing unit. For example, the deemed person and his one dependent child equals an NMI size of 2.
- Review all non-financial and financial information for all of these household members. The deemed person is allowed to claim income disregards in calculating the amount to be deemed to the filing unit. These disregards are the \$90 standard work expense; the NMI amount for the deemed individual and his/her dependents not in the filing unit but in the home; payments made to dependents out of the home; and payments of alimony or child support to persons out of the home (to establish "dependent" individuals evaluate if they are or could be claimed for purposes of determining federal personal income tax liability).
- Subtract the allowed payments, the \$90 and the NMI amount from the countable income and deem the balance as unearned income to the filing unit.

**EXAMPLE of DEEMING:** A married couple, his teenager, her child and their child-in-common all reside together. Her child and the child-in-common are removed and placed in foster care. His teenager remains in the home. He earns \$1000.00 a month and pays \$200.00 a month support for a child that does not live with him. The wife draws \$545.00 a month in SSI.

**Filing Unit for Mom's child:** Mom, her child and child-in-common with her spouse ( the child for whom eligibility is being determined, parents and siblings). Normally mom would not be a

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required filing unit member since she is receiving SSI but she has deemed income which must be counted.

<u>Deeming:</u>	Husband's salary	\$1,000.00
	Earned Income Credit	<u>-90.00</u>
	Sub-total	910.00
	NMI for 2 (self & teen)	<u>-445.00</u>
	Sub-total	465.00
	Child Support paid	<u>-200.00</u>
	Amount to be deemed	\$ 245.00

#### Budget Calculation

Mom's SSI will not be counted as income to the family but the deemed unearned income will be counted. This will be compared to the Gross Monthly Income standard (GMI) for a household of 3 (mom, her child and child-in-common with her spouse). Mom has no earnings so she does not get the \$90.00 earned income disregard or the \$30 and 1/3 nor does she have dependent care expenses. The total gross income is \$245.00 deemed from her husband and this meets the GMI for a household size of 3. It also meets the NMI for a household of 3. Mom's child meets the financial criteria for IV-E eligibility.

Filing Unit for child-in-common: The filing unit will be dad, child-in-common, mom's child and dad's teen. (the child for whom eligibility is being determined, his parents and siblings)  
Mom is not a member of the filing unit because her only income is SSI and will not be counted.

#### Budget Calculation

There is no deeming since both of the child's parents required income will be counted in full. Mom's only income is SSI and will be exempt by law. If she had any other income it would be counted.

Dad's Income	\$1,000.00
Work Disregard	<u>- 90.00</u>
SubTotal	910.00
Less \$30.00	- 30.00
Sub Total	<u>880.00</u>
Less 1/3	- 293.33
Sub Total	<u>586.67</u>
Dependent Care	-200.00
Balance	<u>\$386.67</u>

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Compare the total income to the GMI Standard in Section 002. If the gross income does not exceed the GMI, continue to the next step and subtract the disregards. After all disregards are considered, compare the balance to the NMI Standard in Section 002. The NMI standard for four is \$671.00; therefore the child-in-common meets the financial criteria for IV-E eligibility.

IV-E 200	
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	<b>SUBJECT:</b>  DOCUMENTS AND TIMEFRAMES

**References:** 45 CFR 1356

**GENERAL RULE** In order to access IV-E benefits all legal requirements must be met within the mandated time frames. In some instances if the timeframes are not met, the child will not be IV-E eligible for the extent of this removal period.

Listed below are the most common legal documents you will be reviewing. There will be other documents used by the different tribes that serve the same purpose but may be called by a different name.

**PETITIONS FOR COURT ORDERS**

**Petition for Immediate Protection and Emergency Protective Services** – filed when the social worker must make an emergency removal of the child from the parent’s home. The order is given based on the social worker statement and is issued upon filing the petition. This protective order must contain the contrary to welfare language and must give placement and care authority to the department or designee. An affidavit must be presented to the county attorney within 48 hours (excluding weekends and holidays) of the removal. The county attorney has two working days (excluding weekends and holidays) to file the petition.

Tribal protective orders may have different time limits, for instance it may be 72 hours, the time frames specified above are in state statute and do not apply to the reservations.

**Petition for Temporary Investigative Authority** – specifically limited to investigation. If the court grants this petition, it gives judicial authority to conduct an in-depth investigation into the child’s situation.

**Petition for Temporary Legal Custody** – filed when the social worker determines the child is or has been abused, neglected or abandoned. This petition may be the initial petition in the case.

**Petition for Termination of the Parent-Child Legal Relationship**- filed when continuation of the parent-child relationship is not in the child’s best interests and the statutory requirements are met.

**Petition for Appointment of a Guardian**- filed for a court appointed guardian which is one option for permanency. Parental rights do not need to be terminated prior to filing for a guardian.

IV-E 200	
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**Petition for a Determination that Preservation and Reunification Services Need not be Provided** – is filed when the social worker determines one of the statutorily required conditions exist and that services to prevent the removal or services to reunite the child will not be successful. This will require evidence that one of the required conditions is present in the case. This cannot be filed if the child, who is the subject of the proceedings, is an Indian child defined by ICWA.

**Petition on Behalf of an Abandoned Infant** – The county attorney may file a petition for immediate protection and emergency protective service combined with either TIA, TLC based on abandonment or TPR. The court cannot terminate the parents’ rights prior to 60 days after surrender of the infant because the parent(s) have 60 days to petition for custody of the newborn. The infant is presumed to have been born in Montana and a US citizen.

### **COURT ORDERS**

**TIA – Temporary Investigative Authority** – Judicial authority to conduct an intensive investigation into suspected child abuse and neglect under which the court grants specific relief. This order does not customarily give authority to remove. Problems arise when a TIA is issued for an investigation but the order also allows the placing worker to remove if the situation is unsafe for the child. Example: A TIA is granted allowing the worker to investigate and if circumstances warrant the child may also be removed for their protection. Since this order allows for a removal, it contains the “contrary to the welfare” language and gives placement and care authority to the department. If the child is left in the home, the placing worker violates the court order because the order states it is contrary to the welfare of the child to remain in the home. If the child is removed under an investigative order, it must be followed with a removal order whereby the placing worker has convinced the court that the investigation warrants a removal of the child and the court concurs. If the subsequent order sanctioning the removal is not received, this child does not meet the legal requirements for IV-E eligibility.

**TLC – Temporary Legal Custody** – legal status created by an order of the court that gives a person or agency the right and responsibility for the care, custody and control of a child on a temporary basis. Can only be granted for six months with one six-month extension. This is a state statute and does not apply to tribal orders.

**TPR – Termination of Parental Rights** – The legal rights of legal parents are terminated by a court of competent jurisdiction.

**PLC- Permanent Legal Custody** – an order that grants permanent responsibility for care, custody and control of the child to a person or agency. This would be requested for a child who cannot return home and who the department expects to place for adoption.

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**Voluntary Relinquishment** – is a written document by which the parent voluntarily surrenders his or her rights to and responsibilities for a child who has not been the subject of allegations of abuse and neglect. Within 6 months of relinquishment, this action must be followed by a judicial determination that it is in the best interests of the child not to remain in the home. If the latter determination was not made, this child is ineligible for a Title IV-E subsidy unless the child is SSI eligible at the time of the adoption.

### **LEGAL REQUIREMENTS**

The following documents must be copied and placed in the child=s IV-E eligibility file:

- Copy of the petition leading to the removal of the child; or
- Copy of the parental agreement between the custodial specified relative and the department. This must be followed within **180 days (not 6 months)** by a court order described below.
- Copy of the court order, sanctioning the removal of the child, giving placement and care authority to the department or other public agency, which has a current agreement with the department. This order must contain the language that it is contrary to the welfare of the child to remain in the home or that it is in the best interests of the child to **not** remain in the home; it may also include the specific services provided to prevent or why no services could be provided to prevent the removal; or services provided to reunite; or circumstances to justify that no reasonable efforts are required. If this information is contained in the initial order, skip the next step; or
- Copy of the **judicial determination** that reasonable efforts were made or could not be made to prevent the removal; or if it is an emergency removal, that reasonable efforts to reunite the family; or because of the circumstances, reasonable efforts were not required. This order must be specific as to services provided to prevent or why no services could be provided to prevent the removal; or services provided to reunite; or circumstances to justify that no reasonable efforts are required. This order **must be within 60 days of the placement into foster care.**
- Copies of the judicial determination that the agency is making reasonable efforts to finalize the child’s permanency plan. In cases where the events for removal are such that reasonable efforts to prevent or reunite are not required, the permanency plan must be held **within 30 days of this determination.** Preservation and reunification efforts are not required with a caretaker relative who:

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- o subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse or sexual abuse or chronic, severe neglect; or
  - o committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child; or
  - o committed aggravated assault against a child; or
  - o committed neglect of a child that resulted in serious bodily injury or death; or
  - o had parental rights to the child's sibling or other child of the parent involuntarily terminated, and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue; or
  - o if the putative father failed to contribute to the support of the child for an aggregate period of 1 year or to establish a substantial relationship with the child or register with the putative father registry and he has not been adjudicated to the father of the child for child support and he is not recorded on the child's birth certificate as the child's father.
- Copies of the judicial determination that the agency is making reasonable efforts to finalize the child's permanency plan. Except in cases as described in the previous paragraph, these determinations must be made **within 12 months of the child's entry into foster care and in 12 month increments thereafter for the duration of the placement.**

The entry into foster care or placement date, for permanency hearing purposes only, is either the date of the first judicial finding that the child was subjected to child abuse or neglect or the date that is 60 calendar days after the date on which the child is removed from the home. States may also choose to use the date the child is removed from the home. Whichever date is chosen is the date from which all permanency hearings and termination proceedings are calculated. If a hearing is scheduled within the time frames allowed but subsequently continued until a later date, this does not count as a "held permanency hearing". No IV-E funds can be used from the time the judicial determination is due until the determination is actually made.

Unless all of the financial and the legal criteria are met as described in Sections 100 and 200, the child is not considered to be IV-E eligible.

### PLACING WORKER

1. Will furnish eligibility staff with copies of all legal documents pertaining to the child's case upon receipt of this information. This will include voluntary agreements, petitions, continuances, trial home visits, dismissals and court orders.

### ELIGIBILITY STAFF

2. Review the documents received from the placing worker to insure that each child:

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- Was removed via a voluntary parental agreement signed by a representative of the department (or public entity party to an agreement with the department) and the custodial specified relative; or
- has a petition filed within 48 hours of the child=s removal (or according to tribal code); and
- was removed via a court order giving placement and care authority to PHHS or a public agency with whom PHHS has a IV-E agreement; and
- was removed via a court order stating that it was in the best interests of the child not to remain in the home or that it was contrary to the welfare of the child to remain in the home due to alleged abuse and neglect; and judicial determination was made that reasonable efforts were made or could not be made to prevent the removal; or if it is an emergency removal, that reasonable efforts to reunite the family; or because of the circumstances, reasonable efforts were not required. This order must be specific as to services provided
- to prevent or why no services could be provided to prevent the removal; or services provided to reunite; or circumstances to justify that no reasonable efforts are required
- In the instances of state to tribal transfers of jurisdiction, there must be no gaps in the transferring process between the two entities.

**Example 1: The state jurisdiction ends on June 30th but the tribal court does not accept the case until July 17th. The child will not be eligible for the period of time uncovered by court jurisdiction. IV-E eligibility can be recovered once the case is under tribal court jurisdiction if placement and care is given to the tribe and the child is placed in a licensed foster care home.**

**Example 2: If the child was returned home prior to the tribal court accepting the foster care case, there must be a new removal meeting all of the requirements of an initial removal.**

3. Upon receipt of all the information, determine IV-E eligibility for foster care. Check the appropriate box indicating the eligibility, effective date of IV-E (effective the first day of the month in which all legal and financial criteria are met, not the month for which the financial eligibility was evaluated (petition filing date)). Sign and date the EA-1.
4. If any of the court documents are missing, request the placing worker to furnish the information **within 10 days**. If the information is not received, forward the EA-1 to the OPA office in the county in which the child was removed requesting a Medicaid determination and authorization. Do not deny IV-E eligibility but set a reminder to pursue the missing documents and once they are received, re-evaluate for IV-E eligibility. This case could be determined IV-E eligible once all of the documents have been evaluated.

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5. If the court orders do not contain the required language, or give placement and care authority to the department the reasonable efforts requirements were not met within the 60 days, deny IV-E eligibility (this is not fixable) and send the EA-1 to the OPA office in the county in which the child was removed for a determination and authorization of Medicaid.
6. If an order, containing all of the required language, **is not** issued within 180 days of the parental agreement signed by the parent(s) and a representative of the department, IV-E eligibility ceases on the 180th day. Terminate IV-E eligibility on the EA-1 and forward to OPA for a Medicaid determination and authorization.
7. Proper management of the case requires that copies are received of all ongoing court documents placed in the file, including the judicial determination that reasonable efforts were made to finalize a permanent plan for the child, termination hearings, etc. Continued IV-E payments cannot be made if the ongoing documents are not received.
8. If a child is on a trial home visit, verify that the visit does not exceed 6 mo. If the visit does exceed 6 months IV-E eligibility terminates and the child is presumed to have returned home. Any future IV-E eligibility, will require a new removal and new determination. Terminate the IV-E eligibility.
9. Annual redeterminations of Medicaid and IV-E are required every 12 months from the eligibility date.

IV-E 300	
Child And Family Services Division  IV-E FOSTER CARE	<b>SECTION:</b>  PLACEMENTS
	<b>SUBJECT:</b>  PLACEMENTS

**Reference:** 45 CFR 1356.30

**FOSTER CARE PLACEMENT GENERAL RULE**

Foster care means 24-hour substitute care for children placed away from their parents or guardians.

**LICENSE VERIFICATION**

In order to access Title IV-E funds for foster care payments, the foster care placement must be fully licensed in accordance with the criteria established by the state or tribe.

Prior to authorizing a payment, the license of the placement must be verified on CAPS.

If you know the provider number, type PROS in the PATH field of the MAIN MENU, you may then enter either the provider’s name or number and hit Enter. This will take you to Provider List where you enter an “i” by the name of the provider you want and hit Enter. This will take you to FACD (Facility Detail), Type FALL in the PATH field and that will provide you with the licensing information.

If you do not know the provider number, you can get the number from PLAD which can be accessed using the child’s CAPS ID.

The status of the family foster care license must be “regular” or “restricted” and must have this status for the payment period. If the status is anything other than either of those for the payment period, do not authorize a IV-E payment. Once you have verified that the status is regular or restricted, copy the screen and place the copy in the child’s compliance file. Note the expiration date of the license and set an alert to prevent authorizing payments past the expiration date of the license.

If the provider is other than family foster care, the status will be regular.

Remember that a child can be IV-E eligible once the legal and financial eligibility is established. The IV-E eligibility will be displayed on CELL and counted in the IV-E penetration rate. The penetration rate is used in the formula for IV-E reimbursement for administrative costs but maintenance costs cannot be reimbursed unless the child is in a fully licensed home.

**NON-LICENSED PROVIDERS**

Foster care youth may be placed with family members, kin or family friends who choose not be licensed as a family foster care home. These providers cannot be paid with Title IV-E funds for any portion of the foster care maintenance payment.

IV-E 300	
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**NON IV-E PROVIDERS**

Title IV-E funds cannot be used to pay licensed or non-licensed providers which include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Public child-care agencies with more than 25 children, medical expenses or the medical component of group home care and residential therapeutic facility daily charges cannot be funded with IV-E funds.

**CHILD OF A MINOR PARENT**

Children are often born to minors in foster care. Many times there is no intent to remove these infants from the teen parent because there are no incidents of abuse or neglect but a parental agreement is entered into for the sole purpose of funding. In instances such as this, the baby retains the same eligibility as the mother. If the mother is IV-E eligible the baby is IV-E eligible, and the court order covering the mother also covers the baby. Since the baby is not in protective custody due to abuse and neglect, the baby does not receive foster care Medicaid. The regular HCS-261 needs to be completed by the mother for other Medicaid programs for the baby.

If the baby is removed from the mother via a court order or parental agreement, all of the same IV-E criteria apply that apply to other removals.

**INDEPENDENT LIVING**

IV-E eligible youth may be placed in an independent living program to transition them into total independence due to emancipation or adulthood. IV-E funds cannot be used for services provided to these youth because they are not in 24 hour supervised licensed foster care.

**FROM OUT OF STATE**

Indian tribes may wish to accept jurisdiction of IV-E or non IV-E eligible children without going through the interstate compact process in order to be part of the decision process as allowed under ICWA.

According to the tribal agreements with the state, the state does not participate in funding of these children. In instances where the child did not have a determination of IV-E eligibility prior to the acceptance by the tribe, eligibility cannot be determined in Montana. Part of the IV-E eligibility criteria is that the child must be a resident of Montana at the time the petition for removal or the parental agreement is signed by the department/tribe and the custodial relative.

IV-E 300	
Child And Family Services Division  IV-E FOSTER CARE	<b>SUBJECT:</b>  PLACEMENTS

IV-E eligible children entering the state for placement in foster care or adoption will be issued a Medicaid card based on the IV-E foster care/adoption payments from the sending state. The sending state is responsible for redetermining the continuing IV-E /Medicaid eligibility for the ongoing Medicaid.

**TO ANOTHER OF STATE**

IV-E eligible children placed in other states for foster care or adoptions will have a Medicaid card issued by the other state based on the IV-E funded foster care / adoption payments. The ongoing eligibility redeterminations are the responsibility of the department.

**INTERSTATE COMPACT**

Interstate compact is a formal agreement between states detailing the needs of the child and requesting the receiving state to provide the services and supervise the placement. The receiving state may refuse the request because the child is in need of services not available in the placement community. If there are questions about the eligibility of a child coming in from another state, contact the Interstate Compact program officer for guidance.

**VOLUNTARY RELINQUISHMENTS**

Children placed adoptively may be determined to be eligible for a IV-E subsidy if:

- The child is SSI eligible; or
- The child was voluntarily relinquished by the natural parents to the State agency or another public agency (including Tribes) with whom the State has a title IV-E agreement or to a private nonprofit agency and there is a petition to remove the child within 6 months of the time the child lived with a specified relative; and
- There is a subsequent judicial determination to the effect that remaining in the home would be contrary to the child’s welfare. The order cannot simply sanction a voluntary relinquishment.

## Child and Family Services Policy Manual: Substitute Care for Children SSI

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<b>Application</b>	It is in the best interests of all children in the care of CFSD to make application for SSI if they have special needs such as AIDS, premature or low birth weight, mental (i.e. Downs Syndrome) and or physical (i.e. blind, deaf) handicaps. The child only needs to be disabled for 1 year to be eligible for SSI. Once application is made, any denial must be responded with a request for a reconsideration. A different review team will then look at the medical evidence and at this time doctors or other service providers may give additional details as to the extent of the impairment. The second stage of the appeal is the hearing before the administrative law judge who reviews the record and hears new evidence. Appeals past this point should be pursued with an advocate experienced in the SSI process. It is also important to assist SSI youth with the application process for receiving adult SSI at age 18. This application process for receiving adult must be started several months prior to the 18th birthday.
<b>SSI Benefits</b>	As a result of receiving SSI, children receive these specific benefits: <ul data-bbox="511 1024 1421 1612" style="list-style-type: none"><li>• Diagnostic evaluations completed during the application process which will improve the likelihood that the child or youth will receive timely and appropriate treatment.</li><li>• SSI benefits can increase the amount of funds available to meet the child's/youth's needs.</li><li>• SSI benefits follow a child or youth who is returned home to a lower income biological family.</li><li>• SSI benefits can be a critical source of cash assistance and Medicaid for a youth who ages out of care and cannot be self-supporting because of a severe disability.</li><li>• SSI benefits ensure eligibility for a IV -E adoption subsidy if a child or youth cannot be returned to the parents.</li></ul>
<b>Receiving SSI</b>	Every child under age 18 who receives SSI or Social Security benefits must have a representative payee appointed to receive the benefits of behalf of the child. The Department will become the representative payee for a child's Supplemental Security Income if the Department has been granted custody, supervision, or control of the child and is funding the child's cost of care. <b>If the Department is not funding the cost of care,</b>

## Child and Family Services Policy Manual: Substitute Care for Children SSI

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**SSI should be manually entered on CELL and PFSSI should be entered on SERN to show the child's SSI is being paid to an entity other than the department.** Children in foster homes and groups homes qualify for the Montana State Supplemental Payment. Department Form 108 should be submitted to the Social Security Administration to initiate this payment.

In cases where DPHHS does not make foster care payments, the SSI check may be mailed directly to the foster parent or institution providing care to the child who are acting as the child's representative. In these instances, **SSI eligibility should be added to CELL and PFSSI code entered on SERN** to show that the caretaker is the payee. If the child's benefits are terminated in the future, it is the department's responsibility to appeal the decision on behalf of the child.

### Resources

Children receiving SSI benefits may have resources up to \$2,000.00. Resources = current balance minus income received in the current month. If the youth is in danger of exceeding the \$2,000.00 limit, the department should ask the Social Security Claims representative about ways to create a Plan to Achieve Self Support (PASS). Once approved by SSA, funds allocated to PASS for a specific goal such as vocational school or setting up a business, are not subject to the \$2,000.00 asset limit for SSI benefits.

### Lump Sum

Large retroactive SSI payments covering more than 6 months of benefits are referred to as SSI lump sum payments. These payments must be paid into a "dedicated account" in a financial institution and cannot be combined with any other funds. These funds can be used only for the following:

- Medical treatment and education for job skills training;
- Personal needs assistance, special equipment, housing modification, and therapy or rehabilitation; or
- Any other item or service related to the child's disability that the SSA determines to be appropriate.
- Lump sum benefits become the property of a youth at age 18 unless a new representative is appointed.

## Child and Family Services Policy Manual: Substitute Care for Children SSI

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### SSI/IV-E

Children receiving SSI benefits at the time of removal are not eligible for IV-E. This eligibility is denied based on the fact that the child received SSI benefits in the month the petition was filed or the parental agreement was signed. In cases where the child is eligible for both SSI and Title IV-E and there is concurrent receipt of payments from both programs, “the child’s SSI payment will be reduced dollar for dollar...”, thus decreasing the SSI benefit by the amount of the federal share of the Title IV-E payment. Because the child’s eligibility for SSI continues after the youth reaches majority, the worker must make every effort to assure continued SSI eligibility.

NOTE: This reduction of dollar for dollar does not apply if the foster care payment is made with emergency assistance funds. If Social Security administration questions this, please call the IV-E program officer at 444-4249 for assistance.

If the child receives SSI benefits at the time of removal, the child cannot be IV-E Eligible but continues to receive Medicaid under SSI. **Children who are dually eligible (SSI & IV-E) cannot exceed the resource limit of \$2,000.00.**

If the child in a IV-E foster care placement, subsequently becomes eligible for SSI and then becomes ineligible for SSI, the child does not lose his/her IV-E status. Redetermination must continue at the 12 month intervals for as long as IV-E funds are used to make foster care payments. If the child is placed in unpaid foster care or if SSI is used to fund the foster care payments, redeterminations are not required until/unless IV-E funded foster care payments are made.

### State Supplemental Payments

The Department supplements SSI benefits in the amount of \$52.75 per month per child or youth who resides in foster care homes. The supplement is included with the monthly SSI check. Out of the combined check, \$40.00 personal needs money must be set aside for the personal needs of the youth or child.

### Forms Completion

The placing worker completes and signs the DPHHS 108, (reduced copy on page 4) verifying the child’s eligibility for state supplemental payments. To terminate state supplemental payments, the placing worker must complete the DPHHS 109 (reduced copy on page 5). When supplemental payments are terminated, the placing worker must provide the reason, in

**Child and Family Services Policy Manual: Substitute Care for Children  
SSI**

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writing, to the client and the provider. For openings or changes, one copy of the DPHHS 108 is filed by the worker in the client's record. Two copies are sent to the Social Security Administration (SSA) district office.

For terminations, one copy of the DPHHS 109 is filed in the case record and two copies are sent to the SSA district office.

Detailed instruction to complete the forms are found in the county office.

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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<b>Background</b>	From 1968 through 1996, the Title IV-A Federal Grant included a program of Emergency Assistance specifically designed to assist families through an emergency or crisis. In 1997, the Federal government removed these Emergency Assistance services from the Title IV-A grant, and, instead, included them in the Temporary Assistance for Needy Families (TANF) Block Grant. The funds are to be used for situations involving abuse and/or neglect requiring the removal of the child, placing a social worker in the home to prevent the removal, expediting the early return of the child to the home or preventing the need for protective services.
<b>Inter-Agency Shared Costs</b>	Emergency Assistance (EA) funds can be used for CFS division's share of costs attributed to children for whom we share responsibility with other agencies. The funds cannot, however, be used for any child in the juvenile justice system who has been removed as a result of the child's alleged, charged or adjudicated delinquent behavior or who has otherwise been determined to be in need of State supervision by reason of the child's behavior.
<b>Funding</b>	EA funds may be used to supplement IV-E funds, for a child/family eligible for both programs, by covering services not eligible for IV-E funds.
<b>Services Provided</b>	<p>EA can be used under the following conditions:</p> <ul style="list-style-type: none"> <li>• when taking necessary action to prevent the need for the child's removal;</li> <li>• placement in out-of-home care;</li> <li>• when preventing the need for protective services or more expensive long-term care and services; or</li> <li>• services to re-unify the child with his or her family.</li> </ul> <p>The kinds of services provided to meet the emergency situation include:</p> <ul style="list-style-type: none"> <li>• family preservation/family support services;</li> <li>• home-based services;</li> </ul>

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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- skill building services (such as parenting skills, budgeting skills, homemaker skills, etc);
- day care;
- counseling;
- psychological or other evaluations of families;
- prior approved medical service;
- social services;
- substitute care, including family foster care, group home care, shelter care, transition centers if the child is not in a locked setting;
- training;
- therapy;
- temporary transportation;
- homemaker services; and
- other community based services.

These social services are often referred to as “soft” services and do not start a “time clock” for the family served.

**Services Excluded** The following types of assistance will not be provided by child protective services because the county Office of Public Assistance (OPA) is the authorized entity to process requests for these items/services:

- basic needs such as food, rent, utilities, household supplies, personal care items;
- replacement of necessary appliances such as refrigerators; or
- replacement of necessary household furnishings

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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**NOTE:** These more tangible services are often referred to as “hard” services and, when provided on a one-time only emergency basis, they also do not start a “time clock” (OPA) for the family served. Refer the family to the Office of Public Assistance if these services are needed. The family will not be eligible, however, if they are already receiving emergency assistance-funded services through CPS unless all services were authorized within the same 30 days from the application date.

**Eligibility Period** If the family is determined to be eligible, the funding for services may be available to address an emergency situation for a period not to exceed 12 months from the month of application (but not more than 364 days).

**Application Process** After staff have determined that an emergency exists and the family/child is eligible, federal funds are available to pay for services provided to families and children to alleviate the emergency. In order to meet the federal requirements for the service delivery element of emergency assistance, the following forms must be completed:

- DFS/SRS-FA-020 Emergency Assistance Request (DocGen D405); and
- DFS/SRS-FA-022 Notice of Decision (DocGen D406).

The FA-020 must be completed and signed. This form is available on CAPS as DocGen D405. **Verification of date of birth, citizenship, social security number, relationship and address must be obtained either through TEAMS or hard copy.**

The parents or guardian must sign the FA-020 to request services. If the parents or guardians are unavailable, the responsible worker may sign the FA-020. If the parents or guardians decline or refuse to sign the FA-20 after having the program explained to them, use of EA will require Regional Administrator approval.

**Service Authorization Period** The service authorization period begins on the date the application is signed by the parents, guardians or responsible worker on their behalf. **Make sure the application date on CAPS matches the signature date.** All assistance and

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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services to be provided **must be identified on CAPS screen EAWD within the first 30 days** from the date of application or they will not be allowed during the current 12-month period of eligibility. Forward authorized applications to the appropriate financial specialist or designee immediately. The authorization process must be completed within 30 days.

### Eligibility Determination

In order for a family to be eligible, staff must document that:

- the emergency assistance is necessary to prevent abuse or neglect of the child;
- the application is filed by an adult member of the child's family or if they are unavailable, the application may be signed by the responsible worker;
- the child is a minor child (minor child is defined as an individual who is under age 21);
- the child is currently living with one or both parents (or a specified caretaker relative, i.e., grandparent, an adoptive parent, a stepparent, an aunt, an uncle, or a cousin); OR the child has lived with a specified caretaker relative within the most recent 6 months;
- the services needed are not a result of a parent's/specified caretaker's refusal (without good cause) to accept employment or training for employment within the past 30 days;
- the family does not have the liquid (readily accessible) resources immediately available to pay for services needed by the family (acceptable verification is a signed and dated statement by the specified caretaker relative);
- the family has not applied for and received Emergency Assistance funds more than once within the current twelve (12) month period (verified through TEAMS).
- the TANF funding will provide no direct monetary value to the family (examples of "direct monetary value" would be ongoing cash assistance, ongoing child care vouchers, ongoing rent vouchers, or any ongoing payments which provide basic needs);

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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- the service being provided is a non-medical service (services provided by non-licensed staff are generally considered to be non-medical).

### Authorization Process

Before approving a family for emergency assistance, the child's worker must have established that an emergency situation exists and that the family is eligible for emergency assistance as determined by the above criteria. The placing worker's supervisor or FS approves the types of services that may be available to the family through Emergency Assistance.

Once the approval/denial process is complete, Form FA-022, Notice of Decision, along with information on the fair hearing process, must be sent to the family to notify them of the decision. This is CAPS DocGen D406. If EA services are being provided by a contractor, a copy of the decision must be sent to the contractor.

If approved, it will interface with TEAMS that night for further processing.

### TEAMS INQUIRY

The regional financial specialist will access the CAP2 screen to determine the family's prior use of EA. If the family received EA within the prior 12 months, CAP2 will display 'EM' in the PGM field; the prior request date in the APP RECVD field and the last day of that month in the STATUS DATE field; 'CL' will be displayed in the STS field. **The family is not eligible.**

### Responsibility

The completion of the appropriate CAPS screens is the responsibility of the social worker in the county of service.

### CAPS PROCEDURES

To complete the necessary screens on CAPS, you must first make each family member a client on CAPS. Parents and siblings of the eligible child living in the household must be entered on PERD, CLID, ADDD and RELL. As indicated on page 4 of this section, "parents" could be the specified caretaker relative, i.e. grandparent, an adoptive parent or anyone who is defined in section 405-1. Social security numbers and birth dates of all family members must be entered before the application process can be completed and authorization given.

Once this information has been entered, and you have the child in the global, go to TIID, the TEAMS interface screen. Enter an

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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“a” on the appropriate line to add an application. Pressing “enter” will take you to the EARD screen. Information on the child should automatically be pulled into this screen. To add other family members, press “F10” (the copy feature). This should take you back to the RELL screen. On RELL, type “c” for copy, on the lines next to other family members so that their names will be copied to the application screen. Pressing “enter” will take you back to EARD to confirm information has been copied. **On EARD, make sure the client signature date corresponds with the actual date the client signed the application.**

Next complete the EAR2 screen, which asks the appropriate questions to confirm the eligibility of the family. Pressing “enter” will take you to the EAWD screen on which you should identify any possible services that the family may need during the 364 days of eligibility. **In order to serve all possible family members, the child should be listed on the FA-020/DocGen D405 in the line defined as “SELF”. The child’s name (not the specified caretaker relative’s) should be listed at the top of the request form and the address used for the child.**

Signature on  
Application

After completing these screens, a copy of DocGen D405 (form FA-020) will be printed and should be signed by an adult family member; if they are unavailable, the responsible worker.

**NOTE: Some offices prefer to take a blank copy of the application (Form FA-020) to be completed by hand when gathering the necessary information from the family members. They obtain the necessary signature on the handwritten application. Either way is acceptable, so long as (a) there is a signed application on file; and (b) all information is entered on CAPS.**

The worker completes CAPS screens TIID, EARD, EAR2 and EAWD as explained above, when the decision has been made that an emergency exists and that purchased services will be delivered to the client. The CAPS screens shall be completed by the assigned social worker before purchased services are actually delivered.

Supervisor or  
Financial Specialist  
Approval on CAPS

Completion of the above mentioned screens sends an ALERT to the supervisor or financial specialist who will approve, or disapprove, the application for funding. If the parent/guardian/representative declined or refused to sign the

## Child and Family Services Policy Manual: Substitute Care for Children Emergency Assistance Services

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request, use of EA requires Regional Administrator approval. Upon approval, the CELL screen is updated so that the EA funds can be accessed.

### Child Support Referrals

If an eligible child is placed in a placement in which EA funds will be used for more than 3 months, a child support referral must be made. Complete the SIID screens indicating that this is a EA referral, with expiration date and submit it electronically through CAPS to CSED.

### Record Keeping

A paper file must be maintained for each family receiving emergency assistance. This file should include the signed and dated application and a copy of the approval/denial letter.

## Child and Family Services Policy Manual: Substitute Care for Children Continuation of Foster Care Payments After Age 18

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**Definition** Foster care as used in this section means the full-time care of a youth foster home or group home.

**Continuation of payments to age 19 CAPS** The Department may pay for room, board, clothing, personal needs and transportation for a youth who is in the physical or legal custody of the Department and whose continued placement in foster care can be justified. The youth's primary worker will receive an alert one month prior to the 18th birthday for any youth in foster care who is on the worker's caseload.

Approval by the appropriate regional administrator must be obtained **prior** to the youth's 18th birthday in order for foster care payments to be continued. The request to the regional administrator should justify why foster care payments should be continued and for how long. With approval of the regional administrator, foster care payments may be made between the youth's 18th and 19th birthdays.

If IV-E foster care payments are being made for the youth at the time of his/her 18<sup>th</sup> birthday and the youth is expected to graduate from high school by the time of his/her 19<sup>th</sup> birthday, IV-E funds may continue to be used for the youth's care up until age 19.

**NOTE:** Foster care payments for youth beyond age 18 may be appropriate when the youth:

- is at grade level, but will not graduate from high school until after their 18th birthday;
- is at current grade level but is having academic difficulties or missing credits and will not graduate before their 18th birthday; or
- is below grade level (one or more years behind his or her age group) and is more likely to graduate from high school if they remain in the foster care setting.

**Continuation of Payments After Age 19** If the youth is not expected to graduate by his or her 19th birthday, foster care payments may be continued depending on the circumstances of the case. Only the division administrator or designee may approve continuation of foster care payments after age 19. Payments may be continued until a youth's 21st

## Child and Family Services Policy Manual: Substitute Care for Children Continuation of Foster Care Payments After Age 18

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birthday if warranted by the circumstances of the case.

A youth does not continue to be eligible for foster care related Medicaid after age 19. A request to OPA to close foster care related Medicaid and to open the youth under a different Medicaid program should be made.

### Written Agreement CAPS

The youth, foster care provider and social worker must agree that it is in the youth's best interests to remain in foster care. The parties must sign a written agreement which includes a statement of understanding that payments will be discontinued if the youth leaves care and will not be reinstated if the youth wishes to return to the foster care placement. The youth may be eligible for room and board assistance under the Montana Foster Care Independence Program and should be referred to that program to apply for assistance.

The agreement is maintained in the youth's case record and copies are given to the youth and foster care provider. A sample agreement, [DocGen 311, Continuation of Foster Care Agreement](#), and [DocGen D310, Continuation of Foster Care Payments](#), are on pages 4 and 5 of this section.

### Approval Process Social Worker

The social worker must submit a written request for an extension of foster care payments. Justification for the extension must be provided to the community social worker supervisor.

### Supervisor

The community social worker supervisor reviews the request. If approved, the request is forwarded to the regional administrator.

### Regional Administrator

The regional administrator reviews the request. The regional administrator approves or denies the request and returns a copy of the approval or denial to the worker.

### IV-E Eligibility CAPS

An otherwise eligible youth may continue to have IV-E foster care payments made on his or her behalf if the youth is a full-time student in a secondary or vocational school and is expected to graduate before the age of 19.

A youth who is **not** expected to graduate from high school before the age of 19 is **not** eligible to have IV-E foster care payments made on his or her behalf after the youth's 18th birthday. Foster care payments may be continued using a

**Child and Family Services Policy Manual: Substitute Care for Children  
Continuation of Foster Care Payments After Age 18**

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different funding source.

**CAPS**

The IV-E unit will verify that the correct funding source is entered in CAPS.

**Continuation of SSI and Social Security Benefits**

When a SSI recipient turns 18, the Social Security Administration will determine if the youth needs a representative payee. If not, the youth will receive the monthly benefits directly as long as he or she remains disabled and financially eligible.

Social Security benefits terminate the month before the youth reaches age 18 unless he or she is a full-time student at an elementary or secondary school. Arrangements for continuation of Social Security benefits must be made several months before the youth's 18th birthday. The youth will receive these benefits directly until he or she reaches age 19, leaves school or marries.

**Other Considerations**

Because the youth will be receiving benefits directly after turning 18 (except in cases where a representative payee has been named), the written agreement between the youth, foster parent and social worker may obligate the youth to pay the foster parent or the Department for living expenses.

Youth who are eligible for SSI or Social Security benefits may have a trust account at the central office which will be paid to the youth following his or her 18th birthday. (See section 403-2, Trust Accounts, for instructions on closing accounts.)

**References**

45 CFR 233.90  
Mont. Code Ann. § 52-2-603

Sample Memorandum

DATE:

TO: (Regional Administrator)

FROM: (Social Worker)

RE: (Youth's Name, birth date)

I am writing to request that foster care payments be continued for (youth's name) past his or her 18th birthday and until he or she graduates from high school or until (date). The reason for continuation of foster care payments is

\_\_\_\_\_  
\_\_\_\_\_. (Youth's name) is in foster care with (foster care provider's name), (foster care provider's address).

Enclosed is a copy of the agreement that (youth's name) signed to remain in foster care.

Thank you.

Sincerely,

(Social Worker's name)

Approved                  Disapproved

\_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Regional Administrator

Copy to:    Youth's Case File  
             Foster Home

Note: Requests to continue foster care for youth past age 19 must be sent to the division administrator or designee for approval.



**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Support Services: General Provisions**

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**Definitions**

**Foster care support services** means a clothing allowance, diaper allowance, respite care allowance, or other special needs allowance (including transportation) paid on behalf of a foster child who has a documented need for such services.

**Clothing allowance** means payments made on behalf of a foster child for clothing subject to the conditions and limitations set forth in Mont. Code Ann. § 42-2-603 and Mont. Admin. R. 37.50.506. Use CAPS service code SCALL.

**Diaper allowance** means payments made on behalf of a foster child for diapers subject to the conditions and limitations set forth in Mont. Admin. R. 37.50.505. Use CAPS service code SDALL.

**Respite care allowance** means payments made on behalf of a foster child for assistance necessary to provide foster parents with relief from the daily care requirements of foster children whose mental or physical condition requires special or more intense care. Respite care allowances are subject to the conditions and limitations set forth in Mont. Code Ann. § 52-2-627 and Mont. Admin. R. 37.50.511. Use CAPS service code SRESP.

**Special needs allowance** means payments made on behalf of a foster child who requires services or equipment which is not available through the EPSDT Program or from any other source. Special needs allowances are subject to the conditions and limitations set forth in Mont. Admin. R. 37.50.510. Use the appropriate CAPS service code.

**Transportation allowance** means payments made on behalf of a foster child who requires special educational or training services. It is a service provided under the category of supplemental services and subject to the conditions and limitations set forth in Mont. Admin. R. 37.50.510. Use CAPS service code STRNS.

**CAPS**

Foster care support services are entered by going to SERL and then SERP. Service codes are listed above. If the provider is ineligible for the service that is being requested, the worker should contact the FRS serving the family.

**Date of Eligibility**

The first day of the month in which all requirements for foster care support services have been met is the date of eligibility.

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Support Services: General Provisions**

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<b>Approval/denial</b>	<p>The approval of the regional administrator is required for any orthopedic and orthodontic services which are not covered by the Medicaid EPSDT program. In-home respite care must also be approved by the regional administrator. All other support services are approved by the supervisor.</p> <p>The approval/denial procedure for foster care support services is found in the Section 405-11, Foster Care Support Services: Approval/Denial/ Appeal/Fair Hearing.</p>
<b>Availability of Funds</b>	<p>All foster care support services may be reduced, denied or discontinued regardless of eligibility if there are insufficient funds to pay for the requested services.</p>
<b>References</b>	<p>Mont. Code Ann. § § 52-2-601 to 603 Mont. Code Ann. § 52-2-627 Mont. Admin. R. 37.50.501, et.seq.</p>

## Child and Family Services Policy Manual: Substitute Care for Children Clothing Allowance

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<b>Purpose</b>	<p>The clothing allowance is to ensure that the child in care has at least a basic wardrobe, appropriate for the weather and equivalent to the clothing of children in the same community, within the limits of the funds available for this purpose. Each eligible child may receive <b>up to</b> \$200 per six-month period.</p> <p>If the child has suitable clothing in the parental home, parents should be encouraged to provide the clothing for the child when the foster placement is made or shortly thereafter.</p> <p>If the parents refuse to provide the child's clothing and it is reported to the Department that clothing is available, the parents may be ordered by the court to cooperate with the Department in providing the child's clothing. This may be requested in the petition for temporary investigative authority and protective services, or in a petition for temporary or permanent custody.</p>
<b>Responsibility</b>	<p>When the child moves, all the clothing brought from home and purchased through the clothing allowance goes with him or her into each placement. The social worker supervisor approves all clothing allowances.</p>
<b>Eligibility Family Foster Care</b>	<p>Only children placed in family foster care are eligible to receive clothing allowances. A child is eligible for a clothing allowance if he or she is placed in a licensed youth foster home and:</p> <ul style="list-style-type: none"> <li>• placement is expected to be for more than 30 days;</li> <li>• care is paid by the Department;</li> <li>• the child has a need for a basic wardrobe as determined by the social worker and the foster parents.</li> </ul> <p>The amount of the clothing allowance is determined by the child's wardrobe and the extent to which clothing is needed, but in no case may the amount exceed \$400 per child for the consecutive 12-month period beginning on the date that the department makes the initial clothing allowance payment. The maximum amount of the clothing allowance may be paid in increments as determined by the department.</p> <p style="text-align: center;"><b>NOTE:</b> The allowance is in addition to the monthly foster care payment and is not meant to replace those funds.</p>

## Child and Family Services Policy Manual: Substitute Care for Children Clothing Allowance

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<b>Other Out-of-Home Facilities</b>	The room and board payment that is paid on behalf of children in all other youth care facilities, including specialized and therapeutic foster homes, therapeutic youth group homes, shelter care facilities, receiving homes and child care agencies includes a portion for clothing. Children in these facilities are not eligible for a separate clothing allowance.
<b>Clothing Allowances for SSI Recipients</b>	A child who is a recipient of SSI is eligible to receive a clothing allowance if the child is in family foster care and otherwise meets the eligibility requirements on page 1 of this section.
<b>CAPS</b>	After checking FSPL to ensure that SCALL has been entered as a service code, the worker requests the clothing allowance by going to SERL, then SERP and entering the service code SCALL.
<b>References</b>	Mont.Code Ann. § 52-2-603 Mont. Admin. R. 37.50.506 and 37.97 1002

## Child and Family Services Policy Manual: Substitute Care for Children Diaper Allowance

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<b>Purpose</b>	The diaper allowance ensures that each infant and toddler in foster care has an adequate supply of diapers. Each eligible child may receive a diaper allowance of \$1.32 per day.
<b>Eligibility</b>	<p>A child is eligible for a diaper allowance if he or she is placed in a licensed youth foster home, and:</p> <ul style="list-style-type: none"><li>• the child is expected to be in care more than 30 days;</li><li>• the child is under age three (the allowance may be paid through the month of the child's third birthday); and</li><li>• care is paid by the Department; and</li><li>• the child has a documented need for the diaper allowance as determined by the social worker and the foster parent.</li></ul>
<b>After Age 3</b>	The Medicaid EPSDT Program may cover diaper expenses for children age 3 and older if diapers are deemed medically necessary (written prescription) by a qualified medical provider.
<b>CAPS</b>	After checking FSPL to ensure that SDALL has been entered as a service code, the worker requests the diaper allowance by going to SERL, then SERP and entering the service code SDALL.
<b>References</b>	Mont. Admin. R. 37.50.502 and 37.50 505

## Child and Family Services Policy Manual: Substitute Care for Children Supplemental Services Allowance

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### Purpose

Special Needs

The daily foster care maintenance payment is calculated to include routine transportation, replace worn and out grown clothing, food and other routine expenses related to the cost of raising a child. Supplemental Services provides payment of a special needs allowance to assist with unusual foster care expenses. The supplemental services allowance is for the purpose of covering those expenses that would not be covered by the regular foster care payment, Medicaid, school district or other funding sources. Foster parents who are required to provide extraordinary care to a child may be compensated for some cost associated with this care.

### Eligibility

A child may be eligible for a special needs allowance if placed in a licensed youth foster home and:

- placement is expected to be for more than 30 days;
- care is paid by the Department; and
- there is a need for the supplemental services allowances as determined by the social worker and the foster parent.

The request for allowance will not be approved unless there is justification that the other possible resources have been exhausted (such as the Medicaid EPSDT Program, Crippled Children's Services, Lion's or Easter Seals, etc.).

**NOTE:** The monthly total for supplemental service allowances, including travel, shall not exceed \$87.50 per month per child for the period of time the child needs the service.

### Limitations

School

Approval for school-related expenses will be granted only for those months that the child is in school.

Orthodontia and  
orthopedic services

Orthodontia and orthopedic services which are not covered by the Medicaid EPSDT Program may be approved **only** for children or youth whose daily functioning is limited because of severe psychological effects to the child by not having orthodontia services. Approved payments for these services are not to exceed the Medicaid rates.

These special needs services must be accompanied by a statement from the appropriate professional. The statement or other supporting documentation must contain the expected date

**Child and Family Services Policy Manual: Substitute Care for Children  
Supplemental Services Allowance**

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of the service and the total projected cost.

For those children who are not covered by the Medicaid EPSDT Program, items such as eyeglasses, orthopedic shoes, etc., may be approved after other resources have been exhausted.

All other special needs allowances shall be limited to not more than the actual cost of the service, not to exceed the approved Medicaid rate for the same or similar services.

**CAPS**

The special needs allowance is requested by checking FSPL to ensure that the appropriate service code for the service to be provided has been entered, then going to SERL, then SERP and entering the appropriate service code for the service to be provided. CAPS will default to SSJD, which must be completed.

**References**

Mont. Code Ann. § 52-2-603  
Mont. Code Ann. § 52-2-627  
Mont. Admin. R. 37.50.510

## Child and Family Services Policy Manual: Substitute Care for Children Supplemental Services Allowance - Transportation

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**Purpose** The daily foster care maintenance payment includes routine transportation costs. The transportation allowance provides reimbursement for non-routine transportation. It is a service provided under the category of supplemental services for the purpose of covering costs associated with transporting a foster child that would not be covered by the regular foster care payment.

**Eligibility** A child may be eligible for a supplemental service allowance for travel if placed in a licensed youth foster home and:

- placement is expected to be for more than 30 days;
- care is paid by the Department; and
- there is a documented need for the travel.

The request for allowance will not be approved unless there is justification that the other possible resources have been exhausted (such as the Medicaid EPSDT Program, Crippled Children's Services, Lion's or Easter Seals, etc.).

A supplemental services allowance for transportation costs will be authorized only for foster children who must travel to secure necessary special educational or training services. To be eligible for reimbursement for transportation costs, the following requirements must be met:

- travel one-way is 10 or more miles;
- transportation is provided or paid by the foster parent; and
- transportation is necessary to obtain services not reasonably available in closer proximity to the foster parents' residence;
- the child is being transported for other than medical reasons approved by the supervisor; and
- transportation is approved in advance by the department.

**Supplemental services allowances including transportation must be limited to the lesser of actual costs or \$87.80 per month.**

**Child and Family Services Policy Manual: Substitute Care for Children  
Supplemental Services Allowance - Transportation**

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**CAPS** After checking FSPL to ensure that STRNS is entered, transportation is requested by going to SERL, then SERP, and entering service code STRNS. CAPS will default to SSJD which must be completed.

**References** Mont. Code Ann. § 52-2-603  
Mont. Admin. R. 37.50.510

## Child and Family Services Policy Manual: Substitute Care for Children Respite Care Allowance

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<b>Definition</b>	<b>Respite care</b> is the short term supervision or care of a foster child, in an emergency or on an intermittent basis.
<b>Purpose</b>	Respite care provides foster parents relief from the daily care of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care is an aid in the prevention of abuse of foster children, foster parent burnout and the loss of experienced quality foster parents.
<b>Eligibility</b>	<p>Respite care is available for children or youth whose placement is expected to last for 30 days or more, and whose care is paid by the Department.</p> <p>The Department shall provide respite care, to the extent that funds are available, for foster children who are:</p> <ul style="list-style-type: none"> <li>• persons with developmental disabilities and either on a respite care waiting list or not eligible for respite care from another program;</li> <li>• medically demanding; or</li> <li>• suffering from severe emotional problems that are manifested in serious behavior problems.</li> </ul> <p>Respite care may be provided for other children who are in foster care to the extent that funds are available.</p> <p>Up to 111 hours of respite care may be claimed for each eligible foster child or youth during each fiscal year. Refer to Section 405-5, Foster Care Support Services, General Provisions, page 2 regarding availability of funds.</p>
<b>CAPS</b>	After checking FSPL to ensure that respite has been entered as a service code, respite is requested by going to SERL, then SERP and entering the service SRESP. Once respite is approved, the foster parent will receive an invoice. The foster parent must complete the invoice and submit it to <u>Operations and Fiscal Services Bureau</u> in order to be paid.
<b>Out-of-Foster Home Respite Care</b>	<p>The maximum rate for respite care provided outside the foster home is \$4 per hour per child for up to eight continuous hours or \$32 per child for more than 8 hours and up to 24 hours.</p> <p>If a child is placed in a second foster home for respite purposes and the plan is to return the child to the first foster home, foster</p>

## Child and Family Services Policy Manual: Substitute Care for Children Respite Care Allowance

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care payments will not be discontinued to the first foster home during the time the child is absent. The first foster home will receive the respite allowance and pay the person who provided respite care. The hours and payments must be approved by the social worker in each instance prior to the respite being provided. The approval will be limited to:

- part-day respite (up to eight hours) paid at a maximum rate of \$4.00 per hour;
- full-day respite (more than eight hours and up to 24 hours) paid at a maximum rate of \$32.00 per day; and
- a maximum of 111 hours per fiscal year per child or a total amount of \$444 per fiscal year.

### **In Foster Home Respite Care Selection and Approval**

If respite is to be provided in the foster parent(s)' home, the regional administrator must approve the request to make sure the foster parents are aware of the federal and state laws which apply to in-home care and to determine the rate which will compensate for the extra requirements which may be involved.

The selection of the person to provide respite care is made by the foster parent. **Respite care may not be provided by CFSD staff.**

The foster parent should be directed to consider the ability of the respite care provider to meet the special needs of the foster child, and to provide safe, developmentally appropriate care to the child.

The request for respite care should be made by the foster parent on the Respite Care Payment Request & Worksheet (see page 3). Verbal requests may also be accepted.

The placing worker may deny the request if the respite care provider selected by the foster parent appears to lack the qualifications and ability to provide adequate care for the foster child.

### **References**

Mont. Code Ann. § 52-2-627  
Mont. Admin. R. 37.50.502 and 37.50.511

RESPITE CARE PAYMENT REQUEST & WORK SHEET

Respite care payment is requested for the following foster child(ren): \_\_\_\_\_  
(Reimbursement is limited to funds available for this purpose.)

Time period respite care payment is to cover:

beginning at \_\_\_\_\_ (am or pm), \_\_\_\_\_ date  
and ending at \_\_\_\_\_ (am or pm), \_\_\_\_\_ date.

Estimated total hours of respite care \_\_\_\_\_.

Estimated total cost of respite care \$ \_\_\_\_\_.

The respite care provider I have chosen is \_\_\_\_\_

Telephone number \_\_\_\_\_ Address \_\_\_\_\_

I understand that respite care payment is limited to payment for eligible foster children meeting criteria set by the Department of Public Health and Human Services and within the Department's budget. I understand that I am responsible for paying the respite care provider and for providing any instructions and training necessary for care of the child(ren). I also understand that I may be responsible for meeting federally or state required employer obligations for any respite care services which are provided within my home. I believe that the respite care provider is a person of good moral character and has the qualifications and ability to provide adequate care for my foster child(ren).

Signed \_\_\_\_\_  
Foster Parent

(Route to Social Worker)

DPHHS Use Only: Approved \_\_\_\_\_ Not Approved \_\_\_\_\_

reason \_\_\_\_\_

\_\_\_\_\_  
Social Worker

\_\_\_\_\_  
Social Worker Supervisor

If the request for respite care is approved, the foster parent will receive an invoice which must be completed and returned in order for payment to be made.

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Support Services: Approval/Denial/Appeal/Fair Hearing**

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<b>Definition</b>	<b>Foster Care Support Services</b> refers to clothing, diapers, respite care, or special needs allowances paid on behalf of a foster child who has a documented need for such support services.
<b>Procedure</b>	The social worker summarizes the justification for foster care support services through the completion of SERP and SSJD. Additional justification information <b>may</b> be submitted to the social worker supervisor for approval. Additional justification <b>must</b> be submitted for orthodontic services, and orthopedic services, including a statement from a physician, psychiatrist, psychologist, licensed social worker or licensed professional counselor, as appropriate.
<b>CAPS</b>	The request is approved or denied by the community social worker supervisor on the SERP screen in CAPS. Regional administrator approval may be required for some services. If required, approval or denial by the regional administrator is also entered on the SERP screen.
<b>Appeal</b>	If the social worker supervisor denies the request for foster care support allowance and the requesting social worker or foster parent continues to believe that the child is in need of the allowance, the social worker or foster parent may appeal the decision to the regional administrator.
<b>Fair Hearing</b>	Should a foster parent's request for foster care support services for a child continue to be denied by the regional administrator, the foster parent may request a fair hearing in writing within 10 days of receipt of the letter of denial.
<b>Denial Letter</b>	The person who denies the request for support services informs the foster parent in writing of the denial. The denial letter must inform the foster parent: <ul style="list-style-type: none"> <li>of the denial, the date of denial, and reason(s) for the denial;</li> <li>of the right to request a fair hearing;</li> <li>how a fair hearing may be obtained; and</li> <li>of the right to representation by legal counsel, relative, friend or other spokesperson.</li> </ul>

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Support Services: Approval/Denial/Appeal/Fair Hearing**

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**References**

Mont. Code Ann. 52-2-603

Mont. Admin. R. 11.2.203 and 37.50.501 through 37.50.525

Sample Letter

**CERTIFIED MAIL**

(Date)

(Name)

(Address)

(City/State)

RE: Foster Care Support Services

Dear \_\_\_\_\_:

On (date) your application for (name support service) on behalf of (foster child) has been denied for the following reason(s): \_\_\_\_\_.

If you disagree with this decision, you are entitled to request a fair hearing. Direct your request for a fair hearing to Office of Fair Hearings, P.O. Box 202953, 2401 Colonial Drive, Helena, MT, 59620. A written request for a fair hearing must be postmarked within 10 working days from the date of this letter excluding weekends and holidays.

You may represent yourself at the hearing, or you may choose to be represented by an attorney, friend, relative or other spokesperson.

If you have any further questions, please contact me at the address and phone number written above.

Sincerely,

c: Community Social Worker Supervisor  
Regional Administrator

**Child and Family Services Policy Manual: Substitute Care for Children  
Completion of DPHHS-AD057X**

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**General  
Information**  
CAPS

Some services require that a provider submit an invoice (DPHHS AD-057X) in order for payment to be made. CAPS will generate a pre-printed invoice after the service is approved. The invoice will be mailed from the central office to the provider. The provider should complete and sign the invoice, tear off the yellow copy, and mail the original invoice to:

Child and Family Services Division  
Foster Care Payments  
P.O. Box 8005  
Helena, MT 59604-8005

Subsequent invoices will be mailed to the provider if the service to be provided is open and the total amount of funds approved has not been expended.

Invoices are processed in the order in which they are received. With the exception of the first week of the month, payments are mailed out the first business day after payment is approved. Payment of invoices processed on the first three working days of the month are mailed on the fourth working day of the month.

A sample invoice is on the last page of this section.

**NOTE:** If the provider loses a pre-printed invoice, another pre-printed invoice can be obtained by contacting the Operations and Fiscal Services Bureau at 444-5900.

**Specific  
Instructions**

Invoices are used by the provider (foster parent, counselor, day care worker, etc.), to bill Child and Family Services for services provided. The services are authorized in advance by our social workers.

For example, the sample invoice shows two services authorized for foster parents John and Jane Doe, to provide for foster child Sammy Smith. The first service is transportation, which the worker authorized beginning January 1, 2001, for an indefinite period. The "99/99/99" under the word TRANSPORTATION indicates that the worker has left the service open. The worker will close the service later. The second service is respite (child care during evening hours or vacation days).

## Child and Family Services Policy Manual: Substitute Care for Children Completion of DPHHS-AD057X

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The worker knew that respite had been taken February 8 and 9, so she authorized this service to reimburse the provider.

The AUTHORIZED SERVICE DATES are the dates the provider may bill for services using this invoice. If these dates are ?01/01/01-99/99/99,? as in the transportation example attached, then the provider may bill any dates from January 1, 2001, through the current month. If the AUTHORIZED SERVICE DATES are “2/8/01-2/9/01,” as in the respite example attached, then the provider may bill only February 8th and 9th, 2001.

Notice that the number of units authorized by the worker in the respite example is 16; i. e., the maximum number of hours the provider can bill is 16. When the worker enters the number of units and sets a maximum, the invoice shows the balance remaining. No respite has been used from this service, so the balance remaining is \$64.00.

The “balance remaining” is a useful feature of the CAPS invoice in those cases where a large number of units are authorized; it helps the provider keep track of how many units are left in the service.

**NOTE:** When the worker is entering the service on the SERP screen of CAPS, she should take care that the open and close dates on the SERP screen correspond to the actual dates the service is rendered. A common error, especially with court costs or counseling services, is to enter the current date for the open and close dates; this causes confusion and delays the payment.

If the provider does not agree with the dates of service or amount authorized as shown on the invoice, then the provider should contact the worker.

CAPS will not allow a payment to be entered until the latest SERVICE END DATE which the provider writes on the invoice. For example, on the sample invoice, the latest end date is “2/28/01,” so the invoice cannot be entered before that date.

The provider should complete the portion on the right side of the

**Child and Family Services Policy Manual: Substitute Care for Children  
Completion of DPHHS-AD057X**

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invoice headed PROVIDER COMPLETE THIS SECTION, and should sign the invoice.

**NOTE: IF THE PROVIDER FORGETS TO SIGN THE INVOICE, OR DOES NOT FILL IT OUT, THE INVOICE WILL BE RETURNED TO THE PROVIDER FOR COMPLETION.**

After the invoice is received by the Child and Family Services Division of the Department of Public Health and Human Services, it is entered into CAPS. Department staff will complete the DEPARTMENT APPROVAL section. After the payment is approved, a warrant is mailed to the provider.

MONTANA DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES  
Helena, Montana 59604

PROVIDER ID	CONTRACT NUMBER	INVOICE DATE	INVOICE NUMBER
0099999 001		February 10, 2001	000123456
CONTRACTOR/PROVIDER		BILL TO	
DOE JOHN AND JANE PO BOX 7777 HELENA, MT 59604-7777		CHILD AND FAMILY SERVICES, FOSTER CARE PO BOX 8005 HELENA, MT 59604-8005	

CLIENT NAME: SAMMY SMITH				CLIENT ID NUMBER: 00099999							
SERVICE		TOTAL AMOUNT AUTHORIZED			BALANCE REMAINING		PROVIDER COMPLETE THIS SECTION				
CODE	DESCRIPTION AUTHORIZED SERVICE DATES	NO. OF UNITS	RATE PER UNIT	TOTAL	NO OF UNITS	TOTAL	SERVICE BEGIN DATE	SERVICE END DATE	RATE	NO OF UNITS	TOTAL
STRNS	TRANSPORTATION 01/01/01 TO 99/99/99		87.50 PER MONTH				02/01/01	02/28/01	87.50	1	87.50
SRESP	RESPIRE 02/08/01 TO 02/09/01	16	4.00 PER HOUR	64.00	16	64.00	02/08/01	02/09/01	4.00	16	64.00
										17	151.50

<p style="text-align: center;">PROVIDER/CONTRACTOR APPROVAL:</p> <p>I certify that the amount/s reflected on this invoice represent services actually furnished, that the individuals were eligible to receive said services and that payment has not been received.</p> <p style="text-align: center;"> <u>John Doe</u>  Provider/Contractor Signature </p> <p style="text-align: center;"> <u>2/28/01</u>  Date </p>	<p style="text-align: center;">DEPARTMENT APPROVAL:</p> <p>Comment:</p> <hr/> <p>Approved Amount \$ _____</p> <p>Approved for Payment _____ Date _____</p>
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## Child and Family Services Policy Manual: Substitute Care for Children Specialized Foster Care

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<b>Policy</b>	Specialized foster homes may be used to bridge the transition of a child with special needs from a higher level of care back into the community, or to prevent placement in a higher level of care.
<b>Number of Children Per Home</b>	A specialized foster home may not be licensed for more than one child without prior approval of the regional administrator.
<b>Definitions</b>	<p><b>Specialized foster homes (SFH)</b> are licensed foster homes that provide care and treatment for children with problems that cannot be adequately addressed through the regular foster care services.</p> <p>A child who requires specialized foster care includes a child who:</p> <ul style="list-style-type: none"><li>• has a medical condition making the child non-ambulatory;</li><li>• a colostomy or feeding tube;</li><li>• receives prescribed physical therapy;</li><li>• has severe or profound mental retardation;</li><li>• has a terminal illness;</li><li>• cancer;</li><li>• blood disorders;</li><li>• multiple handicaps;</li><li>• burns;</li><li>• serious emotional disturbance;</li><li>• HIV or AIDS;</li><li>• has been exposed to drugs or alcohol; and exhibits moderate to severe symptoms;</li><li>• has been diagnosed with fetal alcohol syndrome or effect and exhibits moderate to severe symptoms; or</li></ul>

## Child and Family Services Policy Manual: Substitute Care for Children Specialized Foster Care

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- has other severe physical or mental health problems but whose needs are more appropriately met in a family setting. The social worker will determine if the child's needs require specialized foster care.

**A professional support person** is a person who has experience and training related to the type of medical problem for which the specialized foster parents are expected to provide care. The professional support person is available to consult with the foster parents on specific concerns.

### Social Worker Responsibility CAPS

The social worker will:

- assess the child's needs and eligibility for specialized foster care and enter the special needs on SPND;
- obtain supporting documentation;
- identify and approve the professional support person;
- submit a request for approval of specialized foster care along with supporting documentation to the appropriate regional administrator or designee.

Once the regional administrator has provided written approval of the specialized foster care rate for the child, the worker shall:

- work with the FRS to determine the ability of the prospective specialized foster family to meet the needs of the child, or to identify a family able to meet the child's needs.

When a foster home able to meet the child's special needs as determined by the FRS is recommended for approval as a specialized foster home for the child, the recommendation is submitted to the FRS supervisor.

### CAPS

The FRS should notify the placing worker when the specialized license has been approved. **The specialized license must be approved before the worker will be able to enter the specialized foster care service on SERP.**

Once the specialized license has been approved, the worker should close regular foster care and open foster care at the

## Child and Family Services Policy Manual: Substitute Care for Children Specialized Foster Care

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specialized rate on SERP, service code PFSPC.

**NOTE:** The specialized rate includes a clothing and transportation allowance, and for children under age three, the diaper allowance.

### **Intensive Training and Supervision**

In addition to meeting the training requirements for a foster home license, the specialized foster parents must have a demonstrated ability to meet the specific needs of the child or receive pre-service training on the special problem area.

### **CAPS**

The training must be approved by the FRS and will be recorded in the same manner as regular foster parent training on PRTD (Provider Training Detail).

The specialized foster parents must have regular contact with their professional support person and participate in any other required training.

### **Case Plan**

The placing worker should review the case plan with the foster parents and discuss mutual expectations. A written agreement between the foster parents and the agency regarding mutual expectations is recommended.

### **Ongoing Review for Appropriate Placement**

#### **CAPS**

The social worker shall review the child's continuing special needs on an ongoing basis. A formal assessment shall be entered on the IARL as a supervisory review (SUP) every six months. If the identified problems are eliminated, payments will be reduced to the regular foster care rate.

### **Payment**

#### **CAPS**

The specialized foster care rate will be paid only for those children named on the license specifically identified as requiring specialized foster care. Payment will be entered on SERP, service code PSFPC.

If the child is eligible for SSI, SSB, VA benefits or other monthly financial payments, these payments will be made payable to the Department. A trust account must be established per policy section 403-2, Trust Accounts.

If a child in specialized foster care needs hospitalization, the foster parents may continue to receive payment for up to one month or longer with the approval of the regional administrator. During the child's hospitalization, the foster parent is expected to continue regular contact with the child, such as visitation in

## Child and Family Services Policy Manual: Substitute Care for Children Specialized Foster Care

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the hospital.

### Respite

Respite care funding is not part of the enhanced rate for specialized foster care. Respite care is arranged and paid for by the foster parent. Respite is defined as short-term supervision or care of a foster child in an emergency or on an intermittent basis.

Families must advise the placing worker of the identity of the respite care provider and the location of the foster child if the child is staying overnight at a home other than that of the licensed foster parents. Foster parents will advise the respite care provider of health information pertinent to the child, the child's social worker's name and telephone number, and emergency numbers. Foster parents are responsible to assure the respite care providers can adequately provide for the needs of the child.

More detailed information regarding respite is in section 405-10, Respite Care Allowance.

### Medicaid

#### **Medicaid will only pay for medically necessary service.**

The DPHHS Health Policy and Services Division determines the definition of medically necessary services, not the physician. If a worker has a question as to whether Medicaid will provide payment for a particular medical service, treatment or travel, the worker and foster parent may refer to the recipient booklet entitled, Medicaid - Your Health Care Program and What You Need to Know (DPHHS-MA-65). Copies of this booklet are available at the county Office of Public Assistance (OPA).

### Travel

Medicaid travel reimburses only necessary covered services from the nearest provider, and is limited to the least costly means to meet the child's needs. Reimbursement is only available when there is no other way of reimbursing the travel.

**If emergency transportation is needed, call the Medicaid Transportation Hotline (1-800-262-1545) as soon as a medical appointment is made and before the travel occurs.**

### General Information

Medicaid information regarding the coverage of any service may be obtained by calling 1-800-362-8312 or accessing the Division's web site at <http://www.dphhs.state.mt.us/hpsd>. If the worker is unable to get the necessary information, they may call the Health Policy and Services Division at 444-4540.

## Child and Family Services Policy Manual: Substitute Care for Children Specialized Foster Care

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### Mental Health Services

Financial eligibility will be determined by the OPA. Clinical assessments must be provided by a licensed mental health professional to determine the mental health needs. Travel is approved in the same manner as authorizing Medicaid travel.

For information on Mental Health covered Services or for problems accessing services, call 1-888-866-0328 toll free.

### Community Support Services

Each foster parent should be advised of support services available in the community, and other types of financial and educational assistance for children with severe problems who are in foster care.

The placing worker makes appropriate referrals to other programs. These programs may provide services such as purchase of equipment, supplies, clothing, physical therapy, occupational therapy, gastrostomy feeding, tracheostomy care and debridement.

### References

Mont. Admin. R. 37.50.310-320

**Child and Family Services Policy Manual: Substitute Care for Children  
Medicaid Reimbursed Therapeutic Services  
Therapeutic Youth Group Homes and Therapeutic Family Foster Care**

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<b>Definitions</b>	<b>Medicaid Reimbursed Therapeutic Services</b> , for the purpose of this Manual Section 406-2, are Therapeutic Youth Group Homes or Therapeutic Family Foster Care Services. Both programs are licensed by the Department and operated by governmental units or a corporation governed by boards of directors.
Therapeutic Youth Group Homes	<p>A <b>Therapeutic Youth Group Home (TYGH)</b> is a community or campus-based treatment group home. The TYGH programs are operated in single residences located in a community, or in clusters of residences on campus with access to community resources. Each TYGH facility must be licensed by the Quality Assurance Division, DPHHS, with a therapeutic group home license.</p> <p>TYGH services are determined to be moderate, campus-based or intensive treatment levels depending on child to direct child care staff ratios, intensity of treatment, and availability of on-site program managers (PM) and lead clinical staff (LCS).</p>
Therapeutic Family Foster Care	<p><b>Therapeutic Family Foster Care (TFFC)</b> is therapeutic care provided in a family setting on two levels: Moderate and Intensive. Treatment Supervisors provide direct clinical supervision to Treatment Managers who in turn supervise specially trained treatment parents. TFFC programs are licensed as Child Placing Agencies for TFFC by a Child and Family Services Division (CFSD) Family Resource Specialist. Individual Treatment Homes receive a licensing study by the Child Placing Agency, which is then presented to the CFSD Family Resource Specialist for licensure as a Therapeutic Family Foster home.</p>
<b>Treatment Services</b>	<p>Both TYGH and TFFC agencies employ professional and direct care, relief and other staff who provide care and treatment to emotionally disturbed and dually diagnosed youth who, because of their emotional disturbance and/or dual diagnosis, cannot be treated in a less restrictive environment. In the TFFC system, specially trained treatment parents provide treatment interventions in accordance with the Individual Treatment Plan (ITP).</p>
TYGH Services	<p>Moderate and campus-based level TYGH's must provide on a weekly basis, a minimum of two age appropriate group treatment sessions per child, one individual treatment session</p>

**Child and Family Services Policy Manual: Substitute Care for Children  
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per child, one treatment team meeting, and family therapy whenever appropriate and medically necessary.

In addition to the treatment interventions described above, the campus-based level TYGH staff does daily charting of the objectives specified in the child's ITP, and treatment occurs in the campus milieu with the involvement of a facility social worker, clinical director, and a registered nurse.

Intensive level TYGH's provide on a weekly basis, a minimum of three age appropriate group treatment sessions per child, two individual treatment sessions per child, two treatment team meetings and family therapy whenever appropriate and medically necessary.

These treatment services are provided by the LCS or by the PM under the supervision of the clinical staff.

**TFFC Services**

TFFC provides specially trained treatment parents who receive regular supervision from the program's clinical staff. Treatment interventions are provided to children and youth with emotional disturbances or dual diagnosis in accordance with an individual treatment plan. When medically necessary, a Mental Health Assistant can provide up to 10 hours of individual therapeutic care per week.

**TFFC Limitations:  
TFFC Home with  
Provisional Licenses**

A child or youth may not be initially placed in a Therapeutic Foster Family home that has a "Provisional" Therapeutic Foster Care license. If a child or youth is placed in a TFFC Home with a "regular" license that is changed to a "provisional" license, the TFFC program will immediately notify the social worker of the license change and explain the reason for the change. If the TFFC program determines that the child is safe and recommends continued placement with the TFFC home that has received the provisional license, the CFSD social worker and CFSD supervisor have the final determination regarding the placement of the child.

**Authorization for Double  
Placements**

A Maximum of two children will be in a TFFC home, and only with the approval of the appropriate social worker supervisors, family resource specialist, and child placing agency staff. Prior to authorizing a second child to be placed, consideration should be given to ensure that the intensity and needs of each child can be addressed within one treatment home. The DPHHS-

**Child and Family Services Policy Manual: Substitute Care for Children  
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CFS-031 must be completed for authorization of a double placement. Authorization must be obtained prior to the placement of the second child in the home.

When considering TYGH or TFFC as a treatment option, refer to Policy Manual Section 401-1, Philosophy, for additional information.

**Payment for Services**

The Department enters into foster care contracts with individual providers for reimbursement of room and board services for youth placed by the Department.

IV-E Funding

If the child in placement is IV-E eligible, IV-E funding should be utilized for foster care payments made for therapeutic care in TYGH ONLY IF:

- the TYGH has a “regular” therapeutic group home license; or
- the TFFC treatment foster home has a “regular” therapeutic foster care license. If a IV-E child is in a TFFC home that receives a “provisional” license, the funding source must be changed to GFO **or** the child may be placed elsewhere.

The Department may not use IV-E funding for placements with a “provisional” license.

First Health Services of Montana

In both therapeutic service systems, TYGH and TFFC, First Health Services of Montana is the utilization review entity responsible for authorizing reimbursement in accordance with clinical standards for treatment services which are provided by the in-house professional and direct care staff of the programs. For TFFC, First Health will determine if the child receives Moderate or Intensive Level services in the TFFC home.

**Medicaid Admission Criteria**  
Clinical Standards

For youth who are Medicaid eligible or who are eligible for payment of mental health services under the Department’s Mental Health Services Plan (MHSP) or Child Health Insurance Plan (CHIP) (150% of poverty), the First Health authorizes reimbursement in accordance with clinical standards.

The Certificate of Need (CON)

Authorization for TYGH and TFFC services requires a Certificate of Need (CON) for the level of therapeutic care

**Child and Family Services Policy Manual: Substitute Care for Children  
Medicaid Reimbursed Therapeutic Services  
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signed by the involved mental health case manager, a licensed clinician, and a physician which in most cases is provided to First Health by the mental health case manager.

**SSI Determination**

When a youth is authorized for TYGH or TFFC and the youth has not been previously determined to be eligible for SSI benefits, the social worker should contact the local Social Security Office immediately to begin SSI eligibility determination.

**Absent Youth**

In the event a youth placed by DPHHS is absent from the TYGH or TFFC due to runaway status, home visits, or for other reasons such as admission into an in-patient medical or psychiatric facility, the appropriate Regional Administrator may authorize room and board payments for up to five days. Additional days may be authorized on a case by case basis.

When a youth leaves the TYGH or TFFC and enters an in-patient Medicaid facility, Medicaid reimbursement to the TYGH or TFFC provider will stop. If the youth was placed by DPHHS and will be returning to the TYGH, the appropriate Regional Administrator may authorize room and board payments to the TYGH for up to five days. If the bed is to be held longer than five days, special payment arrangements must be approved by the Regional Administrator. Prior to authorizing these room and board payments, verify that return to the TYGH is part of the approved Medicaid treatment plan.

**Eligibility for Other  
Medicaid Reimbursed  
Mental Health Services**

Medicaid reimbursable physical health and other services, including transportation, are available to Medicaid eligible youth. Authorization for these services is the responsibility of the individual Medicaid provider.

**Reimbursement Prohibitions**

TYGH and TFFC providers are not eligible for DPHHS payments of foster care clothing allowances and/or special needs payments.

**Respite**

The Department's foster care contract for room and board services to TFFC providers includes an allowance for 38 days of respite care. Medicaid reimburses the TFFC providers at a daily rate for treatment interventions. No distinction is made between treatment provided in the primary treatment home and treatment provided in a respite care home. MEDICAID may authorize additional reimbursement for respite services.

**Child and Family Services Policy Manual: Substitute Care for Children  
Medicaid Reimbursed Therapeutic Services  
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**Qualifications of Respite Providers for TFFC**

Respite providers must be:

- licensed and trained therapeutic foster parents; **or**
- a member of the child's family or other person familiar with and known to the child who has been identified in the treatment plan as a respite provider and approved by the responsible social worker and/or supervisor.

**Third Party Liability**

Under federal law, Medicaid is always the payor of last resort to all other insurance programs. Third party resources, including Medicare, must make payment or denial before Medicaid can consider the claim for payment. The exception to this law is Indian Health Services which need not be billed before Medicaid.

**NOTE:** When children or youth receiving services in Medicaid reimbursed TFFC are discharged from this treatment level, they may remain with the treatment family and continue to receive services through the provider's foster care contract. Youth who are not authorized for admission to Medicaid reimbursed TFFC or who are not Medicaid eligible may be referred to therapeutic foster care with services paid under the same contract. (Refer to Section 406-3, Therapeutic Foster Care - 100% General Fund Foster Care Budget.)

**CAPS**

The worker should close any existing open foster care services including respite care, and open foster care in the therapeutic facility using the appropriate service codes from the following list:

**TYGH CAPS Payment and Placement Codes**

PTGHI is used for Intensive level therapeutic group homes.  
PTGHM is used for Moderate level therapeutic group homes.  
PTGHC is used for Campus-based therapeutic group homes.

Clothing is purchased through the Foster Care Contract.

**TFFC CAPS Payment and Placement Codes**

PFTB1 is used for Medicaid paid TFFC. On CPHL, the specific Therapeutic Foster Family should be listed as the "Provider." On SERL, the specific Treatment Foster Family should be listed under "Service-Rendering," and the TFFC agency should also be listed under "Payment-Receiving."

**Child and Family Services Policy Manual: Substitute Care for Children  
Medicaid Reimbursed Therapeutic Services  
Therapeutic Youth Group Homes and Therapeutic Family Foster Care**

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Clothing is purchased through the Foster Care Contract and respite care is provided through the Medicaid payment to the provider.

IV-E funding Changed  
with a Provisional  
license

In the case that the therapeutic provider (either the therapeutic group home or the treatment foster family) receives a “provisional” license, IV-E funding may not be used to pay for a placement during the provisional license, but must be changed to General Fund (GFO).

**References**

Mont. Code Ann. § 52-2-601 to 603  
Mont. Admin. R. 37.37.101-336  
Mont. Admin. R. 37.93.101-716



## Child and Family Services Policy Manual: Substitute Care for Children Therapeutic Family Foster Care – Non-Medicaid

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<b>Definition</b>	A Therapeutic Family Foster Care program (TFFC) is an out-of-home placement service provided by a governmental unit or a corporation governed by a board of directors. Licensed foster parents receive intensive training, supervision, consultation, and support services from TFFC staff. This enables the foster parents to provide care and treatment for children whose problems cannot be adequately addressed through regular family foster care services. The TFFC program may provide services to the children's biological families when included in the case plan.
<b>Referrals</b>	<p>Children and youth may enter this service in two ways:</p> <ul style="list-style-type: none"> <li>• a child or youth may remain in the treatment family's home following discharge from the therapeutic level of service;</li> <li>• a child or youth may be referred directly for this service.</li> </ul> <p>Direct referral usually occurs when Medicaid reimbursement is not available.</p>
<b>Admission Criteria</b>	The contracted provider of this service establishes admission criteria. The child or youth referred for this service is evaluated by the provider based, in part, on information provided on the <u>Common Application for Residential Services</u> or other referral information which is completed by the placing professional.
<b>TFFC Services</b> Full TFFC Services	Regular Therapeutic Family Foster Care Services may be provided to a child that is not Medicaid eligible with full payment from General Fund. This service would have the same therapeutic expectations from the TFFC program as in Policy Section 406-1.
Assessment for Youth Needs Services	"Assessment for Youth Needs" service may be utilized when a child enters therapeutic services for the first time, is not Medicaid eligible, and requires evaluation to identify the specific care the child needs.
Step Down Services	This service can be used as a "step down" from the Medicaid reimbursed Therapeutic Family Foster Care service. (Refer to Section 406-1, Medicaid Reimbursed Therapeutic Services, Therapeutic Youth Group Homes and Therapeutic Family Foster Care.)
Permanency Level	The Permanency Level of TFFC is intended to support

## Child and Family Services Policy Manual: Substitute Care for Children Therapeutic Family Foster Care – Non-Medicaid

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Permanency Plans for children and to provide services to families who have indicated they are willing to be the permanent family for the youth. The Permanency Team collaboratively develops a permanency plan within 30 days of admission to this level of services.

Assessment for  
Permanency Level  
Services

Assessment for Permanency Level services are intended to serve those youth for whom a specified period of time is necessary to gather information specific to the permanency needs of the youth and for this information to be evaluated. The provider is responsible for providing to the Department an Assessment report within 14 days of the youth's discharge from this level of service. This report must contain specific recommendations and information supporting the youth's permanency plan.

**NOTE:** When considering placement in this level of service, refer to Section 402-1, Placement Procedures.

**Licensing  
and  
Limitations**

TFFC programs are licensed as Child Placing Agencies for Therapeutic Family Foster Care by a Child and Family Services Division (CFSD) Family Resource Specialist. Individual Treatment Homes receive a licensing study by the Child Placing Agency, which is then presented to the CFSD Family Resource Specialist for licensure as a Therapeutic Family Foster home.

Therapeutic foster families must receive training as requirement for a foster home license; they also receive supplementary training in order to meet the requirement for the therapeutic foster home.

Professional staff of the TFFC must be available to the foster parents 24 hours a day, seven days a week.

TFFC Home with  
Provisional Licenses

A child or youth MAY NOT be initially placed in a TFFC home that has a "Provisional" Therapeutic Foster Care license. If a child or youth is placed in a TFFC Home with a "regular" license that is changed to a "provisional" license, the TFFC program will immediately notify the social worker of the license change and explain the reason for the change. If the TFFC program determines that the child is safe and recommends continued placement with the TFFC home that has received the provisional license, the CFSD social worker and CFSD supervisor have the final determination regarding the placement of the child.

## Child and Family Services Policy Manual: Substitute Care for Children Therapeutic Family Foster Care – Non-Medicaid

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Authorization for Double Placements	<p>Therapeutic family foster homes shall be licensed to care for a maximum of two children. However, a maximum of one child will be placed in a TFFC home, unless permission is granted for one additional child through prior agreement of the TFFC director and the appropriate social worker supervisors. Authorizations to allow the TFFC home to serve more than one child are “child specific.” When that particular child leaves, the TFFC home reverts to a maximum of one child and additional children cannot be served without a new, “child specific” authorization. The DPHHS-CFS-031 must be completed for authorization of a double placement. Authorization must be obtained prior to the placement of the second child in the home.</p>
Considerations for Dual Licenses	<p>Social Worker Supervisors should consider the level of intensity of the two children being requested for placement in one TFFC home. If one child is authorized for placement by Medicaid and the other is non-Medicaid, the following dictate when this may occur:</p> <ul style="list-style-type: none"> <li>• the service is necessary to maintain an intact sibling group;</li> <li>• the service is necessary to maintain a parent/child relationship, when the child is authorized for TFFC placement; or</li> <li>• disruption of the service would place the child at risk of medical treatment in a more restrictive environment.</li> </ul>
<b>Respite Care</b>	<p>The TFFC must make respite care available for foster parents. Each foster parent is required to take respite an average of two days per month. The rate paid by DPHHS in accordance with the Model Rate Matrix pays the provider for 38 days of respite/family annually. Payment for additional respite days must have prior approval by the regional administrator who is financially responsible for the child/youth.</p>
Qualifications of Respite Providers	<p>Respite providers must be trained by the TFFC agency and must be:</p> <ul style="list-style-type: none"> <li>• licensed therapeutic foster parents; OR</li> <li>• a member of the child’s family or other person familiar with and known to the child who has been identified in the treatment plan as a respite provider and approved by the</li> </ul>

**Child and Family Services Policy Manual: Substitute Care for Children  
Therapeutic Family Foster Care – Non-Medicaid**

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responsible social worker and/or supervisor.

<b>Support Services</b>	The TFFC develops contracts or agreements with psychologists, substance abuse counselors, and other therapists on a case by case basis as needed. Payment for these services is not included in the daily reimbursement.
<b>Payment for Services</b>	The Department contracts for TFFC services using daily reimbursement rates established on the Department's Model Rate Matrix. Payments are made from the regional foster care budgets.
<b>IV-E Funding Restrictions</b>	<p>If the child in placement is IV-E eligible, IV-E funding should be utilized for foster care payments made for therapeutic care in TYGH <b>ONLY IF</b>:</p> <ul style="list-style-type: none"> <li>• the TYGH has a "regular" therapeutic group home license; or</li> <li>• the TFFC treatment foster home has a "regular" therapeutic foster care license.</li> </ul> <p>The Department may not use IV-E funding for placements with a "provisional" license. If a IV-E child is in a TYGH or TFFC home that receives a "provisional" license, the funding source must be changed to GFO on the SERL screen for payment as of the date of the license change, or the child may be placed elsewhere.</p>
<b>Clothing Allowances</b>	A clothing allowance is included in the contracted daily rate. Children/youth receiving this service are eligible for additional clothing allowances <b>only</b> with prior approval of the Regional Administrator who is financially responsible for the child/youth.
<b>Absent Youth</b>	In the event a youth placed by DPHHS is absent from the TYGH or TFFC due to runaway status, home visits, or for other reasons such as admission into an in-patient medical or psychiatric facility, the appropriate Regional Administrator may authorize room and board payments for up to five days. Additional days may be authorized on a case by case basis.

**NOTE:** Although children and youth receiving TFFC services may be Medicaid eligible, Medicaid does not reimburse for mental health services provided by the contractor. Medicaid will pay for authorized mental health

**Child and Family Services Policy Manual: Substitute Care for Children  
Therapeutic Family Foster Care – Non-Medicaid**

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services provided on an out-patient basis and other Medicaid reimbursable physical health care services.

**CAPS**

The worker should close any existing open foster care services including respite care. CAPS Codes to be used for payment and placement are as follows:

Full TFFC services: PFTHR and PSTL2

“Assessment for Youth Needs” services: PFTHR and PSTL2

Step Down services:

‘Assessment for Permanency’ services: PTAL1 and PTXL2

“Permanency Level” services: PTAL1

Respite services (beyond that paid in the daily rate): SRETF

**References**

Mont. Code Ann. § 52-2-603  
Mont. Admin. R. 37.50.310-320



## Child and Family Services Policy Manual: Substitute Care for Children Residential Chemical Dependency Treatment

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**Policy Statement** The Mental and Addictive Disorders Division (AMDD) of DPHHS administers funds allocated for inpatient chemical dependency treatment of youth. Priorities for the use of these funds are:

- youth who are in the custody of the CFSD;
- youth who, by court order, are under the supervision of the Department of Corrections (DOC) or youth court probation; and
- indigent youth (as defined below) referred by other resources, including, but not limited to schools, parents, private or state funded chemical dependency programs, CD counselors and mental health professionals.

Youth who are sentenced to incarceration in correctional facilities, such as Pine Hills, are not eligible for payment of inpatient chemical dependency treatment under AMDD funding until they are discharged from the correctional facility.

### Definitions

**Indigent youth** means a person under age 18 who is receiving Medicaid, is in the custody of the Department or DOC and has no other source of payment, or a youth whose family income is under 200% of federal poverty level as determined by AMDD or its designated representative.

**Residential alcohol and drug treatment** means chemical dependency treatment provided either in a hospital licensed by DPHHS or in-patient hospital care or in-patient free standing component approved by the DPHHS pursuant to Title XX, Chapter 3, subchapter 2, Mont. Admin. R.

**Provider** means a licensed or approved residential alcohol and drug treatment facility.

**Chemical dependency counselor** means a counselor certified by DPHHS, AMDD.

### Referral Process

The referring party must contact the local state-approved Outpatient Community Chemical Dependency Program serving the geographic area in which the youth resides. This list is updated semi-annually. A copy may be obtained by calling the AMDD, Children's Services Officer, at 444-1290.

## Child and Family Services Policy Manual: Substitute Care for Children Residential Chemical Dependency Treatment

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The state-approved Outpatient Chemical Dependency Program has the following responsibilities:

- to complete the referral information packet;
- to submit the complete referral packet to the AMDD's designated utilization reviewer for review and approval/denial;
- to ensure completion of a comprehensive coordinated treatment plan for continued care services for the youth;
- to ensure coordination of community based services delivered to the youth;
- to assess the parents' ability to pay pursuant to the sliding scale; and
- to provide chemical dependency services directly or through subcontracts per the comprehensive treatment plan for the youth.

### Referral Packet

To be eligible for payment of inpatient services by AMDD, each youth must have a complete referral packet submitted by the local state-approved Outpatient Chemical Dependency Program to the designated utilization reviewer. The referral packet must contain:

- an assessment which includes a bio/psycho/social assessment and an ASAM which justifies why the youth cannot be served in the community and why there is a need for inpatient care;
- other psychological testing or reports regarding the youth. (If the youth is on probation or pending court action, complete information on the reasons for the referral should accompany the referral.); and
- a plan for continued treatment after inpatient care. The plan is expected to be the product of an interdisciplinary team which may include the youth's parents.

**Referrals without a viable continued care plan will be denied payment of inpatient treatment.**

## Child and Family Services Policy Manual: Substitute Care for Children Residential Chemical Dependency Treatment

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- Treatment Teams**      If an interdisciplinary treatment team already exists for a youth, an additional treatment team is not necessary. The expansion of an existing team to include the chemical dependency counselor and program serving the youth may be all that is needed to meet the requirements of an interdisciplinary teams.
- If there is no existing team, it is the responsibility of the state-approved Chemical Dependency Program to organize and facilitate the team.
- Availability of Funds**      Payments for residential alcohol and drug treatment for indigent youth are subject to the availability of funds appropriated to the Department by the legislature. The AMDD will not approve care in excess of these funds. **All inpatient care provided under this funding requires prior written approval of the AMDD.**
- The chemical dependency funds of the AMDD will be used to pay for chemical dependency treatment of youth only when other sources of funding cannot be found. Medicaid, private insurance and parental participation are expected to be utilized before AMDD funds.
- References**      Mont. Code Ann. § 52-2-603  
Mont. Admin. R. 37.25.107, et.seq.

**Child and Family Services Policy Manual: Substitute Care for Children  
Placement of Youth in  
Acute Psychiatric Hospitalization or a Residential Treatment Facility**

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<b>Purpose</b>	This section establishes general guidelines for social workers and supervisors for the placement of children in Residential Treatment Facilities and Acute Psychiatric Hospitals, both in-state or out-of-state. The guidelines address level of care issues, authorization for funding, and payment through CAPS.
<b>Placement Selection Considerations</b> Treatment Team Involvement	<p>The decision to place a child in residential treatment or acute psychiatric hospitalization typically requires a collaborative effort between the social worker and mental health professionals involved with the care of the child. Ideally, the treatment team, including the social worker, the psychiatrist, therapist, mental health case manager, care givers, and other pertinent professionals involved in the child's care, should determine the level of care and treatment required for the child to be successful.</p> <p style="text-align: center;"><b>NOTE:</b> If a child with Medicaid appears to require residential treatment or acute hospitalization and is not currently receiving mental health case management services, the social worker should enroll the child to receive mental health case management services immediately.</p>
Match the Child's Treatment Needs to the Facility Services	The treatment needs of the child should be identified (ie. therapy for sexual reactivity, the need for a highly behavioral program vs. a cognitive program, etc.). If the level of treatment recommended by the team is residential or inpatient, the team should select a treatment facility based on the ability of the facility to meet the treatment needs of the child.
Location of Placement	Treatment services are to be provided to the child as close as possible to the home community, the child's supportive family members, or the child's permanent placement as determined by the best interest of the child. When the appropriate treatment services are not close by, arrangements should be made to maintain contact between the child and the social worker, family members, and other significant people in the child's life.
Limitations on Placements	A child alleged to be or adjudicated as a youth in need of care may not be placed in jail, a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

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<b>ICPC</b>	All out-of-state placements are required to comply with the Interstate Compact on the Placement of Children (ICPC). Please refer to Policy 402-7. Request that supervision of the placement be provided by the receiving state for all out-of-state placements, with the exception of placements at Home on the Range in North Dakota and Normative Services in Wyoming.
<b>Payment for Services</b>	The Department does not contract with residential treatment facilities or acute psychiatric hospitals. Child and Family Services and/or Montana Medicaid enters into agreements with these facilities for payment of services. The agreements are only for the provision of services; clothing is not included in any of the agreements.
IV-E Funding	<p>If the child in placement is IV-E eligible, IV-E funding should be utilized for foster care payments made for room and board in a treatment program ONLY IF</p> <ul style="list-style-type: none"> <li>• the facility has a “regular” license; and</li> <li>• the facility meets the Federal Guidelines for a facility which may receive IV-E funding.</li> </ul> <p>The Department may not use IV-E funding for placements in a facility with a “provisional” license.</p>
<b>MEDICAID</b> Eligibility and Admission Requirements	For youth who are Medicaid eligible or who are eligible for payment of mental health services under the Department’s Mental Health Services Plan (MHSP) or Child Health Insurance Plan (CHIP) (150% of poverty), the First Health authorizes reimbursement in accordance with clinical standards.
First Health Services of Montana	In the therapeutic service systems, First Health Services of Montana is the utilization review entity responsible for authorizing Medicaid reimbursement in accordance with clinical standards for treatment services which are provided by the in-house professional and direct care staff of the programs. First Health provides certification for treatment services, and periodically reviews each child’s case individually to determine the level of care needed to address the child’s current mental health needs.
The Certificate of Need (CON)	Authorization for acute hospitalization or residential treatment services requires a Certificate of Need (CON) for the level of

**Child and Family Services Policy Manual: Substitute Care for Children  
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therapeutic care signed by the involved mental health case manager, a licensed clinician, and a physician. The CON, in most cases, is provided to First Health by the mental health case manager.

During the time a child is certified by First Health for a particular placement, Medicaid will pay the Medicaid daily rate for the placement. Additional funding for treatment at the placement must be approved through Medicaid, and may not be paid by the CFSD. General Fund may be utilized by CFSD for clothing for children in this level of care.

Additional  
Requirement for  
Out-of-State  
Treatment

In addition to the CON, placement in residential treatment or acute psychiatric hospitalization Out-of-State requires that the applications for placement have been denied by all in-state residential treatment facilities. Currently, the in-state residential treatment facilities are Shodair Hospital (Helena), Kids Behavioral Health (Butte), and Yellowstone Boys and Girls Ranch (Billings).

SSI Determination

When a youth is authorized for Residential Treatment and the youth has not been previously determined to be eligible for SSI benefits, the social worker should contact the local Social Security Office immediately to begin SSI eligibility determination.

Eligibility for Other  
Medicaid  
Reimbursed  
Services

Medicaid reimbursable physical health care and other services, including transportation, are available to Medicaid eligible youth. Authorization for these services is the responsibility of the individual Medicaid provider. Out-of-State facilities may be requested to arrange for appropriate physical health care or other services by Montana Medicaid providers, if available.

Appealing a First  
Health  
Decertification

If a child who is in a placement approved by First Health is decertified for the level of care, the decision may be appealed for further review by a physician with First Health. Instances when an appeal may be appropriate are when the child has not completed the treatment as outlined by the facility, the child is unable to safely be placed at a lower level of care, the treatment professionals involved with the child believe the child should remain at that level of care, or if the decertification was issued due to a lack of information provided by the facility or hospital. The social worker should ensure that the facility has appealed the First Health decertification prior to payment of the

**Child and Family Services Policy Manual: Substitute Care for Children  
Placement of Youth in  
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facility or hospital out of General Fund.

**Third Party Liability** Under federal law, Medicaid is always the payor of last resort to all other insurance programs. Third party resources, including Medicare, must make payment or denial before Medicaid can consider the claim for payment. The exception to this law is Indian Health Services which need not be billed before Medicaid.

**Non-Medicaid** When a child is not Medicaid eligible or does not meet the Medicaid clinical standards for placement as determined by First Health, placement may be made utilizing the General Fund. Placements using General Fund should be limited to the required treatment as determined by the social worker, supervisor and the child's treatment team.

**Limitations** Instances when this may be appropriate are for treatment which is not covered by Medicaid services, or to provide services required to maintain the child at the current level of care for safety or continuity purposes after First Health has decertified the level of care for the child.

**Authorization** For each individual case, the daily rate and the use of General Fund for placement must be authorized by the Regional Administrator. The Regional Administrator may choose to be involved in the negotiated daily rate for the placement.

**CAPS** In-state Residential Treatment Facilities and Acute Psychiatric Hospitals are currently on CAPS. Out-of-state facilities may only be entered on CAPS by the Residential Specialist. Prior to placement, notify the Residential Specialist of facilities which are not listed or up-to-date on CAPS.

**CAPS Codes** In-State Facilities:

- If Medicaid approved, enter PRCMM as a non-paid code on SERN.
- If Medicaid denies payment for the placement, use PRCMM as a paid code on SERP at the daily rate approved by the Regional Administrator.

**Child and Family Services Policy Manual: Substitute Care for Children  
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Out-of-State Facilities:

- If Medicaid approved, enter POSTP as a non-paid code on SERN.
- If Medicaid denies payment for the placement, use the codes listed on the most recent "Out-of-State Provider/Facility Rate List" as distributed by the CFSD Fiscal Bureau. Typically these codes may be:

POSRB--Room and Board  
POSTX--Treatment Services  
POSSU--Supervision Services  
SEDOS--Regular Education  
SEDOT--Special Education

**For full CFSD payment, do not use POSTP, which is an all inclusive rate intended for DOC use only. POSTP does not allow for the use of IV-E, IV-A, Title XX, or other funding sources available for facility placement.**

**References**

Mont. Code Ann. § 41-3-301  
Mont. Code Ann. § 41-3-440  
Mont. Code Ann. § 41-7-102

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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### Definition

**Legal risk pre-adoptive placement** is the placement of a foster child, for whom the permanency plan is adoption, with people who have been approved as an adoptive resource, pending the child becoming legally free for adoption

**NOTE: Legal risk pre-adoptive placement should not be confused with the placement of a child with a concurrent planning family.**

A concurrent planning family is a family approved both as a foster family and an adoptive family. The foster family must be willing to work with the Department, the child's birth family, and the child's extended family members toward the goal of reunification. If a permanent placement is not established through reunification with the child's birth family or extended family, the concurrent family will be given priority for adoption if they are determined to meet the best interests criteria for the child. (See Section 603-2, Identification and Selection of Family.)

### Policy

Legal risk pre-adoptive placement is appropriate in cases where the Department, at a minimum, has filed a petition for permanent custody of the child. By using an approved adoptive family willing to accept a legal risk, the child may be placed with an approved adoptive family in a timelier manner, which meets the child's developmental and emotional needs.

Legal risk placement is necessary because the child's legal availability for adoption cannot be guaranteed to the prospective adoptive family at the time of placement. This may be because:

- a petition has been filed, but the birth parents' rights have not yet been terminated; or
- a pending legal action, such as an appeal, is contesting the validity of a court order terminating parental rights.

### Criteria for Placement

Legal risk pre-adoptive placements should be made only when:

- the child's best interests are served;
- adoption is clearly the goal;

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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- a determination has been made by the county attorney or the agency's legal counsel that termination of parental rights is both likely and able to be obtained in a reasonable period of time;
- the prospective adoptive parent(s) have given written consent to the placement indicating that they have been fully informed of the risks involved (i.e., if the child is not freed for adoption, the child may have to return to the birth parents). See the Legal Risk Pre-Adoptive Placement Agreement on page 5; and
- the family is an approved adoptive family and is licensed for foster care.

Because it will need to be adjusted to meet the needs of each placement, the Legal Risk Pre-Adoptive Placement Agreement is not a pre-printed form or a DocGen on CAPS. It is the responsibility of the child's worker to complete the legal risk agreement to meet the specific situation.

The child's social worker and the family resource specialist serving the adoptive family will coordinate a placement process that best meets the needs of the child. The process includes:

1. providing the prospective adoptive parent(s) with complete and accurate information, including:
  - a. completed DPHHS-CFS-107, Birth Family Social and Medical History;
  - b. complete medical records, including immunizations;
  - c. psychological evaluations on any family member, if contained in the Department's records;
  - d. school records;
  - e. child's daily routine;
  - f. information on previous placements, including type and length of placements;

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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- g. child's eligibility for subsidized adoption; and
  - h. the child's Life Story Book.
2. clarifying if and how information about the child and/or the child's birth parents will be updated;
  3. arranging for pre-placement visits; and
  4. providing adoptive parent(s) a copy of placement agreements for their review prior to placement of the child.

<b>Licensing</b>	The approved adoptive home that receives a child in a legal risk placement is issued a foster home license based upon an approved adoptive pre-placement evaluation. The pre-placement evaluation is placed in the licensing file in lieu of a foster home study.
<b>Restrictions</b>	The youth foster home license issued is restricted to the child(ren) in the home for whom there is a signed <u>Legal Risk Pre-Adoptive Placement Agreement</u> .
<b>Requirements</b>	Foster Care Review Committee (FCRC) requirements must be met for all children in foster care including those children in legal risk placements. The Department FCRC policy must be followed for all reviews. (See Sections 409-1, Foster Care Review Committees.)
<b>Social Worker Responsibility</b>	The FCRC forms must be placed in the child's case record. The reviews are scheduled by the community social work supervisor or his or her designee. The required review form is completed by the placing worker. (See Section 402-6, Request for Courtesy Supervision and Case Transfer.)
<b>CAPS</b>	Placements must be entered on PLAD even if no payment is being made. Update the permanency goal to reflect adoption. An application for Medicaid should be made even if no foster care payment is being made. This will determine if the child is eligible under any other available Medicaid program.
<b>Procedure for Subsequent Adoption</b>	Once the child is legally free for adoption, a DPHHS-CFS-030, <u>Agreement on Adoptive Placement</u> is completed and signed by the adoptive parent(s), child's worker, the worker supervising the adoptive placement, and, when appropriate, the child. At

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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this point, the placement becomes an adoptive placement rather than a foster care placement. Services continue to be provided by the family resource specialist until the adoption is finalized.

### **Parental Rights Not Terminated**

If the Department is not successful in obtaining permanent legal custody of the child with the right to consent to adoption, the child's worker shall determine a new plan for the child. If the child is returned to the birth parents, the worker shall assure a transition that will ease the child into the home and shall work with the family resource specialist to assist the legal risk adoptive parent(s) in adjusting to the transition.

### **Private Agencies**

In a legal risk pre-adoptive placement through a private agency, the approved adoptive family must meet the Department's foster care licensing standards and be licensed by the Department prior to the placement of the child in the home. At the discretion of the Regional Administrator, payments negotiated for the Adoption Subsidy may be made on behalf of the child at the time of pre-adoptive placement until the adoption is finalized.

**Montana Department of Public Health and Human Services  
Legal Risk Pre-Adoptive Placement Agreement**

I/We agree to accept \_\_\_\_\_ on a Legal Risk Pre-Adoptive basis from the Department of Public Health and Human Services.

I/We understand that the Department of Public Health and Human Services does not have the legal authority to consent to the adoption of this child because:

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I/We agree to accept the above named child on a foster care basis until such time as the child becomes available for adoption, or, in the event the Department does not obtain the right to consent to adoption, until such other plans are made for the child. I/We understand that the child may have to be removed from my/our home and placed elsewhere if the Department does not obtain permanent legal custody with the right to consent to adoption.

I/We agree to the following terms and conditions regarding the provision of foster care for the above-named child:

1. to abide by the terms of the DPHHS-CFS-LIC-020, Foster Parent Licensing and Relicensing Agreement, in providing care to the child;
2. to continue any therapy or counseling that the child may be receiving and to make arrangement for any further treatment the Department deems necessary;
3. to return physical custody of the child to the Department, if requested, in the event that the Department does not obtain permanent legal custody with the right to consent to adoption; and
4. to \_\_\_\_\_  
\_\_\_\_\_

The Department of Public Health and Human Services agrees as follows:

1. to seek permanent legal custody of the child including the right to consent to adoption;
2. to consent to the adoption of \_\_\_\_\_ if the Department receives permanent legal custody with the right to consent to adoption, providing that the family completes a successful period of post-placement supervision;
3. to comply with the Department's responsibilities;
4. to provide the family with the current psychological information regarding the child, and the completed form DPHHS-CFS-107, Birth Family Social and Medical History;

5. to provide Montana Medicaid coverage while the child is in foster care status;  
and

6. to \_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Department of Public Health and Human Services

Adoptive Parent(s)

\_\_\_\_\_  
Social Worker

\_\_\_\_\_

\_\_\_\_\_  
Supervisor

\_\_\_\_\_

\_\_\_\_\_  
Family Resource Specialist

## Child and Family Services Policy Manual: Substitute Care for Children Guardianship

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<b>Philosophy</b>	<p>The Department of Public Health and Human Services is committed to permanency for all children.</p> <p>Guardianship is the most appropriate permanent placement option for some children, <b>when reunification and adoption have been ruled out</b>. A determination that guardianship is the most appropriate permanent placement option must be made at a permanency staffing.</p> <p>Appointment of a guardian by the court creates a legal relationship between the child and the guardian(s) which can only be terminated by the court.</p>
<b>Definition</b>	<p>A <b>legal guardian</b> is a person who has qualified as a caretaker of a child/youth in the custody of the Department or tribe and has been appointed guardian by the court.</p> <p>A <b>legal guardianship</b> is a judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the child, custody of the child and decision making.</p>
<b>Permanency Team Staffing</b>	<p>In order to determine the appropriateness of a guardianship placement team a permanency staffing must be held. Participants in the staffing must include the child's social worker, community social worker supervisor, family resource specialist or family resource specialist supervisor and permanency planning specialist.</p> <p>The child's social worker is responsible for ensuring that the case record documents that the child meets the legal and department criteria for guardianship and for requesting a permanency staffing .</p> <p>The permanency team will review the information provided by the social worker, and the appropriateness of guardianship for the child and determine if guardianship is determined to be the most appropriate permanent plan.</p> <p>The permanency team will determine the necessary action that must be taken prior to filing a petition for guardianship with the court and will assign responsibility for completion to team member.</p>

## Child and Family Services Policy Manual: Substitute Care for Children Guardianship

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Action steps include:

- discussion with the prospective guardian regarding the guardianship program;
- for IV -E eligible children, provision of specific information regarding the Child Welfare Demonstration Project::
- if the prospective guardian is currently receiving foster care payments on behalf of the child, AND the child meets the eligibility requirements for a guardianship subsidy, discussion of the availability of guardianship subsidy;
- discussion with the county attorney or attorney representing the Department of the desire to petition the court to award guardianship to the identified family;
- preparation of a life story book for the child if one has not been completed;
- provision of all available information regarding the child and the child's birth family to the potential guardian;
- assistance to the potential guardian to identify ways that will help the child to maintain positive connections to his/her culture and heritage;
- assistance to the proposed guardian in identifying the strengths and needs of the placement and the support services that may be available that the guardian is willing to utilize;
- completion of an assessment of the guardianship home and family; and
- submission to the appropriate regional administrator of a request for the signed consent to the guardianship;
- completion of a DPHHS-CFS-133, Guardianship Agreement; and
- submission of a completed CFS-83 Adoption and Guardianship Program Child's Eligibility Determination to

## Child and Family Services Policy Manual: Substitute Care for Children Guardianship

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the assigned regional staff member responsible for subsidy negotiation if a subsidy will be provided.

The results of the permanency team staffing, including responsibility and time lines for completion of task, should be documented on a Guardianship Requirements and Request for Approval form and maintained in the case file

### IV-E Demonstration Project

DPHHS has a Child Welfare Demonstration Project which allows the department to use IV -E funds to subsidize guardianship placements for children who meet specific requirements. Use of IV-E funds to subsidize guardianship is only possible because Montana has been awarded a demonstration project.

### Additional Requirements

In addition to the requirements for guardianship on the following pages, if the child is part of a sibling group placed with a prospective guardian, all of the children in the sibling group must be IV-E eligible and must have IV-E payments being made on their behalf. The child or children must reside in Montana.

### Random Assignment Process

If guardianship is determined to be the most appropriate option for a child who is IV-E eligible; and

?the child meets all of the requirements for participation in the demonstration project; and

?a guardianship subsidy will be needed if a guardianship is granted;

a DPHHS-CFS 132, Child Welfare Demonstration Project Guardianship Program Application must be submitted to the foster care program officer in central office.

Following receipt of the application, the child's IV -E eligibility will be verified and If the child is IV-E eligible, a referral for assignment will be sent to the project evaluators. The referring worker will be notified when the assignment is made.

Children will be assigned to either the experimental or control group. Children who are assigned to the experimental group are eligible to receive IV-E guardianship subsidy payments. Children who are assigned to the control group are not eligible for a guardianship subsidy but continue to be eligible to receive

## Child and Family Services Policy Manual: Substitute Care for Children Guardianship

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<p>all services for which they are otherwise entitled and to have IV-E funds used to pay for any IV-E eligible service.</p>	
<p><b>Provision of Information and Discussion with Prospective Guardian</b></p>	<p>The worker should inform the prospective guardian the child is eligible to participate in the demonstration project and provide the prospective guardian with information regarding the design of the demonstration project and the expectations of the guardian specific to the demonstration project (i.e., interviews, surveys, etc.).</p> <p>An explanation of the random assignment process which includes the options that are available for permanent placement of the child depending on the group to which the child is assigned must be part of the discussion with the prospective guardian. The prospective guardian must be helped to understand that assignment to the control group means that the child is not eligible for a guardianship subsidy.</p> <p><b>If prospective guardians elect NOT to participate in the demonstration project, but intend to pursue guardianship outside of the demonstration project, the prospective guardians must sign a notarized statement acknowledging that they are forever forfeiting IV-E guardianship subsidy.</b></p>
<p><b>Legal Requirements for Subsidized Guardianship</b></p>	<p>The court may appoint a guardian for a child under Mont. Code Ann. § 41-3-444, if the following facts are found by the court:</p> <ul style="list-style-type: none"> <li>• the child has been adjudicated a youth in need of care;</li> <li>• the Department has either permanent legal custody or temporary legal custody of the child;</li> <li>• the Department has made reasonable efforts to reunite the parent and child, further efforts would likely be unproductive; and</li> <li>• reunification of the parent and child would be contrary to the best interests of the child;</li> <li>• either termination of parental rights is not in the child's best interests; or parental rights have been terminated, but adoption is not in the child's best interests;</li> <li>• it is in the best interests of the child to remain or be</li> </ul>

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placed with the potential guardian(s);

- the child has lived with the potential guardian(s) in a family setting and the potential guardian(s) is/are committed to a long-term relationship with the child;
- if the child is an Indian child as defined in the Indian Child Welfare Act, the appropriate tribe or tribes have received notification by the state of the proceedings;
- the Department has given its written consent to the appointment of the guardian; and
- the Department has given its written consent to the provision of a guardianship subsidy.

The court must make a specific finding of fact for each of the above before establishing a guardianship.

### Priority to Extended Family

If the child meets the definition of an **abandoned child**, the court may give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts and uncles. Placement with the extended family member must be determined to be in the best interests of the child.

If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint based on a finding by the court that the extended family member is qualified to care for the child and which of the interested extended family members can best meet the child's needs.

### Additional Eligibility Requirements

In addition to the above, the following must also exist before the Department will consent to a guardianship:

- if adoption is in the child's best interests, no appropriate adoptive family has been located despite a diligent search;
- the prospective guardianship family has been approved by the Department to become the legal custodian of the child; and

## Child and Family Services Policy Manual: Substitute Care for Children Guardianship

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- the child has resided with the prospective guardian(s) for a minimum of six months.

**If a child is IV-E eligible and the prospective guardians elect NOT to participate in the demonstration project, but intend to pursue guardianship outside of the demonstration project, the prospective guardians must sign a notarized statement acknowledging that they are forever forfeiting IV-E guardianship subsidy.**

### Subsidy Eligibility Requirements

The Department has the authority to provide financial assistance and Medicaid to eligible children for whom guardianship is established under Mont. Code Ann. § 41-3-444.

The department may provide state-funded guardianship subsidy for children who are NOT IV -E eligible and IV -E subsidy only to children who have been assigned to the experimental group under the demonstration project.

In addition to the requirements which must be met for a guardianship placement, a guardianship may only be subsidized if the child is defined as a "child with special needs" because he or she meets at least one of the following criteria:

- diagnosed as having a physical, mental or emotional disability;
- recognized to be at high risk of developing a physical, mental, or emotional disability;
- a member of a minority group;
- six years old or older; or
- a member of a sibling group for whom guardianship will be established with the same guardian.

In addition, foster care payments on the child's behalf must be being made.

The amount of the financial subsidy that can be provided on behalf of a child cannot exceed \$10 less than the amount of the monthly foster care maintenance payment that was provided for the child.

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### Advantages

The advantages of guardianship over long term foster care include:

- a legally recognized relationship in which the child's care givers (guardians) have the right and responsibility to make important decisions regarding the child without Department involvement;
- a more stable placement which can only be terminated by court action;
- the comfort and security of belonging without the need to terminate parental rights; and
- greater likelihood of parental acceptance since termination of parental rights is not required.

In addition, if the guardianship is with a kinship family, it:

- provides legal permanence to existing relationships in a manner which supports connections and cultural norms;
- returns legal custody to family members; and
- assists family members in meeting the child's needs.

### Powers and Duties of Guardian

Specific powers and duties of a guardian include the:

- right to authorize medical or other professional care, treatment and advice;
- right to make decisions regarding the child's education, social or other activities;
- responsibility to take reasonable care of the child's personal effects and other property; and
- responsibility to use funds received on behalf of the child for the care, support and education of the child.

### Guardianship Home Assessment

The prospective guardian must complete a DPHHS-CFS-090(A) Resource Family Application and Profile (Part I) to initiate the guardianship assessment process. If the prospective guardian is a licensed foster parent, there are no other forms that must be completed by the prospective guardian to initiate the

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guardianship assessment process.

If the prospective guardian is not a licensed foster parent, he/she must submit a complete application packet.

### Home Visit

At least one visit to the home of the prospective guardian for the express purpose of assessing the appropriateness of the family to become the legal custodian of the child must be **made even when the family is already licensed as a foster family.**

If the child has or will be referred for assignment in the demonstration project, a determination must also be made of the family's appropriateness to participate in the subsidized guardianship demonstration project

### Written Assessment

A written assessment of the prospective guardian and home of the prospective guardian which meets the requirements of Mont. Admin R. 37.50.1101 must be completed. The assessment must include a statement that the prospective guardian and home of the prospective guardian meet the youth foster home requirements contained in Mont. Admin. R. 37.51.301, 37.51.305 - 307, 37.51.310 & 311, 37.51.805 & 806, 37.51.810, 37.51.815 & 816, 37.51.825 & 826, 37.51.901 & 902, 37.51.1001.

The worker conducting the assessment should utilize the DPHHS-CFS-013 Guardianship Home Assessment Guide when conducting the assessment. This guide contains the text of the rules referenced above.

The assessment must include a determination that the prospective guardian is appropriate to become the legal custodian for the specific child or children. Factors to be considered in determining the appropriateness of the proposed guardian include:

- acceptance of the child's cultural, racial and religious heritage;
- knowledge of the child's history, including placement and loss history and the potential effect on the child's development and future functioning;
- understanding and acceptance of the continued role of

## Child and Family Services Policy Manual: Substitute Care for Children Guardianship

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the child's birth family;

- understanding and acceptance of the powers and duties of a guardian and
- the desire of the prospective guardian to become the child's guardian.

### **CAPS**

The person completing the guardianship assessment must complete the FASD screen, and attach a written assessment of the applicants including a recommendation.

The guardianship home must be entered in CAPS as a licensed facility using the appropriate code:

GKS Guardian Kinship  
GNK Guardian Non-Kinship

Note: If the assessment is completed by a tribe and entered into CAPS, the appropriate codes are:

T GK Tribal Guardian Kinship  
T GN Tribal Guardian Non-Kinship

The guardianship subsidy service code of PGUAR must be entered on FSPL.

### **Notification to Applicant**

The FRS or FRS supervisor notifies the applicants in writing of the approval or denial of the application for guardianship.

### **Re-Assessment**

If guardianship for children for whom a guardianship assessment was completed is not established within one year of the approval of the guardianship assessment, an addendum to the assessment must be completed. The addendum should address the reasons why the guardianship has not been completed, whether the requirements for guardianship are still being met, and a recommendation as to continued approval or denial of the guardianship application.

The re-assessment should be sent to the FRS supervisor following the same process as is required for an initial assessment.

**A guardianship assessment or re-assessment is only valid for the specific child or children identified on the**

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**application. If a person wishes to become a guardian for additional children, a new application and assessment must be completed.**

### **Regional Administrator Consent to Guardianship**

**The consent of the Department is required by law.** A request for the signed consent to guardianship must be sent to the regional administrator for his/her signature. **Only the regional administrator or designee may consent to guardianship.**

The signed consent will be returned to the requesting worker.

### **Guardianship Subsidy Agreement**

Upon receipt of the CFS-83 Adoption and Guardianship Subsidy Program Child's Eligibility Determination, the regional designee will contact the prospective guardian to negotiate the terms of the guardianship subsidy. All relevant parties must sign the DPHHS-CFS-131 Subsidized Guardianship Agreement **prior to the guardianship hearing.**

### **Guardianship Petition**

The original signed consent to guardianship must be provided to the attorney who will (or has) filed the petition for guardianship. This may be either the county attorney (or other attorney representing the Department) or the child's guardian ad litem.

### **CAPS**

When a decree of guardianship has been issued, the guardianship decree information and subsidy information must be entered on CAPS. This information is entered by the Financial Specialist, who **must** be provided a copy of the decree of guardianship and the date the permanency team determined that guardianship was the most appropriate option for the child.

The child's social worker must ensure that the date the child was placed with guardian and the date the petition for guardianship was filed are correct in CAPS. The Financial Specialist may request verification of these dates from the worker.

The Financial Specialist must:

- check relationships on RELL to be certain the guardian has been added to the relationships as LGD (legal guardian);
- check FSPL to add or verify that the service code of

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PGUAR has been added;

- close foster care if it is not already closed using a closure code of POG. Foster care services on SERL must also be closed. **Children for whom guardianship has been established are not eligible for services such as clothing allowance, day care or respite.**
- complete CRTD using a disposition code of GSP Guardianship (Youth). **This is the only guardianship code that is to be used.**
- return to CPHL, put GARD in the path, and select F11 to go to the guardianship detail and complete the GARD screen;
- return to SERL and add PGUAR (guardianship financial subsidy).

### Medicaid Application

The worker should remind the guardian that an application for Medicaid must be made at the County Office of Public Assistance in the county **in which the guardian lives**. The application, form HCS-250/HCS-251 Application for Assistance will require information relating only to the child. The OPA staff will require verification of the child's income and resources.

### Child Support

CSED should be notified when a decree of guardianship is issued if there is an open child support case. The Department's child support case will be closed whether or not a subsidy is being provided. If the guardian wishes to pursue child support, the guardian may contact CSED to request services.

### Effect of Guardianship Decree

Entry of a decree of guardianship terminates the custody of the Department and the involvement of the Department with the child and the guardian(s) unless a subsidy is being provided. If a subsidy is being provided, the involvement of the Department is limited to issues related to the provision of the subsidy **unless the child is participating in the demonstration project. For children who are part of the demonstration project, an annual visit to the guardian's home is required.**

### Annual Visit

### Case Records

The field case record of a child for whom guardianship is established is retained in the county office until the child's 18<sup>th</sup> birthday. At that time the record is sent to the central office for permanent storage. A completed CFS -382 Receipt for Files to

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Central Office must accompany the box in which the file is sent.

### **Transfer to State Subsidy Program**

Children who are receiving a IV -E guardianship will be converted to the state guardianship program upon termination of the demonstration project. The child will continue to receive a state guardianship subsidy as long as the requirements of the state subsidy program are met.

### **Resignation of Guardianship**

A guardian may petition the court for permission to resign the guardianship. The petition may include a request for appointment of a successor guardian. Notice of a hearing for resignation of guardianship must be provided to:

- the Department;
- any court appointed guardian-ad-litem;
- the child's parent(s) if the rights of the parent(s) have not been terminated; and
- any other persons directly interested in the welfare of the child.

After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary or permanent legal custody to the Department.

### **Revocation of Guardianship**

The court may revoke a guardianship if continuation of the guardianship is not in the best interests of the child. A petition to revoke the guardianship must be filed and a hearing held on the petition prior to revocation of the guardianship by the court.

Notice of the revocation hearing must be provided by the person filing the petition to:

- the child's guardian;
- the Department;
- any court appointed guardian-ad-litem;
- the child's parent(s) if the rights of the parent(s) have not been terminated; and

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- any other persons directly interested in the welfare of the child.

### References

Mont. Code Ann. § 41-3-401  
Mont. Code Ann. § 41-3-406  
Mont. Code Ann. § 41-3-444  
Mont. Code Ann. § 41-3-607  
Mont. Code Ann. § 41-3-603  
Mont. Code Ann. § 72-5-231  
Mont. Admin. R. 37.50.1101-1102

Rev. 10/03  
Rev. 10/06

## Child and Family Services Policy Manual: Substitute Care for Children Planned Permanent Living Arrangement

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<b>Definition</b>	<p>A planned permanent living arrangement is long-term, planned foster care with a foster family, including a relative of the child, with whom a child has lived for at least six months.</p>
<b>Policy</b>	<p>The Department of Public Health and Human Services is committed to permanency for all children.</p> <p>A planned permanent living arrangement may be a permanency option for a child if other, more permanent options, are not appropriate for the child or not in the child's best interests. For the court to grant long-term custody and approve a planned permanent living arrangement for a child, the court must find, by a preponderance of evidence, that specific statutory requirements have been met.</p>
<b>Criteria</b>	<p>A planned permanent living arrangement formalizes an existing placement through a written agreement between the foster family, the child (if age 12 or older) and the Department. The youth's birth family may participate in the decision to make the placement permanent.</p> <p>If the Department petitions the court for long-term custody when the child is in a planned permanent living arrangement, the court must find by a preponderance of evidence, which is reflected in specific findings by the court, that the child meets one of the following criteria:</p> <ul style="list-style-type: none"><li>• the child is being cared for by a fit and willing relative;</li><li>• the child is at least 16 years old and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;</li><li>• the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contacts with the parent, indicated that it would not be in the best interests of the child to terminate parental rights of that parent; or</li><li>• the child meets the following criteria;</li><li>• the child has been adjudicated a youth in need of care;</li><li>• the Department has made reasonable efforts to reunite</li></ul>

## Child and Family Services Policy Manual: Substitute Care for Children Planned Permanent Living Arrangement

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the parent and child, further efforts by the Department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

- there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate and not to be in the child's best interests; and
- the child has been in a placement in which the foster parent or relative has committed to the long-term care of and to a relationship with the child and that it is in the best interests of the child to remain in that placement.

**NOTE:** Long-term custody of a child may also be appropriate for a child who has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting.

### Advantages

Advantages of permanent family care over long-term foster care include:

- the foster family has more autonomy than is customary in regular foster care;
- only the court may terminate the planned permanent placement upon petition of the birth parents or the Department if the court finds that the circumstances of the child or family have been substantially changed and the best interest of the child are no longer served by placement with that family; and
- foster parents and youth are ensured placement continuity.

### Permanency Team Staffing

In order to determine the appropriateness of a planned permanent living arrangement, the case will be staffed with a permanency team consisting of, at a minimum, the youth's social worker, community social worker supervisor, family resource specialist, family resource specialist supervisor and permanency planning specialist.

## Child and Family Services Policy Manual: Substitute Care for Children Planned Permanent Living Arrangement

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- The child's social worker is responsible for ensuring that the case record documents that the criteria for a planned permanent living arrangement found on pages 1-2 of this policy section are met and for requesting a permanency team review of the case.

The permanency team, utilizing the information provided by the social worker, will review the appropriateness of the proposed planned permanent living arrangement for the child. If a planned permanent living arrangement is determined to be appropriate, the permanency team will determine the necessary steps to be taken prior to filing a petition for long-term custody with the court.

The permanency team will assign responsibility for completion of needed tasks with time lines to team members. Steps and tasks to be considered include:

- a written assessment of the potential permanent family which demonstrates their appropriateness for permanent placement of the child and includes an assessment of the family's acceptance of the child's cultural and racial heritage;
- preparation of a Life Story Book for the child if one has not been completed;
- provision of all available information on the child and the child's birth family to the proposed permanent family;
- discussion with the potential permanent family of the frequency and type of birth family contact recommended to meet the needs of the child;
- assistance to the potential permanent family in identifying ways that will help the child to maintain positive connections to his/her culture and heritage;
- assistance to the potential permanent family in identifying the strengths and needs of the placement and the support services that are available that the family is willing to utilize.

The results of the permanency team staffing, including

## Child and Family Services Policy Manual: Substitute Care for Children Planned Permanent Living Arrangement

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responsibility and time lines for completion of tasks should be documented and maintained in the case file.

Subsequent review by the permanency team should occur based on the established time lines. Once the tasks and steps on the time line established by the permanency team have been completed, and a final determination for permanent placement has been made, the social worker must arrange for the planned permanent placement agreement to be signed by all of the appropriate parties. (See page 6 for sample agreement.)

Once the agreement is signed, the social worker should request that the county attorney file a petition for long-term custody.

A signed copy of the agreement should be provided to the child (if over age 12) and the foster parents and a copy placed in the child's case record

### **Ongoing Social Worker Responsibility** CAPS FCRC/CRB

The social worker should update all relevant screens, including IARL, CRTD and PLAD to reflect the permanent placement.

The child's case plan, updated to reflect any changes, must be reviewed by the FCRC or CRB every six months. (Section 402-2 Case Plan, 409-1 Foster Care Review Committee.

### Contact

The social worker must have personal (face-to-face) contact with the child in the foster home at least once every six months.

### References

Mont. Code Ann. § 41-3-445

## Planned Permanent Placement Agreement

The undersigned believe that it is in the best interest of \_\_\_\_\_ to  
Legal Name of Child  
remain in the home of \_\_\_\_\_ to be raised by them as a member of their  
Name(s) of Foster Parents  
family.

### **PARENT(S)**

I/we, \_\_\_\_\_ agree to be the primary parent(s) for \_\_\_\_\_  
Name(s) of Foster Parent(s) Legal Name of Child  
for his/her lifetime. We will not ask for him/her to be removed from our home except under  
serious or unusual circumstances.

We will maintain our current foster home license and will comply with all licensing  
requirements.

We will promptly inform \_\_\_\_\_'s social worker of any significant  
Legal Name of Child  
changes in his/her needs or circumstances.

### **DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES;**

The Department of Public Health and Human Services, Child and Family Services  
Division agrees to maintain and support the permanent placement of

\_\_\_\_\_ with \_\_\_\_\_.  
Legal Name of Child Name(s) of Foster Parents

The Department will not remove \_\_\_\_\_ from the home of  
Legal Name of Child  
\_\_\_\_\_ except under serious or unusual circumstances.  
Name(s) of Foster Parent(s)

The Department will provide foster care maintenance payments, Medicaid and  
other support services while \_\_\_\_\_ is in permanent placement with  
Legal Name of Child  
\_\_\_\_\_.  
Name(s) of Foster Parent(s)

A Department social worker will visit the home of \_\_\_\_\_ and  
Legal Name of Child  
\_\_\_\_\_ at least twice a year.  
Name(s) of Foster Parent(s)

A Department social worker or supervisor will be available to \_\_\_\_\_  
Name(s) of Foster Parent(s)  
to answer questions and address concerns. The social worker will provide support to  
\_\_\_\_\_ as they address \_\_\_\_\_'s ongoing needs and  
Name(s) of Foster Parent(s) Legal Name of Child  
behaviors.

A social worker will work with \_\_\_\_\_ and \_\_\_\_\_  
Legal Name of Child Name(s) of Foster Parent(s)  
and a Montana Foster Care Independence Program Contractor to develop a case plan that will  
help \_\_\_\_\_ prepare for adulthood.  
Legal Name of Child

\* As determined appropriate by the Department, the social worker will inform  
\_\_\_\_\_, the birth parents of \_\_\_\_\_ of his/her  
Birth Parents' Names Legal Name of Child  
adjustment and progress.

#### **\*BIRTH PARENTS**

I/we, the birth parents of \_\_\_\_\_ agree to continued placement of  
Legal Name of Child  
\_\_\_\_\_ with \_\_\_\_\_ until he/she is an adult.  
Legal Name of Child Name(s) of Foster Parent(s)

\*The sections regarding birth parents should only be included when the birth parents' rights have not been terminated and/or they have participated in the decision to make the placement permanent.

I/we will keep the Department social worker and \_\_\_\_\_ informed of our  
Legal Name of Child  
address(es) and will adhere to the established visitation plan.

#### **YOUTH**

I, \_\_\_\_\_, want to live with \_\_\_\_\_ as a member  
Legal Name of Child Name(s) of Foster Parent(s)  
of their family.

By signing this agreement, each of the parties is agreeing that every reasonable effort to maintain the placement will be made. Each party further agrees to notify the other parties in a timely manner of any circumstances which might alter the stability of the placement.

\_\_\_\_\_  
Legal Name of Child

\_\_\_\_\_  
Foster Parent

\_\_\_\_\_  
Birth Parent

\_\_\_\_\_  
Foster Parent

\_\_\_\_\_  
Birth Parent

\_\_\_\_\_  
Department Representative

Subscribed and sworn to me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

Reviewed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge's Name

\_\_\_\_\_  
Judicial District

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care: Independent Living Services

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### Background

The Foster Care Independence Act of 1999, Public Law 106-169 was enacted into law on 12-14-99. This law amended Section 477 of the Social Security Act and replaced the former Independent Living Initiative with the Chafee Foster Care Independence Program (CFCIP). CFCIP was amended on 1-17-2002.

The six purposes of the CFCIP are to:

- 1, To identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);
2. To help children who are likely to remain in foster care until 18 years of age receive the education, training and services necessary to obtain employment;
- 3, To help children who are likely to remain in foster care until 18 years of age prepare for and enter post-secondary training and education institutions;
4. To provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;
5. To provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 - and 21 years of age to complement their own efforts to achieve self-sufficiency, and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and
6. To make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

### Definitions

**Montana Foster Care Independence Program (MFCIP)** is the

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care: Independent Living Services

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name of the Chafee program for Montana. Services provided under the program are intended to assist eligible youth in attaining the attitudes, values, education, skills and experiences necessary for transitioning to adulthood.

**Foster care** (as used to define eligibility for services under CFCIP) means 24 hour substitute care for children placed away from their parents or guardians and for whom the state /tribe/BIA has placement and care responsibility.

**Foster care status** refers to a young person's status as opposed to a particular placement. A young person who is under the care and supervision of the state or tribe is considered to be in foster care.

**Foster care placement** includes, but is not limited to, paid and non-paid placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes.

**Permanency Plan:** The permanency plan of PPLA should only be used on a case by case basis for goals of independent living or emancipation. Permanency provides a context for independent living preparation for youth regardless of their permanency goal or plan. Independent living services are a supplement to, not a replacement for, permanency services. Regardless of whether a young person will return to birth family, live with kin, be adopted, or age out of the system to live on their own, he or she will need to have the skills, knowledge, and competencies for adult life.

**Transitional Living Plan (TLP):** The TLP is a written document that is a part of the overall case plan for a youth. It should clearly identify the best possible permanency plan for the youth, well defined goals and objectives for becoming self sufficient and the how and when the goals and objectives will be met.

**Like Skills Assessment** refers to the Ansell Casey Life Skills Assessment (ACLSA). The Assessment is available at [www.caseylifeskills.org](http://www.caseylifeskills.org).

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- Eligible Youth** Youth may qualify for the MFCIP and ETV programs if:
- He/she is age 16 or older and currently in foster care;
  - They have “aged out” of foster care and are not yet 21 years old; and
  - They were in foster care at age 18 including those who, after their 16<sup>th</sup> birthday, have had a guardianship established or adoption finalized.

Youth do not need to be eligible for Title IV-E foster care.

Priority for services is given to youth who have exited foster care because they reached the age of 18 and to youth 16 or older likely to be in foster care until age 18.

The social worker, supervisor or permanency-planning specialist identifies youth who are likely to “age out” of foster care.

**Other States** Youth who move to or from another state do not lose their eligibility for services.

Youth under age 18 If an eligible youth under the age of 18 is placed in another state, the sending state is responsible for foster care maintenance payments and case planning, which includes a written description of the programs and services that will be provided to help a child 16 or over prepare for the transition from foster care to independence, and a case review system.

When requesting ICPC approval for placement of a youth in another state, the sending worker should request information from the receiving state regarding the CFCIP services in the receiving state and the contact information for the CFCIP coordinator in that state.

If the youth is being placed in a residential treatment center, part of the services provided to the youth by the residential treatment center should be services to assist the youth in preparing for independence. It is the responsibility of the placing worker to ensure that appropriate transitional services are provided to the youth in the state in which the youth is living.

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### Youth ages 18-21

If an otherwise eligible youth between the ages of 18-21 moves to a state or is living in a state other than the state which had placement and care responsibility of the youth, the state of the youth's current residence is responsible for providing and paying for services needed by the youth if those services are a part of the CFCIP plan of the state in which the youth is living.

If an otherwise eligible youth moves to another state and wishes to access ETV, the state of the youth's current residence is responsible for providing the Education and Training Voucher. If a youth previously accessing MFCIP services in Montana is attending school in another state for the sole purpose of education and is considered by that school to be an 'out of state' resident, that youth will be considered eligible for ETV under the MFCIP if they are not eligible in the state they are residing. Additionally, youth from another state who attend a Montana school for the sole purpose of education and is considered by that school to be an 'out of state' resident, will not be eligible for ETV under the MFCIP.

### Referral to Services

The majority of services are accessed through contractors. Referral of eligible youth to the appropriate contractor is the responsibility of the youth's social worker.

**The social worker, contractor, youth and youth's foster care provider are expected to work together to develop and implement an appropriate transitional living plan for the youth in conjunction with the youths overall case plan.**

The primary worker for a youth will receive a CAPS alert 30 days prior to the youth's 16th birthday alerting the worker to the youth's eligibility for services.

The worker will refer the youth to the appropriate contractor for the region or tribal area in which the youth is living within 30 days of the youths 16<sup>th</sup> birthday (or within 30 days of placement for youth over 16 or through ICPC). The referral form is available in Public Folders.

**To ensure timely services to youth, the worker will grant shared access in CAPS via AXED immediately upon referring a youth to a contractor.**

The contractor will enter contact information regarding the youth on CNTD and services on SERN and SERP. Services include

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assessments (SBSAA), reassessments (SBSRA), transitional living plans (SBSAP) mentoring services (SBSAM), life skills groups, (SBSSG) and life skills individual training modules (SBSSM) youth cash stipend (SBSAC) and board and room (SBSAB). The contractor will attach a copy of the most recent TLP to DocGen and keep case notes on CAPS.

**MFCIP Contractors TUMBLEWEED - BILLINGS**

505 N 24<sup>th</sup> - 59101  
 Phone 259-2558  
 Fax 259-3681  
 Toll-free 888-816-4702

**TUMBLEWEED - BUTTE**

C/O CFSD  
 700 Casey - 59701  
 Phone 496-4940  
 Fax 496-4966

**TUMBLEWEED - GREAT FALLS**

626 Central Avenue West- 59404  
 Phone 454-3440  
 Fax 268-9838  
 Toll-free 877-612-0898

**TUMBLEWEED - HELENA**

C/O CFSD  
 316 North Park - 59601  
 Phone 444-2717  
 Fax 444-1681

**TUMBLEWEED - MISSOULA**

C/O Sentinel High School  
 901 South Avenue West - 59801  
 Phone 543-9205  
 Fax 543-9205  
 Toll-free 866-280-9205

**MFCIP – BLACKFEET**

PO Box 850  
 Browning, MT 59417  
 Phone 338-5171  
 Fax 338-5660

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**MFCIP – CSKT**

PO Box 278  
Pablo, MT 59855  
Phone 675-2700  
Fax 275-2883

**MFCIP – NORTHERN CHEYENNE**

PO Box 128  
Lame Deer, MT 59043  
Phone 477-8321  
Fax 477-8333

**MFCIP – CHIPPEWA CREE/FT. BELKNAP**

Box 544  
Elder, MT 59521  
Phone 395-4885  
Fax 395-4889

**Assessment**

MFCIP contractors will assist youth and placement providers in completing an assessment with all referred, eligible youth 16 years old or older.

When possible the TLP should incorporate the results of the life skills assessment and identify the programs and services needed.

Upon completion of assessment, contractors will assist and/or refer eligible youth to appropriate life skills classes.

Social workers are encouraged to have youth age 13-15 and their foster care provider, complete the assessment and use the results to identify the youth's strengths and needs and provide a framework for the foster parent's work with youth.

**NOTE:** A life-skills assessment and TLP may be completed and for youth 13-15 at any time. The MFCIP contractors are not responsible for youth in this age group.

**Transitional Living Plan**

A transitional living plan, which identifies the programs and services to be offered to the youth, must be developed with youth 16 and older within **60 days** of their placement in foster care. Update meetings need to occur at least every six months to review the progress and update the TLP as needed.

Social workers will ensure all youth 16 and older on their

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caseload have a completed TLP within 60 days of entering foster care and ensure it is updated at least every six months regardless of referral to contractor or services requested through ICPC.

Social workers will actively participate in the development and update of the TLP and whenever possible the youth will attend meetings to develop or update their transitional living plan. Youth will actively participate in the development of the plan as well as attend FCRC when appropriate.

MFCIP contractor will facilitate the development of TLP with the youth, social worker (or case manager), placement provider and other relevant participants.

The development of the TLP will identify programs and services which are needed to assist the youth in making the transition from foster care to self-sufficiency. Whenever possible, the placement provider, mentor and any other adults who may be able to offer assistance with the plan such as birth family members or school personnel should be included.

The transitional living plan, which is part of the case plan, should be reviewed by the FCRC as a part of the case review. The Social Worker will ensure the most current TLP is attached to or incorporated into the case plan (DocGen 427, Part A) for review by the FCRC.

Contractors, the youth's worker, youth and placement providers will collaborate in arranging a meeting to develop a transitional living plan.

The transitional living plan is a part of the overall case plan for the youth. Development of the transitional plan may be incorporated into other planning meetings regarding the youth such as permanency staffing, FCR, IEP, etc.

The Contractor will notify the youth's worker if the youth is uncooperative or refuses services offered by the contractor. **A placement provider cannot refuse services on behalf of a youth.**

Youth will receive assistance from the MFCIP contractor, social worker and placement provider in compiling a personal

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information packet as part of the TLP.

### Cash Stipends

Cash stipends may be available for eligible youth 16-21 who have completed a life skills assessment and have a current (less than six months old) TLP. Stipend must be clearly identified as necessary to assist a youth in achieving the goals and objectives of the TLP.

Cash stipends must be age-appropriate and directly linked to the goals and objectives stated in TLP and the overall case plan.

Contractors will maintain receipts for stipend expenditures in the youth's file. All stipend funds must be used to purchase the items/services which have been requested and approved. Failure to spend funds as requested may result in denial of future requests.

Youth may receive assistance for:

#### Education/Work

- secondary school educational expenses, including tutoring not available through the school system, driver's education, application fees, tuition, books or supplies;
- vocational training including apprenticeships or other job training;
- job readiness assistance, such as resume/application assistance, etiquette instruction, appropriate interview/work clothing, haircut, etc; and
- cost of travel to educational, apprenticeship or job sites.

Youth obtaining a GED or high school diploma are eligible for a \$100 incentive payment.

Youth who request funds to purchase or repair a used vehicle must be able to demonstrate that public transportation is unavailable.

The amount of transportation assistance will be limited to a lifetime maximum of \$500 from stipend funds.

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### Counseling and Medical

- counseling or therapy when it has been determined that such services will assist in the process and other funding is not available;
- medical expenses which are deemed medically necessary and for which other funding is not available.

The amount of assistance, if any, to be provided will be determined on a case-by-case basis.

### Household Set-up

- basic apartment or dorm room set-up. Set-up is limited to the purchase of basic necessities;
- security deposits, phone activation and utility connection fees.

### Room and Board

- rental and dorm deposits and applications fees;
- assistance with monthly rental payment;
- assistance with monthly utility payments;
- assistance with purchasing food.

No MFCIP funds may be used for room and board costs for youth under the age of 18.

Room and board assistance may be made to a placement provider on behalf of an eligible youth, only if foster care funds are not being used.

The amount of assistance will be based on the youth's personal circumstances and needs, other available community resources, previous use of funds and the availability of funds.

The need for room and board assistance must be clearly demonstrated. Youth must meet one of the following criteria in order to access room and board assistance:

- youth must be employed full-time; or

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- actively seeking full-time employment unless attending school or can demonstrate why he/she should not be expected to work full-time; or
- enrolled on a full-time basis in a post-secondary education program that does not meet the requirements for assistance through the ETV program; or
- youth is enrolled on a part-time basis in a post-secondary education program and it has been determined by program management that the youth's circumstances are such that the youth should not be required to attend school full-time or to work and attend school.

### **Mentors**

All eligible youth will be asked to identify a mentor or offered a mentor through an MFCIP contractors mentor program. The social worker, MFCIP contractor, youth and placement provider will collaborate to identify and match an appropriate mentor for the youth.

The MFCIP contractor will provide the mentor and the youth with resource material, information regarding resources and ongoing support.

### **Education & Training Voucher**

Education & Training Voucher Program Eligible youth may receive up to \$5000 per year to attend an eligible institution.

If a youth reaches the age of 18 prior to completing secondary education (high school graduation or GED), and the department will not continue foster care payments for the youth until high school graduation, the youth may apply for assistance through the ETV program. The youth must attend school regularly and maintain a 2.0 GPA in order to receive continued assistance.

The total amount awarded is dependent on other assistance available and cannot exceed the cost of attendance as defined by the Higher Education Act.

Youth may continue receiving ETV assistance to age 23 if they are enrolled in eligible program and making satisfactory progress toward completion on their 21st birthday.

Application Process Youth who wish to apply for assistance through either the secondary or post-secondary ETV Program

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can obtain an application from any MFCIP contractor, the state MFCIP coordinator or online at: [www.safmt.org](http://www.safmt.org).

ETV applications must be postmarked either by January 15th or July 15th and will be considered for the entire academic year. Youth will need to re-apply annually for continued assistance.

Students must be in good standing with the school and maintain a minimum GPA of 2.0 in order to receive continued assistance under the program and demonstrate this by providing a copy of their grades to the MFCIP contractor.

If a youth is not eligible for assistance under the ETV, the youth may be eligible for comparable assistance utilizing basic Chafee funds.

Room & Board assistance may be used to supplement assistance provided under the ETV programs when necessary.

### References

ACF Child Welfare Policy Manual, Chafee FAQ III.

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care: Personal Information Packet

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### Personal Information Packet

The Department should ensure children and youth leaving foster care after a prolonged period of time receives a personal information packet or Life Story Book.

Youth exiting care because they reach the age of 18 will receive original documents (photocopies when originals are not available) as part of their transitional living plan prior to exiting care.

If the following information is available, the personal information packet should contain:

1. Certified birth certificate.
2. Placement history: names, addresses and dates of each out-of-home placement to give a complete and continuous record of where the youth has lived.
3. A brief summary of how, when and why the youth first came into foster care, and why he or she is there now.
4. A relevant court order that distinguishes DPHHS had custody of youth through his/her 18<sup>th</sup> birthday or a court document indicating an adoption or guardianship was established after age 16.
5. School history: names, addresses and dates of attendance at all schools, report cards, awards, class pictures, and any other school information or mementos.
6. Current and relevant medical information: names of most recent physicians and dentists, physical health history requested from physicians and dentists (immunization records, illnesses, chronic medical or dental problems, accidents or injuries, and surgeries).
7. Relevant family health history: information regarding biological parents and siblings, and significant genetically transmitted tendencies for illness, birth defects, etc.
8. Social Security and other benefits: Social Security card, information on benefits available through parent(s)' accounts, veterans' benefit status, insurance benefits from parent(s) (life, health, etc.), tribal benefits for Indian youth, or

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other special resources.

9. Personal mementos: pictures, letters, baptismal certificate, awards and other mementos from case files or foster parents, including family members' names and whereabouts.

10. Work history: resume or jobs held and vocational training received.

11. Change of address card

In many instances, the foster parent will take the lead in putting together the personal information packet. In these instances, it is appropriate for the foster parent to maintain a copy of the packet.

PERSONAL INFORMATION PACKET

- Certified birth certificate
- Placement history
- Summary of how, when and why the youth first came into foster care
- Identification cards
- Copy of court order
- School history
- Medical records
- Family health history
- Social Security
- Personal mementos
- Work history
- Change of address card
- Other (Please specify)

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Received by \_\_\_\_\_  
(Youth or designated representative)

\_\_\_\_\_  
Date

DPHHS \_\_\_\_\_

A copy of the packet and signed receipt are retained in the case record.

Rev. 10/03  
Rev. 10/06

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care: Youth Employment

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### Background

The Workforce Investment Act (WIA) of 1998 replaced the Job Training Partnership Act (JTPA) of 1982. Title IB of WIA provides services to adults, dislocated workers and youth. The youth program provides services to **low income or economically disadvantaged youth ages 14 to 21**. Youth ages 14-18 (at the time of enrollment) receive services through the younger youth program, ages 19-21 (at the time of enrollment) receive services through the older youth program. At least 30 percent of youth funding must be spent on out-of-school youth.

All youth in state foster care are considered economically disadvantaged, since they are treated as a "family of one" for income purposes. However, the Workforce Investment Act is not an entitlement program.

### Eligible Youth

Enrollments beyond income eligibility are based on those "most in need" of services. Individuals who have "barriers to employment" in addition to being economically disadvantaged will be given highest priority. Barriers to employment for youth in WIA include:

- Basic skills deficient (reading, writing and computing scores below the 8th grade level on a generally accepted standardized test or comparable score on a criterion referenced test);
- Offender (any juvenile who is or has been subject to any stage of the criminal justice process, or who requires assistance in overcoming barriers to employment resulting from a record of arrest or conviction (excluding misdemeanors);
- School dropout (no longer attending any school and who has not received a secondary school diploma or its recognized equivalent (GED));
- Public assistance recipient or member of a family which receives public assistance;
- Homeless, runaway or foster child;
- Disabled (includes learning disabled);

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care: Youth Employment

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- Educational attainment one or more grade levels below appropriate level for the age of the youth;
- Pregnant or parenting youth (age 14 to 21);
- CEP designated barrier (and individual, including a youth with a disability who has no vocations/employment goals, or has a poor work history (including no work history), or has been fired from a job in the last six calendar months;
- BOS designated barrier (an individual, including a youth with a disability who has no vocational/employment goals, is at risk of dropping out of school, or has a poor work history (including no work history) or has been fired from a job in the last six calendar months.

Up to five percent of each service provider's participants can be non-economically disadvantaged provided they meet the other eligibility requirements and selective service. At least one barrier must be documented if the client is not economically disadvantaged.

**NOTE: Questions regarding eligibility can be referred to the local service provider listed on pages 6 and 7 of this section.**

### Program Goals

Program goals are to:

- provide eligible youth assistance in achieving academic and employment success by providing effective and comprehensive activities that include a variety of options for improving educational and skill competencies and provide effective connections to employers;
- ensure ongoing mentoring opportunities for youth committed to providing such activities;
- provide training opportunities;
- provide continued supportive services;
- provide incentives for recognition and achievement; and
- provide opportunities in activities related to leadership

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care: Youth Employment

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development, decision-making, citizenship and community service.

### Required Components

The following ten elements must be made available to WIA youth participants:

- tutoring, study skills training and instruction leading to secondary school completion, including dropout prevention strategies;
- alternative secondary school opportunities;
- summer employment opportunities directly linked to academic and occupational learning;
- paid and unpaid work experiences, including internships and job shadowing;
- occupational skills training;
- leadership development opportunities, which may include such activities as positive social behavior and soft skills, decision making, team work and other activities;
- supportive services;
- adult mentoring for a period of at least twelve months that may occur both during and after program participation;
- follow-up services;
- comprehensive guidance and counseling, including drug and alcohol abuse counseling, as well as referrals to counseling appropriate to the needs of the individual youth.

### Referral

Youth in care may be referred to the WIA Youth Program by completing a memorandum (see the sample on page 4). The memorandum is then sent to the local/regional program contact person as listed on page 6 of this section.

Referred youth must be instructed to:

1. Contact the local WIA service provider and complete the

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Foster Care: Youth Employment**

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application form; and

2. Provide the following verification for the application process:
  - a. Birth certificate;
  - b. Social security card;
  - c. If in foster care, proof of enrollment in state foster care (sample Memorandum on page 4 of this section);
  - d. Most recent report card;
  - e. A picture ID and/or driver's license;
  - f. Selective service card for male applicants 18 years of age or older.

**CAPS**

All services received should be entered on SERN.

**SAMPLE MEMORANDUM TO SUMMER YOUTH PROGRAM CONTACT PERSON**

TO: Name and Address of Contact Person  
FR: Name and Address of Caseworker  
RE: WIA Services for Youth in Foster Care

I am referring the following youth to your program.

Name of Youth: \_\_\_\_\_

Birthdate: \_\_\_\_\_ SSN: \_\_\_\_\_

This youth has been under the care and custody of DPHHS since: \_\_\_\_\_  
placement date

If you have any questions, please contact me at \_\_\_\_\_ .  
telephone number

Thank you for your assistance.

## WIA YOUTH PROGRAM OPERATORS

Community-based organizations (CBO's) and private non-profit agencies provide Youth Program services and are located in ten communities in the state.

BOS - Balance of State Local Workforce Investment Area\*

CEP - Concentrated Employment Program Local Workforce Investment Area\*\*

<u>Location</u>	<u>Contact Person</u>	<u>Agency</u>	<u>Address</u>	<u>Counties Served</u>
Billings	Monica Tvetene 247-4742 FAX: 248-2943 <a href="mailto:mtvetene@bilhrdc.hhs.state.mt.us">mtvetene@bilhrdc.hhs.state.mt.us</a>	District VII HRDC*	PO Box 2016 Billings MT 59103	Yellowstone, Carbon, Stillwater, Big Horn, Sweetgrass
Bozeman	Stephanie Gray 587-4486 FAX: 585-3538 <a href="mailto:Yb97@mcn.net">Yb97@mcn.net</a>	District IX HRDC*	321 East Main St, Ste 300 Bozeman MT 59715	Gallatin, Meagher, Park
Butte	Debbie Cuny 496-4911 <a href="mailto:Debbie@in-tech.com">Debbie@in-tech.com</a>	District XII HRDC**	PO Box 3486 700 Casey St Butte MT 59702	Silver Bow, Powell, Deer Lodge, Madison, Beaverhead, Granite
Glendive	Leslie Colbrese 365-3364 Program Contact: TaLisa Nemic	Action for Eastern MT*	PO Box 1309 Glendive MT 59330	Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, Wibaux
Great Falls	Curt Campbell 761-8462 FAX: 761-8635 <a href="mailto:Wai1@initco.net">Wai1@initco.net</a>	Opportunities, Inc.*	PO Box 2289 Great Falls MT 59403	Cascade, Choteau, Toole, Glacier, Pondera, Teton
Havre	Karen Thomas 265-6743 FAX: 265-1312	District IV HRDC*	111 W 11 <sup>th</sup> St, Ste 109 Havre MT 59501	Hill, Liberty, Blaine
Helena	Sheila Hogan 443-0800 FAX: 442-2745 <a href="mailto:Sheila@ixi.net">Sheila@ixi.net</a> Program Contact: Tim Kennedy	Career Training Institute**	347 Last Chance Gulch Helena MT 59624	Lewis & Clark, Broadwater, Jefferson
Kalispell	Leslie DeWitt 758-5426 FAX: 752-6582 <a href="mailto:les@kalhrdc.hhs.state.mt.us">les@kalhrdc.hhs.state.mt.us</a>	NW Montana HRDC*	PO Box 8300 1 <sup>st</sup> & Main Kalispell MT 59904	Flathead, Lake, Lincoln, Sanders

Lewistown	Pam Higgins 538-7488 FAX: 538-2843 <a href="mailto:Hrdc6@tein.net">Hrdc6@tein.net</a> Program Contact: Cherelee Martin	District VI HRDC	300 First Ave Lewistown MT 59457	Fergus, Golden Valley, Judith Basin, Mussellshell, Petroleum, Wheatland
Missoula	Maggie Driscoll 728-3710 FAX: 728-7680 <a href="mailto:Mag@hccxi.org">Mag@hccxi.org</a>	District XI HRDC*	1801 South Higgins Missoula MT 59802	Missoula, Mineral, Ravalli

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care Review Committee

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<b>Purpose of FCRC Committee</b>	The foster care review process is intended to review issues that are germane to the goals of permanency and to accessing appropriate services to parents and children.
<b>Membership Required members</b>	<p>The district court judge, appoints the members of the Foster Care Review Committee FCRC. The committee must consist of not less than three or more than seven members. The committee must include at least the following members:</p> <ul style="list-style-type: none"> <li>• a representative of the Department, who may not be responsible for the placement of a child being reviewed or have any other direct conflict of interest;</li> <li>• a person who is knowledgeable regarding the needs of foster children and who is not employed by the Department or the youth court;</li> <li>• if the child whose care is under review is an Indian child, a person, preferably an Indian person, knowledgeable about Indian cultural and family matters (This person may be appointed only for the review of Indian children or may be a regular member of the committee.);</li> </ul>
<b>Other Members</b>	<p>Members may also include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• a representative of youth court;</li> <li>• a representative of a local school district;</li> <li>• a public health nurse;</li> <li>• an at-large community member with knowledge of child protective services.</li> </ul> <p>Examples of persons who may have knowledge of child protective services and/or the needs of foster children and may be appropriate committee members are child development specialists, former foster children, group home staff, former foster parents, mental health professionals, transitional managers, etc.</p>
<b>Notification of Review</b>	The CSWS assures that the appropriate people are provided written notice of the FCRC meeting 10 days prior to the scheduled review. In addition to notifying the committee

## Child and Family Services Policy Manual: Substitute Care for Children Foster Care Review Committee

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members, written notification of the foster care review, which includes notification that the foster care review is an opportunity to be heard, shall be provided to:

- the child, if 12 years of age or older;
- the child's tribe (or tribes);
- the child's parent(s) and their attorneys if parental rights have not been terminated); and
- the child's foster parents if the child is in foster care; or
- the child's pre-adoptive parents, if the child is in a pre-adoptive placement; or
- the child's relative care-givers or other kinship provider if the child is in a kinship placement; and
- the child's attorney; and
- the child's guardian ad litem, for review of that child's case only.

The case record must document that notification was provided to the above named parties.

The following individuals may also attend FCRC meetings:

- the placing worker and/or his or her supervisor;
- the mentor for youth 16 years of age or older; and
- other people, as appropriate.

### **What Information to Bring to FCRC**

If copies of the DocGen 427-A, Foster Care Case Plan have not been provided to the committee members prior to the review, the child's social worker or the supervisor brings copies of a current DocGen 427-A, Foster Care Case Plan and attachments (including the child's transitional plan, report cards, etc., and if available, a copy of the 107-E Child's Assessment by Foster Care Provider) to the review.

### **FCRC Action After**

The FCRC makes written findings (DocGen 427, Foster Care

**Child and Family Services Policy Manual: Substitute Care for Children  
Foster Care Review Committee**

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<b>Review</b>	Case Plan, Part B Findings of the Foster Care Review Committee) which along with Part A and any attachments is submitted to the appropriate court,
<b>CAPS</b>	FCRC meetings must be entered on the IARD screen in CAPS.
<b>Case File</b>	The DocGen 427, Foster Care Case Plan Parts A and B are maintained in the child's case record.
<b>Response to FCRC Report</b>	The social worker shall attempt to implement the recommendations made in the FCRC report. If the FCRC's written recommendations to the court are adverse to the Department's case plan, the appropriate regional administrator shall be notified to determine what additional action may be needed.
<b>References</b>	Mont. Code Ann. § 41-5-1115 Mont. Admin. R. 37.50.401, 37.50.402 and 37.50.405

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## Child and Family Services Policy Manual: Substitute Care for Children Permanency Staffings

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**Purpose of  
Permanency  
Staffings**

The purpose of permanency staffings is to ensure timely and appropriate permanent placement for children in foster care.

**Required Team  
Members**

The child's social worker and the social worker's supervisor, a family resource specialist or family resource specialist supervisor and a permanency planning specialist are required participants at permanency staffings. Other people may be included in a permanency staffing if their participation is agreed to by the required team members.

**Children to be  
Reviewed**

At a minimum, permanency staffings must be held:

- within 90 days of a child's placement in foster care unless a FGDM conference has been held within the first 90 days;
- nine months after the child's placement in foster care; and
- at six month intervals thereafter until the child is permanently placed.

Additional permanency staffings may be needed since approval of a permanency team is necessary to determine that guardianship or a planned permanent living arrangement is the most appropriate permanent placement.

Exceptions to required permanency staffings may be made for children in placement with the Casey Family Program, children in long-term group care and on a case-by-case basis with the consensus of the required team members.

Permanency staffings may be combined with Foster Care Review Committee meetings or other meetings or staffings at which permanent placement of the child is discussed and at which required permanency team members are in attendance

**Child and Family Services Policy Manual: Substitute Care for Children  
Permanency Staffings**

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**Action and  
Documentation**

Utilizing information provided by the social worker, the permanency team will determine the most appropriate plan for the child as well as the steps that need to be taken to implement the plan. The permanency team will also assign responsibility for completion of tasks along with time lines to team members.

The assignments, time lines, etc., should be documented and maintained in the case file. Subsequent reviews should occur as needed based on the time line; however no more than six months should elapse between permanency staffings.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Introduction – Confidentiality and HIPAA

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### Introduction

The collection of personal information on clients is essential to the provision of social services. Therefore, the collection of personal information creates a responsibility as well as an obligation of every staff person to collect, utilize, store and preserve the information in a manner which preserves the integrity and privacy of the applicant or recipient of social services.

Personal information collected, utilized, stored or preserved shall be:

- appropriate for and limited to information necessary for the services being provided or sought;
- collected, stored, utilized, and preserved according to relevant statutes, regulations and Department policy; and
- confidential and disclosed only as provided for in this section or as ordered by a court of competent jurisdiction.

### **Safeguarding confidentiality is the responsibility of each staff person employed by the Department.**

Employees shall not look up information on persons in CAPS unless there is a work-related reason to do so. Work-related reasons are those that allow the employee to conduct the responsibilities of their work assignments constituting a “need to know.” “Need to know” relates to the employees job-related activities as defined in the position description. Employees are prohibited from accessing CAPS information for personal reasons either on themselves or on behalf of another employee who may be the subject of CAPS information.

Preserving the confidentiality of Department information regarding an applicant or recipient is a serious matter. Violation of Department policy on confidentiality will result in disciplinary action, up to and including termination of employment, in addition to any criminal penalties which may be imposed by statute.

### HIPAA

When preserving confidentiality, the Department must also adhere to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Congress recognized that advances in electronic technology could erode the privacy of health information. Accordingly Congress incorporated into HIPAA provisions that mandated the adoption of Federal privacy protections for individually identifiable health information.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Introduction – Confidentiality and HIPAA

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The U.S. Department of Health and Human Services published a final regulation in the form of the Privacy Rule in December 2000, which became effective on April 14, 2001. This rule set national standards for the protection of health information. DPHHS declared itself a single covered entity. Single covered entities must implement standards to protect and guard against misuse of individually identifiable health information by the implementation date April 14, 2003. Additional regulations were implemented April 2005 safeguarding electronic protected health care information.

### Sources of Confidentiality Requirements

Various levels of authority exist to protect public health, safety and welfare as provided through our federal and state Constitutions, statutes, administrative rules and policies.

### Constitutions

The U.S. Constitution and the Montana Constitution grant authority to government to protect public health, safety and welfare, but that authority must be balanced against:

- Right of privacy  
Montana Constitution: The right of individual privacy is essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest.  
  
United States Constitution: A subjective expectation of privacy that society recognizes as legitimate or as reasonable to protect.
- Right of personal dignity
- Right to due process

### Statutes

Statutes must provide the protections required by state and federal Constitutions, but carry the force of law and protections. Examples:

- Mont. Code Ann. 50-16-601, Montana Government Health Information Act
- 45 CFR Parts 160 and 164, Health Insurance Portability and Accountability Act

### Administrative Rules

Carry the force of law. Rules expand upon statutory requirements in order to provide more protection or specific detail regarding how information may be released.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Introduction – Confidentiality and HIPAA

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- Mont. Admin. R. 37.47.607 and 608, Protective Services Disclosure

### **Policies**

Explain how the Department is to implement Constitutional, statutory and administrative laws. Must follow all of the above laws.

### **References**

Admin. R. Mont. § 37.47.607 and 608  
Mont. Code Ann. §§ 41-3-205, 53-2-105  
Montana Constitution, Art II, Sections 9 and 10  
45 CFR 1340.14 (I)  
45 CFR 1340.20  
45 CFR Parts 2, 160 and 164  
42 USC § 671

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Definitions- Confidentiality, HIPAA, and Public Health Service Act

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### Definitions

The following definitions apply to disclosure or access to information maintained by the Department:

**Business Associate** means a person or organization that performs a function on behalf of the Department that requires the use or disclosure of protected health information and relates to the health care component activities of the Department. Such functions include claims processing, utilization review, quality assurance, billing, benefits management, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services. Business associates do not include members of the DPHHS workforce. An example of a business associate is a foster care contractor.

**Business Associate Agreement** means a written agreement that specifies the uses and disclosures of protected health information that the Department requires of the business associate.

**CA/N** means child abuse or neglect, or abandonment.

**CASE RECORDS or CASE RECORDS OF THE DEPARTMENT** according to statute and rule means any records maintained by the Department relating to reports and investigations child abuse, neglect or abandonment. This includes photographs, video and audio tapes, case notes, correspondence, evaluations, and interviews. The term does not include confidential reports or evaluations provided to the department by other professionals, or licensing or registration files of providers licensed, registered or certified by the department. The term "case records" also does not include Criminal Justice Information.

**CHILD ABUSE OR NEGLECT** means:

- actual or psychological harm to a child;
- substantial risk of physical or psychological harm to a child; or
- abandonment.

The term includes:

- actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or
- exposing a child to the criminal distribution of dangerous drugs, as prohibited by Mont. Code Ann. § 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by Mont. Code Ann. § 45-9-110, or the operation of an unlawful

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Definitions- Confidentiality, HIPAA, and Public Health Service Act

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clandestine laboratory, as prohibited by Mont. Code Ann. § 45-9-132.

**Dangerous drugs** means the compounds and substances described as dangerous drugs described in Mont. Code Ann. § 50-32-2.

- In proceedings in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as “serious emotional or physical damage to the child” as used in 25 U.S.C. 1912(f).
- The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

**CHILD PLACING AGENCY** means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for the placement of any child with a family, person or facility not related by blood or marriage, either for foster care or for adoption.

**CONFIDENTIAL INFORMATION** means information in case records, that is restricted by law from being disclosed.

**DAY CARE FACILITY** means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day care home, group day care home, or a day care center. It does not include a person who limits care to children who are related to him or her by blood or marriage or are under his or her legal guardianship, or any group facility established chiefly for educational purposes, unless the state is making day care payments to that person or facility.

**DEPARTMENT** means the department of public health and human services as provided for in Mont. Code Ann. § 2-15-2201.

**DESIGNATED RECORD SET** See Protected Health Information.

**DISCLOSURE** means to release for inspection or copying, or to make known or reveal in any manner any information contained in case records (per Mont. Admin. R. 37.47.602, Mont. Code Ann. § 41-3-208).

**Disclosure** under HIPAA means the release, transfer,

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Definitions- Confidentiality, HIPAA, and Public Health Service Act

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provision of, access to or divulging in any other manner of information outside the entity holding the information.

**GUARDIAN** means a person appointed by the court to assume the powers and responsibilities of a parent for the child.

**HEALTH CARE INFORMATION** under the Montana Government Health Care Information Act means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identify of an individual, including one who is deceased, and that relates to that individual's health care or status.

- The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.
- The term does not include vital statistics information gathered under Mont. Code Ann. § Title 50, chapter 15.

**HEALTH CARE PROVIDER** under HIPAA means a provider of medical or health services as defined in 42 USC 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

**HEALTH INFORMATION** per the Health Insurance Portability and Accountability Act (HIPAA) means any information, whether oral or recorded in any form or medium, that is created by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that:

- Relates to the past, present, or future physical or mental health or condition of health care to an individual; or
- Relates to the past, present, or future payment for the provision of health care to an individual.

**Individually Identifiable Health Information** is a subset of Health Information including demographic information, collected from an individual that is created or received by a health care provider, health plan, employer, or health care clearinghouse that:

- Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; and
- Relates to the past present, or future payment for the provision of health care to individual; and

**Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records  
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- Identifies the individual; or
- There is a reasonable basis to believe the information can be used to identify the individual.

**HIPAA** means **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**. This includes the U.S. Department of Health and Human Services publication of a final regulation in the form of the Privacy Rule in December 2000, which became effective on April 14, 2001. This rule set national standards for the protection of health information. By the compliance date of April 14, 2003, covered entities must implement standards to protect and guard against the misuse of individually identifiable health information.

**IN CAMERA INSPECTION** means a matter is heard “*in camera*” in a judge’s private chambers or in a courtroom from which all spectators have been excluded. Black’s Law Dictionary

**INDICATED:** Maltreatment occurred, but the perpetrator of the maltreatment is not identified as a “person legally responsible for the welfare of a child.” For example, an uncle commits an act of sexual abuse while visiting his niece.

**PARENT** means the biological or adoptive parent or stepparent of the child. [Mont. Code Ann. § 41-3-102(11)]

**PERMANENT LEGAL CUSTODY:** Grants permanent responsibility for care, custody and control of the child to a person or agency. (see 302-6)

**PERSONAL REPRESENTATIVE** means under the HIPAA Privacy Rule, a person authorized to act on behalf of the individual in making health care related decisions, which may include disclosure of the individual’s protected health information.

**PERSON RESPONSIBLE FOR CHILD’S WELFARE** means:

- the child's parent, guardian or foster parent or an adult who resides in the same home in which the child resides;
- person providing care in a day-care facility;
- an employee of a public or private residential institution, facility, home or agency; or
- any other person responsible for the child's welfare in a residential setting.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Definitions- Confidentiality, HIPAA, and Public Health Service Act

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**PROTECTED HEALTH INFORMATION (PHI)** means Individually Identifiable Health Information that is transmitted electronically in any medium or maintained in any medium. PHI does not include educational records covered by the Family Educational Right and Privacy Act, 20 USC 1232, the student records held in post-secondary institutions or the records of students 18 years or older. PHI also does not include employment records held by a DPHHS in its role as employer.

- All PHI located in the case records containing reports of child abuse or neglect may be considered the division's **Designated Record Set** under HIPAA.

A **Designated Record Set** means 1) A group of records maintained by or for a covered entity that is:

- The medical records and billing records about individuals maintained by or for a covered health care provider;
- The enrollment, payment claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- Used, in whole or in part, by or for the covered entity to make decisions about individuals.

The term *record* means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used or disseminated by or for a covered entity.

**PUBLIC HEALTH SERVICE ACT** was formerly the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1970 (42 CFR Part 2). It states that the records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under this Act. These regulations are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

**Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records  
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**REASONABLE CAUSE TO SUSPECT** means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

**RECORDS MANAGEMENT:** The systematic application of efficient methods to manage the creation, utilization, maintenance, retention, disposal and preservation of records.

**REPORT OF CHILD ABUSE OR NEGLECT** means a referral made pursuant to Mont. Code Ann. § 41-3-201 alleging that a child may be an abused or neglected child.

**SEAL** means to make secure against access and withhold for disclosure.

**SUBJECT** means the person responsible for the child's welfare who is the alleged perpetrator of the child abuse, neglect or exploitation.

**SUBSTANTIATED REPORT** means that, after an investigation, the investigating worker has determined by a preponderance of the evidence that the reported child abuse or neglect occurred, based upon credible information or facts. To substantiate abuse or neglect, the social worker must have evidence which, as a whole, shows that the facts sought to be proved indicate that it is more probable than not that the abuse or neglect **actually** occurred (preponderance of evidence). The evidence of the abuse or neglect must meet the definition of abuse, neglect, or abandonment as defined in Mont. Code Ann. § 41-3-102.

**SUBSTITUTE CARE:** Full-time care of a child in an out-of-home setting for the purpose of providing food, shelter, security, safety, guidance and, if necessary, treatment of children who are removed from or without the care and supervision of their parents or guardians.

**TEMPORARY LEGAL CUSTODY:** The legal status created by an order of the court that gives a person or agency the right and responsibility for the care, custody and control of a child on a temporary basis. Can only be granted for six months with one six-month extension.

**UNFOUNDED REPORT** means that, after an investigation, the investigating person has determined the reported child abuse, neglect, or exploitation has not occurred.

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**UNSUBSTANTIATED REPORT** means that, after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

**USE** means, with respect to individually identifiable health information (under HIPAA), the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

**YOUTH CARE FACILITY** means a facility that is licensed by the Department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child care agencies, transitional living programs, and youth assessment centers.

**References**

Mont. Admin. R. 37.47.602  
Mont. Admin. R. 37.47.608  
Mont. Admin. R. 37.50.101  
Mont. Code Ann. § 41-3-102  
Mont. Code Ann. § 41-3-442  
Mont. Code Ann. § 50-16-601 et seq.  
Mont. Code Ann. § 52-2-602  
42 CFR Part 2  
45 CFR Parts 160 and 164

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Consequence of Violation of Department Policy for Confidentiality, HIPAA and the Public Health Service Act

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### Introduction

Safeguarding confidential and protected health information (PHI) is essential to preserving the integrity and privacy of clients. This includes alcohol and drug abuse patient information. DPHHS staff must maintain the confidentiality of case record information and PHI gathered by providing direct services, by contractors for providing contracted services, or by foster care providers for providing foster care services.

Violations by Department employees will result in disciplinary or corrective action, suspension or discharge of the employee in addition to any criminal penalties that may be imposed by statute.

Violations by contractors may result in the termination of the contract.

Violations by foster care providers may result in suspension or revocation of a license or registration certificate issued by the Department.

**Criminal penalties may be imposed by statute and an individual may be held personally liable in a civil proceeding resulting from the confidentiality breach.**

### Department Staff Responsibilities

Each employee is responsible for his or her own actions and for knowing and understanding the agency's policies and laws concerning confidentiality. All Department employees shall comply with the confidentiality provisions of this policy. Each employee will receive orientation on Department confidentiality policy within 30 days of employment and annually thereafter for the duration of employment.

All Department employees shall comply with Department policies concerning the uses and disclosures of PHI. **Any use or disclosure in violation of these policies will be subject to disciplinary action up to and including termination of employment.**

### Supervisors

The supervisor is responsible for assuring that each employee receives:

- Orientation to Department policy within 30 days, including HIPAA training and the written test for those who work with PHI. HIPAA training must be commensurate with the employee's level of access pertaining to information they

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Consequence of Violation of Department Policy for Confidentiality, HIPAA and the Public Health Service Act

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must access to accomplish their work. The training documents are located in Outlook under Public Folders, All Public Folders, HHS, HIPAA, Training; the DPHHS HIPAA policies are located in Outlook under Public Folders, All Public Folders, HHS, HIPAA, Policies.

Supervisors will document the date of such training and communicate the training roster to the DPHHS HIPAA privacy officer. The privacy officer then enters the orientation training information into the DPHHS HIPAA Database.

- CFSD Policy training that covers HIPAA-related information (e.g., Section 500 of the CFSD Policy Manual) will be tracked and entered by the CFSD HIPAA Field Liaisons into the DPHHS HIPAA Database.

The supervisor or designee is responsible for ensuring that members of child protective teams and individual habilitation teams are informed of the Department's confidentiality and HIPAA policies, as well as record disclosure laws.

### **Licensure Staff**

Licensure staff are responsible for assuring that facilities and providers are informed of confidentiality and HIPAA requirements at the time of licensure.

### **Grant Administrators/ CFSD Contract Liaisons**

CFSD Grant Administrators and Contract Liaisons are responsible for assuring that contractors are advised of and agree to comply with Department confidentiality and HIPAA requirements prior to or at the time of execution of the contract.

Violation of Department policy on confidentiality or HIPAA policy by a contractor may result in cancellation of the contract.

### **Duty to Report**

Each DPHHS Employee or Contractor must immediately report any disclosure of confidential information, including PHI, in violation of federal and/or state law and rule requirements to the applicable supervisor, Grants Administrator or Contract Liaison.

### **Complaints and Violations**

Every complaint regarding an alleged violation of the Department's confidentiality and HIPAA policies shall be promptly investigated by the immediate supervisor, Grant Administrator or Contract Liaison. If a violation has occurred, appropriate action shall be taken.

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**NOTE: If the violation is an inappropriate disclosure of protected health information, it will be promptly reported to the CFSD HIPAA Liaison and the DPHHS Privacy Officer.**

**Unintentional Violation** When a violation of confidentiality occurs unintentionally without any apparent harm to the client, the employee shall be advised verbally by his or her immediate supervisor of the error and Department Policy.

Continued violation may result in a written reprimand and further corrective action.

**Intentional or Repeated Violation**

When a violation of confidentiality occurs intentionally, or occurs after an employee has been warned following an unintentional violation, and the employee has been advised verbally by his or her immediate supervisor of the error and Department policy, the employee's immediate supervisor notifies the regional administrator in writing setting forth the facts of the situation.

An investigation by the supervisor is conducted and completed within 10 working days, with a written report provided to the regional administrator. The report will include a recommendation of disciplinary and/or corrective action.

The regional administrator will promptly review the recommendation and, in conjunction with the personnel department, take appropriate action. Any action taken shall be in accordance with the Department's personnel policy.

Violation of confidentiality policy can result in suspension or dismissal.

**Intentional Violation With Malice**

When a violation of confidentiality occurs intentionally and with malice or intent to cause harm to the individual, the investigation procedures identified above shall be followed, except the employee may be suspended from employment pending completion of the investigation. The personnel officer shall be contacted whenever consideration is given to suspending or discharging an employee.

**Investigation of Inappropriate PHI Disclosure**

When an inappropriate disclosure or use of PHI or other confidential information is reported, the supervisor shall conduct an investigation into the matter to determine what action to take. Supervisors will also make the CFSD HIPAA Liaison and the DPHHS Privacy Officer aware of any improper uses and disclosures involving PHI so that

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appropriate risk management measures may be implemented.

**Complaints of HIPAA  
Violations**

All HIPAA privacy complaints must be reported to the DPHHS HIPAA Privacy Officer. Written complaints will be reported by mailing the complaint to the HIPAA Privacy Officer. Verbal and telephone complaints will be referred directly to the HIPAA Privacy Officer, who will attempt to resolve the matter. The HIPAA Privacy Officer will coordinate the effort to resolve complaints with the appropriate supervisor, Contract Liaison and, if applicable, the Grant Administrator, the DPHHS Human Resources officer.

MAILING ADDRESS: DPHHS HIPAA Privacy Officer, 2401 Colonial Drive, Helena, MT 59620.

The Privacy Officer shall log all improper uses and disclosures in the HIPAA Database. This log may be made available to the client pursuant to HIPAA policy. The accounting to a client of the disclosure does not need to inform the client of disciplinary action taken.

If the problem cannot be immediately solved, the client will be asked by the DPHHS Privacy Officer if he/she would like to file a formal complaint. If so, the individual will be encouraged to use the Protected Health Information (PHI) complaint form. This form is available electronically on the Department's Microsoft Outlook file list under the path: All Public Folders/HHS/HIPAA/Forms/HPS-404.

The Complaint must contain a short and plain statement of each reason the complainant contends that DPHHS employees of the State or Business Associates of the State have violated policies and procedures relating to the uses and disclosures of PHI.

The Privacy Officer will contact the Complainant to determine if a resolution to the problem can be developed. The Privacy Officer will document unsuccessful attempts to contact the Complainant. A complaint file will be maintained by the Privacy Officer containing each complaint and its resolution. CPS case records shall be kept for a minimum of twelve (12) years. Other records that contain PHI must be maintained for a minimum of six years and three months.

Complaints alleging violations of HIPAA policies by personnel of the Department will be referred to the Office of Human Resources. The Privacy Officer will follow up with that office to ensure the issue has been resolved.

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Resolution of complaints will be documented on the complaint form. The Privacy Officer will send written notice to the complainant explaining how the problem was resolved. This notification shall also inform the complainant that he/she has a right to file a complaint with the Office for Civil Rights of the U.S. Department of Health and Human Services and shall include applicable contact information.

Complaints related to other covered entities' uses and disclosures of PHI shall be referred to that entity's Privacy Officer and/or the Office of Civil Rights (Washington D.C.) at:

U.S. Department of Health and Human Services  
Office for Civil Rights  
200 Independence Avenue, SW – Room 506-F  
Washington D.C. 20201  
(866) 627-7748

Complaints not related to HIPAA privacy but related to other business practices will be referred to the appropriate program or management staff for resolution of the complaint.

### Other Penalties

HIPAA violations are subject to financial penalties as determined by the U.S. Office for Civil Rights. The Department could be subject to fines of \$100 per incident, up to \$25,000 annually. If willful negligence is determined to have taken place, the Department could be subject to fines up to \$250,000.

Under the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subpart A), of the Public Health Service Act, any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

### References

Mont. Code Ann. § 41-3-205  
42 CFR Part 2  
45 CFR Parts 160 and 164  
DPHHS HIPAA Policies 001 - 015

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Case Records

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### Introduction

Records are indispensable in the efficient and economical operation of state government. They serve as the memory -- the evidence of past events and the basis for future actions. When created, maintained and disposed of in a systematic and orderly fashion, records are a tremendous asset. However when records are created, maintained and disposed of in a haphazard and disorderly manner, they reduce the effectiveness of an organization and increase its costs substantially.

The purpose of this manual section is to provide the basic principles with which a workable and economical records management program can be initiated and maintained.

**Records Management** means the systematic application of efficient methods to manage the creation, utilization, maintenance, retention, disposal and preservation of records. Records management, as a program, is essentially one of:

- determining ways and means of organizing and controlling the vast quantities of records used today so they are free of nonessentials;
- assuring records are readily accessible when needed;
- adequately preserving records if they have permanent retention value; and
- assuring records are destroyed when they have served their purpose.

### Paper Case Record Contents

Effective April 15, 2006 *General* and *Individual* files must be either a 6-sided file or an accordion file. Each general and individual file must include the *Index Grids* below and information indicated in each grid:

#### General File

Investigations

Case Notes/Recordings

Family Group Decision Making (FGDM) Documentation

Kinship

Correspondence

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### Individual Files

Eligibility  
 Permanency  
 Reports/Evaluations  
 Services and Payments  
 Personal Information  
 Interstate Compact on the Placement of Children (ICPC)  
 Case Plan  
 Indian Child Welfare Act (ICWA)

### General OR Individual File

Legal –depending on whether the local office receives separate court orders specific to each child/individual (individual file) or court orders that include the entire family (general file).

SEE updated **Grids** with specific documents listed within the General and Individual Files (**in Outlook/All Public Folders/HHS/Forms/CFSD/ORGANIZATION FORMS & CHECKLISTS**).

### Case Notes Requirements

Case notes provide a chronological record of the delivery of services to children and their families. These notes also provide the necessary documentation to support case decisions.

### Activity Detail Screen

Effective June 1, 2005 the Activity Detail Screen (ACTD) will be used to record all significant case contact and activities. Significant case contact is defined as any contact that impacts the direction of a child protective services case.

### Updating the Case Record

CFSD staff shall take reasonable steps to ensure documentation in records is accurate, timely, and reflects the services provided.

**Contacts and Activities shall be documented on ACTD as they occur and not later than 14 days after they occur.** Entries on ACTD should be entered by case name, which is mother's name, the caregiver the child was removed from if no mother is involved or the individual child if termination has occurred. You may use the F10 key at any time to copy Activity Detail records to any Client.

Case notes will be current and focus on the plan of services for the child and family. Case notes are an objective, non-judgmental summary description of the nature and content of the contact, and actions taken as a result of the contact.

Assessment, Case Planning, Monitoring and Referral information should be included in the Case Recording System on the Activity

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Case Records

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Detail Screen. Any time a decision is made that impacts the Child Protective Services Case the decision should be recorded on the Activity Detail Screen as a **Decision Point**.

### Minimal Recording Requirements

Decision points may include: Termination of Parental Rights, Removal, Change in Placement, Change in Visitation Plan, Permanency Plan Decisions, New Referral, Reunification, or Case Closure.

The following are considered to be the minimal recording requirements:

#### **Family/Foster parent/Service provider participation:**

Any contact that documents:

- parents, foster parents, GAL or other interested person's participation in decision making, case plan or treatment plan development
- parent or sibling visitation if the child is in foster care and parent's participation in planning for the visit

**FGDM-** to be entered by FGDM facilitator

#### **Activities to assure safety:**

*Note: An initial safety assessment must be completed for new reports on open clients. Don't forget to complete the safety assessment at reunification and case closure. These may be referenced on ACTD as decision points.*

Activities related to safety that shall be documented on ACTD include:

- The fact that you had personal face to face contact with the child in their own home, in the foster home or placement
- The fact that you had personal face-to-face contact with the family in their home.
- Observations relevant to the child's safety with the parent or child's current placement.

#### **Well being issues:**

*Note: most well being issues shall be documented on the MDTD (medication/treatment detail) screen, the SPND (special needs detail) screen and the MMHD (medical/mental health detail) screen. These screens will indicate that the child medical and mental health or other special needs are being assessed and what treatment is taking place. Included will be preventive health, (EPSDT), dental care, and immunizations.*

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Activities related to well-being that shall be recorded on ACTD will include:

- contacts to/from the child's therapist giving the worker an update on progress
- contacts to/from foster parent giving progress report
- contacts regarding progress in school

### **Permanency issues:**

All activities that document:

- efforts to keep child in own home
- efforts to reunite child with parent removed from
- efforts to search and place the child with kin.
- efforts to place child adoptively i.e. circulation posting on website
- efforts to place siblings together
- referral and progress toward independent living
- changes in permanency goals
- effort to establish concurrent plan
- why a particular placement was chosen
- document placement stability, "the child is thriving and the family enjoys his presence"
- document efforts to stabilize a placement (placement stability plan may be referenced)
- reasons for moving a child from one placement to another,
- efforts to prevent the change in placement.,
- whether change in placement was necessitated for reasons related to helping the child meet the goals of the case plan.
- decisions to terminate parental rights

**Permanency Staffing**-to be entered by PPS

**Supervisory review**-to be entered by supervisor, or social worker

Document complaints and informal efforts to resolve client/ family member complaints– **may be entered by social worker, supervisor, regional administrator or division administrator.**

### **ELECTRONIC CASE RECORDS**

#### **Child and Adult Protective Services System**

The Child and Adult Protective Services (CAPS) system is utilized by the Division to electronically collect and store data regarding clients for case management purposes (e.g., child abuse/neglect reports/referrals, client services, service providers) and to maintain information pertaining to licensure of foster care providers (e.g., regular foster homes, specialized foster homes).

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Upon receiving a child abuse or neglect report, the information is entered into the CAPS system on the CID1 screen and CAPS automatically assigns a unique number to the report. While the majority of the direct services within CPS case information are on-line in the CAPS system, it is also necessary to maintain the paper case file.

These records are confidential. Preserving the confidentiality of Department information regarding an applicant or recipient is a serious matter.

### **Safeguarding confidentiality is the responsibility of each staff person employed by the Department.**

Neither employees nor contractors shall access information on persons in CAPS unless there is a work-related reason to do so. Work-related reasons are those that allow the employee to conduct the responsibilities of their work assignments based on a “need to know.” “Need to know” relates to the employee’s or contractor’s job-related activities as defined in the position description. Employees and contractors are prohibited from accessing CAPS information for any non work-related reason This includes accessing information pertaining to oneself, another employee, or a non-employee.

Occasionally, a report will be made on an agency employee, elected official or another person who is professionally known to the agency. These are considered sensitive reports and may be secured. The fact that a report or client file is not secured does not give any agency staff or contractor permission to review information stored in CAPS when there is no work-related reason for the agency staff or contractor has no work-related reason to know the information.

Information entered on CAPS is confidential. Use of the RRRL screens is limited to a work-related “need to know” basis.

**Employees and contractors may not “browse” the system or look at any CAPS information without having a work-related reason for doing so.**

Confidentiality will be maintained in accordance with Department policy. **Violation of this “need to know” policy is serious and will result in disciplinary action up to and including termination of employment. Criminal penalties may be imposed by statute and an individual may be held personally liable in a civil proceeding resulting from the confidentiality breach**

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Violation of Department policy on confidentiality by a contractor may result in cancellation of that contract with the Department.

Violation of confidentiality laws and rules may result in suspension or revocation of a license or registration certificate issued by the Department.

### DPHHS HIPAA Database

DPHHS is designated as a single “covered entity” for purposes of HIPAA. Under the agency umbrella, CFSD collects and maintains data regarding:

- Receipt of valid authorization forms allowing disclosure of an individual’s protected health information (PHI).
- Disclosures of PHI allowed by law without authorization.
- Agreed-upon restriction items
- Requests for amendments to PHI contained in Department records.

Disclosures of PHI do not need to be documented in the HIPAA Database if they are related to:

- De-identified information
- Health care operations, such as a quality assurance review
- Disclosures for which a valid authorization has been received
- Disclosures to the individual about whom the PHI pertains
- Disclosures for a DPHHS facility directory
- Disclosures to correctional institutions

Neither employees nor contractors shall access information on persons in the DPHHS HIPAA Database unless there is a work-related reason to do so. Work-related reasons are those that allow the employee or contractor to conduct the responsibilities of their work assignments constituting a “need to know.” “Need to know” relates to the employee’s or contractor’s job-related activities as defined in the position description. Employees and contractors are prohibited from accessing HIPAA Database information for any non work-related reason. This includes accessing information pertaining to oneself, another employee, or a non-employee.

Information entered on the DPHHS HIPAA Database is confidential. Neither agency staff nor contractors have authorization to access information stored in the HIPAA Database unless there is a work-related reason to know the information. Access to Division-wide data is limited to those who are CFSD HIPAA Field Liaisons and their supervisors. **Employees and contractors may not “browse” the system** or look at HIPAA Database information without having a

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work-related reason for doing so. This includes information stored in the HIPAA Database pertaining to oneself, another employee, or a non-employee.

**Violation of this “need to know” policy is serious and will result in disciplinary action up to and including termination of employment. Criminal penalties may be imposed by statute and an individual may be held personally liable in a civil proceeding resulting from the confidentiality breach.**

### Securing Case Records

Each paper case record must be stored or filed in a locked place when not in use. Equipment such as locking file cabinets, full-door cabinets or suitable locking areas are all acceptable for confidential information. Access to all locking equipment and keys must be limited to DPHHS personnel.

Keys (including electronic identification badges) must be kept in secured areas. Local offices are responsible for developing a policy to assure all office building, cabinet, state vehicle, etc., keys are identified, stored and secured.

When a file or report is secured, the worker assigned to the report or client receives an alert when someone else in the agency has accessed the information. Upon receipt of this alert, the assigned worker shall immediately report the alert to his or her supervisor. The supervisor, in consultation with the regional administrator, will determine whether the individual who accessed the report had a work-related reason to do so.

Electronic records must also be stored securely, guarded by passwords and ensuring work stations are not accessible to unauthorized individuals. When away from work stations employees and contractors should activate password protection by locking the electronic workstation (Ctrl + Alt + Del, and select ‘Lock Workstation’) or shut the computer down. E-mails sent outside state government should be encrypted if the e-mail contains identifying information on individuals receiving services from the Department

Social workers are responsible for securing confidential material for which they have been assigned. Confidential material must be maintained so access is provided only to those DPHHS employees who have the right to the material

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through Montana's laws, administrative rules, or Department policy.

**Compliance** Overall compliance with this policy is the responsibility of the supervisor.

**References** Mont. Code Ann. §§ 41-3-205, 53-2-105  
Admin. R. Mont. 37.47.607 and 608  
42 USC § 671  
45 CFR 1340.14 (I)  
45 CFR 1340.20  
45 CFR Parts 2, 160 and 164

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Supervisory Review of Case Record

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<b>Policy</b>	Social worker supervisors are responsible for ensuring that training and consultation is provided to social workers on paper and electronic case record management and case planning. Social workers and/or clerical staff are responsible for preparing and maintaining case records, dictation, case plans, documentation and other contents of the case record.
<b>Review</b>	<p>Social worker supervisors are responsible for evaluating each case and the service provided to the client.</p> <p>Cases must be reviewed by supervisors at the time of transfer or closure and an entry shall be made into the case record to document the review.</p>
<b>Content of Review</b>	The social worker supervisor's evaluation of a case shall include ongoing reviews throughout the life of the case to determine whether all electronic and paper case file information is completed appropriately and in a timely manner (See policy section 202-4, Investigation - Documentation of Investigation and Opening a Case). Documentation of these reviews should be completed on the various <i>Safety Assessment</i> forms via the supervisor's dated signatures. Supervisors also document supervisory case review on the ACTL (Activity List) screen in CAPS at the time of the review. Dated initials throughout the case record signify that the supervisor is verifying tasks have been completed and are evidence of completed tasks in the case record. Disagreement or dissatisfaction with social worker activity on a case should be dealt with as a training and/or disciplinary matter.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Summary of Rules for Disclosure

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<b>Who May Disclose Information</b>	Disclosure of information may only be approved by the social worker responsible for the case, his or her supervisor, Child and Family Services regional staff, Department legal unit, or the county attorney when acting as legal representative of the Department.
<b>Child Abuse and Neglect Case Records and Disclosure</b>	<p>The philosophy of the Department is that, to the extent appropriate, information contained within a child abuse and neglect case record regarding the child who is the subject of the case record should be available to the parent(s) and child. Others with a need to know may also receive otherwise confidential information per Mont. Code Ann. § 41-3-205, and for health information, in accordance with HIPAA. If the Department does not have custody of or is not the personal representative for the individual who is the subject of the information, obtain written authorization whenever possible.</p> <p>Pursuant to Mont. Code Ann. § 41-3-205, records, including case notes, correspondence, evaluations, videotapes, audiotapes, and interviews, <b>unless disclosure of the records is determined to be detrimental</b> to the child or harmful to another person who is a subject of information contained in the records, <b>may</b> be disclosed to the following:</p>
<b>Court</b>	1. the court for <i>in camera</i> (by the judge) inspection if relevant to an issue before it;
<b>Other Agencies</b> (including out-of-state)	2. local, state or federal agency or organization, military enclave or Indian tribal organization, in this or any other state that is legally authorized to receive, inspect, or investigate reports of child abuse and neglect and otherwise meets disclosure criteria;
	<p>Confidential case record information may be released to a law enforcement agency, including an out-of-state police department (including the FBI) if the requesting law enforcement agency needs the information in connection with an investigation of child abuse or neglect.</p> <p>As a general rule, DO NOT RELEASE CRIMINAL JUSTICE INFORMATION, without consulting with the attorney representing the Department. Doing so could be in violation of the Montana Criminal Justice Information Act.</p>
<b>Substitute Care Providers</b>	3. licensed youth care facility or child placing agency that is providing services to the family or child who is the subject of the report or to a person authorized by the Department to

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		receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;
<b>Health Care Providers</b>	4.	a health or mental health professional who is treating the family or child who is the subject of the report;
<b>Parent, Guardian or Personal Representative</b>	5.	a parent or guardian or person designated by a parent or guardian of a child who is the subject of the report on CA/N, <b>without the disclosure of the person who reported or provided information regarding the alleged abuse or neglect.</b> The worker must obtain a written statement from the parent in those instances when a parent is designating someone to whom their records may be disclosed. The written statement must be documented on the DPHHS form, HPS-401 (Designation of Authorized Personal Representative for Health Information). A copy is provided to the client and the original is forwarded to the CFSD field liaison to log into the DPHHS Database; then the original is filed in the case record. SEE sample form at the end of this policy.
Authorized Personal Representative (HIPAA)		<p><b>NOTE:</b> When the Court ‘designates the Department to be the child’s personal representative as set out in the Federal Health Insurance Portability and Accountability Act (HIPAA) regulations’, the Department will self-authorize the release of protected health information regarding that child as deemed minimally necessary to meet that child’s needs, in accordance with all other applicable federal and state statutes and rules.</p> <p>SEE the 2005 Judges Deskbook for examples of motions, petitions and orders with this specific language included.</p>
Copying at No Cost to Parent or Parent’s Attorney		Copies of records, evaluations, reports, or other evidence obtained or generated that are provided to the parent, the guardian, or the parent or guardian’s attorney <b>must</b> be provided without cost.
<b>Child, Child’s Guardian or Child’s CASA, GAL or Legal Representative</b>	6.	a child named in the records who was alleged to be abused or neglected or his legal guardian or legal representative, including the child’s guardian ad litem or attorney or a special advocate appointed by the court to represent the child in a

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pending case; **obtain a copy of the court order appointing CASA, GAL, or legal representative for the child and maintain it in the case record.**

**State Protection and Advocacy Program**

7. the State Protection and Advocacy Program as authorized by 42 U.S.C. 6042(a)(2)(B); in Montana this is the Montana Advocacy Program (MAP).

**Prospective foster and adoptive parents**

8. approved foster and adoptive parents who are or will be providing care for the child;

**NOTE:** Health and immunization records of the child placed in their home may be shared with foster parents. The minimum necessary information should be shared with foster parents.

Once a placement has ended, or the child has aged-out of care, foster parents shall provide the Department with a signed and dated statement that all confidential information (written and electronic) regarding the child has been properly destroyed (paper documents shredded, electronic information erased) OR return all information to the local CFSD office intact within 30 days. When confidential information is provided to a foster parent as needed, the social worker shall notify not to disseminate the confidential information.

Refer to Mont. Code Ann. § 42-3-101 and § 42-6-101, et seq. for details related to releasing the child's and parent's health information to prospective adoptive parents.

SEE sample confidentiality statement and notice of destruction of confidential records statement at the end of this policy section.

**Individual subject of a CAN report and Individual's Attorney**

9. a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

**Probation/Parole Agency**

10. an agency that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect, including a probation or parole agency;

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| <b>Research/Evaluation Project</b>  | 11. a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the Department to conduct the research or evaluation;   |
| <b>FGDM Meetings</b>  | 12. the members of a Family Group Decision-making meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;   |
| <b>Coroner/Medical Examiner</b>   | 13. the coroner or medical examiner when determining the cause of death of a child;   |
| Child Fatality Review Team  | a member of a child fatality review team recognized by the Department.  |
| <b>Investigators of CAN Reports on Day Care, Child Placing Agency or Youth Care Facility</b><br>(includes out-of-state) | 14. a department or agency investigating an applicant for a license or registration that is required to operate a day care facility, youth care facility or child placing agency.   |
| <b>Background Checks on Employment-Related and Volunteer-Related Screening</b>  | 15. a person or entity carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection must be made in writing. Disclosure under this subsection is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the Department (SEE Section 504-1 for procedure); |
| <b>News Media, U.S. Congress or State Legislator</b>  | 16. the news media, a member of the United States Congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent(s) or guardian(s) as determined by the Department;   |

**Such releases should occur ONLY through the Division Administrator or upon consultation with the Division Administrator.**

**NOTE:** A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member if the news organization, employee, writer, or reporter maintains the

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- confidentiality of the child who is the subject of the proceeding.
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| <b>Department or Other State Agency Employee or Designee</b><br>(includes out-of-state)  | 17. | an employee or designee of the Department or other state agency, i.e., Food Stamps, Medicaid, etc., if necessary for administration of programs designed to help the child;   |
| <b>Indian Tribes and Relatives (ICWA)</b>  | 18. | an agency of an Indian tribe or the relative of an Indian family if disclosure is necessary to meet the requirements of the Federal Indian Child Welfare Act;   |
| <b>Youth Probation Officer</b>   | 19. | a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;  |
| <b>County Attorney, Peace Officer or Attorney Representing Department</b>  | 20. | a county attorney or peace officer, or an attorney who is hired by or represents the Department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect; |
| <b>NOTE:</b> Confidential case record information may be released to a law enforcement agency, including an out-of-state police department (including the FBI) if the requesting law enforcement agency needs the information in connection with an investigation of child abuse or neglect. |     |   |
| <b>School Employee</b>   | 21. | a school employee participating in an interview of a child by a social worker, county attorney or peace officer; or   |
| <b><u>TEAMS, COMMITTEES and GROUPS</u></b>   | 22. | members of teams, committees, or groups authorized by statute with access to child abuse and neglect records, including:  |
| CPT  | a.  | a child protection team member as authorized by Mont. Code Ann. § 41-3-108;   |
| FCRC   | b.  | a member of a Foster Care Review Committee established under Mont. Code Ann. § 41-3-115;  |
| Citizen Review Board   | c.  | a member of a local Citizen Review Board established under Mont. Code Ann. § 41-3-1003;   |
| County Interdisciplinary Child Information Team  | d.  | a member of a county interdisciplinary child information team formed under Mont. Code Ann. § 52-2-211;  |

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| Local Interagency Staffing Group | e. a member of a local interagency staffing group provided for in Mont. Code Ann. § 52-2-203; or      |
| Youth Placement Committee        | f. a member of a youth placement committee formed under the provisions of Mont. Code Ann. § 41-5-121. |

### Reporters of CAN

**NAMES OF REPORTERS OR INFORMATION WHICH MIGHT IDENTIFY THEM ARE NOT TO BE SHARED WITH THE FAMILY OR ALLEGED PERPETRATOR EXCEPT UNDER SPECIFIC ORDER OF THE COURT.** In addition, names and identifying information of any person who provided information on the alleged child abuse or neglect incident are not shared with the family or alleged perpetrator, unless advised otherwise by legal counsel for the Department.

**Nothing in this manual shall be construed so as to violate the provisions of Mont. Code Ann. § 41-3-205, Mont. Code Ann. § 42-3-101, Mont. Code Ann. § 42-6-101 et seq., Mont. Code Ann. § 44-5-101, et seq., Mont. Code Ann. § 50-16-601 et seq., 42 CFR Part 2, 45 CFR parts 160 and 164, 25 USC § 1901, et seq., or 20 USC § 1232(g).**

### Written Request for Information

In all cases where access is allowed, there should be a written request for information which contains the information required by Section 502-4 (Procedures for Disclosure). The written request shall be filed in the appropriate case record.

### Disclosure Detrimental to Child or Harmful to Another Person

Absent a court order, disclosure to the entities listed in Mont. Code Ann. § 41-3-205 of information contained in the child's protective services case record is discretionary. When disclosure of information contained in a child's protective services case record is requested, the social worker, in consultation with the supervisor, must make the determination on whether or not disclosure of the information would be either:

Ⓒ **detrimental to the child; or**

Ⓒ **harmful to another person** who is a subject of information contained in the case record.

In accordance with Mont. Code Ann. § 50-16-604, disclosure of health care information regarding the child's parents or other non-party to the case is presumed to be harmful to that person. **The only circumstances under which a parent's health care information may be disclosed to any entity other than the parent or the parent's attorney are:**

Ⓒ if the parent has signed an authorization specifying

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which health care information may be disclosed and specifying to whom the health care information may be disclosed; **or**

- C under order of the court after an *in camera* inspection; **or**
- C Pursuant to Mont. Code Ann. § 42-3-101 and Mont. Code Ann. § 42-6-102, the Department has a duty to disclose to a prospective adoptive parent the social and medical histories of the birth families, including tribal affiliation if applicable. The parents' health care information may be disclosed to pre-adoptive parents upon selection of the family as the child's prospective adoptive family. Identifying information may need to be redacted.

In those situations in which a social worker determines that disclosure of the record would be detrimental to the child or harmful to another person who is a subject of information contained in the records, the social worker will obtain approval of the determination not to disclose from the social work supervisor.

If a conflict arises between disclosure and the determination of detriment to the child or harmful to another person, the worker shall immediately inform his or her immediate supervisor and seek the assistance of the appropriate legal advisor if necessary.

The appropriate legal advisor for child abuse cases in District Court is the county attorney. The appropriate legal advisor for most other situations is the Department's legal unit.

### **Written Authorization (CFS-210)**

Prior to releasing information from the case record, a written authorization must be signed by the individual who is either the subject of the CPS case record or his/her authorized representative, or disclosure must be otherwise permitted by law or ordered by the Court.

CFSD Authorization form CFS-210 serves:

- as a release of confidential information from the CPS case record;
- to meet the requirements of a valid HIPAA authorization for the disclosure of protected health information (PHI);
- authorizes disclosure of substance abuse treatment information;

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- and permits disclosure of educational records.

SEE 502-4 for further procedures for written authorization for disclosure of confidential and protected health information.

### Confidentiality Statement

Information released must be accompanied by a written statement indicating the information is confidential, confidentiality must be maintained, and may not be used by parties other than those requesting the information and for the purpose for which it is requested. However, the prohibition against releasing the information to a third party does not apply to the parent(s) or guardian of the child. SEE sample confidentiality statement at end of policy.

NOTE: In lieu of a written confidentiality statement attached to the front of confidential information shared, the department may use an ink stamp for written documents or typed in electronic documents that says the following:

**CONFIDENTIAL INFORMATION:  
NOT TO BE DISSEMINATED FURTHER  
WITHOUT COURT ORDER  
OR EXPRESS WRITTEN AUTHORIZATION**

A person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

### Limitation on Disclosure

The Department has an obligation to release the minimum necessary to those with a “need to know” of confidential and protected health care information pursuant to Mont. Code Ann. § 41-3-205, Mont. Code Ann. § 42-3-101, Mont. Code Ann. § 42-6-101 et seq., Mont. Code Ann. § 50-16-601 et seq., 20 USC § 1232(g), 42 CFR Part 2, and 45 CFR parts 160 and 164.

### Substance Abuse Treatment

Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

Generally, if the Department receives information from a substance abuse treatment program based upon a release signed by the patient, federal confidentiality law and regulation prohibit the Department from any further disclosure of the information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains.

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The CFS-210 form (Authorization to Disclose Information) may be utilized to share confidential information with the substance abuse treatment program/provider. The CFS-211 form (Request for Information) or other authorization form belonging to the treatment provider should be signed by the client authorizing a substance abuse treatment program to release information to the Department.

### Licensing and Registration

Licensing and registration records may be disclosed to the licensed or registered provider or his or her authorized representative; however, certain information may not be disclosed from the records:

1. The provider may have access to information in the file that pertains to him or her. Information pertaining to other people should be removed from the file before the licensed provider is allowed to review it.
2. The confidentiality of referrals received from third parties is a significant factor in encouraging those people to provide their observations to the Department. A request for the identity of the reporter must be denied, unless the person has agreed to present evidence at a hearing or allows their identity to be disclosed.
3. When information in the licensing file pertains to a report of child abuse or neglect, the statutes protecting the confidentiality of child abuse and neglect records governs.

When information in the record pertains to elder abuse or neglect, the statute protecting elder abuse records apply (pursuant to Mont. Code Ann., Title 52, Chapter 3).

### Child Placing Agency

A copy of a child placing agency license may be given upon request to any district court, proposed adoptive parent, or agency for use in any adoption proceeding in which the licensed agency is involved.

### Adoption

Pursuant to Mont. Code Ann. § 42-3-101 and Mont. Code Ann. § 42-6-101, et seq., Adoption records are confidential and may not be disclosed except pursuant to a valid court order from the court which ordered the decree of adoption. A child's CPS case file becomes an adoption record at the time the adoption is finalized.

### Records May Be Disclosed to Other DPHHS Employees

Information contained in case records may be disclosed to other DPHHS staff and their legal representatives for:

1. the direct provision of social services;

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2. administration of any other federal or federally assisted program. These include programs under the Social Security Act which provide assistance in cash or in-kind, or services directly or through contract to individuals on the basis of need. Access to information is limited to eligibility information for such programs and does not include medical, psychological, or other similar reports which remain the property of the professional who completed the report; and
3. for the purposes of conducting an investigation of a program managed or administered by another division, information may be shared as indicated by the protocol for that division.

Any case records or information that may be disclosed under the provisions of this section must be disclosed according to the procedures set forth in Section 502-4, except disclosures to Departmental employees or other authorized persons for routine use or for the administration of any federal or federally assisted program.

### **Transfers to Another County**

When an applicant or recipient of social services transfers to another county within the state, transfer of case records is necessary to assure continuation of service and may be considered routine use. All case records transferred to another county must be transferred by certified mail or by personal delivery.

### **Discovery and Disclosure**

As a general rule, if a request for discovery or disclosure comes from an attorney representing anyone other than the Department, the request should be handled by or as directed by the attorney for the Department.

Examples of types of discovery:

- Subpoenas
- Interrogatories
- Requests for Production
- Depositions

The appropriate legal advisor for child abuse cases in District Court is the county attorney. The appropriate legal advisor for most other situations is the Department's legal unit.

### **Subpoenas**

A subpoena for a case in which the state is a party, such as a child abuse and neglect case or a criminal case, contact the state's attorney who is assigned to the case for guidance. This could be a local county attorney or an attorney from the attorney general's

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Summary of Rules for Disclosure

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office.

When the state is NOT a party to a case in which a subpoena has been issued (e.g., custody and divorce/dissolution cases), contact the Department's legal unit for guidance. In most cases the individual(s) will be requested to reimburse the Department for staff time (including benefits). The request for reimbursement must come from a Department attorney.

### Services Paid for by the Department

Service providers document the services provided to children and families served by the Department. These records are confidential and should not be released by the Department without express written authorization or court order.

Disclosure of confidential information in the service provider's records should occur through the provider unless the provider **states in writing** that the disclosure will not be detrimental to the child or harmful to another person who is the subject of the information contained in the record.

When the Department contracts for services and the contract states that the Department owns the output (results) of the service(s), and the material is not a medical record, the Department may make a determination whether to release the requested information, after consultation with the contractor (e.g., reports, evaluations).

Due to the expertise required to determine the possible detriment or harms possible when medical records are released, even if the Department "owns" the record, the provider should be responsible for determining the level of disclosure, in cooperation with the Department.

### References

Mont. Code Ann. § 41-3-205  
 Mont. Code Ann. § 42-3-101  
 Mont. Code Ann. § 42-6-101, et seq.  
 Mont. Code Ann. § 44-5-101 et seq.  
 Mont. Code Ann. § 50-16-601, et seq.  
 Mont. Code Ann. § 52-3-101, et seq.  
 Mont. Admin. R. 37.47.607  
 Mont. Admin. R. 37.47.608  
 20 USC § 1232g  
 25 USC § 1901, et seq.  
 42 CFR Part 2  
 45 CFR Parts 160 and 164

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records  
Summary of Rules for Disclosure

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[SAMPLE]

**CONFIDENTIAL INFORMATION:**  
**NOT TO BE DISSEMINATED FURTHER**  
**WITHOUT COURT ORDER**  
**OR EXPRESS WRITTEN AUTHORIZATION**

Any person authorized to receive records under Mont. Code Ann. § 41-3-205 must maintain the confidentiality of the records and may not disclose the record to anyone other than as provided in that statute. Specifically, the following information cannot be released to others, including parents and their representatives without an *in camera* inspection by the court and a determination by the court that the disclosure is necessary for fair resolution of the issue before it:

- The information that would disclose the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records.
- Any information whose release would be detrimental to the child or harmful to another person who is a subject of information contained in the records.

Mont. Code Ann. § 41-3-205(2) and (3):

Dissemination of this information without appropriate authorization – whether dissemination is made orally or in written form – may result in criminal liability or civil liability to the person who releases the information or to the person who has failed to protect confidentiality of the information contained in the records.

[OPTIONAL *additional language* WHEN RELEASING TO FOSTER PARENTS or GUARDIANSHIP Providers]:

NOTE: In the event that (*the adoption is not finalized*) (*the guardianship is dissolved*) (*the custodian withdraws from the permanent planned living arrangement*), all of the documents are to be returned to the Department intact within 30 days.

**Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records  
Summary of Rules for Disclosure**

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[Sample]

**CFSD Notice of the Return or Destruction of Confidential Records**

The placement of (*child's name*) \_\_\_\_\_ in my home ended on (*date*) \_\_\_\_\_.

I (*care provider's name*) \_\_\_\_\_ have returned ALL confidential documentation, written and electronic, to (*CFSD social worker/staff person name*) \_\_\_\_\_ on (*date*) \_\_\_\_\_ to be destroyed.

**OR**

I (*care provider's name*) \_\_\_\_\_ destroyed ALL confidential written information by shredding it, and all electronic information by erasing all copies of any information related to this child on (*date*) \_\_\_\_\_.

Care Provider's Signature: \_\_\_\_\_.

Care Provider's Name (please print): \_\_\_\_\_.

Date of signature: \_\_\_\_\_.

Notice of Return or Destruction of Confidential Information form (including all records that need to be destroyed) were received by (*CFSD staff name and date received*):

\_\_\_\_\_.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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### Introduction

The Department has an obligation to release a minimum amount of information necessary to those with a “need to know” confidential and protected health care information pursuant to Mont. Code Ann. § 41-3-205, Mont. Code Ann. § 42-3-101, Mont. Code Ann. § 42-6-101 et seq., Mont. Code Ann. § 50-16-601 et seq., 42 CFR Part 2, and 45 CFR parts 160 and 164.

This policy is intended to guide staff to assess requests for information, apply discretion in releasing only the minimum amount of information necessary when there is a need to know within the parameters of state and federal statute and rules (as set forth in policy 502-3).

### CFSD Field HIPAA Liaisons

At least one CFSD Field Liaison per every CFSD office location has been identified by Supervisors and Regional Administrators statewide to enter, maintain and review CFSD information in the DPHHS HIPAA Database. The Database is a centralized repository for all Divisions to track first and foremost disclosures of PHI that were not authorized by the individual who is the subject of the PHI. Per HIPAA regulations, the Department must provide each individual with an accounting of the disclosures of PHI, regarding that individual that were not covered under a valid HIPAA authorization.

CFSD will utilize the HIPAA Database to enter:

- all Authorizations to disclose PHI;
- all disclosures of PHI not covered by a written authorization or made by a personal representative
- all designated personal representatives for clients served by the Division;
- all requests from clients to amend PHI in the case record;
- all requests from clients to restrict the disclosure of PHI; and
- all HIPAA-related employee training.

CFSD staff will be responsible for providing the field liaisons with necessary information listed in this policy. Supervisors are responsible for ensuring employees are aware of who the field liaisons are. A list of the field liaisons is available in Microsoft Outlook in All Public Folders/HHS/Forms/CFS/Confidentiality-HIPAA.

Field liaisons are trained by, receive technical assistance from and report to the designated division liaison. The division liaison

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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provides updated HIPAA-related policies and information, technical assistance and seeks assistance from the DPHHS HIPAA Privacy Officer and Office of Legal Affairs as needed to ensure inappropriate disclosures are avoided, and when necessary, to help mitigate damage if an inappropriate disclosure was made.

### Notice of Privacy Practices Form CFS-199

Under HIPAA a client has a right to adequate notice of the uses and disclosures of Protected Health Information (PHI) that may be made by DPHHS, and the legal duties of the Department with respect to PHI.

#### CPS Client

The right to Notice of Privacy Practices does not apply to inmates of correctional institutions. DPHHS must notify all clients at least once every three years that the Notice of Privacy Practices is available and how the client can receive a copy. CFSD field liaisons are responsible for tracking and ensuring CPS clients receive this reminder, as applicable.

Division employees will request each adult in the household being served, to sign an acknowledgement of receipt of the Notice of Privacy practices. The two-part CFS-199 form should be discussed and presented to client(s) when an investigation is initiated (e.g., during intake). If the client refuses to sign, documentation to that effect must be noted (including the date) on the CFS-199 form and kept in the client's record.

This Notice is not required for minor children residing in the household. The Notice may be mailed to clients with the expectation that it has been received if it is not returned.

The original is maintained in the CFSD case record (yellow copy) and the white copy is provided to the client. The original will be provided to the field liaison to document/track the three year time clock to remind the client of the CFSD Notice of Privacy Practices form and how to receive a copy. SEE sample form CFS-199 at the end of this policy. This form is available in Microsoft Outlook, All Public Folders, HHS, Forms, CFS Forms, Confidentiality/HIPAA, and can be ordered through DPHHS forms personnel in Helena.

#### Prospective Licensed Family Foster Care and Kinship Providers

This Notice should also be given to all prospective family foster care and kinship providers who are applying for licensure. Care providers complete the LIC -33 form regarding any health condition he or she may have. If the Department needs further information regarding that condition, the family resource specialist requests the care provider to have the health care provider supply more details

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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about the individual's health condition. The health care provider completes the LIC-33A, providing an assessment of the prospective foster or kinship parent's health condition and how it does or does not affect his/her ability to provide substitute care for children placed by the Department.

The Privacy Practices Notice (CFS-199) should be included in the annual re-licensing paperwork to ensure the three year 'reminder' time line has been met.

### Request for Disclosure

Within the context of the rules for disclosure discussed in policy 502-3, the department may only release case record information according to statute and rule.

A **request** for the department to make a disclosure **must be made in writing**, filed in the client record, and shall include:

- the name of the person requesting the information;
- the organization (if any) with which the person is associated;
- the requestor's or organization's address;
- the names(s) of the client(s) about whom information is being requested;
- reason for request; and
- the date of the request and the signature of the requestor.

Requests received in the form of an Order of the Court will serve as a written request.

**NOTE:** A "request for disclosure" is NOT an authorization for disclosure, and does not replace the use of the CFS-210 (authorization to disclose information).

SEE sample Request for Disclosure form at the end of this policy.

### Considerations for Disclosure Requests

When the Department receives a request for disclosure of information contained in a child's case record the Department must consider the following:

- 1) Identify whether disclosure of the requested information would be legally permitted under federal and state statute and rule (as outlined in policy 502-3).
- 2) Disclosure may only be approved by a court of competent jurisdiction, the social worker responsible for the case, his or her supervisor, Child and Family Services regional staff,

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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Department legal unit or the county attorney acting as legal representative of the Department.

- If it is legally permitted, absent a court order, it must be determined whether the requested information would be **detrimental to the child or harmful to another person** who is the subject of the information contained in the case record.
- If the requested information would be detrimental to a child or harmful to another person who is subject of the information contained in the case record, the Department shall not release it.

When CFSD is concerned that an order to disclose case record information would be detrimental to the child or harmful to another person who is the subject of the case record information, an *in camera* inspection by a court can be requested; contact the attorney representing the Department in the case or the Department's legal unit.

- 3) The Department shall **respond** to requests for disclosure within **30 calendar days** of the request.
- 4) The Department may prevent the disclosure of any portions of the case record if:
  - a) the disclosure of the information is determined to be detrimental to the child or harmful to another person named in the records, in accordance with Mont. Code Ann. § 41-3-205; or
  - b) the disclosure is prohibited by:
    - i) the federal Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164;
    - ii) the Public Health Service Act, 42 CFR Part 2;
    - iii) the Family Educational and Privacy Rights Act, 20 USC § 1232g;
    - iv) the Government Health Care Information Act, found in Mont. Code Ann. § 50-16-601, et seq.;
    - v) the Montana Criminal Justice Information Act found in Mont. Code Ann. § 44-5-101, et seq.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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- 5) If the request for disclosure is denied, the department shall notify the person requesting the information in writing of the reasons for denial.

NOTE: Any person who is not authorized to receive the information shall be notified in writing that the information cannot legally be disclosed without a court order.

### Limiting Disclosure

If a person authorizes another to receive information on his/her behalf, information disclosed cannot go beyond that which would be released to the individual.

### Mark Information as “Confidential”

If mailing is required, the information to be released shall be duplicated and a copy sent by certified mail (or registered mail if needed).

A confidentiality statement **must** be included with the material disclosed. SEE sample confidentiality statement at the end of this policy.

It is best practice to stamp or type on all written and electronic information released as:

**CONFIDENTIAL INFORMATION:  
NOT TO BE DISSEMINATED FURTHER  
WITHOUT COURT ORDER  
OR EXPRESS WRITTEN AUTHORIZATION**

### Authorization to Release Information Form CFS-210

Prior to releasing information from the case record, a written authorization must be signed by the individual who is either the subject of the CPS case record or his/her authorized representative, or disclosure must be otherwise permitted by law or ordered by the Court.

CFSD Authorization form CFS-210 is utilized for:

- releasing of confidential information from the CPS case record;
- meeting the requirements of a valid HIPAA authorization for the disclosure of protected health information (PHI);
- authorizing disclosure of substance abuse treatment information; and
- permitting disclosure of educational records.

One form is completed per individual client. The client may authorize disclosure to multiple entities at one time. The name and address (location) of the person or agency that the information is to be released to shall be listed on the authorization.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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The original is maintained in the CFSD case record; the yellow copy is provided to the client. The original will be provided to the field liaison to scan into DocGen and log in the DPHHS HIPAA Database. This form is located in Microsoft Outlook, All Public Folders, HHS, CFS Forms, Confidentiality/HIPAA, and can be ordered through DPHHS forms personnel in Helena.

### **Authorized Personal Representative**

Adult Client Names  
a Personal  
Representative  
(HPS-401)

An adult client may request another adult individual to act as his/her personal representative for the purposes of accessing and disclosing PHI under HIPAA. If a client makes a request to appoint someone as his/her personal representative under HIPAA, CFSD will provide the client with the DPHHS form HPS-401 (found in Microsoft Outlook under HIPAA, Forms). Once completed, the HPS-401 will be provided to the CFSD Field HIPAA Liaison to log the information into the DPHHS HIPAA Database.

Self-Authorization to  
Disclose Child's  
Information

When the Department is designated by the Court as the child's personal representative as set out in the federal Health Insurance Portability and Accountability Act (HIPAA) regulations, the Department will self-authorize disclosures of protected health information as necessary to meet the child's needs. The social worker will provide a copy of the court order to the field liaison for the office with legal jurisdiction of the child. The field liaison will log the personal representative status in the HIPAA Database.

Self-Authorization  
for Provider-to-  
Provider Disclosure

The department is not required to complete the CFS-210 to disclose the child's confidential case record information if self-authorizing under court order (e.g., Department named child's personal representative, temporary legal custody and/or permanent custody).

After the Department obtains permanent custody, temporary legal custody or is designated as the child's personal representative by court order, the Department may self-authorize one service provider to disclose confidential information to another service provider by completing the CFS-211 (Request for Information). The Department should attach a copy of the court order to the CFS-211 if the receiving agency has not already received one to verify the Department may make such an authorization.

### **Documentation of Disclosure**

The client's case record shall contain the following documentation of disclosures:

- ALL disclosures of confidential information (including PHI), made by the Department (even when the Department is

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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acting as the personal representative of the child by court order or the child's parents' right have been terminated), must be documented and located in the case record. For example, documentation may be located in correspondence section of the case record, noted on the ACTD (Activity Detail) screen in CAPS, or located in a handwritten case note.

Documentation of disclosures should include such details as:

- a) the date information was disclosed;
- b) the type(s) of information disclosed or duplicated;
- c) how the information was disclosed (in person, mail, phone, fax, e-mail);
- d) the purpose of the release;
- e) for what period of time (e.g., 2002 to present);
- f) the name and address of the party to whom information was disclosed; and
- g) the dated signature and title of the DPHHS representative who supervised the disclosure.

### Disclosures of Protected Health Information (PHI)

Note: **PHI disclosures** not authorized by the individual or the individual's personal representative must be documented on the **CFS-220** and forwarded to the field liaison to document the disclosure in the DPHHS HIPAA Database. SEE sample disclosure (not PHI) form at the end of this policy.

### Request for Information Form CFS-211

The Request for Information form (CFS-211) is utilized by the Division to REQUEST information from outside the Department. This is a three-part form that the original (white) copy goes to the agency/individual the Division is requesting information from, the yellow copy is maintained in the CFSD case record and the pink copy goes to the client.

One form is completed per individual, authorizing one service provider per form.

***This form is NOT logged into the HIPAA Database, but IS scanned into DocGen*** when completed for IV -E eligibility purposes (allows the IV -E unit access to the authorization when determining IV -E eligibility). The receiving agency who has been given written permission to disclose PHI to CFSD must maintain that documentation to account for that individual/agency's disclosures of PHI.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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The CFS-211 may also be utilized by the Division to authorize one service provider to share information with another service provider (when CFSD is acting in the role of personal representative for a child via a court order). This form is located in Microsoft Outlook, All Public Folders, HHS, CFS Forms, Confidentiality/HIPAA. and can be ordered through DPHHS forms personnel in Helena.

**NOTE:** When the information the Division is requesting includes PHI, the individual/agency who receives the CFS-211 may not be willing to 'act' upon a form not produced by that service provider.

The requestor (e.g., the Department or CPS client) may be required to complete the other agency's authorization form before disclosure of PHI occurs. In addition, the Department may be requested to attach a copy of the court order giving the Department the authority to act as personal representative or legal guardian for a child.

### Client Request for Disclosure

When a client requests to review or receive copies of information from his/her case record, the request must be made in writing. The Department has **30 days** to respond to this request and the response will be in writing. SEE sample request form at the end of this policy.

### In Person Inspection of Record

A client may request to view the record in person rather than receive duplication of the record. If the client requesting disclosure of information lives in or near a town where a DPHHS office is located, the in person review should be conducted in the office with a DPHHS representative present.

### Personal Representative for Client

Disclosure to a parent or guardian or person designated by a parent or guardian of a child who is the subject of the CPS case record must be made **without the disclosure of the person who reported or provided information regarding the alleged abuse or neglect.**

### HPS-401 Personal Representative Form

The Department must obtain a written statement from the parent in those instances when a parent is designating someone to whom their records may be disclosed. The written statement must be documented on the DPHHS form, HPS-401 (Designation of Authorized Personal Representative for Health Information). A copy is provided to the client and the original is forwarded to the CFSD field liaison to log into the DPHHS Database; then the

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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original is filed in the case record. SEE sample form at the end of this policy. It is also available on Microsoft Outlook, All Public Folders, HHS, HIPAA, Forms.

Copies of records, evaluations, reports, or other evidence obtained or generated that are provided to the parent, the guardian, or the parent or guardian's attorney **must** be provided without cost.

No Charge for  
Copies

**GAL and CASA  
inspection of the  
record**

The guardian ad litem or court appointed special advocate for the child who is subject of a child abuse or neglect case record may have access to the CPS case record and have copies of its contents. Per Mont. Code Ann. § 41-3-205 persons acting in these capacities must also maintain the confidentiality of the case records. **The CASA/GAL must have a court order granting this authority and a copy of the court order should be placed in the CPS case record.**

**Information  
Provided to Out-of-  
Home Caregivers**

Foster parents, guardianship and kinship providers may need confidential information to care for the child. Provide only the "minimum necessary" to help them meet the child's needs.

Once a placement has ended, or the child has aged-out of care, foster parents shall provide the Department with a signed and dated statement that all confidential information (written and electronic) regarding the child has been properly destroyed (paper documents shredded, electronic information erased) OR return all information to the local CFSD office intact within 30 days. When confidential information is provided to a foster parent as needed, the social worker shall notify not to disseminate the confidential information.

Refer to Mont. Code Ann. § 42-3-101 and § 42-6-101, et seq. for details related to releasing the child's and parent's health information to prospective adoptive parents.

SEE sample confidentiality statement and notice of destruction of confidential records statement at the end of this policy.

**Court Ordered  
Access - Subpoena**

See policy 502-3 (Rules for Disclosure) to address subpoenas and legal counsel.

**Refusal to Comply  
with Court Order**

At no time shall staff refuse to comply with a duly issued court order for disclosure of case record contents, except through

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records Procedure for Disclosure

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appropriate legal avenues as advised by legal counsel.

A representative of the Department will deliver the records to the court on the date specified by the subpoena or court order, and will ask permission to be present during all reviews or duplication of the records. Any information or records copied should be noted in the client's record.

### Legal Advice Contrary to Department Policy

In the event the county attorney is unavailable or the legal advice appears to be contrary to the Department's policy or regulations, staff shall seek the assistance of the Department's attorneys.

**NOTE:** If statute or case law changes between updates of the policy manual, statute or case law may supersede material in policy.

### Notification of Confidential Requirements

Information released must be accompanied by a written statement indicating the information is confidential, confidentiality must be maintained, and may not be used by parties other than those requesting the information and for the purpose for which it is requested. However, the prohibition against releasing the information to a third party does not apply to the parent(s) or guardian of the child. SEE sample confidentiality statement at end of policy.

NOTE: In lieu of a written confidentiality statement attached to the front of confidential information shared, the department may use an ink stamp for written documents or typed in electronic documents that says the following:

**CONFIDENTIAL INFORMATION:  
NOT TO BE DISSEMINATED FURTHER  
WITHOUT COURT ORDER  
OR EXPRESS WRITTEN AUTHORIZATION**

A person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

### References

Mont. Code Ann. § 41-3-205  
 Mont. Code Ann. § 42-3-101  
 Mont. Code Ann. § 42-6-101, et seq.  
 Mont. Code Ann. § 44-5-101, et seq.  
 Mont. Code Ann. § 50-16-601, et seq.  
 Mont. Code Ann. § 52-3-101, et seq.  
 Mont. Admin. R. 37.47.607

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Mont. Admin. R. 37.47.608  
20 USC § 1232g  
25 USC § 1901, et seq.  
42 CFR Part 2  
45 CFR Parts 160 and 164

**State of Montana  
Department of Public Health & Human Services  
Child and Family Services Division**

**NOTICE OF USE OF PROTECTED HEALTH INFORMATION**

**For Your  
Protection**

**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED, AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE READ IT CAREFULLY.**

**Protected  
Health  
Information**

You are receiving services from a government program. When we provide services we may ask that you provide some Protected Health Information (“PHI”).

The law says that:

1. We must keep your PHI from others who do not need to know it; and

You can tell us if there is some PHI you do not wish to be shared. However, in some cases, we may not be able to agree with your request.

**Who Sees and  
Shares My  
Application  
and Medical  
Information?**

Unless you tell us differently, we may share your personal health information with other programs that may be able to help you. Some are programs for children, people with disabilities, and people who need financial help. If one of these programs can help you, they will contact you.

Healthcare providers who treat you may use your PHI. This may cover healthcare you have had in the past or may have in the future.

**May I See My  
Medical  
Information?**

We only share the minimum necessary PHI that is needed at the time by that provider or agency.

If you wish to view your PHI, the department recommends contacting your medical provider(s) so that they may review the records with you, explaining anything you do not understand, and answering any questions you may have.

You can ask the department to provide you a list showing where your medical information has been sent, unless otherwise prohibited by law.

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<b>What if My Medical Information Needs to go to Another Location?</b>	<p>You will be asked to sign a separate form CFSD Authorization/Release of Information, allowing your PHI to be sent to another location. This would be used if CFSD provides it to another location or if you request that we send it to another individual or health care provider for you.</p> <p>The form gives the name and address or the provider-type to whom we are to send your PHI and the information you wish to be provided.</p> <p>Your authorization is good for one year or until the date you put on the form (not more than 30 months). You can cancel or limit the amount of PHI sent at any time by written notification, unless it is required by law or court order.</p> <p><b>Note:</b> If you are under the age of 18, your parents or guardians will receive your PHI, <b>unless, by law, you are able to consent to your own health care.</b> If you are, then it will not be shared with them unless you sign an Authorization form.</p>
<b>Could My Information be Released Without My Authorization?</b>	<p>We adhere to laws that provide specific instances when medical information must be shared, even if you do not sign an authorization form. We always report:</p> <ol style="list-style-type: none"> <li>1. contagious diseases;</li> <li>2. reactions and problems with medicines;</li> <li>3. to the police when required by law or when the courts order so;</li> <li>4. to the government for audits and reviews of our programs;</li> <li>5. to a provider or insurance company to verify your enrollment in one of our programs;</li> <li>6. to Workers' Compensation for work-related injuries;</li> <li>7. birth, death and immunization information;</li> <li>8. to the federal government if required to investigate any matter pertaining to the protection of our country, the President or other governmental workers.</li> </ol>

**Your Medicaid benefits will not be affected by a complaint made to the DPHHS Privacy Officer or to the Secretary of Health and Human Services.**

**I will be given a copy of this Notice and have been given the opportunity to ask questions concerning how my Protected Health Information will be used. I know that I can contact the DPHHS Privacy Officer at (800) 645-8408 if I have further concerns.**

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Signature

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Date

REQUEST FOR DISCLOSURE OF INFORMATION

1. Name and address of person requesting information:

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2. Name and address of organization or person(s) represented by requestor:

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3. Name(s) of client(s) or licensee(s) about whom information is requested:

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4. Description of information:

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5. Reason(s) for request:

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I understand that any information provided to me from case records is confidential and may not be released by me to any other persons.

Date: \_\_\_\_\_ Signature of Requestor: \_\_\_\_\_

If requestor is not the client, written authorization of the client or court order authorizing release should be attached.

DOCUMENTATION OF DISCLOSURE (protected health information not included)

a. Date and time information requested was disclosed:

\_\_\_\_\_

b. The nature of the information disclosed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c. How information was disclosed (in person, mail, phone, fax, e-mail):

\_\_\_\_\_

\_\_\_\_\_

d. Purpose of the release (use):

\_\_\_\_\_

\_\_\_\_\_

e. For what period of time:

\_\_\_\_\_ to \_\_\_\_\_

f. Name and address of person to whom information was disclosed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

### CFSD PHI DISCLOSURE FORM

**Instructions:** CFSD staff complete this form when a PHI Disclosure is made, that was not authorized in writing by the client or his/her personal representative.

**Client Name:** \_\_\_\_\_ **Client SSN:** \_\_\_\_\_  
Last First MI

**Client Birth Date:** \_\_\_\_\_ **Client CAPS ID:** \_\_\_\_\_

**DISCLOSURE INFORMATION:**

**Requestor's Name:** \_\_\_\_\_  
Last First MI

**Requestor Firm:** \_\_\_\_\_

**Requestor Address:** \_\_\_\_\_  
Street/PO Box City State Zip

**PHI Description:** \_\_\_\_\_

**Purpose of Disclosure:** Legal Action: \_\_\_\_\_ Inappropriate Disclosure: \_\_\_\_\_ Public Health Purposes: \_\_\_\_\_

**Other:** National Security & Intelligence Activities: \_\_\_\_\_ Response to OCR Investigation: \_\_\_\_\_ Death of Client: \_\_\_\_\_

Protective Services for the U.S. President: \_\_\_\_\_ Response to Serious Threat to Health or Safety: \_\_\_\_\_

Other (Explain): \_\_\_\_\_

**Method of Disclosure:** Email: \_\_\_\_\_ Fax: \_\_\_\_\_ In Person: \_\_\_\_\_ Mail: \_\_\_\_\_ Phone: \_\_\_\_\_

**Pursuant To:** Cadaveric Organ, Eye or Tissue Donation: \_\_\_\_\_ Coroner, Medical Examiner, Funeral Dir.: \_\_\_\_\_

Court Order or Subpoena: \_\_\_\_\_ Inappropriate Disclosure: \_\_\_\_\_ Public Health Purposes: \_\_\_\_\_

Required by Law: \_\_\_\_\_ Avert Serious Threat to Health or Safety: \_\_\_\_\_ Investigation by Office of Civil Rights: \_\_\_\_\_

**Law Enforcement:** Concerning Decedents: \_\_\_\_\_ Concerning Victims of Crime: \_\_\_\_\_ Crime on DPHHS Premises: \_\_\_\_\_

Response to Medical Emergency: \_\_\_\_\_ ID, Location: \_\_\_\_\_

National Security & Intelligence Activities: \_\_\_\_\_ Protective Services for the President: \_\_\_\_\_

**Recurring Disclosure?** Yes: \_\_\_\_\_ No: \_\_\_\_\_ # of Recurring Disclosures: \_\_\_\_\_ Time Period (to/from): \_\_\_\_\_

Disclosed by Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date Request Rec'd: \_\_\_\_\_ Date Disclosure Made: \_\_\_\_\_

**CONFIDENTIAL INFORMATION:**  
**NOT TO BE DISSEMINATED FURTHER**  
**WITHOUT COURT ORDER**  
**OR EXPRESS WRITTEN AUTHORIZATION**

Any person authorized to receive records under Mont. Code Ann.

§ 41-3-205 must maintain the confidentiality of the records and may not disclose the record to anyone other than as provided in that statute. Specifically, the following information cannot be released to others, including parents and their representatives without an *in camera* inspection by the court and a determination by the court that the disclosure is necessary for fair resolution of the issue before it:

- The information that would disclose the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records.
- Any information whose release would be detrimental to the child or harmful to another person who is a subject of information contained in the records.

Mont. Code Ann. § 41-3-205(2) and (3):

Dissemination of this information without appropriate a uthorization – whether dissemination is made orally or in written form – may result in criminal liability or civil liability to the person who releases the information or to the person who has failed to protect confidentiality of the information contained in the records.

[OPTIONAL *additional language* WHEN RELEASING TO FOSTER PARENTS or GUARDIANSHIP Providers]:

NOTE: In the event that (*the adoption is not finalized*) (*the guardianship is dissolved*) (*the custodian withdraws form the permanent planned living arrangement*), all of the documents and copies thereof (written and electronic) are to be returned to the Department intact or provide a written statement that all information pertaining to the child has been destroyed (paper records shredded, electronic erased) within 30 days.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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### Introduction

Disclosures of “Protected Health Information” (PHI) under the Health Insurance Portability and Accountability Act (HIPAA) must be accounted for by every single-covered entity under HIPAA. DPHHS declared itself a single-covered entity and enacted DPHHS policies (located in Outlook under All Public Folders/HHS/HIPAA/Policies) that require each division to enter and maintain specific information in the DPHHS HIPAA Database (referred to as ‘the Database’ hereinafter).

DPHHS requires that each Division have a designated liaison that reports to and coordinates with the DPHHS HIPAA Privacy Officer. In addition, CFSD has field liaisons (one in each office location) that report to and coordinate with the division liaison.

### Levels of Access

The three levels of access to the Database are:

- Worker Level (the user can enter client data, and only view client data entered by that user).
- Liaison Level (the user can enter and view client data and HIPAA-related employee training statewide. This access is limited to the division the user is employed in and **must** be work-related and on a ‘need to know’ basis. The user may not browse the system. The user may also run various data reports.
- Privacy Officer Level (the user has the highest level of access statewide and across all DPHHS divisions; the user enters the initial HIPAA-related employee training and reports)

Every CFSD employee is initially granted Worker Level access to the Database. However, **ONLY the designated field liaisons and the division liaison enter or modify information in the Database.**

At least one person in every CFSD office location statewide has been identified as a field liaison by supervisors and/or regional administrators. The division liaison maintains the list of field liaisons and makes it available to staff statewide. The list of division liaisons is available in: Microsoft Outlook, All Public Folders, HHS, Forms, CFS Forms, Field Liaisons.

The division liaison and the field liaisons all have Liaison Level security access to the Database. Supervisors of all field liaisons have Liaison Level access for READ ONLY purposes, unless

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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carrying out the duties of a vacant position that fulfills field liaison duties.

### Roles and Responsibilities of CFSD Liaisons

Two types of liaisons act on behalf of CFSD: Field liaisons and the division liaison.

#### Division Liaison

The division liaison is located at central office and coordinates all activities and develops policies, reference tools, protocol and training related to HIPAA and the DPHHS HIPAA Database. The division liaison reports to, coordinates with, and relays information from the DPHHS Privacy Officer. The division liaison coordinates all field liaison activities and training (approximately 45 staff statewide).

When made aware of HIPAA violations, the division liaison communicates with the individual's supervisor regarding the violation (or potential violation). The division liaison reports HIPAA violations to the DPHHS HIPAA Privacy Officer and ensures the violation is entered into the Database. Corrective actions taken due to a violation are NOT to be entered into the Database. SEE policy 501-3 for more details on violations.

#### Field Liaisons

Field liaisons are designated staff within each CFSD office location. Each field liaison manages entries of required PHI-related information in the Database, and provides copies of Database entries to staff for the case record.

**Field liaisons DO NOT make determinations for social workers whether or not to disclose information from a case record.**

Field liaisons document disclosures of PHI that were not authorized by the individual and for whom the Department has not been appointed the individual's personal representative via court order.

Field liaisons consults to the division liaison regarding the status of Database entries, Database performance, interpretation of policy and training needs in the field.

Each field liaison reports to his/her supervisor or regional administrator regarding confidentiality and/or HIPAA violations, inter-office procedures, and workload dynamics.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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### DPHHS HIPAA Database

The DPHHS HIPAA Database was created to address Department accountability with regard to disclosure of clients' PHI. It provides consistency department-wide and helps to avoid significant financial penalties for noncompliance with HIPAA.

The Database is designed to record:

- **authorizations** permitting disclosures of PHI
- **personal representatives** for individuals who can access and disclose PHI (designated by the individual or court ordered)
- **ALL PHI disclosures** (including those that are authorized by the individual in writing)
- **requests/denials for restrictions** of the use of an individual's PHI
- **requests/denials for PHI amendments** in the case record
- **HIPAA-related employee training**

### CFSD Uses of the HIPAA Database

**CFSD will utilize the HIPAA Database to:**

- 1) **Record only those PHI disclosures NOT authorized by individuals for whom the Department does not have custody or for whom the Department is not the authorized representative.**
- 2) **Record authorizations to release PHI** (and optionally other confidential information in the case record)
- 3) **Record the designated personal representatives for clients**, including when the division is appointed the personal representative for a child by court order. The Division can refuse to provide PHI to an individual designated as a personal representative if the information is considered to be detrimental to a child or harmful to another person who is the subject of the PHI and/or the CPS case record.
- 4) **Record client requests/denials to restrict the use of his/her PHI.** The Division may not be able to grant the request per statute, rule or court order.
- 5) **Record client requests/denials to amend PHI in the case record.** The Division shall deny the request if:
  - CFSD did not create the PHI; or
  - the amendment is not accurate per written verification from the health care provider who did create the PHI.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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If the health care provider submits a written statement to the Department that an error has been made to a client's PHI, the Department will note this error in the case record.

- 6) **Record HIPAA-related employee training**, with the exception of the initial new employee training (which is recorded in the Database by the DPHHS HIPAA Privacy Officer).

### Database Address/Location

The DPHHS HIPAA Database is a web-based application that can be accessed at:

- <http://161.7.8.64:8084/HETA>; or
- in Outlook, under All Public Folders/HHS/HIPAA/Link to PHI Database.

### CFS-210 Authorization/ Release of Information Form

Staff will provide field liaisons with completed CFS-210 forms. The field liaison will enter the information from the CFS-210 into the HIPAA Database. This allows the division to track which clients the division has authorizations to disclose information, the type of information, to whom, and the effective date(s).

To be considered a valid authorization, it must be completed and have a dated signature of the individual authorizing the department to release information. The client needs to initial by each check box showing what can be shared and to whom. Once the form has been signed and dated by the client additional information cannot be added to the authorization at a later date. One client is listed per each form.

Authorizations may be revoked at any time. When a client wants to revoke an authorization the client must indicate this in the revocation in writing on the bottom of the CFS-210 (gray box) with a dated signature. The form will be provided to the field liaison to document the revocation date in the Database. Revocations cannot be effective earlier than the date of the signature in the revocation box.

A client's authorized representative must complete the HPS-401 form or present a copy of a legal document appointing the representative, PRIOR to the representative signing an authorization form to disclose PHI. When the department is appointed the personal representative for a child by court order, the order will be maintained in the case record as verification that the

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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department may authorize disclosure as necessary to meet the needs of the child.

### Client Access to PHI

Health Care  
Providers

Under HIPAA, clients have the right to access, read and obtain copies of their PHI. CFSD will recommend clients contact their health care provider(s) so that they may view the records with the health care provider where the records were originated. **CFSD shall NOT provide copies of medical reports (including mental health evaluation and treatment) directly to the client, without written authorization from the health care provider stating a determination has been made that disclosure of the information would not be detrimental to the child or harmful to another person who is the subject of the information.**

The department will provide the client with the name and location of the health care provider(s) from whom he/she is requesting the PHI.

When the division denies a client access to PHI, the denial must be submitted to the client in writing within 10 working days, stating why the client was denied the information. This letter will be maintained in the CPS case record.

### Accounting for Disclosures

Clients also have the right to request an accounting to whom CFSD has sent the client's PHI. CFSD must respond to these requests within 60 days of receipt. A 30-day extension may be requested. **The Department will provide a list of disclosures of PHI that were made outside of an authorization from the client or when the department has not been named the individual's personal representative by court order.**

These requests will be processed through the field liaison, the division liaison, and the DPHHS Privacy Officer. The field liaison submits the request to the division liaison, and the division liaison provides the request to the DPHHS Privacy Officer. The DPHHS Privacy Officer gathers a listing of PHI disclosures department-wide and submits the PHI disclosures listing to the requestor in writing.

### Legal But Unauthorized Disclosures

A disclosure of PHI can be permitted by law, but may not be 'authorized' by the individual or that individual's personal representative. These disclosures (verbal or written) must be entered into the HIPAA Database to ensure accountability for the disclosures made in which the individual did not authorize.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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**For example:** The department is ordered by the Court to release PHI from a CPS case record. The individual who is the subject of the PHI did not authorize this release and the department was not appointed by court order to be that individual's personal representative. This disclosure must be made pursuant to the court order, and must be logged in the Database to account for the disclosure.

### **CFS-220 PHI Disclosure Form**

The PHI Disclosure Form, CFS-220, is to be completed each time a staff person makes a PHI disclosure that was not authorized by the individual via the CFS-210 form and/or the individual's personal representative.

The CFS-220 will be forwarded to the field liaison after it is completed, to be logged in the Database. The field liaison will return the CFS-220 to the staff person who completed it after the information has been logged in the Database.

### **Authorized Personal Representative for Health Information**

When an adult requests another adult individual to be his/her personal representative for the purposes of accessing and disclosing PHI, the DPHHS form HPS-401 must be completed. The HPS-401 is located in Microsoft Outlook/All Public Folders, HHS, HIPAA, Forms, Designation of Authorized Personal Representative. When the HPS-401 is completed with a dated signature it will be forwarded to the field liaison to enter the information in the Database.

The department is to treat a personal representative of the client, as the client, for purposes of access to PHI. The personal representative is not entitled to more information than the client would receive. If the department believes that the access to such information by the personal representative would pose a threat of injury to the client, PHI shall not be released (e.g., the personal representative has been physically abusive to the individual).

When the department is appointed the personal representative of a child by court order, the court order will be provided to the field liaison to enter CFSD as the child's personal representative in the Database. The department will then self-authorize disclosures of the child's PHI as necessary to meet the child's needs.

### **Requests to Restrict the Use of PHI**

Clients and their personal representatives have a right to restrict the uses and disclosures of PHI, as permitted by federal and state law and rule.

## Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records HIPAA Liaisons and the DPHHS HIPAA Database

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Clients or personal representatives must submit restriction requests in writing with a dated signature. The request will include:

- 1) Start and end date;
- 2) What is to be restricted;
- 3) from whom the information is to be restricted; and the purpose/reason for the restriction.

**Requests to Amend PHI** Clients and their personal representatives have a right to request amendments (corrections) to the client's PHI.

Clients or personal representatives must submit amendment requests in writing with a dated signature. The request will include:

- 1) The error that is to be amended;
- 2) A statement from the health care provider who created the PHI that the PHI has been amended.

The department shall recommend the client contact the health care provider who generated the PHI to review it, explain the content and to determine if an amendment to the PHI is necessary.

**Division staff shall NOT amend PHI that was created outside the division.**

Staff will provide the field liaison with the written amendment request and the division's written response to the amendment request, to enter the information in the Database.

The client may request further review of the request for amendment of case record information after the division has denied the request. If the division provides a rebuttal letter to the client's further inquiry, a copy of the rebuttal letter will be submitted to the field liaison to enter the information in the Database. SEE policy 504-1 (Information Correction and Appeal Process) for more details.

### References

Mont. Code Ann. § 41-3-205  
 42 CFR Part 2  
 45 CFR Parts 160 and 164  
 45 CFR 1340.14 (I)  
 45 CFR 1340.20  
 DPHHS HIPAA Policies 001 – 015

## Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA Information Correction and Appeal Process

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### Information Correction and Appeal

When a client has been allowed to review the CPS case record and identifies information in the record he or she considers to be in error, the individual may request correction of the alleged error.

### Procedures

The individual requesting a correction should provide a written request explaining the error, and the reason or reasons justifying the request to the social worker who shall immediately inform his or her supervisor.

The request is reviewed by the worker and supervisor and the information corrected in the record if there has been an error. When the information in question was created by someone from outside the division, the social worker or supervisor will forward the request to the agency or service provider personnel and inform the client this action has been taken (providing the client with the name to whom the request was forwarded).

If the worker and supervisor believe there has been no error, no correction is made and the requesting party is informed in writing of the decision and the appeal process. All requests for correction of information and the Department's response are permanently maintained in the record.

**NOTE:** If the error is regarding PHI, the Department will recommend the client contact the health care provider who generated the PHI to review it and explain the content. **Division staff shall NOT amend PHI that was created outside the division.** SEE policy 503-1 for more details regarding documentation of PHI amendment requests.

### Response to Request for Change

Social workers must respond to requests for changes or corrections to the CPS case record within 15 working days of receipt of the written request. If a request is denied, the reasons for denial are outlined in the worker's written response.

**Written requests for amendments to PHI will be provided to the field liaison for that office and the field liaison will document the request and response in the Database.**

### Information Correction

When information is corrected in the case record, the worker informs all individuals or agencies to whom the information has been disclosed. Such notice is made in writing with a copy retained permanently in the case record. The notice includes:

- name of individual;
- date of change;
- information to be corrected;

## Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA Information Correction and Appeal Process

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- date the information had previously been sent to the individual or agency; and
- sufficient information to identify original information sent.

**NOTE: If the corrected information is PHI (created by the division),** documentation by staff will be provided to the field liaison to enter the information in the Database.

### **Appeal to Regional Administrator**

Social Worker Assists in Appeal

If the client is dissatisfied with the decision of the worker and supervisor, he or she may appeal the decision in writing to the regional administrator responsible for services in the geographic area.

The worker responsible for the case provides information and assists the client in preparing and submitting the appeal if the client is unable to do so or has no other person willing or able to assist. However, the worker may not represent the client. The appeal should state the reasons for the appeal and the justification for the requested change.

The request for review by the regional administrator must be made within 30 days of the date of the Department's response to the request for amendment.

The regional administrator reviews the appeal and issues a written decision within 15 working days of receipt of the written request. The regional administrator's decision should decide the action to be taken and include information on the person's right to appeal to the director or his or her designee.

### **Appeal to Division Administrator or Designee**

If the client is dissatisfied with the decision of the regional administrator, he or she may appeal to the Division Administrator or his or her designee. The client's appeal must be in writing and state the reasons for the appeal and the justification for the request.

The Division Administrator or designee reviews the request and renders a decision within 30 calendar days of receiving the request. The decision shall include the action to be taken. A copy of the written decision is sent to the regional administrator, the local supervisor and social worker. The decision of the Division Administrator or designee is final.

### **Continued Disagreement**

If the agency does not change the information being contested and the client continues to contest the information, a short statement concerning the client's disagreement with the information must be

**Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA  
Information Correction and Appeal Process**

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filed in all records (including computer records) containing that information. Any time the information is disclosed, the client's statement must accompany the other records.

**Reference**

Mont. Code Ann. §§ 41-3-205, 53-2-105  
Admin. R. Mont. 37.47.607 and 608  
45 CFR Parts 160 and 164  
DPHHS HIPAA Policies 001-015

## Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA Record Retention/Destruction

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**Schedule Approval** State law requires that retention and disposal of records be approved by the state records committee. A retention/ destruction policy has been approved by the state records committee.

All medical records and documentation about protected health information (listed below) must be retained for a period of six years and three months:

- Authorizations to disclose PHI
- Authorized personal representatives
- Requested restrictions for the use of PHI
- Requested amendments to PHI
- Requests to access PHI
- Denials for access to PHI
- and Disclosures of PHI (not authorized by the individual or the individual's personal representative)

If the case record is scheduled for destruction due to unfounded or unsubstantiated reports of abuse or neglect, the paper case record documenting the above-listed PHI-related information will be retained for audit purposes six years and three months from the most recent date listed in the above-listed information.

### **Permanent Retention**

Adoption Records

At the time an adoption is finalized, the entire CAPS record is transferred electronically and the paper case record is forwarded by the local office via certified mail to central office for permanent retention. The record is maintained in perpetuity.

Permanent Custody

At the time of closure, permanent custody records are forwarded by the local office by certified mail to the Division's central office for permanent retention. Such records are also maintained in perpetuity.

Temporary Legal Custody

In cases that the Department had TLC of a child and the child ages out of the system, the foster care records are forwarded by the local office by certified mail to the Division's central office for permanent retention. Such records are maintained in perpetuity.

### **Limited Retention**

CPS Case Records

**Substantiated or Indicated reports:** Case records containing substantiated or indicated complaints are retained by the local office until the date the youngest child in the home turns age 23. When a case is closed, the projected destruction date is marked on the outside of the file folder. A chronological list of files and their destruction dates must be maintained by each local office.

If possible future legal action is anticipated in a case, the record should be retained until 12 years after the child turns age 18. This

## Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA Record Retention/Destruction

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time period allows for statute of limitations for reporting abuse and neglect as well as various judicial proceedings to take place (e.g., appeals).

**Unsubstantiated reports:** If a case record contains a report which is unsubstantiated, the social worker **must** destroy all of the records (hard copies and CAPS documentation), except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

- 1) there had been a previous or there is a subsequent substantiated report concerning the same person (alleged perpetrator); or
- 2) an order has been issued in response to a filed child abuse or neglect petition based on the circumstances surrounding the initial allegations.

A person who is the subject of an unsubstantiated report made prior to October 1, 2003, may request that the social worker destroy all of the records concerning the unsubstantiated report if a period of 3 years has elapsed and

- 1) no subsequent substantiated report has involved the individual; or
- 2) no order has been issued under this chapter based on the circumstances surrounding the initial allegations.

**Unfounded reports:** Unfounded reports will automatically be electronically purged by CAPS. The paper case record portion concerning the report and investigation must be destroyed within 30 days of the determination the referral is unfounded, with the exception of medical records, which will be retained for audit purposes for six years and three months. A case is unfounded when the investigating worker makes the determination that the reported abuse or neglect did not occur.

### Other Records

All other records may be destroyed according to the schedule mentioned under "limited retention" above.

### Licensing Files

Licensing files are retained by the issuing office for a period of three years after the date of closure, except for medical records which will be retained for six year and three months (for audit purposes). When a licensed or registered facility has been the subject of a substantiated report, the file is retained as in the case of other substantiated case records above.

## Child and Family Services Policy Manual: Confidentiality, Case Records, and HIPAA Record Retention/Destruction

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Grants/ Contracts	<p>Financial and other information related to federal and state grants and contracts will be kept according to federal and state regulations and contract laws. In the event of a conflict between state schedules and federal requirements, the longer retention period shall apply.</p> <p><b>NOTE:</b> The current year is not included in the calculating of the retention period. The retention period should be calculated as the current year plus the given retention period.</p>
Storage	<p>Case records approved for destruction are to be stored in locking file cabinets whenever possible.</p>
Methods	<p>The staff person assigned to carry out destruction of case records, licensing files or other documents shall destroy the documents either by shredding or burning. If the person does not actually conduct the shredding or burning, he or she must witness that it has been done.</p>
<b>Reference</b>	<p>Mont. Code Ann. §§ 2-6-201 through 2-6-213 Mont. Code Ann. § 2-15-1013 Mont. Code Ann. § 41-3-102 Mont. Code Ann. § 41-3-202 Mont. Admin. R. 37.47.602 DPHHS HIPAA Policy 008 45 CFR Parts 160 and 164</p>

## Child and Family Services Policy Manual: Confidentiality and Case Records Background Checks on Applicants, Employees or Volunteers

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### Release of Information for Employment Screening

Mont. Code Ann. § 41-3-205 authorizes an employer or volunteer organization to request information from the Department about applicants, employees or volunteers who will or who may have unsupervised contact with children.

Mont. Code Ann. § 52- 2-622(4) requires completion of a criminal records check for youth foster care applicants by means of a fingerprint check. Mont. Code Ann. § 42-3-203(2)(a) requires completion of a criminal records check for adoptive applicants. SEE policy 802-3 for more details on resource family criminal records and protective services checks.

### Conditions the Requestor Must Meet

The person requesting the information must properly identify the applicant, employee or volunteer;

To assist the Department with locating records, the person requesting the information must list the address of the applicant, employee, or volunteer for the past 5 years, if known;

The person must have hiring authority or approval of the applicant, employee or volunteer;

The applicant must be actively being considered for the position or have already been hired by the requestor; and

The applicant, employee or volunteer would or may have unsupervised contact with children.

The request must be made in writing to the local office.

### Response by Local Office

The social worker assigned to respond to the request should make every attempt to respond to the request in a timely manner and will:

- check the local files to determine if the person has been named as a perpetrator of child abuse, sexual abuse, neglect or exploitation;
- request information about the person from the Department's local offices where the applicant said he or she has been living for the past 5 years; and
- if there is no record on the person, respond in writing to the requestor stating the Department has not been able to

## Child and Family Services Policy Manual: Confidentiality and Case Records Background Checks on Applicants, Employees or Volunteers

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verify any record on the applicant, employee or volunteer;  
or

- if verification is found that the applicant, employee or volunteer is a substantiated perpetrator, the worker responding to the request and his or her supervisor must determine what information will be shared to assist the requestor in assessing risk to the children and respond in writing to the requestor.

Before any information regarding a CPS investigation against the individual can be released, two conditions must be met:

1. The Department must have substantiated person is a perpetrator of abuse, sexual abuse, neglect, and/or exploitation of a child; **and**
2. The person, as a substantiated perpetrator, must have received a letter of notification as required in Section 202-4, Documentation of Investigation.

If the person is an alleged perpetrator and is in the appeal process at the time of the request, the worker may not release any information regarding the incident of alleged child abuse/neglect until the case has been heard by a Hearings Officer and an opinion rendered.

### **Letter of Response to the Requestor**

The letter to the requestor regarding an applicant, employee or volunteer who has a substantiated record with the Division must contain the following information:

- name of person about whom the information has been requested;
- statute citation authorizing release of information [Mont. Code Ann. § 41-3-205(3)(o)];
- type of abuse and a brief description of the substantiated acts; and
- identity of the victim in general terms (child or adolescent).

The letter must be signed by the worker making the response and by the worker's immediate supervisor. (See sample letter at end of this section). The original letter should be marked "Confidential" and is sent to the requestor. A copy of the letter

## Child and Family Services Policy Manual: Confidentiality and Case Records Background Checks on Applicants, Employees or Volunteers

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is retained in the local office file and one copy is sent to the regional administrator.

### **Immunity from Civil Liability**

Mont. Code Ann. § 41-3-203 states that a person providing information regarding suspected abuse or neglect of a child, or a person who uses the information, substantiated by the Division, to refuse to hire or to discharge an employee or volunteer is immune from civil liability unless the person reporting or using the information acts in bad faith or with malicious purpose.

### **References**

Mont. Code Ann. § 41-3-203  
Mont. Code Ann. § 41-3-205  
Mont. Code Ann. § 42-3-203  
Mont. Code Ann. § 52-2-622

**Child and Family Services Policy Manual: Confidentiality and Case Records  
Background Checks on Applicants, Employees or Volunteers**

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**SUGGESTED RESPONSE LETTER TO A REQUESTOR REGARDING A PERSON ON  
WHOM THE DEPARTMENT HAS A SUBSTANTIATED RECORD AS A PERPETRATOR**

(Letterhead)

DATE

REQUESTOR'S NAME AND ADDRESS

RE: Name of Applicant, Employee or Volunteer

Dear \_\_\_\_\_:  
Name of Requestor

The following information is provided in response to your letter requesting information about name of applicant, employee or volunteer who is (applying for a position with, or employed by, or may be serving as a volunteer) with your agency. The information is provided in accordance with Mont. Code Ann. ' 41-3-205(3)(o).

A search of the Department's records indicates name of applicant, employee or volunteer has been named as a perpetrator of substantiated (either physical or sexual abuse or neglect and/or exploitation). Name of applicant, employee or volunteer committed (describe briefly the substantiated act or acts) to or against (identify the victim in general terms: aged person, person with a developmental disability, or child). Name of applicant, employee or volunteer was notified by letter of this substantiation on (date notification letter was sent).

This correspondence is not to be considered as a recommendation for or against (name of applicant, employee or volunteer) being hired or serving as a volunteer for your agency.

If you need further information, please contact either of us at address or phone number of person(s) signing this letter.

\_\_\_\_\_  
Worker's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

## Child and Family Services Policy Manual: Adoption Definitions

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### Definitions

**ADOPTEE:** means an adopted person or a person who is the subject of an adoption proceeding that is intended to result in the adoptee becoming the legal child of another person.

**ADOPTION:** means the act of creating the legal relationship between parent and child when it does not exist genetically. It is the permanent legal transfer of all parental rights from one person or couple to another person or couple.

**ADOPTIVE PARENT:** means an adult who has become the mother or father of a child through the legal process of adoption.

**AGENCY:** means a public or non-profit entity that is licensed by any jurisdiction of the United States and that is expressly empowered to place children preliminary to a possible adoption.

**BIRTH PARENT:** means the woman who gave birth to the child or the father of genetic origin of the child.

**CHILD'S SOCIAL HISTORY:** means the form (DPHHS-CFS-107, Birth Family Social and Medical History, completed by the child's social worker in conjunction with the birth parents or significant others that includes relevant family background; education, health, mental health, religion and social information; tribal affiliation, if any; current and past living arrangements (placement history); etc.

**CONCURRENT PLANNING:** means to work toward reunification while, at the same time, developing and implementing an alternative permanent plan. This is done by establishing and implementing two simultaneous plans intended to achieve a permanent outcome for a child in the shortest period of time.

**CONFIDENTIAL ADOPTION:** occurs when there is no direct contact between the birth and adoptive families. Confidential adoption preserves the confidentiality and anonymity of the adoptive parent(s) and the birth parents and is most appropriate in cases where the parent(s) poses a serious continuing risk to the child's health, safety and welfare.

**CONFIDENTIAL INTERMEDIARY:** means a person certified by the Department and under contract with or employed by a non-profit entity with expertise in adoption.

## Child and Family Services Policy Manual: Adoption Definitions

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**COURT:** means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

**DEPARTMENT:** means the Department of Public Health and Human Services as provided for in Mont. Code Ann. § 2-15-2201.

**DIRECT PARENTAL PLACEMENT ADOPTION:** means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

**DOMESTIC VIOLENCE (PARTNER OR FAMILY MEMBER ASSAULT):** is bodily injury inflicted on a partner or family member or causing reasonable apprehension of bodily injury to a partner or family member. Bodily injury is physical pain, illness or any impairment of physical condition and includes mental illness or impairment. (See Mont. Code Ann. § 45-5-206.)

**FOSTER PARENT ADOPTION:** occurs when foster parents are approved by the Department to adopt a child when the adoption is in the best interests of the child. (See Section 602-5, Foster Parent Adoption.)

**KINSHIP ADOPTION:** is the adoption of a child by relatives or other kin who have been approved by the Department when the adoption of the child has been determined to be in the best interests of the child. (See Section 602-4, Kinship Adoption.)

**LEGAL RISK PRE-ADOPTIVE PLACEMENT:** is the placement of a foster child with people who have been approved as an adoptive resource pending the child becoming legally free for adoption. (See Sections 602-6, Legal Risk Adoptive Placement, and 407-1, Legal Risk Adoptive Placement.)

**OPEN ADOPTION:** means an adoption in which the birth parents have no legal or nurturing rights to the child but may have continuing communication and/or knowledge of the child's whereabouts and welfare.

There are varying degrees of openness in adoption. The degree of openness in any adoption should be arrived at by mutual agreement based on a thoughtful, informed decision-

## Child and Family Services Policy Manual: Adoption Definitions

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making process involving the birth parents, the prospective adoptive parent(s) and, when appropriate, the child.

**PARENT:** means the birth or adoptive mother, or the birth, adoptive or legal father whose parental rights have not been terminated.

**PLACING PARENT:** means a parent who is voluntarily making a child available for adoption.

**PRE-ADOPTIVE PLACEMENT:** means the placement of a child who has been determined by a permanency team to meet the legal requirements of a legal risk adoptive placement as defined in policy, or the legal requirements for an adoptive placement as defined in statute, with a family who has a current approved pre-placement evaluation; and who has signed a legal risk adoptive placement agreement or an adoptive placement agreement regarding the child.

**PRE-PLACEMENT EVALUATION (ADOPTIVE HOME STUDY):** means the home study process conducted by the Department, a licensed child placing agency or a Licensed Clinical Social Worker that assists a prospective adoptive parent or family to assess its own readiness to adopt and assess whether the prospective adoptive parent or family and home meet applicable requirements.

**POST PLACEMENT EVALUATION:** means a written report in which specific elements required by law are addressed, including a recommendation for or against finalization of the adoption. The evaluation is usually completed by the worker who has supervised the placement of the child.

**RECORDS:** means all documents, exhibits, and data about an adoption.

**RELINQUISHMENT:** means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual.

**SUBSIDIZED ADOPTION:** occurs when a special needs child is approved for financial and/or medical assistance. It allows families to adopt special needs children who need additional resources to be maintained in the family. (See Section 604-1,

**Child and Family Services Policy Manual: Adoption  
Definitions**

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Subsidized Adoption, Non-Recurring Adoption Expenses, and  
Medical Subsidy.)

**References**

Mont. Code Ann. § 42-1-103

## Child and Family Services Policy Manual: Adoption Adoptive Inquiry and Training

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<b>Adoptive Inquiry</b>	<p>People inquiring about adoption shall be referred to the family resource specialist.</p> <p><b>NOTE:</b> Division employees who are interest in adopting must be referred to a private adoption agency.</p>
<b>Information to be Provided</b>	<p>During the inquiry process, the family resource specialist should provide the following information to the inquirer:</p> <ol style="list-style-type: none"> <li>1. information about the availability of other licensed adoption agencies;</li> <li>2. an explanation of the Department's policy and procedures regarding adoption;</li> <li>3. information regarding the types of children available through the Department;</li> <li>4. referral to families who have adopted and have agreed to share their experiences with others;</li> <li>5. information regarding adoptive parent training, which is a prerequisite to adoption; and</li> <li>6. an adoption information packet.</li> </ol> <p><b>The family resource specialist shall advise prospective applicants that there is no guarantee for placement of a child</b> -- the Department finds parents for children rather than children for parents. The prospective adoptive parent(s) may be referred to additional training such as group meetings, self study, adoptive support groups and meetings with families who have adopted.</p>
<b>CAPS</b>	<p>The family resource specialist should complete a provider search on CAPS and determine if the prospective adoptive parent(s) have a provider ID#. The RRD1 screen in CAPS should be completed to record the adoption inquiry.</p>
<b>Background Checks</b>	<p>Immediately following the inquiry and prior to KCS (Keeping Children Safe) training, the assigned adoption worker shall obtain releases from the prospective adoptive parent(s) and begin the process of conducting background checks of the applicant(s), other family members and other persons residing in the home, including:</p>

## Child and Family Services Policy Manual: Adoption Adoptive Inquiry and Training

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- CPS/APS check for possible child or elder abuse records;
- a search of CAPS (PERS);
- a check with the DPHHS county office for each county in which the applicants have resided;
- a check with the state/or county outside of Montana in which the applicants have resided;
- criminal background checks.

The prospective adoptive parent(s) should be provided with copies of the DPHHS-DFS-033 Personal Statement of Health for Licensure (or Adoption). The prospective adoptive parent(s) must also provide copies of any and all divorce decrees or other orders related to domestic violence or child custody or visitation.

### CPS/APS Background Check

The worker shall conduct a CPS/APS background check on all prospective adoptive parent(s). Any substantiated report of child abuse or neglect by either prospective adoptive parent or other person residing in the home must be fully examined by reviewing the files, if available, and contacting the investigating worker and/or the supervisor. The referral should also be discussed with the prospective adoptive parent(s). If prior substantiated abuse or neglect by either prospective adoptive parent does not disqualify the couple as being recommended for approval, the pre-placement evaluation must detail for the Regional Administrator's review, the allegations, reasons for substantiation and reasons why they should not be disqualified as adoptive parent(s).

If a substantiated abuse or neglect referral disqualifies a prospective adoptive parent for adoption, the worker must ensure that the person received notice of the substantiation and had an opportunity to have the substantiation reviewed before the substantiation is used to deny an application. To do this, the worker should contact the Social Worker supervisor and ask that person to verify the substantiation. If abuse or neglect is verified but no letter has been sent to the alleged perpetrator, the supervisor will send the letter of notification to the alleged perpetrator. A copy of the letter is to be forwarded to the FRS. The FRS may not deny an application for adoption based on the abuse or neglect until the person has had the allegations

## Child and Family Services Policy Manual: Adoption Adoptive Inquiry and Training

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### Criminal and Youth Court Records Checks

reviewed or their time for requesting the review has expired.

Completion of a criminal records check for adoptive applicants is required by Mont. Code Ann. § 42-3-203(2)(a). This check must be by means of a fingerprint check for adoptive applicants to the Department.

The results of both the criminal and protective service checks must be satisfactory in order to continue the provisional status of the license (if one has been issued) or to issue a regular license, or to approve the home for guardianship. Current resource families will be required to have fingerprint checks as part of the licensing renewal or reapproval process.

If the criminal records check on the prospective adoptive parent(s) or other household members reveals a **felony conviction** at any time for any of the following crimes:

- child abuse or neglect;
- spouse abuse;
- a crime against children (including child pornography);
- a crime of violence, including rape, sexual assault or homicide,

the prospective adoptive parent(s) **shall not** be approved to adopt. If the criminal records check reveals a **felony conviction** within the past five years for any of the following:

- physical assault;
- battery; or
- a drug related offense,

the prospective adoptive parents shall not be approved.

Youth court records for any persons over age 13 living in the home may also be reviewed. A release of information for the criminal justice agency should be signed by the applicant for themselves and any teen aged children living in the home. The

**Child and Family Services Policy Manual: Adoption  
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release should be sent to the juvenile probation office in the county where the family resides, or resided when family members were teenagers. If the family has moved from another state, the worker does not need to attempt to obtain these records from the other state.

**References**

Mont. Admin. R. 37.52.101  
Mont. Code Ann. § § 42-3-203 and 204.  
42 USC 670 Sec 471(20)(A)

## Child and Family Services Policy Manual: Adoption Assessment and Pre-Placement Evaluation

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### Philosophy

The evaluation and assessment process involves the agency and the adoptive applicants in a process to determine:

- the applicant's capabilities to meet the needs of an adopted child; and
- the type of child best suited to the applicant's family.

The evaluation and assessment process should prepare applicants for adoption, help them anticipate the special needs of an adopted child, inform them of the difficulties inherent in adoptive parenthood, and bring about growth and change in their attitudes and expectations as they increase their understanding of adoption and the characteristics of available children.

**Basis for Selection of Adoptive Parents** Applicants for adoption of a child will be selected to be parents on the basis of their capacity to understand, accept and meet the needs of a particular child in need of a family. Each potential adoptive family will be assessed from the perspective of what is in the best interests of the child to be adopted. The interests of the child are paramount.

The following individuals who otherwise meet the requirements of the Department are eligible to adopt a child:

- a husband and wife jointly or either the husband or the wife if the other spouse is a parent of the child (step-parent);
- an unmarried individual who is at least 18 years of age; or
- a married individual at least 18 years of age who is legally separated from the other spouse or whose spouse has judicially been declared incompetent.

### Common-Law Marriages

Montana law recognizes common-law marriage as a valid marriage in this state, as long as all elements to establish a valid common-law marriage are present. These elements are:

- If a couple states that they are married, and can attribute this married status to a certain date; and
- if they have lived together; and

## Child and Family Services Policy Manual: Adoption Assessment and Pre-Placement Evaluation

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- held themselves out to others as “married”.

The statute and case law in Montana will recognize this couple as married. If the couple has met the elements of common-law marriage as discussed above, the adoption statute at Mont. Code Ann. 42-1-106 will allow them be eligible to adopt a child as husband and wife.

The Department should strive to select applicants who are able to:

1. provide the continuity of a caring relationship to permit conditions and opportunities favorable to healthy personality growth and development of the child's potential;
2. provide non-identifying information or open linkages to the child's birth family;
3. be informed and sensitive to the child's ethnic, religious, cultural, and racial heritage;
4. demonstrate an ability to understand the child's uniqueness; and
5. demonstrate an ability to understand the needs of a child at various developmental stages.

All applicants shall have an equal opportunity to apply for the adoption of children, and receive fair and equal treatment and consideration of their qualifications as adoptive parents. Applicants must be fairly assessed on their abilities to successfully parent a child and not on other factors.

Neither the state nor any other entity in the state that receives funds from the federal government and is involved in adoption or foster care placements may deny to any person the opportunity to become an adoptive parent on the basis of race, color, national origin or jurisdictional boundaries of the applicant or of the child involved; or delay or deny the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent or the child involved. For adoption of an Indian child in state district court,

## Child and Family Services Policy Manual: Adoption Assessment and Pre-Placement Evaluation

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however, the Indian Child Welfare Act applies, and adoptive placement preferences must be followed. (See Section 305-1, Indian Child Welfare Act)

### **Considerations regarding capacity for adoptive parenthood**

The following characteristics may be useful indicators of a persons capacity for adoptive parenthood: total personality functioning; emotional maturity; if married, quality of Spousal relationship; capacity to parent children; attitudes toward childlessness, if applicable; readiness to adopt; and the reasons for seeking adoption.

In families with children, it is important to consider each family member's adjustment. The children's functioning at home, in school and with their peers is an important indicator of the development and quality of their parents' parenting skills.

Although it is difficult to know what kind of parents people will be before they have the opportunity to function as parents, all applicants should have a realistic understanding of the needs and behavior of children who need adoption and the adoption relationship's impact on them, the ability to love and accept a child, a willingness to provide linkages to the child's birth family when appropriate, and an understanding and sensitivity to ethnic, religious, and cultural heritage.

If childless, the applicants may want help to understand and cope with their feelings about their inability to have a child. Feelings about birth parents, children born out of wedlock, and inherited traits should be taken into consideration because these reactions may affect their attitudes toward a child. It is important to know whether they will be able to help the child understand that he or she is adopted, or if they will have a strong tendency to deny it. Unresolved feelings about their childlessness should not necessarily disqualify a couple as adoptive parents. However, both parents should be comfortable with the decision to adopt.

### **Procedure**

#### Application

The prospective adoptive family may obtain an application to adopt anytime upon request to the Department. (DPHHS-CFS-090, Application to Adopt). Once returned, the worker should review the application forms to assure the application file is complete and give the family the necessary information on the required pre-service

## Child and Family Services Policy Manual: Adoption Assessment and Pre-Placement Evaluation

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training (Keeping Children Safe, KCS). Any information provided which is withheld or erroneous may result in denial of the application. The department will not accept adoptive applicants who have a current application before another licensed adoption agency.

References	The worker must contact all of the references listed by the applicants and document such contact in the pre-placement evaluation. Written responses from the persons listed as references are preferred over verbal responses. The worker cannot guarantee the anonymity of the person making the reference. If a negative reference is a factor in disapproving an applicant for adoption, the applicant must be allowed an opportunity to respond.
Information sought	The worker must conduct <b>at least</b> one in-home visit and conduct at least one interview with each family member of the prospective adoptive home. Prior to the initial home visit, the worker should review the family profile or other supporting documentation for the family. During the home visit(s), the worker should view the house and meet with each family member individually and as a family. The worker should explore the reasons for wanting to adopt, the attitude of each family member toward adoption and any issues raised in the family profile. The number of contacts (home visits, phone calls, etc.) will vary depending upon the concerns, questions, and other unique factors.
Information provided	The worker should use contacts with the applicants to provide information about adoption, a description of the evaluation process and adoptive process, a discussion of resources available for more information about adoption and a chance for the family to ask questions. Concerns shall be addressed as they arise.
<b>Pre-Placement Evaluation Review</b>	<p>The worker conducting the pre-placement evaluation must consider all information provided by the applicants and obtained during home visit(s) and write a pre-placement evaluation report of the prospective adoptive family. The worker must consider at least the following:</p> <ul style="list-style-type: none"> <li>• results of a check of criminal conviction data, data on substantiated abuse or neglect of a child, and data pertaining to any involvement in incidents of domestic violence by any person over the age of 13 living in the prospective home;</li> </ul>

## Child and Family Services Policy Manual: Adoption Assessment and Pre-Placement Evaluation

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- when appropriate, results of a check of the youth court records of each person over the age of 13 living in the home;
- an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child;
- assessment of potential parenting skills;
- medical and current health of the adoptive parents;
- background information on the adoptive family;
- assessment of the family's ability to provide adequate financial support for the child;
- assessment of the level of knowledge and awareness of adoption issues, including; when appropriate, matters relating to open, interracial, cross-cultural, and special needs adoption;
- the worker's impression of each family member and the family as a whole;
- information from the family profile and application;
- areas of concern; and
- strengths and needs assessment of the applicants.

### **Pre-Placement Evaluation Report**

The written pre-placement evaluation report must contain the following information, if available:

1. age and date of birth, nationality, racial or ethnic background, and any religious affiliation;
2. marital status and family history, including the age and location of any child of the individual and the identity of and relationship

**Child and Family Services Policy Manual: Adoption  
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- to anyone else living in the individual's household;
3. physical and mental health and any history of abuse of alcohol or drugs;
  4. educational and employment history and any special skills;
  5. property and income, including outstanding financial obligations as indicated in a current credit report or financial statement furnished by the individual;
  6. any previous request for an evaluation or involvement in an adoptive placement and the outcome of the placement or evaluation;
  7. whether the individual has been charged with or convicted of domestic violence or has been involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition of the charges;
  8. whether the individual has been convicted of a crime other than a minor traffic violation;
  9. whether the individual is subject to a court order restricting the individual's right to custody or visitation with a child (review divorce decrees);
  10. If a child is identified, the evaluation must specifically address the appropriateness of placing that child or children with the prospective adoptive parents;
  11. any other fact or circumstance that may be relevant in determining whether the individual is suited to be an adoptive parent, including the quality of the environment in the home and the functioning of other children in the household; and
  12. a specific recommendation regarding the suitability of the subject of the study to be an adoptive parent, including

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recommended children's ages and any special needs.

Notification After a supervisor and regional administrator approve the pre-placement evaluation, the regional administrator or designee notifies the applicants in writing of the approval or denial of their application to adopt. Any applicant may review the application for adoption.

Only a hard copy of the pre-placement evaluation may be released to the applicant. The hard copy will be printed with an "unofficial" watermark. In addition, the following disclaimer must be on all copies of a pre-placement evaluation given to a family:

Disclaimer **PRE-PLACEMENT EVALUATIONS ARE THE PROPERTY OF THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES.** This is an unofficial copy of this pre-placement evaluation. Receipt of this document does not commit or obligate (nor imply such) the Division of Child and Family Services to provide any services.

**NOTE: The family should not be provided with an electronic version of the pre-placement evaluation.**

Approved families who find children available for adoption on the internet To enhance informed decision making for the adoptive parents, FRS who are contacted by families who have an approved pre-placement evaluation and have identified a child on the internet who are not Montana children will be requested to meet with the FRS. The purpose of the meeting will be to determine if the family has been assessed to meet the needs of the identified child and to offer the family an opportunity to hear about children from Montana that are available for adoption who have profiles similar to the child the family identified. The FRS should send inquiries via email to staff statewide to locate children with similar profiles. This process will enhance informed decision making for the adoptive parents.

Denial of Application Unless the family withdraws their application in writing, a denial of an application for adoption requires the approval of the worker's supervisor. The worker shall complete a written evaluation summarizing the basis for the denial and shall confirm, in writing to the family, the Department's position regarding the reason(s) for denial,

## Child and Family Services Policy Manual: Adoption Assessment and Pre-Placement Evaluation

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supported by specific statements as to the reasons for denial. The supervisor must approve the denial of the application.

### Re-evaluation

A pre-placement evaluation is valid for one year from its date of completion and must be updated earlier if there is a significant change in the circumstances of the prospective adoptive family. The approved adoptive parents will update all information that has changed from the time of the original application and shall submit a DPHHS-CFS-033, Personal Statement of Health for Licensure. The worker will visit the home and prepare a revised evaluation noting any changes that have occurred. An outline of the re-evaluation is provided.

If the pre-placement evaluation recommends placement of a specific category of child (i.e. birth to three year old girl) and a child is then identified for placement with that family that differs from the recommendation, the pre-placement evaluation must be updated regarding the appropriateness of placement of that child with the family and a specific recommendation for or against that adoptive placement for the child.

A family which has a current favorable evaluation from another state's agency authorized to conduct such evaluations or from a licensed child-placing agency in this, or another state, may be required to be re-evaluated by the Department or a contractor, if determined to be necessary.

### Waiver of Pre-Placement Evaluation

A court may waive the requirement of a pre-placement evaluation if the child is placed by the child's parent or guardian (with the consent to place the child adoptively) with the child's extended family member (grandparent, aunt, uncle, brother or sister). Step-parent adoptions do not require a pre-placement evaluation, unless the child to be adopted is in the custody of DPHHS.

### References

Mont. Code Ann. § 42-3-201 through 42-3-213; 42-1-106  
ARM 37.52.104

## **Adoptive Home Evaluation: the Re-evaluation**

### I. Current Family Functioning

Any changes since original pre-placement evaluation, including changes in housing, employment, etc.

Present attitudes toward adoption.

Ability to parent as represented by child or children in home.

Current financial picture.

### II. Motivation

Continued interest in adopting a child.

### III. Children

Birthdates

Children presently in home, their adjustment and attitudes toward their family adopting a child.

Parents' attitudes toward and ability to cope with sibling rivalry.

Type of child they see being placed with them at this time.

Background information on children in home.

### IV. Evaluation

Worker's evaluation of family and their ability to incorporate an additional child or children into their family.

### V. Recommendation

Clear and definite recommendation as to the type of child or children to be placed with this family to include number of children, age, sex, whether or not they can accept handicapped and/or minority child.

# Universal Study Outline

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Date:

Worker: (Name, address, telephone number)

Agency Name:

Name of Family:

Address:

Telephone Number:

Provider ID Number:

Directions to the Home:

## **I. Inquiry and Motivation**

- Dates of Contact
- How family learned of foster care, adoption or guardianship program
- Previous knowledge of foster care, adoption or guardianship
- Motivation (include: assessment of couple – decision to adopt is a mutual agreement and both are equally invested to adopting; OR single person – decision to adopt has been well thought out)

## **II. Training Summary**

- Dates attended orientation/Training
- Numbers sessions attended by each
- Participation in training
- Issues and decisions realized during training
- Collateral training, research reading
- How training has prepared them for foster care/adoption/guardianship

## **III. Home and Community**

- Physical description of home/neighborhood/city/county
- Kids in neighborhood
- Style of home: Number of bedrooms – neat, cluttered, etc.
- Schools which children would attend – bus service availability – special services offered
- Type of town – community services available
- Pets
- Child care arrangements

## **IV. Financial Information**

- Brief description of income/resources/expenses
- Plan to support child or children (adoption)
- Plan in event of premature death (Will, guardianship of children)

## **V. Worker's Perception and Evaluation of Family**

10/03

- Understanding of/experience with:
  - Abuse and neglect
  - Concurrent/legal risk placement
  - Child with special needs
  - Discipline rule (Department's policy)
  - Child development (realistic expectations of children)
  - Attachment, loss and separation
  - Importance of connections including birth family/foster family/cultural
- Ability to:
  - Positively approach helping children manage their behavior
  - Adjust their own personal expectations
  - Accept and adjust to change
  - Accept and utilize professional resources to meet child's needs
  - Work in partnership with Department
  - Resolve conflicts internally (w/in family unit) & externally (w/others outside family unit)
  - Communicate effectively
  - Accept and value differences in others
- Strengths/needs as a couple or individual
- Family perception of the impact fostering/adoption/guardianship will have on their own lives
- Couple – quality of marital relationship
- Single individual – Health support system is available
- Experience in working with children
- Experience in working with children who have special needs

**VI. Family History**

- Type of home which individuals were raised
- Relationships with parents/sibling
- Type of discipline experienced as a child
- Communication style within family home of origin
- How were conflicts resolved within family of origin
  - Attach an autobiography of each individual – this should be written by each person in their own words discussing their own personal life, experiences, and desire to care for child/ren

**VII. Type of Child Desired by Family:**

Include the type of special needs the family feels they can parent  
Including age, sex, number of children

**OR**

Summary of how they are suited to meet the needs of a particular child/children

**VIII. References:**

10/03

- Criminal and CPS Checks
- Personal References – recommendations and comments using quotes if desired

**IX. Recommendations**

Recommend approval for number of child/ren, age range, ethnicity, gender preference

**OR**

Recommendation for specific child/children

**X. Signatures**

- ATTACH application and profile to worker assessment when submitting to selection committee

**ATTACH A COPY OF THE FOLLOWING COMPLETED  
“ASSESSMENT FOR CHILD PLACEMENT” FORM**

## Child and Family Services Policy Manual: Adoption Indian Adoptions

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<b>Indian Child Welfare Act</b>	The Indian Child Welfare Act (ICWA) requirements must be followed regarding the relinquishment and placement of Indian children. (See Section 305-1, Indian Child Welfare Act.)
<b>Relinquishment</b>	<p>Parental rights must be relinquished before a judge and accompanied by the judge's certification that the terms and consequences of the relinquishment have been fully explained to and understood by the parent.</p> <p>A relinquishment of an Indian child may not be accepted until the child to be relinquished is at least ten days old.</p>
<b>Preference under ICWA</b>	<p>The ICWA states that the following list of people must be given preference as adoptive parent(s) for an Indian child covered by ICWA:</p> <ol style="list-style-type: none"> <li>1. a member of the child's extended family;</li> <li>2. other members of the child's tribe; or</li> <li>3. other Indian families.</li> </ol> <p>To preclude the possibility that the adoption may be invalidated at a later date, all tribes with which the child has connections or may be eligible for membership must be notified. The child's tribe(s) must determine whether it wants to intervene in the adoption.</p>
<b>Good Cause not to follow Preference Order</b>	<p>An Indian child shall be placed for adoption with a person listed above unless there is good cause not to follow the preference order. Good cause not to follow the preference order may be established in the following cases:</p> <ol style="list-style-type: none"> <li>1. the request of the biological parents or the child (if of sufficient age);</li> <li>2. the extraordinary physical or emotional needs of the child as established by testimony of a Qualified Expert Witness; or</li> <li>3. the unavailability of suitable families for placement, after a diligent search has been completed for families meeting the preference criteria.</li> </ol> <p>Failure to follow the ICWA's placement preference provisions</p>

## Child and Family Services Policy Manual: Adoption Indian Adoptions

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without good cause could subject an adoption to being declared invalid.

The Indian Child Welfare Act Report Form (DPHHS-CFS\ICWA-250) must be completed for all adoptions in order to collect information for the Bureau of Indian Affairs Social Services Office.

### **Additional Information**

For additional information regarding ICWA and any out-of-home placement of an Indian child, refer to Section 305-1, of this manual.

### **References**

25 U.S.C. 1901-1963  
Mont. Code Ann. § 41-3-109

## Child and Family Services Policy Manual: Adoption Kinship Adoption

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### Policy

Relatives and other kin may provide a familiar environment for the child and thereby provide a less traumatic and disruptive placement. Relatives/kinship providers offer an important connection to the birth family.

Relatives or other kin wishing to adopt shall be assessed as any other prospective adoptive parent(s) and must meet the same criteria, for approval as any other adoptive parent. Relatives or other kin are required to participate in adoptive parent training unless a written exception is granted by the regional administrator.

When the child's relatives or other kin and the child's foster parents wish to adopt the same child, and both have a favorable pre-placement evaluation completed, the relatives or other kin shall be given priority if they meet the placement criteria developed for the child as determined by the selection committee and if the placement is in the child's best interest. Documentation of "best interest" must be provided. Refer to Section 603-2, Identification and Selection of the Family and to Section 602-5, Foster Parent Adoption.

### References

Mont. Code Ann. § § 42-3-202, 203, 204 and 42-3-301.  
Mont. Admin. R. 37.52.101 through 37.52.115

## Child and Family Services Policy Manual: Adoption Foster Parent Adoption

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### Policy

Foster parents who express interest in adopting a child living in their home for whom adoption is or is likely to become the case plan must be allowed to apply to adopt. Foster parents who express interest in adopting a child in their home should be referred to a Family Resource Specialist and should have a pre-placement evaluation completed as soon as possible, but not later than six months after the foster family has met all of the requirements to adopt.

Foster parents must meet the same criteria for approval as other adoptive parents including participating in adoptive parent training. Foster parents are required to participate in adoptive parent training unless a written exception is granted by the regional administrator.

Adoption by the child's foster parents maintains continuity with persons the child has come to know as caretakers. Maintaining a relationship between the foster parents and the child through adoption may be in the child's best interests. However, the pre-placement evaluation should include an assessment of the foster parents' understanding of the differences between foster parents and adoptive parents, as well as the difference between attachment and making a lifetime commitment to the child.

If approved as adoptive parents, foster parents with whom the child has been living will be given priority over non-related adoptive parents if the foster parents are determined to be the most appropriate family for the child as determined by the selection committee and if the placement is in the child's best interest. Documentation of "best interest" must be provided. See Section 603-2, Identification and Selection of the Family.

### Concurrent Family

A concurrent family is a family approved both as a foster family and an adoptive family to provide early permanency for children. The foster family must be willing to work with the Department, the child's birth family, and the child's extended family members toward the goal of reunification. If a permanent placement is not established through reunification with the child's birth family or extended family, the concurrent family will be given priority for adoption if they are determined to meet the best interest criteria for the child. See Section 603-2, Identification and Selection of Family.

Once the determination is made that the concurrent family will be adopting the child, no further foster care placements shall be

## Child and Family Services Policy Manual: Adoption Foster Parent Adoption

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made with the foster family unless the child(ren) placed are siblings to the child to be adopted.

Six months following the adoption finalization the family may once again be assessed as to their readiness for placement of additional children. The assessment is completed by the family resource specialist, who will review the adjustment of all family members, but particularly that of the child(ren) who was adopted.

An exception to the above may be granted in writing by the family resource specialist supervisor.

When the child's foster parents and relatives or other kin both wish to adopt the same child, and both have a favorable pre-placement evaluation completed, the relatives or other kin shall be given priority if they meet the placement criteria developed for the child as determined by the selection committee. Refer to Section 603-2, Identification and Selection of the Family and to Section 602-4, Kinship Adoption.

### References

Mont. Code Ann. § 42-3-202, 203, 204, and 42-3-301.  
Mont. Admin. R. 37.52.205

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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### Definition

**Legal risk pre-adoptive placement** is the placement of a foster child, for whom the permanency plan is adoption, with people who have been approved as an adoptive resource, pending the child becoming legally free for adoption

**NOTE: Legal risk pre-adoptive placement should not be confused with the placement of a child with a concurrent planning family.**

A concurrent planning family is a family approved both as a foster family and an adoptive family. The foster family must be willing to work with the Department, the child's birth family, and the child's extended family members toward the goal of reunification. If a permanent placement is not established through reunification with the child's birth family or extended family, the concurrent family will be given priority for adoption if they are determined to meet the best interests criteria for the child. (See Section 603-2, Identification and Selection of Family.)

### Policy

Legal risk pre-adoptive placement is appropriate in cases where the Department, at a minimum, has filed a petition for permanent custody of the child. By using an approved adoptive family willing to accept a legal risk, the child may be placed with an approved adoptive family in a timelier manner, which meets the child's developmental and emotional needs.

Legal risk placement is necessary because the child's legal availability for adoption cannot be guaranteed to the prospective adoptive family at the time of placement. This may be because:

- a petition has been filed, but the birth parents' rights have not yet been terminated; or
- a pending legal action, such as an appeal, is contesting the validity of a court order terminating parental rights.

### Criteria for Placement

Legal risk pre-adoptive placements should be made only when:

- the child's best interests are served;
- adoption is clearly the goal;

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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- a determination has been made by the county attorney or the agency's legal counsel that termination of parental rights is both likely and able to be obtained in a reasonable period of time;
- the prospective adoptive parent(s) have given written consent to the placement indicating that they have been fully informed of the risks involved (i.e., if the child is not freed for adoption, the child may have to return to the birth parents). See the Legal Risk Pre-Adoptive Placement Agreement on page 5; and
- the family is an approved adoptive family and is licensed for foster care.

Because it will need to be adjusted to meet the needs of each placement, the Legal Risk Pre-Adoptive Placement Agreement is not a pre-printed form or a DocGen on CAPS. It is the responsibility of the child's worker to complete the legal risk agreement to meet the specific situation.

The child's social worker and the family resource specialist serving the adoptive family will coordinate a placement process that best meets the needs of the child. The process includes:

1. providing the prospective adoptive parent(s) with complete and accurate information, including:
  - a. completed DPHHS-CFS-107, Birth Family Social and Medical History;
  - b. complete medical records, including immunizations;
  - c. psychological evaluations on any family member, if contained in the Department's records;
  - d. school records;
  - e. child's daily routine;
  - f. information on previous placements, including type and length of placements;

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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- g. child's eligibility for subsidized adoption; and
  - h. the child's Life Story Book.
2. clarifying if and how information about the child and/or the child's birth parents will be updated;
  3. arranging for pre-placement visits; and
  4. providing adoptive parent(s) a copy of placement agreements for their review prior to placement of the child.

<b>Licensing</b>	The approved adoptive home that receives a child in a legal risk placement is issued a foster home license based upon an approved adoptive pre-placement evaluation. The pre-placement evaluation is placed in the licensing file in lieu of a foster home study.
<b>Restrictions</b>	The youth foster home license issued is restricted to the child(ren) in the home for whom there is a signed <u>Legal Risk Pre-Adoptive Placement Agreement</u> .
<b>Requirements</b>	Foster Care Review Committee (FCRC) requirements must be met for all children in foster care including those children in legal risk placements. The Department FCRC policy must be followed for all reviews. (See Sections 409-1, Foster Care Review Committees.)
<b>Social Worker Responsibility</b>	The FCRC forms must be placed in the child's case record. The reviews are scheduled by the community social work supervisor or his or her designee. The required review form is completed by the placing worker. (See Section 402-6, Request for Courtesy Supervision and Case Transfer.)
<b>CAPS</b>	Placements must be entered on PLAD even if no payment is being made. Update the permanency goal to reflect adoption. An application for Medicaid should be made even if no foster care payment is being made. This will determine if the child is eligible under any other available Medicaid program.
<b>Procedure for Subsequent Adoption</b>	Once the child is legally free for adoption, a DPHHS-CFS-030, <u>Agreement on Adoptive Placement</u> is completed and signed by the adoptive parent(s), child's worker, the worker supervising the adoptive placement, and, when appropriate, the child. At

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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this point, the placement becomes an adoptive placement rather than a foster care placement. Services continue to be provided by the family resource specialist until the adoption is finalized.

**Parental Rights Not Terminated** If the Department is not successful in obtaining permanent legal custody of the child with the right to consent to adoption, the child's worker shall determine a new plan for the child. If the child is returned to the birth parents, the worker shall assure a transition that will ease the child into the home and shall work with the family resource specialist to assist the legal risk adoptive parent(s) in adjusting to the transition.

**Private Agencies** In a legal risk pre-adoptive placement through a private agency, the approved adoptive family must meet the Department's foster care licensing standards and be licensed by the Department prior to the placement of the child in the home. At the discretion of the Adoption Program Officer, payments negotiated for the Adoption Subsidy may be made on behalf of the child at the time of pre-adoptive placement until the adoption is finalized.

**Montana Department of Public Health and Human Services  
Legal Risk Pre-Adoptive Placement Agreement**

I/We agree to accept \_\_\_\_\_ on a Legal Risk Pre-Adoptive basis from the Department of Public Health and Human Services.

I/We understand that the Department of Public Health and Human Services does not have the legal authority to consent to the adoption of this child because:

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I/We agree to accept the above named child on a foster care basis until such time as the child becomes available for adoption, or, in the event the Department does not obtain the right to consent to adoption, until such other plans are made for the child. I/We understand that the child may have to be removed from my/our home and placed elsewhere if the Department does not obtain permanent legal custody with the right to consent to adoption.

I/We agree to the following terms and conditions regarding the provision of foster care for the above-named child:

1. to abide by the terms of the DPHHS-CFS-LIC-020, Foster Parent Licensing and Relicensing Agreement, in providing care to the child;
  2. to continue any therapy or counseling that the child may be receiving and to make arrangement for any further treatment the Department deems necessary;
  3. to return physical custody of the child to the Department, if requested, in the event that the Department does not obtain permanent legal custody with the right to consent to adoption; and
  4. to
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The Department of Public Health and Human Services agrees as follows:

1. to seek permanent legal custody of the child including the right to consent to adoption;
2. to consent to the adoption of \_\_\_\_\_ if the Department receives permanent legal custody with the right to consent to adoption, providing that the family completes a successful period of post-placement supervision;
3. to comply with the Department's responsibilities;

4. to provide the family with the current psychological information regarding the child, and the completed form DPHHS -CFS-107, Birth Family Social and Medical History;
  
  5. to provide Montana Medicaid coverage while the child is in foster care status;  
and
  
  6. to
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Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Department of Public Health and Human Services

Adoptive Parent(s)

\_\_\_\_\_  
Social Worker

\_\_\_\_\_

\_\_\_\_\_  
Supervisor

\_\_\_\_\_

\_\_\_\_\_  
Family Resource Specialist

## Child and Family Services Policy Manual: Adoption The Child's Adoption Referral Circulation

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<b>Developing the Permanent Placement Plan</b>	As soon as possible after the need for an adoptive home is identified, the permanency team, should review the child's circumstances and needs and determine what action is necessary to identify an approved adoptive family and place the child adoptively. This plan must be presented to the court at the 12-month permanency plan hearing. (See Section 301-2, Required Judicial Hearings.)
<b>Adoption Referral</b>	<p>The child's social worker must provide a written adoption referral packet to a family resource specialist or family resource specialist supervisor. To expedite the subsidy processing, the referral must be submitted in conjunction with a permanent custody hearing. The following information must be contained in the referral packet:</p> <ul style="list-style-type: none"> <li>• completed DPHHS-CFS-107 <u>Birth Family Social and Medical History</u>;</li> <li>• a determination of the best interest criteria for adoptive placement of the child. (See form at the end of this section.)</li> </ul>
<b>Circulation</b>	States may not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for the child. In <b>ALL</b> instances in which a prospective adoptive home has not been identified within 30 days of the date the permanent custody hearing is completed, the child's social history must be circulated. Circulation within DPHHS and to other licensed adoption agencies is required. Circulation should be completed by the assigned family resource specialist. If the foster parent(s) are an approved adoptive family and have been determined to be an appropriate family for the child, it is not necessary to circulate the child's history.
Adoption Circulation List	The social history will be sent to all family resource specialists and permanency planning specialists and/or appropriate Tribal agencies via hard copies or agency E-mail using the E-mail address of <i>HHS Adoption list</i> . If the worker wants to have verification that the information was sent to tribal agencies to demonstrate compliance with ICWA, the social history should be sent by certified mail. At the same time, a hard copy may be sent to the licensed adoption agencies listed below:

**Child and Family Services Policy Manual: Adoption  
The Child's Adoption Referral Circulation**

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- Catholic Social Services  
PO Box 907  
Helena, Montana 59624  
Phone: (406) 442-4130
- Lutheran Social Services  
PO Box 1345  
Great Falls MT 59403  
Phone: (406) 761-4341
- LDS Social Services  
2620 Colonial Dr., Suite D  
Helena, Montana 59701  
Phone: (406) 443-1660
- Youth Homes  
DFHFK  
PO Box 7616  
Missoula MT 59807  
Phone: (406) 721-2754
- Intermountain Children's Home  
500 S. Lamborn  
Helena, MT 59601  
(406) 442-7972

The E-mail message or cover letter should indicate to whom copies of pre-placement evaluations should be sent.

## Child and Family Services Policy Manual: Adoption The Child's Adoption Referral Circulation

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### AdoptUSKids

If an adoptive family has not been located within 30 days after the social history of the child is circulated, the child must be referred to, *AdoptUSKids*, the national website ([www.AdoptUSKids.org](http://www.AdoptUSKids.org)), if the Department has been granted permanent custody of the child.

If a child is affiliated with a Native American tribe, written approval to feature the child on *AdoptUSKids* must be received from the child's tribe prior to the child appearing on *AdoptUSKids*. If the tribe does not respond to a request for approval within two weeks, contact the ICWA specialist for assistance.

If the Department has not been granted permanent custody, the child may be featured on *AdoptUSKids* only with written consent of the child's parent(s). The regional permanency planning specialist or an Adoption Program Officer may be contacted for assistance in making the referral to *AdoptUSKids*. A referral to *AdoptUSKids* requires:

- a photo of the child;
- a completed *AdoptUSKids* profile;
- signed authorization form; and
- preparation of the child and his or her foster parent(s) for circulation on *AdoptUSKids*.

Before referral to *AdoptUSKids* is made, preparation of both the child and the child's foster care provider is necessary and should be provided by the child's worker with assistance from the permanency planning specialist. The preparation process should include one or more visits with the child to prepare the child and foster parent(s).

Preparation should include:

- an explanation as to why this method of recruitment is being utilized e.g., identification of specific families appropriate for children who are on *AdoptUSKids*, recruitment of adoptive families in general etc.;
- an explanation that this is only one way that the agency

## Child and Family Services Policy Manual: Adoption The Child's Adoption Referral Circulation

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will try to locate a home for the child and if it does not result in an appropriate family, the agency will try other methods;

- an explanation of the pre-placement evaluation process that families must complete prior to any child being placed with them;
- discussion of possible reactions from other people who may see the *AdoptUSKids* website, e.g., how will foster parents respond to pressures that they should be “keeping” the child, what should child say to peers; and
- involvement of the child and foster care provider in developing the profile that will be on *AdoptUSKids*.

In addition to preparing the child and the child's foster parent(s), it may be appropriate to prepare the child's birth parent(s) or other extended family.

### Exception

An exception to referral to *AdoptUSKids* can be granted by the Regional Administrator or designee. The exception request must be submitted in writing to the Regional Administrator or designee with a copy sent to the community social worker supervisor and permanency planning specialist. The request for an exception must justify why the referral to *AdoptUSKids*, is not in the child's best interests. A written response approving or denying the request for an exception will be sent to the worker requesting the exception with a copy sent to the worker's supervisor and to the permanency planning specialist.

### Waiting Child Program

Any time after permanent legal custody with the right to consent to adoption is granted to the Department, a child may be referred to the Montana Waiting Child Program. The permanency planning specialist can facilitate the referral process as well as provide information on other potential opportunities for identifying an adoptive home for a child.

**Best Interest Criteria  
Of Child To Be Placed Adoptively**  
**Complete PRIOR to Selection Committee Meeting**  
*Attach a Copy of Child's Social History*

**Child:** \_\_\_\_\_ **Age:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

Current Legal Status: \_\_\_\_\_

Date of Original Placement: \_\_\_\_\_ Number of Placements: \_\_\_\_\_

Nature of Current Placement: \_\_\_\_\_

Siblings: \_\_\_\_\_

To be Placed Together? \_\_\_\_\_

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- 
1. Describe the child's special needs and related services required to meet those needs.  
A. Physical, emotional, psychological, and educational needs (*Please include therapist's recommendation if available*):

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- B. Describe services needed to meet needs.

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2. Document efforts to locate and develop family member placement. Describe where birth family is located and the need for child to maintain contact with family. (*Policy 304-1*)

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3. Is it in the child's best interest to be placed with siblings?  
A. If yes, what is their relationship and the level of importance of joint placement?

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- B. If no, document reasons and have supervisor sign.

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**SUPERVISOR SIGNATURE:**

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4. Does the child have an emotional relationship with any of the families being considered as an adoptive resource? If so, describe:

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5. Discuss the short-term impact that result to the child from a change in placement including the importance of maintaining current relationships through:

- A. Placement with family with whom the child has strong emotional ties.

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- B. Placement that enables the child to maintain relationships with friends, teachers, foster parents, etc.

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- C. Placement with a family that will make a permanent, lifelong commitment to the child

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D. Placement with kin:

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6. Identify the child's race and the role racial identity has played in the child's life.

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7. Identify the child's religion and the role it has played in the child's life.

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8. Has the child stated a preference for a family? If so, what type of family?

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9. Is there any significant information that is pertinent to this child? (ie. Interests, skills, personality, activities, etc.)

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**\*\* IF THE INFORMATION BEING REQUESTED IS IN THE CHILD'S SOCIAL HISTORY, PLEASE MAKE THE NOTATION AND MAKE REFERENCE TO THE PAGE NUMBER \*\***

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Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

**Social Worker (R) Please complete the child's need section PRIOR to the selection committee meeting. The family's strengths section will be completed by the selection committee members DURING the selection meeting.**

**Factors to Consider Only as it Applies to the Individual Child(ren)**

Child's Need Strength		Family Strength	Family Strength	Family
<input type="checkbox"/>	Two parent home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Cultural Connections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	No other children in the home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Stay at home parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Understand special education needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Medical knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Able to advocate with other systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Other children in the home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	No pets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	No smoking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Allow contact with birth family	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Parenting experience/knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Family has skills to meet child(ren)'s therapeutic needs .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Willingness to develop skills to meet child(ren)'s therapeutic needs..	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Total: \_\_\_\_\_

**COMMENTS:**

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## Child and Family Services Policy Manual: Adoption Identification of and Selection of Family

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### Identification of Families

Upon receipt of a request for adoptive home studies for a child or children, the adoptive family's worker should identify families for the child(ren) from their pool of approved families. A copy of each appropriate family's pre-placement evaluation should be forwarded to the child's worker and others if indicated on the request for pre-placement evaluations.

The adoptive family's worker should consult with the family, either by phone or in person, prior to sending their pre-placement evaluation to determine their interest in being considered for placement of a particular child(ren). Social histories, **in hard copy**, may be given out to families at this time. **Social histories must not be sent electronically**. The worker needs to inform the family that the social history must be returned to the worker if the family is not selected.

To expedite adoptive placements, a response to a request for pre-placement evaluations should be made within two weeks after a request is received. The response should indicate whether or not the family's worker will be submitting pre-placement evaluations for consideration. Even if the adoptive family's worker has no evaluations to submit, it is important that the worker respond to the request.

### Selection of Family

A committee consisting of the placing worker and the worker's supervisor, the family resource specialist and supervisor, and the permanency planning specialist will review the families submitted for consideration and will select the family that best meets the child's needs. Families should be closely screened for their suitability for the child for whom they are being considered.

When many studies are received for a particular child or sibling group, the families may be prescreened, using the child's best interest criteria, by the selection committee coordinator, or by the child's social worker and supervisor prior to the selection committee meeting.

When a family is prescreened out prior to the meeting of the selection committee, the FRS who submitted that family's information will be notified. That FRS may advocate for the family to continue to be included for consideration. If the prescreeners do not concur, the FRS may advocate for a decision to include the family from the prescriber's supervisor, and finally from the Regional Administrator, whose decision will

## Child and Family Services Policy Manual: Adoption Identification of and Selection of Family

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be final.

The selection committee will receive the list of families who were prescreened out along with the reasons why. The selection committee may, at their option, reconsider a family from the prescreening list if the committee fails to concur with the decision to screen out that family.

If the child is an Indian child (an ICWA case), a Tribal Social Services representative shall be invited to participate in the selection committee.

The child's therapist, guardian ad litem or foster parent(s) may be invited to provide information regarding the child and the type of placement which would meet the best interests of the child.

The placement of a child for adoption may not be delayed or denied on the basis of race, color, national origin, or jurisdictional boundaries of the adoptive family or the child. For adoption of an Indian child in state district court, however, the Indian Child Welfare Act supersedes this policy; adoptive placement preferences must be followed. The ICWA states that the following list of people must be given preference as adoptive parent(s) for an Indian child covered by ICWA:

1. A member of the child's extended family;
2. Other members of the child's tribe; or
3. Other Indian families.

(See Section 602-3, Indian Adoptions)

### **Best Interest Criteria**

In selecting a family for a child, the interests of the child outweigh the interests of the state, the birth parents, the foster parent(s), or the adoptive parent(s).

Relatives or other kin wishing to adopt shall be assessed as any other prospective adoptive parent(s) and must meet the same criteria for approval as any other family. They are required to participate in the pre-service training unless a written exception is granted by the Regional Administrator.

When the child's relatives or other kin and the child's foster

## Child and Family Services Policy Manual: Adoption Identification of and Selection of Family

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parent(s) wish to adopt the same child, and both have a favorable pre-placement evaluation completed, the relatives, or other kin, shall be given priority if they meet the placement criteria developed for the child as determined by the selection committee, and if the placement is in the child's best interest.

**NOTE:** Foster parent(s) or non-related families cannot be given preference over kin families based solely on the fact that the kin family resides in a different jurisdiction within the state or in another state.

**NOTE:** When a child is adjudicated a youth in need of care based on **abandonment** or if the Department is awarded temporary or permanent legal custody of an **abandoned** child and the child is not placed with his/her noncustodial parent, placement priority shall be given to a member of the child's extended family if such placement is in the child's best interests.

Determination of the best interests of the child includes consideration of the following:

- an assessment of services the child will need, based on the physical, educational, emotional and psychological needs of the child;
- whether the person(s) seeking to adopt the child adopted a sibling or half-sibling of the child(ren). Siblings shall be placed together whenever possible. If placement together with siblings is not considered in the child's best interest, document the reasons and submit to the supervisor for approval;
- the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child (See Montana Code Ann. § 42-5-107);
- the harm that could result to the child from a change in placement, including the importance of maintaining current relationships through:
  - a. placement with a family with whom the child has

## Child and Family Services Policy Manual: Adoption Identification of and Selection of Family

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strong emotional ties;

- b. placement that enables the child to maintain relationships with friends, teachers, etc; and
  - c. placement with a family that will make a permanent, lifelong commitment to the child.
- identification of the child's race, and the role racial identity has played in the child's life. In an Indian child's placement, determination must be made if the requirements of the Indian Child Welfare Act have been met;
  - identification of the child's religion (if the child has been raised in a particular religion) and the role religion has played in the child's life;
  - the child's preference for a family;
  - which, if any, of the persons seeking to adopt the child were selected by the placing parent or the Department or other agency whose consent to the adoption is required; and
  - other factors particular to the child.

While each factor must be taken into account, the weight given any one factor or combination of factors will vary from child to child.

If no available family is determined to be appropriate, further circulation of the child's social history or referral of the child to *AdoptUSKids*, the national website ([www.AdoptUSKids.org](http://www.AdoptUSKids.org)), and Montana's Waiting Child Program, must be pursued. The permanency planning specialist may be contacted for assistance. (See Section 603-1, Child's Adoption Referral and Circulation.)

A placement may not be denied or delayed when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child. An opportunity for a fair hearing must be granted to an individual who alleges that the Department denied or delayed a placement for adoption of a

## Child and Family Services Policy Manual: Adoption Identification of and Selection of Family

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child based on jurisdiction.

The selection process will be repeated as often as necessary until the majority of the committee members agree that an appropriate adoptive family has been located and the family has agreed to proceed with the placement.

### **Notification to Family**

The selected family will be notified by their adoption worker who will then notify the placing worker of the family's decision. The placing worker will promptly notify in writing all other workers and agencies who submitted families for consideration that a family has been selected.

Copies of the pre-placement evaluations for families that were not selected should be returned to the adoptive family's worker promptly, but no later than a week after another family has agreed to accept the placement.

The placing worker must document in the child's file why the family selected meets the placement criteria for the child.

### **References**

Mont. Code Ann. § 41-3-438  
 Mont. Code Ann. § 42-1-106  
 Mont. Code Ann. § § 42-3-201 through 42-3-301  
 Mont. Code Ann. § 49-2-308(1)(a)  
 Mont. Code Ann. § 52-2-102  
 Mont. Admin. R. 37.52.101 through 37.52.125  
 42 U.S.C. 670 Sec 471(a)(23)

## Child and Family Services Policy Manual: Adoption Role of the Birth Parents

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<b>Policy</b>	When appropriate, birth parents should be involved in the planning and placement for adoption of their child. However, once parental rights are terminated or relinquished, the birth parents have no legal right to intervene in any respect.
<b>Involuntary Terminations</b>	When an involuntary termination has occurred, birth parents may state preferences with respect to the placement. Once parental rights have been legally terminated, the Department has no obligation to involve the birth parents in the planning; however, involvement of birth parents and extended family members is often appropriate and in the child's best interest.
<b>Family Group Conference/ Meeting</b>	It is often appropriate and in the child's best interest to involve kin early in the adoption process. A family group conference can be an appropriate process and should be developed through consultation with the placement team, including, the placing worker and his or her supervisor, the family resource specialist and supervisor and relevant others. The conference assists the worker with development of a safety plan for the child and helps identify the most appropriate placement.
<b>Voluntary Relinquishments</b>	<p>If the birth parents voluntarily agree to relinquish their child for adoption, they may state particular preferences regarding the characteristics of the family they want for the child. Any preferences can and should be considered by the placing worker if in the child's best interests, but no guarantees or promises of any kind can be made to birth parents.</p> <p>A relinquishment may not be taken from a birth parent until the child to be relinquished is at least 72 hours old and the birth mother has received counseling. Birth fathers, if available, are encouraged to also receive counseling. If the child to be relinquished is an Indian child, a relinquishment may not be taken until the child is at least ten days old. The relinquishment of an Indian child must be in writing before a judge. (See Section 602-3, Indian Adoptions, and Section 303-2, Relinquishment.)</p> <p>A voluntary relinquishment is not valid unless the person or entity to whom the child is being relinquished accepts temporary custody and agrees to assume the care and support of the child pending an adoption.</p> <p>In a direct parental placement, if the parent is a minor the parent must be represented by a separate legal counsel from</p>

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**Role of the Birth Parents**

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the attorney for the adoptive parent(s). The legal fees charged by the minor parent's attorney are an allowable expense that may be paid by the prospective adoptive parents.

**Conditional Relinquishments**

Conditional relinquishments shall not be taken by the Department. Any agreement regarding continued contact or visitation between the adopted child and birth family members cannot be guaranteed to a birth parent by a placing worker. Any agreement for continued contact must be arranged directly between the adoptive parents and the birth parents. Any increase or decrease in the type or frequency of contact is at the discretion of the adoptive parents once a final decree of adoption is issued.

**Reference**

Mont. Code Ann. § § 42-2-401 et. seq. and 42-5-301

## Child and Family Services Policy Manual: Adoption Preparation

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### **Purpose of Preparation**

Preparation for adoptive placement is intended to help the child transition successfully to an adoptive home by:

- helping the child grieve the loss of birth parents and the fact that the child will not be returning to live with them;
- helping the child understand the differences between foster care and adoption and why adoption is the plan for the child;
- helping the child with the separation from the foster family (if the child will be adopted by a different family);
- ensuring that the child's transition to the adoptive home is planned and based on the child's individual needs; and
- protecting the child, as much as possible, from the emotional trauma associated with sudden separation from a known situation to an unknown situation.

### **Social Worker Responsibility**

Preparation for adoptive placement is a team process involving the child's social worker, foster parents, birth parents (if appropriate), adoptive parents and the family resource specialist. The child's social worker is the person responsible for coordinating the preparation of the child for adoptive placement.

### **Preparation of Child**

The social worker can prepare the child by:

- informing the child of the placement plan (as appropriate for the child's age);
- working with the child to prepare or update his or her Life Story Book;
- helping the child to understand the reasons for the adoption;
- encouraging the child to talk about his or her feelings regarding the child's birth parents, foster parents and prospective adoptive parents; and

## Child and Family Services Policy Manual: Adoption Preparation

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- arranging for the child to have a “good-bye” visit with the child's birth parent(s).

The social worker can contact the family resource specialist or permanency planning specialist for resources to assist with the process of preparing the child.

If a child who is being placed for adoption will be moved to a new home, he or she will need to work through the resulting changes in relationships with the significant people in the child's life. These people may include birth parents, siblings, teachers, therapists, social worker or others significant in the child's life. Although every effort should be made to continue relationships that are in the child's best interests, some changes may be unavoidable. In such situations, the child should be aided through the transition and the grieving process.

The child should have the opportunity to gradually become acquainted with the new parents. The placing social worker, the family resource specialist for the adoptive family and the child's foster family can provide the child some continuity during the transition to the adoptive family.

## Child and Family Services Policy Manual: Adoption Pre-Placement

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### Process

The child's social worker and the family resource specialist serving the adoptive family will coordinate a placement process that best meets the needs of the child. The process includes:

1. providing adoptive parents with complete and accurate information, including:
  - a. DPHHS-CFS-107 Birth Family Social and Medical History;
  - b. complete medical records, including immunizations;
  - c. psychological information, or evaluation\*, on the child, if contained in the Department's records;  
\* Copies of the child's evaluations may be given to adoptive parents unless disclosure of the records may be detrimental to the child or harmful to the person who is a subject of information in the records. Mont. Code Ann. § 41-3-205.
  - d. school records;
  - e. child's daily routine;
  - f. information on previous placements, including type and length of placements;
  - g. child's eligibility for subsidized adoption; and
  - h. the child's Life Story Book.
2. clarifying if and how information about the child and/or the child's birth parents will be updated;
3. arranging for pre-placement visits; and
4. providing adoptive parents a copy of placement agreements for their review prior to placement of the child.

### Documentation

A major part of this process is the full disclosure of information to the adoptive parents. It is important that what was disclosed and when it was disclosed be clearly documented in the file by the social worker or family resource specialist who provided the information to the

## Child and Family Services Policy Manual: Adoption Pre-Placement

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adoptive parent(s).

### Pre-Placement Visits

Arrangements for pre-placement visits are made by the child's social worker, the family resource specialist, the foster parents and the adoptive parents. Visitation allows the child and prospective adoptive parents to become acquainted. The goal is to ease the adjustment of all parties as the child moves into a new home. Caution should be taken not to rush the placement or to prolong visitation unnecessarily.

The number and location of meetings with adoptive parents, the duration of preparation, and the timing of placement should be determined by the child's age and the particular needs of both the child and the adoptive family. When the child is old enough to comprehend and have a part in the decision, the social worker will both plan and work directly with the child.

The child should have the opportunity to gradually become acquainted with the new parents. The child's social worker, the family resource specialist for the adoptive family, and the child's foster care family can provide the child some continuity during the transition to the adoptive family.

The child's Life Story Book and the adoptive family's scrap book should be exchanged during pre-placement contacts.

### Visitation Agreement

A **written** visitation agreement must be drawn up regarding the pre-placement visits. The agreement shall include everything relevant to the visits so there is understanding between all parties involved. This includes:

- the purpose and goals of visits;
- the place, frequency and number of visits;
- financial responsibility for visits;
- involvement of the extended family; and
- social worker and family resource specialist responsibilities.

The agreement should be signed by the prospective adoptive

## Child and Family Services Policy Manual: Adoption Pre-Placement

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parents, family resource specialist (or private agency worker), social worker, foster parents, and, when appropriate, the child.

A written visitation agreement greatly reduces potential misunderstandings and poorly thought out changes. It will reduce anxiety for all parties during what is likely to be a very stressful time and provides consistency for the child.

Often, either the adoptive parents, foster parents, and/or the child (or all three parties) will want to rush the visitation process. The visitation plan was agreed to by all parties; it should not be changed without the agreement of all parties. Any visitation plan should be based on the child's needs, therefore, any changes to the plan must be considered very carefully and must also be based on the child's needs.

### **Example of Visitation Agreement**

An example of a visitation agreement follows. The social worker must always keep in mind the child's individual needs when developing a plan for visitation. Other factors, such as the adoptive parents' financial resources, distances to be traveled and weather conditions, may be considered but the needs of the child must remain the primary focus.

1. Prospective adoptive parents will send their Adoptive Family Book to the child's social worker by May 1, 2001.
2. The child's social worker will review the book with the child.
3. The adoptive family will travel to West Yellowstone to visit the child, with the social worker present, at foster home on May 5, 2001, from 2:00 pm until 5:00 pm.
4. On May 7, 2001, the family resource specialist will meet with the prospective adoptive parents to discuss the visit. The social worker will visit with the child and foster parents regarding the visit.
5. If the visit was satisfactory to all, on May 11, 2001, the prospective adoptive parents will travel with their other children to West Yellowstone for a weekend visit. The adoptive parents will stay at a local motel at their expense. The child will stay in the foster home Friday night and will stay with the prospective adoptive parents in

**Child and Family Services Policy Manual: Adoption  
Pre-Placement**

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the motel on Saturday night.

6. The social worker and family resource specialist will evaluate this visit.
7. On May 18, 2001, the social worker will take the child, at agency expense, to the prospective adoptive parents home in East Glacier and will introduce the child to the family resource specialist. The child will stay with the social worker in the motel on Friday night and with the prospective adoptive family on Saturday, Sunday and Monday nights.
8. If the visits are satisfactory to the child, the adoptive parents and the agency, the child will be placed with the prospective adoptive parents on May 26, 2001. The prospective adoptive parents will provide transportation.

\_\_\_\_\_  
Family Resource Specialist

\_\_\_\_\_  
Social Worker

\_\_\_\_\_  
Adoptive Parent

\_\_\_\_\_  
Adoptive Parent

\_\_\_\_\_  
Foster Parent

\_\_\_\_\_  
Foster Parent

\_\_\_\_\_  
Child

## Child and Family Services Policy Manual: Adoption Placement

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<b>Placement</b>	When the child is to be placed in the adoptive home, the adoptive parents, the child's placing worker, and the worker who will be supervising the adoptive placement will sign either a form DPHHS-CFS-30 <u>Agreement on Adoptive Placement</u> or, if appropriate, the <u>Legal Risk Adoption Agreement</u> . If the <u>Legal Risk Adoption Agreement</u> is signed at this time, the DPHHS-CFS-030, <u>Agreement on Adoptive Placement</u> must also be signed when the child is legally free for adoption.
<b>Placement Agreement</b>	The DPHHS-CFS-030 (Revised 6/2002) <u>Agreement on Adoptive Placement</u> shall be completed and signed by the adoptive parent(s) and placing worker at the first signature line when the child is placed in the home. The agreement shall be signed again, in the appropriate place, after the family has acknowledged receipt of the child's information that is listed on the form. The original agreement remains with the child's file, one copy is given to the adopting parents, and one copy is to be mailed to the adoption specialist in the CFSD central office with the adoption finalization packet.
<b>Placing Worker Responsibilities</b>	<p>At the time of placement, the placing worker sends the child's entire paper record to the supervising family resource specialist or private agency. If there is more than one child in the family and the children are not going to be placed together, case record information on each child must be copied. In addition to all of the other case record information, the placing worker should make certain that the following are also included in the case file at the time of transfer:</p> <ul style="list-style-type: none"><li>• completed form DPHHS-CFS-107, <u>Birth Family Social and Medical History</u>;</li><li>• written report of birth parent counseling (if birth parent relinquished child for adoption);</li><li>• waiver(s);</li><li>• a <b>certified</b> copy of the child's birth certificate;</li><li>• the <u>Report to the Court Supporting the Petition for Permanent Legal Custody</u>;</li><li>• the <u>Petition for Permanent Legal Custody</u>;</li></ul>

## Child and Family Services Policy Manual: Adoption Placement

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- two certified copies of the Court Order (giving the right to consent to adoption);
- the DPHHS-CFS-030, Agreement on Adoptive Placement;
- Indian enrollment information; and
- the DPHHS-CFS/ICWA-250, Indian Child Act Welfare Reporting Form (this form must be completed on every child).

The placing social worker shares CAPS access (on AXED) with the supervising FRS.

### **Filing Eligibility Information**

Information regarding eligibility for foster care and Medicaid remains in the Central Office IV -E Unit compliance file.

### **Removal of Child from State**

Before a decree of adoption is issued, a prospective adoptive parent may not remove the child from the state without written permission from the Department. The family resource specialist or community social worker supervisor supervising the placement will submit a request for travel authorization. The request shall include:

1. child's name
2. birth date
3. type of custody
4. names of prospective adoptive parents
5. tentative itinerary and approximate length of travel
6. a copy of the court order granting the Department permanent legal custody

### **CAPS**

The community social worker supervisor or family resource specialist supervisor must provide written authorization to the prospective adoptive parents for the travel. The DocGen for travel authorization is #337, Travel Authorization for Foster Care or Adoptive Child. A copy of the authorization shall be placed in the file.

### **References**

Mont. Code Ann. § 42-4-203  
 Mont. Code Ann. § 42-5-108  
 Mont. Admin. R. 37.52.120 and 37.52.125

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the attorney for the adoptive parent(s). The legal fees charged by the minor parent's attorney are an allowable expense that may be paid by the prospective adoptive parents.

**Conditional Relinquishments**

Conditional relinquishments shall not be taken by the Department. Any agreement regarding continued contact or visitation between the adopted child and birth family members cannot be guaranteed to a birth parent by a placing worker. Any agreement for continued contact must be arranged directly between the adoptive parents and the birth parents. Any increase or decrease in the type or frequency of contact is at the discretion of the adoptive parents once a final decree of adoption is issued.

**Reference**

Mont. Code Ann. § § 42-2-401 et. seq. and 42-5-301

## Child and Family Services Policy Manual: Adoption Post-Placement Evaluation/Finalization

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<b>Policy</b>	Post-placement services assist in the adjustment of the family and seek to preserve the family unit to ensure permanency for the child.
<b>Non-Department Adoptions</b>	The Department does not complete post-placement evaluations or supervise placements for direct parental placement adoptions or other non-Department adoptions except as provided for under the Interstate Compact on Placement of Children.
<b>Department Adoptions</b>	<p>Following placement of a child for adoption there is a six month post-placement evaluation period required prior to a decree being issued. The six-month post-placement evaluation period may be waived by the court if the child to be adopted is a foster child who has been in the prospective adoptive family's home as a foster child for at least six months. The Department may recommend in its post-placement evaluation that a decree be issued prior to six months if:</p> <ul style="list-style-type: none"> <li>• there are extenuating circumstances that justify the issuance of an adoption decree less than six months after the child has been placed with the prospective adoptive parents; or</li> <li>• if the petition for adoption is filed six months or longer after a child has been placed in a prospective adoptive home.</li> </ul> <p>In most adoptions handled through the Department, the court will probably waive the waiting period of six months as set forth above. When the six-month period is not waived, the assigned worker must supervise the placement for six months and then complete a post-placement evaluation.</p>
<b>Family Contact</b>	The assigned worker should make at least monthly contact with the family during the post-placement period. The frequency and content of visits and office contacts will depend upon the unique circumstances of each placement, but the assigned worker should make at least two home visits. The first visit should be made during first two weeks following the child's placement in the home so the adoptive parents know help is available when needed.

## Child and Family Services Policy Manual: Adoption Post-Placement Evaluation/Finalization

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<b>Post-Placement Evaluation Content</b>	<p>The assigned worker must prepare a post-placement evaluation to be filed with the court with the adoption petition. The evaluation report must contain the following:</p> <ol style="list-style-type: none"> <li>1. whether the child is legally free for adoption;</li> <li>2. whether the proposed home is suitable for the child;</li> <li>3. a statement that the completed DPHHS-DFS-107 Birth Family Social and Medical History has been provided to the prospective adoptive parent(s);</li> <li>4. an assessment of adaptation by the prospective adoptive parent(s) to parenting the child;</li> <li>5. a statement that the six-month waiting period has been complied with or should be waived;</li> <li>6. the maiden name of the adoptive mother and the correct spelling of the name of the child and adoptive parent(s) that will appear on the amended birth certificate as verified by the adoptive parent(s);</li> <li>7. whether the Department waives notice of the adoption proceeding;</li> <li>8. a statement that any applicable provision of law governing an Interstate or Intercountry placement of the child has been complied with;</li> <li>9. a statement of compliance with any applicable provisions of the Indian Child Welfare Act; and</li> <li>10. any other circumstances or conditions that may have a bearing on the adoption and of which the court should have knowledge.</li> </ol> <p>The evaluation report must contain a definite recommendation stating the reasons for or against the proposed adoption.</p>
<b>Finalization Procedure</b>	<p>When the family and assigned worker agree that the adoption should be finalized and supervisory approval has been obtained, inquiry should be made of the family as to whether they intend to represent themselves (petitioners pro se) or whether they plan to hire an attorney to represent them when</p>

## Child and Family Services Policy Manual: Adoption Post-Placement Evaluation/Finalization

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they finalize the adoption.

The assigned worker will send the information contained in the check list in Section 603-8 to the Adoption Specialist in the central office requesting that finalization papers be prepared and forwarded to the adoptive parent(s) or their attorney.

Child 12 or older

A child, age 12 years or older, with the mental capacity to consent, must consent to the adoption either in writing or in court.

Central Office  
Responsibility

Central office will send a cover letter containing instructions and the following documents to the adoptive parents or their attorney:

1. One Post-Placement Evaluation Report (original) marked EXHIBIT "A";
2. One Certificate of Adoption;
3. One certified copy of the Permanent Custody Order(s) terminating each parent's rights and granting DPHHS the right to consent to adoption, marked EXHIBIT "B";
4. One Consent to Adopt, signed by the DPHHS director and marked EXHIBIT "C";
5. Three copies of the Petition for Adoption;
6. Three copies of the Order of Adoption Decree; and
7. One Indian Child Welfare Act Reporting Form (DPHHS-CFS/ICWA-250).

Included in the instructions will be a request that the adoptive parents or their attorney send the central office a copy of the signed Petition for Adoption and a certified copy of the Order of Adoption Decree as soon as the adoption is finalized.

Removing Child from  
State

Prior to issuance of a decree of adoption, the prospective adoptive parent(s) must obtain permission from the Department before they remove the child from the state.

If the adoptive parents move out of Montana prior to the time the adoption is finalized, the worker assigned to the family must

## Child and Family Services Policy Manual: Adoption Post-Placement Evaluation/Finalization

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implement an interstate compact agreement before the child leaves Montana, requesting supervision from the state to which they are moving. See 407-2, Interstate Compact on the Placement of Children.

### **Other Resources**

Adoptive families should be provided information on adoption support groups and services that are available through agencies or organizations.

### **Adoption Subsidy**

Once the central office has received a certified copy of the decree of adoption, payment of the adoption subsidy will be initiated. The subsidy will be sent automatically to the adoptive parent(s) near the beginning of each month. They do not submit monthly vouchers for payment. See Section 604-1, Subsidized Adoption, Non-Recurring Adoption Expenses, and Medical Subsidy.

### **Trust Account Closures**

Please refer to Section 403-2, Trust Accounts, for information regarding trust accounts and continued benefits for children who are adopted.

### **References**

Mont. Code Ann. §§ 42-2-301, 42-3-212, 42-4-205 through 42-4-209  
Mont. Code Ann. § 42-4-310  
Mont. Admin. R. 37.52.214

## Child and Family Services Policy Manual: Adoption Finalization Checklist

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- 1) \_\_\_ **Cover Letter** including:
  - \_\_\_ Attorney name, address, phone and fax numbers
  - \_\_\_ Number of years adoptive parents have lived at the current address, Mont. Code Ann. §42-5-101(1)(a)
- 2) \_\_\_ **Report to the court/Post Placement Evaluation**, including:
  - \_\_\_ Date of foster care placement \_\_\_ Date of adoptive placement
  - \_\_\_ Child's new name
- 3) \_\_\_ **Child's DPHHS-DFS 107**
- 4) \_\_\_ **Certified Birth Certificate**
- 5) \_\_\_ **Social Security Card**, original or legible copy
- 6) \_\_\_ **2 Certified copies of court orders** terminating parental rights of all parents
  - \_\_\_ Mother, \_\_\_ Father, \_\_\_ any putative fathers
  - \_\_\_ and giving DPHHS permanent legal custody and
  - \_\_\_ the right to consent to adoption
- 7) \_\_\_ **Application to Adopt, DPHHS DFS-90, completed, including:**
  - \_\_\_ Adoptive mother's maiden name \_\_\_ Date and place of marriage
- 8) \_\_\_ **Adoptive Placement Agreement, DFS-30**, completed and:
  - signed by \_\_\_ worker and \_\_\_ adoptive parents
- 9) \_\_\_ **ICWA 250**, including: \_\_\_ Tribal notification
- 10) \_\_\_ **Death Certificate** if either parent is deceased
- 11) \_\_\_ **Benefits** child receives; example, SSA, SSI, Survivors, etc.
- 12) \_\_\_ **Pre-placement evaluation**, current within 1 year, including DFS 33 and R.A. approval letter
- 13) \_\_\_ **Consent of children age 12 and above**, Mont. Code Ann. §42-2-301(6) Montana Law requires children 12 and over to *consent either in writing or in court*, unless the child does not have the mental capacity to consent. The consent must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department, an agency, or the court.
- 14) \_\_\_ **Approved Adoption Subsidy Agreement (CFS-082)** signed by adoptive parents and Adoption Program Officer will be added to packet by Central Office.
- 15) \_\_\_ **IV-E Eligibility Determination for Adoption Subsidy** will be completed by the IV-E unit and added to packet by Central Office.

## Child and Family Services Policy Manual: Adoption Adoption Decree

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<b>Requirements</b>	<p>A decree of adoption must state:</p> <ul style="list-style-type: none"><li>• the original name of the child;</li><li>• the name(s) of the petitioner(s) for adoption;</li><li>• whether the petitioner is married or unmarried;</li><li>• whether the petitioner is a stepparent of the child;</li><li>• the name by which the child is to be known;</li><li>• for a child born in Montana, a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;</li><li>• the child's date and place of birth, if known;</li><li>• the effect of the decree of adoption as stated in Mont. Code Ann. §42-5-202;</li><li>• that the adoption is in the best interests of the child; and</li><li>• whether either birth parent objects to the release of the original birth certificate information upon the adoptee reaching 18 years of age.</li></ul>
<b>Communication to Department</b>	<p>Within 30 days after a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the Department, and if requested by petitioners, the court shall order the vital statistics bureau to issue a new birth certificate for the child.</p>
<b>Effect of Decree</b>	<p>After the decree of adoption is entered, the relationship of parent and child and all the rights, duties, and other legal consequences of the relationship of parent and child exist between the adoptee and the adoptive parent(s) and the kindred of the adoptive parent(s). The former parents and the kindred of the former parents of the adoptee (unless they are the adoptive parent(s) or the spouse of an adoptive parent) are relieved of all parental responsibilities for the adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearage for child support. A decree of adoption must include a notice to the vital statistics bureau if it is known that either birth parent objects to release of the information on the original birth certificate upon the adoptee reaching the age of 18.</p>
<b>Finality of Decree</b>	<p>For purposes of appeal, the decree of adoption is a final order when it is issued. A person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions. An appeal must be heard expeditiously pursuant to the</p>

## Child and Family Services Policy Manual: Adoption Adoption Decree

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provisions of Mont. Code Ann. §42-2-618. A decree of adoption does not affect any right or benefit vested in the adoptee before the decree became final (e.g., social security, death benefits, private trust fund).

After the entry of a final decree of adoption of an Indian child in any state court, the parent(s) may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree. Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the decree and return the child to the parent(s). An adoption which has been effective for at least two years cannot be invalidated by this process.

### Visitation and Communication Agreements

A decree of adoption terminates any existing order or written or oral agreement for contact or communication between the adoptee and the birth parent(s) or family.

Any express written agreement entered into between the placing parent(s) and the prospective adoptive parent(s) after the execution of a relinquishment and consent to adoption is independent of the adoption proceedings, and any relinquishment or consent to adopt remains valid whether or not the agreement for contact or communication is later performed. Failure to perform an agreement is not grounds for setting aside an adoption decree.

### Confidentiality of Records and Proceedings

Unless the court orders otherwise, all hearings held in adoption proceedings are confidential and must be held in closed court without admittance of any person other than the interested parties and their counsel.

All papers and records pertaining to the adoption must be kept as a permanent record of the court and must be withheld from inspection. A person may not have access to the records, except:

- for good cause shown on order of the judge of the court in which the decree of adoption was entered;
- as provided in Mont. Code Ann. § § 50-15-121 and 122 (pertaining to release of vital statistics records); or
- the Department's Child Support Enforcement Division.

## Child and Family Services Policy Manual: Adoption Adoption Decree

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All files and records pertaining to adoption proceedings retained by the Department, a licensed child placing agency, a lawyer, or any authorized agency are confidential and must be withheld from inspection, except as provided above.

### Field Files

When an adoption is finalized, the case record becomes an adoption record. Prior to finalization the case record is a CPS record.

After an adoption is finalized, the field file (case record) must be sent to the Adoption Program Officer in central office for permanent storage as required by law. Each box of files must be accompanied by a completed CFS 382 Receipt for Delivery form. (See p. 4 of this section. Also available in Outlook forms folder.)

### Disclosure of Records

The adoption specialist in the division's central office should be contacted regarding disclosure of information from adoption records. The specialist may disclose:

- non-identifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; and
- identifying information to a court-appointed Confidential Intermediary upon order of the court or as provided in Mont. Code Ann. §§ 50-15-121 and 122.
- identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

Confidential information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based on a consensual exchange of information unless the adoptee's adoptive parent(s) consents in writing.

### References

Mont. Code Ann. § §42-5-109 and 42-6-101 and 102  
Mont. Admin. R. 37.52.120 and 37.52.125  
PL 95-608, Indian Child Welfare Act, Title 1 Sec 103(d)



**Child and Family Services Policy Manual: Adoption**  
**Subsidized Adoption, Non-Recurring Adoption Expenses, and Medical Subsidy**

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**Policy** The subsidized adoption program encourages and promotes the adoption of children with special needs out of the public foster care system. Subsidized adoption provides support services and medical and financial assistance to adoptive families when such assistance is necessary to ensure the health and welfare of children with special needs.

**Definitions** **Adoption Subsidy or Adoption Assistance** (these terms are used interchangeably throughout this policy section) means financial assistance and/or Medicaid provided to assist in the adoption of children with special needs.

**IV-E Adoption Subsidy** means nonrecurring expenses, financial assistance and /or Medicaid assistance available to assist children eligible for a IV-E subsidy.

**Non-IV-E Adoption Subsidy** means financial assistance available to assist children who are eligible for an adoption subsidy but who are not eligible for a IV -E adoption subsidy. These children may receive a subsidy from the state-funded subsidized adoption program and may receive Medicaid.

**Subsidized Adoption Agreement, Subsidy Agreement, Adoption Assistance Agreement** (terms are used interchangeably throughout this policy section) means a written document which is binding on the parties and which is between the Department and the adoptive parent(s) and is signed by all parties prior to the final decree of adoption.

**Reasonable Efforts to Place Without a Subsidy:** The State must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate parents without providing adoption assistance has been made. This means that if the adoptive parent(s) have been asked whether they are willing to adopt without a subsidy, and if they say they cannot adopt the child without assistance, the placing worker will have met the requirement that reasonable efforts were made to place the child without a subsidy.

**Child With Special Needs** means a child who is under the placement and care responsibility of the State agency (DPHHS), or that of a Tribe with whom the State has a title IV-E agreement and:

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1. the child has been defined as a “child with special needs” because he or she meets at least one of the following criteria:
  - a. diagnosed as having a physical, mental, or emotional disability;
  - b. recognized to be at high risk of developing a physical, mental, or emotional disability;
  - c. a member of a minority group;
  - d. six years of age or older;
  - e. a member of a sibling group to be placed together for adoption; and
2. the child is under 18 years of age at the time the subsidized adoption agreement is signed; and
3. the child is legally free for adoption and cannot or should not be returned to the home of his or her parent(s); and
4. adoptive placement is in the child's best interest; and
5. The State of Montana has determined that reasonable, but unsuccessful, efforts have been made to place the child with appropriate adoptive parents without a subsidy, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parent(s) while in the care of such parent(s) as a foster child.

**Subsidy Eligibility Determination**

Eligibility for adoption assistance payments is to be related to the child’s needs, not the parent(s). To be eligible for a subsidy, a child must meet the definition of A Child With Special Needs and the criteria listed above. A determination of the child's eligibility for adoption subsidy should be made on form DPHHS-CFS-083 Adoption Subsidy Program: Child's Eligibility Determination. The child is entitled to Medicaid.

Eligibility for subsidy does not mean that a cash assistance payment will necessarily be provided; however, the child is

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entitled to Medicaid coverage. The Subsidy Agreement must be approved and signed by an Adoption Program Officer in central office.

**Continuing Eligibility**

When any special needs child who is adopted after October 1, 1997 and who had previously been eligible for federal adoption assistance payments becomes available for adoption again because of the dissolution of the original adoption or the death of the adoptive parent(s), the child remains eligible for adoption assistance as if there was no prior adoption.

**NOTE:** As soon as the worker determines the child's special needs, the special needs should be entered on CAPS screen SPND.

**Disruption of Legal Guardianships**

Montana has an approved title IV-E demonstration waiver to operate a subsidized legal guardianship program. If a guardianship disrupts and the child returns to foster care or is placed for adoption, the child's IV-E eligibility status that was in place prior to the establishment of the guardianship is reinstated.

**TITLE IV-E  
ADOPTION  
ASSISTANCE  
SUBSIDY**

Prior to negotiating the adoption subsidy, eligibility for a IV-E subsidy must be determined. A child is eligible to receive a Title IV-E subsidy if the child meets the definition of a child with special needs and:

- (1) is AFDC eligible at the time of removal

States are required to use AFDC standards in effect as of July 16, 1996. Receiving cash benefits from the current cash assistance program does not insure eligibility for IV-E adoption assistance. If a child does not meet IV-E criteria, the Department may negotiate a state subsidy.

- The method of removal also has implications. If the child is removed from the home pursuant to a judicial determination, the determination must indicate that it was contrary to the child's welfare to remain in the home; or
- If the child is removed from the home pursuant to a voluntary placement agreement, that child must actually receive title IV-E foster care payments to be eligible for the title IV-E adoption assistance.

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- (2) The child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child meets the requirements for SSI benefits, and prior to the finalization of the adoption is determined by the State to be a child with special needs. Specifically how a child is removed from h/her home or whether the State has responsibility for the child's placement and care is irrelevant in this situation. SSI eligibility must be established no later than at the time the adoption petition is filed.
- (3) Child is eligible as a child of a minor parent and meets the definition of a child with special needs if:
- a. The child's parent is in foster care and receiving IV-E foster care payments that cover both the minor parent and the child at the time the adoption petition is initiated; and
  - b. Prior to the finalization of the adoption, the child of the minor parent is determined by the State to meet the definition of a child with special needs.

However, if the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for title IV-E adoption assistance must be determined based on the child's current and individual circumstances.

**NOTE: TRIBAL  
ADOPTIONS  
WHERE NO TPR  
EXISTS**

In some Tribes, adoption is legal without a TPR or a relinquishment from the birth parent(s). If a child can be adopted in accordance with Tribal law without a Termination of Parental Rights or relinquishment, and is otherwise eligible for adoption assistance, the State may enter into an adoption assistance agreement with the adoptive parents if the tribe has documented the valid reasons why the child cannot or should not be returned home.

**Application  
Process  
DPHHS-CFS-083**

The request for an adoption subsidy shall be made by the child's social worker on behalf of the child. The worker shall submit a completed DPHHS-CFS-083, Adoption Subsidy Program Child's Eligibility Determination and supporting documentation, to an Adoption Program Officer in Central

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Office. Supporting documentation may include physician reports, social history information, and birth parent social/medical information.

**Subsidy  
Negotiation**

The terms of the Adoption Assistance Agreement including Medicaid, the amount of the monthly cash assistance, the amount of non-recurring adoption expenses and non-Medicaid medical coverage are negotiated between the Adoption Program Officer, and the adoptive parent(s) preferably prior to adoptive placement, but always prior to finalization. Once an agreement is reached, the adoptive parents and the Adoption Program Officer sign the CFS-082 Subsidized Adoption Agreement and Application/Change Notice for Medicaid. The original and one copy are retained by central office, one copy is given to the adoptive parents and one copy goes into the child's file.

A DPHHS-CFS-082, Subsidized Adoption Agreement and Application/Change Notice for Medicaid must be completed for every adoption of a child with special needs who meets eligibility criteria. The completed form will verify the child's eligibility and enable negotiation of a future subsidy, if necessary. The IV -E eligibility needs to be checked "yes" or "no" on the agreement. A subsidy amount of \$0.00 should be entered if the adoptive parent(s) will not be receiving a subsidy. This agreement will affirm the child's eligibility into the future and is easily altered by adding the amount of the subsidy should assistance be required at a later date.

If the family refuses to enter into an agreement, the Adoption Program Officer should fully document the refusal in the file.

**Means Test**

The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Once a child has been determined eligible, adoptive parent(s) cannot be rejected for adoption assistance or have their payments reduced without their agreement because of their income or other resources. In addition, the State cannot arbitrarily reject a request for an increase in the amount of the subsidy (up to \$10.00 less the amount the child would have received in foster care) in cases where the adoptive parent(s) make life choices such as resigning one's job to stay at home with the adopted child or to return to school. Adoptive parent(s) can request a fair hearing if

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the state rejects such requests.

The circumstances of the adoptive parent(s) must be considered together with the needs of the child when negotiating the subsidy agreement. *Consideration of the circumstances of the adopting parent(s)* pertains to the adoptive family's capacity to incorporate the child into their household in relation to their lifestyle, standard of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment.

**Amount of Subsidy**

The amount of the adoption assistance payment cannot exceed \$10.00 less than the amount the child would have received in a regular or specialized foster family home, but otherwise must be determined through an agreement between the adoptive parent(s) and the State. This program is intended to encourage an action that will be a lifelong social benefit to the child(ren) and not to meet short-term monetary needs. Further, the adoptive parent(s)' income is not relevant to the child's eligibility for the program.

Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the subsidy payment is determined through the discussion and negotiation process between the adoptive parent(s) and the State based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parent(s)' resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., childcare.

Once a subsidy agreement is in effect, the parent(s) can spend the subsidy in any way they see fit to incorporate the child into their lives. The State cannot require an accounting.

**NOTE:** If the child is being placed adoptively with someone other than the family with whom the child is currently residing (i.e. foster home), the subsidy agreement shall be negotiated at the time of placement.

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If foster care payments are opened, the payments should be equal to the amount of the subsidy.

The Federal IV-E-related statute limits the amount of adoption assistance to no more than the child would have received in “a foster family home.” Thus, the amount of the adoption assistance payment may not exceed \$10.00 less than the amount of the regular or specialized foster family home maintenance payment.

**Renegotiation**

A State may renegotiate a subsidy agreement if the adoptive parent(s) request an increase in payment due to a change in their circumstances or a higher foster care rate would have been paid on behalf of the child if the child had still been in care.

If parents want to re-negotiate an existing subsidy they should contact an Adoption Program Officer in Central Office, or the regional PPS staff person who will then make a recommendation to central office for a change in the terms of the existing subsidy.

**Example:** A child is adopted and the subsidy is negotiated for \$250 a month, the same amount the child had been receiving in foster care. If, two years later, the State’s monthly foster care rate is increased to \$400, the family can request that the subsidy agreement be renegotiated and receive up to the \$390 for the child, since this is \$10.00 less than the amount the child would have received each month if s/he had remained in foster care.

**SSI and Adoption Assistance**

Under the IV-E foster care program, the parent, guardian, custodian, caretaker relative or other decision-maker for the child has to make the choice of applying for either Title IV-E foster care payments or SSI benefits; however, the policy for the IV-E adoption assistance program is different. The applicant may choose to apply for either or both SSI and adoption assistance. In deciding whether to make application for one or both programs, the adoptive parent(s) should be made aware of the differences between SSI and the adoption assistance program.

SSI is a needs-based program and requires a test of income and resources of the adoptive parent(s) in determining the amount of the SSI benefit to which the child may be entitled. If, or when, the parental resources and income exceed a certain

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level determined by SSI, the child is no longer eligible for SSI payments or SSI related Medicaid.

**Concurrent Eligibility**

When there is concurrent eligibility for both programs, SSI will then count dollar-for-dollar the amount of IV-E adoption assistance paid to the parent(s), thus decreasing the SSI benefit payment by the amount of the adoption assistance payment. Under the adoption assistance program, the amount of the SSI benefit payment would be a consideration in the negotiation of the amount of the adoption assistance payment; however, unlike the SSI program, this income would not generate an automatic reduction in the payment amount.

Because there are many complexities and financial implications for the Department as well as for the adoptive families, it is important all parties discuss all aspects of a combination of SSI and adoption assistance at the time the adoption assistance agreement is negotiated. Adoptive parent(s) should be advised if they decline IV -E adoption assistance and choose to receive only SSI for the child, and if they do not sign a Subsidized Adoption Agreement before the adoption is finalized, they may not later receive IV -E adoption assistance payments. Technical assistance to field staff can be provided by an Adoption Program Officer in central office.

**Payments Initiated**

Subsidy cash payments and Medicaid may begin at the time of the adoptive placement, or after the adoption has been finalized and central office has received a certified copy of the Decree of Adoption and subsidy agreement has been signed.

**CAPS**

To approve an adoption subsidy on the appropriate CAPS screen(s) following receipt of finalization information from central office, the person entering the adoption subsidy information should:

- check relationships on RELL to be certain the adoptive family has been added to the relationships;
- check FSPL to make sure the adoption services are there; then,
- if foster care is not already closed, do so by going to CPHL and closing foster care. This will also take you to SERL where you also must close foster care;

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- go to CRTL, push F11, and add the court finalization information there; then
- go back to CPHL, put ADOD in Path and push F11 to go to adoption detail and complete that screen;
- go to SERL and add financial (PADFS) subsidy information, if the child is IV-E eligible, go to CELL to activate.

Following completion of the above procedure, the worker shares the CAPS case with the county of financial responsibility.

**Voluntary Placements**

The statute allows a child who has been removed from home pursuant to a voluntary placement agreement (parental agreement) to be eligible for adoption assistance in limited situations. A child must be placed in foster care via a voluntary placement agreement (parental agreement), **and** have IV-E foster care maintenance payments paid on his or her behalf pursuant to that voluntary agreement to be eligible for a subsidy. A child must have been under the State IV-E agency's responsibility for placement and care {or that of a Tribe with whom the Department has a IV-E agreement at the time of the voluntary placement agreement (parental agreement)} to be eligible for a IV-E foster care payment and, subsequently, for an adoption subsidy. **In addition, a IV-E foster care maintenance payment must have been paid on behalf of the child.**

**Voluntary Relinquishments**

When a child is removed from the home by way of a voluntary relinquishment, the removal is *neither* the result of a voluntary placement agreement *nor* the result of a judicial determination that to remain in the home would be contrary to the child's welfare as defined in statute. The State or **private nonprofit adoption agency** must petition the court within six months of the child living with a specified relative and obtain a judicial determination to the effect that remaining in the home would be contrary to the child's welfare. The child will then be treated as though s/he were judicially removed rather than voluntarily relinquished for the purpose of IV-E Adoption Assistance eligibility.

There are two circumstances under which the nature of a child's

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removal from his/her home is irrelevant:

- (1) when a child is SSI-eligible at the time adoption proceedings are initiated and the State determines that the child meets the statutory definition of a *special needs* child prior to the finalization of the adoption; and
- (2) in a subsequent adoption when a child received title IV -E adoption assistance in a previous adoption that dissolved or in which the adoptive parent(s) died, if the state determines that the child continues to be a child with special needs.

Under these two circumstances, no additional eligibility criteria should be applied to the eligibility determination.

**Private, Nonprofit  
Agency Adoptions**

Title IV -E adoption subsidies are available to children placed for adoption through private adoption agencies if all eligibility requirements are met. However, non IV -E special needs children may qualify for Medicaid. Contact the IV -E specialist in central office if you have questions.

**EXAMPLE**

**Question:** Is a child who is voluntarily relinquished to a private, nonprofit agency eligible for title IV -E adoption assistance?

**Answer:** A child is eligible for title IV -E adoption assistance if s/he is removed from the home by way of a voluntary placement agreement with respect to which title IV -E foster care payments are provided, or as a result of a judicial determination that to remain in the home would be contrary to the child's welfare. However, a child who is voluntarily relinquished to either a public or a private, nonprofit agency will be considered judicially removed in the following circumstances:

- (1) the child is voluntarily relinquished either to the State agency, a Tribe, or to a private, nonprofit agency; and
- (2) there is a petition to the court to remove the child from the home within six months of the time the child lived with a specified relative; and
- (3) there is a subsequent judicial determination to the effect that remaining in the home would be contrary to the

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child's welfare.

Under these circumstances, the AFDC-eligible child will be treated as though s/he was judicially removed rather than voluntarily relinquished. If the State agency subsequently determines that the child also meets the definition of child with special needs criteria (on pages 2 and 3 of this section), the child is eligible for title IV -E adoption assistance. If, however, there is no petition to remove the child from the home or no subsequent judicial determination, the child cannot be considered judicially removed for the purpose of the title IV-E adoption assistance eligibility. Furthermore, if the court merely sanctions the voluntary relinquishment without making a determination that it is contrary to the child's welfare to remain in the home, the child is not eligible for title IV -E adoption assistance.

**Adoption  
Assistance  
Agreements**

Adoption Assistance Agreements must (a) be written, (b) be negotiated by and binding on all parties privy to them (including the Department and prospective adoptive parent(s)), and (c) specify services to be provided by the State and any other agency. IV-E adoption subsidy agreements must specify that stated provisions remain in effect regardless of the State of residence of the adoptive parent(s). Non-IV-E state adoption subsidy agreements may not necessarily remain in effect in all states. Contact an Adoption Specialist in central office for information on which states are participants in the Interstate Compact on Adoption and Medical Assistance and offer Medicaid benefits to children with non-IV-E adoption assistance agreements.

The subsidized adoption agreement between parent(s) and the Department must be signed by the Department and the adoptive parent(s) prior to the finalization of the adoption.

If the parent(s) and the Department are unable to reach an agreement on the terms and/amounts of the subsidy agreement during the negotiation process, the parent(s) may request a fair hearing.

**Termination or  
modification of the  
Subsidy  
Agreement**

Agreements may include Medicaid, non-recurring expenses, monthly cash assistance payments, and in some cases State medical assistance up to \$2600 annually.

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Once an adoption assistance agreement is signed and in effect, it can be terminated under three circumstances only. Namely:

1. the child has attained the age of 18 (or 21 if the State has determined that the child has a mental or physical disability which would warrant continuation of assistance);
2. the State determines that the adoptive parent(s) are no longer legally responsible for support of the child; or
3. the State determines that the adoptive parent(s) are no longer providing any support to the child.

A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. "Any support" means various forms of financial support which may include payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs.

The State may continue the IV -E adoption subsidy if it determines that the parent is providing some form of financial support to the child even in situations where the child is placed in some form of out-of-home care.

**Appeal and Fair Hearings**

Adoption assistance agreements are to be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive parent(s) feel they have been wrongly denied benefits on behalf of an adoptive child, they have the right to a fair hearing. Some allegations that constitute grounds for a fair hearing include:

- relevant facts regarding the child were known by the State agency or Tribe and not presented to the adoptive parent(s) prior to the finalization of the adoption;
- denial of assistance based upon a means test of the adoptive family;
- adoptive family disagrees with the determination by the State that a child is ineligible for adoption assistance;
- failure by the State agency to advise potential adoptive

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parent(s) about the availability of adoption assistance for children in the State foster care system;

- decrease in the amount of adoption assistance without the concurrence of the adoptive parent(s); and
- denial of a request for a change in payment level due to a change in the adoptive parent(s) circumstances.

**Post Decree  
Subsidy Request**

The Department cannot change its eligibility determination and provide adoption assistance without requiring the applicant to obtain a favorable ruling in a fair hearing. A subsidy request that is denied because the decree has already been entered must also be reviewed through the fair hearing process.

Extenuating circumstances that may constitute grounds for a fair hearing include but are not limited to:

- relevant facts regarding the child, the biological family or the child's background are not known or are not presented to the adoptive parent(s) prior to the legalization of the adoption;
- denial of adoption assistance based on a means test of the adoptive family;
- erroneous determination by the Department that a child is ineligible for adoption assistance; or
- the Department's failure to carry out the terms of the Subsidized Adoption Agreement.

If the Department and the parent(s) are in agreement, however, an evidentiary hearing is not necessary and the matter may be negotiated through an administrative review by the adoption program officer. The undisputed documentary evidence can then be presented to the Hearings Officer for his or her review and determination on the written record.

To be eligible for a post-decree adoption subsidy, the following criteria must be met:

1. the child has special needs, as defined by State statute;

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2. the child was eligible at the time the adoption petition was filed or met the requirements for SSI eligibility; and
3. there is a judicial determination that removal of the child from the home was in the child's best interests.

If the child is determined to be eligible for a post-decree subsidy, the provisions of the agreement must be negotiated with the parent(s). Retroactive benefits should not be denied without prior consultation with the Division's legal unit.

**Non-Recurring  
Adoption  
Expenses**

Non-Recurring Adoption Expenses are reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. These expenses must not have been incurred in violation of state or federal law or have been reimbursed from other sources of funds.

Other expenses directly related to the legal adoption of a child with special needs means the costs incurred by or on behalf of the parent(s) for the adoption study, including health and psychological examination or consultation, supervision of the placement prior to adoption, as well as transportation and the reasonable costs of lodging and food for the child and/or the adoptive parent(s) when necessary to complete the placement or adoption process.

The State must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse the non-recurring adoption expenses incurred by any parent who adopts a child with special needs. The State must determine that the child meets the definition of a child with special needs, that is:

- the State has determined that the child cannot or should not be returned to the home of his/her parent(s); and
- the State has determined that there exists a specific factor (page 2, #1-5) or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parent(s) without providing IV -E adoption assistance; and
- the State has determined that in each case a reasonable, but unsuccessful, effort to place the child with appropriate

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parent(s) without providing adoption assistance has been made. The only exception to this requirement is when it would be in the child's best interest because of a significant emotional attachment with the foster parent(s) or adoption by a relative.

In cases where siblings are placed and adopted, either separately or together, each child is treated as an individual with separate reimbursement for non-recurring expenses up to the maximum amount allowable for each child.

An adoption subsidy cash assistance payment is not required for the child to be eligible for non-recurring adoption expenses, medical subsidy, or social services.

**\$2000 maximum**      Adoptive parent(s) of special needs children may be reimbursed for non-recurring adoption expenses for the actual costs incurred by the adoptive parent(s) up to \$2000.

**Approval Process**      Requests for payment of non-recurring adoption expenses are submitted to an Adoption Program Officer and are approved on the CFS-82 form, Subsidized Adoption Agreement and Application Change Notice for Medicaid. The agreement must indicate the nature and amount of the non-recurring expenses to be paid. The request may be submitted in conjunction with requests for financial and medical assistance. **The family should be advised that they will need to submit documentation of the actual cost of approved expenses to the central office to receive reimbursement.**

Non-recurring expenses will be paid through CAPS when the central office has received a certified copy of the final decree of adoption and an itemized claim for payment.

**IV-E Medicaid Subsidy**      The medical needs of a child approved for an adoption subsidy are met through the Medicaid program or through a medical subsidy. Medicaid for adoption will be opened when the central office has received a certified copy of the final decree of adoption. Subsidy-related Medicaid will be effective the day following the closure of foster care related Medicaid or the day the adoption is finalized if the child has not been in foster care.

**Private Health Insurance**      All adoptive parents should be advised to add their adopted child to their private health insurance within 30 days of the adoption finalization. Insurance companies are prohibited from

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refusing coverage because of pre-existing conditions if the child is enrolled during the period available for enrolling newborns. Private insurance does not affect Medicaid coverage.

<b>Non-Medicaid State Medical Subsidy</b>	A child who has medical expenses which are not covered by Medicaid may be approved for a state medical subsidy to cover these expenses. The state medical subsidy is limited to \$2600 annually. The state medical subsidy will be effective the date the adoption is finalized. No payments will be made until the central office has received an approved subsidy agreement and a certified copy of the final decree of adoption. Children may be eligible for this benefit in addition to Medicaid.
<b>In-State Placements</b>	When the final decree of adoption is received by an Adoption Specialist in the central office, central office will notify the CFSD fiscal officer of the region of financial responsibility to close foster care-related Medicaid (if open). The central office will then forward a copy of the CFS-082, <u>Subsidized Adoption Agreement and Application/Change Notice for Medicaid</u> to the Public Assistance Bureau (central office) of DPHHS/Human and Community Services Division. The Public Assistance Bureau will open subsidy-related Medicaid and a Medicaid card will be sent to the adoptive parent(s) of the child.
<b>Out-of-State Placements</b>	A child who is IV -E eligible and for whom a subsidized adoption agreement is in effect will be eligible for a Medicaid card in the state where he or she actually is a resident, even if it is not the state that entered into the adoption subsidy agreement or is not the state making the subsidy payment.
<b>Interstate Compact on Adoption and Medical Assistance</b>	<p>If a child meeting IV-E eligibility criteria is placed in a state other than Montana or if a family who adopted in Montana is moving to another state, the Interstate Compact on Adoption and Medical Assistance outlines procedures to obtain Medicaid coverage in the state of residence. Technical assistance for field staff is available from the Compact Administrator or an Adoption Specialist in central office.</p> <p>If a family from out of state moves to Montana with a child eligible for IV-E Medicaid, the child is eligible for Montana Medicaid.</p>
<b>Independent Adoptions</b>	While it is highly improbable that a child who is adopted through an independent adoption (direct parental placement) will be eligible for IV-E adoption assistance, there are two exceptions:

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1. a child is SSI eligible at the time the adoption petition is filed; or
2. those children in subsequent adoptions who were previously eligible to receive a IV-E subsidy.

**International Adoptions**

The Federal adoption assistance program under Title IV-E was intended to provide permanency for children with special needs in public foster care by assisting States in providing ongoing financial and medical assistance to families who adopt them. These children must meet the three-pronged definition of a child with special needs in order to be eligible for a IV-E subsidy. Children who are adopted abroad, or are brought into the U.S. from other countries for the purpose of adoption, are not:

1. AFDC eligible in their own homes;
2. SSI eligible in the month the adoption petition is filed; or
3. eligible as a result of their minor parent's receipt of title IV-E foster care maintenance payments.

Therefore, it is highly unlikely, if not virtually impossible, that they would meet the criteria for adoption assistance eligibility.

**References**

Social Security Act Sections 471(a), 473, and 475(3)  
 45 CFR 1336.40  
 42 USC 672  
 Mont. Code Ann. § § 42-10-101 through 42-102-128  
 Mont. Code Ann. § 53-6-131 (1)(e)  
 Mont. Admin. R. 37.52.201 through 37.52.220

Rev. 10/03  
 Rev. 04/04  
 Rev. 10/05  
 Rev. 10/06

## Child and Family Services Policy Manual: Adoption Direct Parental Placement Adoption

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<b>Definitions</b>	Direct parental placement adoptions means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.
<b>Procedure</b>	<p>A prospective adoptive parent who wishes to adopt a child placed directly by the child's parents must obtain a favorable pre-placement evaluation prior to taking custody of a child. The pre-placement evaluation process is initiated by contacting a licensed adoption agency or a Licensed Clinical Social Worker. A court order is <b>not</b> required.</p> <p>In a direct parental placement, prior to relinquishment, the parent must be informed that the fees for any required counseling and legal fees are allowable expenses that may be paid by a prospective adoptive parent, and the birth parent must be provided with a copy of the pre-placement evaluation (adoptive home study).</p> <p>In a direct parental placement, if the parent is a minor the parent must be represented by separate legal counsel from the attorney for the adoptive parent(s). The legal fees charged by the minor parent's attorney are an allowable expense that may be paid by the prospective adoptive parents.</p> <p>Three hours of birth mother counseling is required prior to relinquishment, and must be provided by a staff member of a licensed private adoption agency. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged. This department does not provide this counseling in direct parental placements.</p> <p>Effective July 01, 2006 the court may order the state Office of Public Defender to represent the minor child.</p>
<b>Pre-Placement Evaluation</b>	The prospective adoptive parent(s) are responsible for paying for the evaluation at whatever reasonable cost is set by the evaluator. The pre-placement evaluation must contain all the information required by Mont. Code Ann. § §42-3-203 through 205 as detailed in Section 602-2, Assessment and Pre-Placement Evaluation, of this manual.
Other factors	The pre-placement evaluation report should also advise the court of any other circumstances and conditions that may affect the adoption. For example:

## Child and Family Services Policy Manual: Adoption Direct Parental Placement Adoption

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1. whether the placement was arranged in violation of state laws requiring licensing of adoption agencies, Mont. Code Ann. § 42-8-103;
2. whether the Interstate Compact applies to the adoption;
3. whether the Indian Child Welfare Act applies to the adoption; or
4. if only one birth parent is making the placement, the status of the other parent's rights.

### Step-parent or Relative Adoptions CPS Inquiry

The court may no longer order an investigation for direct parental placement adoptions, including step-parent or relative adoptions, but may order a protective services search for a step-parent or relative petitioning to adopt. In these cases, where CPS involvement is substantiated, the court must be notified.

### Pre- and Post-Placement Evaluations

The Department does not conduct investigations (pre-placement or post-placement evaluations) for direct parental placement adoptions, or step-parent or relative adoptions. People with inquiries about this should be directed to the adoption codes in Montana Code Annotated, Title 42, or, when appropriate, referred to a licensed adoption agency or a Certified Licensed Clinical Social Worker who provides these services. If an individual requiring a pre or post-placement evaluation for a direct parental placement cannot secure the services of a licensed adoption agency or a Certified Licensed Clinical Social Worker, the Department may agree to conduct the evaluation for a fee not more than \$1500 for a pre-placement evaluation and/or \$1000 for post-placement evaluation and supervision.

### Waiver of counseling and evaluations

The Department may not waive any counseling requirements, pre- or post-placement evaluations, or the post-placement evaluation period. Only the court may waive counseling requirements for good cause.

In a step-parent adoption, the court may waive the requirement of a pre-placement evaluation and the six-month post-placement evaluation report.

In a direct parental placement adoption, the court may waive the requirement of a pre or post-placement evaluation when a

**Child and Family Services Policy Manual: Adoption**  
**Direct Parental Placement Adoption**

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parent or guardian places a child for adoption directly with an extended family member of the child.

**References**

Mont. Code Ann. § § 42-3-202 through 42-3-205, 42-3-212, 42-4-103, 42-4-309, 42-4-310, and 42-8-103

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**Child and Family Services Policy Manual: Adoption**  
**Certification for Evaluations in Direct Parental Placement Adoptions**

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**Policy**

Prior to October 1, 2001, the Department certified Licensed Clinical Social Workers to conduct pre and post-placement evaluations and to provide post-placement supervision in direct parental placement adoptions. This statute was repealed effective October 1, 2001. There is no longer a certification process for LCSW's.

Inquiring prospective adoptive parents with questions about obtaining a pre-placement evaluation for a direct parental placement adoption should be advised to contact a licensed adoption agency or a Licensed Clinical Social Worker.

## Child and Family Services Licensing Policy Manual: Introduction Philosophy and Development

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<b>Philosophy</b>	Licensing is a process that promotes the protection of youth, aged or handicapped individuals through specific requirements regarding their care and the qualification of providers. Licensing also helps protect the rights of service providers, parents and others. Licensing requirements are intended to be non-discriminatory. Requirements apply equally to all applicants regardless of race, religion, and geographic or socio-economic background.
<b>Development</b>	Licensing rules, adopted by the Department of Public Health and Human Services (DPHHS), were developed and implemented through the combined efforts of foster parents, provider associations, licensing workers, placing workers, supervisors and staff from various state departments.
<b>Types of Facilities Licensed by CFSD</b>	CFSD licenses youth foster homes, kinship care homes and child placing agencies, including adoption agencies.  CFSD also approves adoptive and guardianship families.
<b>References</b>	Mont. Code Ann. §52-2-601 through 52-2-603 Mont. Code Ann. §52-2-621 through 52-2-623 Mont. Code Ann. § 52-8-102 through 52-8-108 Admin. Rule. Mont. 37.93.101 through 37.93.716 Admin. Rule Mont. 37.97.101 through 37.97.1019

**Child and Family Services Licensing Policy Manual: General Requirements  
Licensing Requirement Booklets**

The following licensing requirement booklets are available from the local CFSD licensing office or the Internal Support Division of DPHHS.

**Youth Care Facilities**

UNPAM-108, Youth Foster Home Requirements Revised 6/98

UNPAM-111, Child Care Placing Agencies and  
Adoption Agencies Requirements Revised 6/98

**Resource Manual**

UNPAM-124, Preparing for a Fair Hearing:  
A Resource Manual New 6/97



Child and Family Services Licensing Policy Manual: General Information  
Definitions and Facility Type Codes

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**General Definitions** **Department:** Department of Public Health and Human Services.

**Substitute Care:** 24 hour care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or who are without the care and supervision of their parents or guardian.

**Child or Youth:** Any person under the age of 18 years.

**Resource Family:** A family who has been approved and/or licensed by the department and is available to the department for temporary or permanent placement of children. Resource families include foster families, kinship families, adoptive families, concurrent planning families and guardianship families.

**Youth Foster Home (YFH):** A foster home in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren or wards.

**Kinship Care Home (KIN):** An unlicensed home in which care is provided by a member of the child's family, a member of the child's or family's tribe, the child's godparents or step-parents or a person to whom the child, child's parents or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family

A kinship family may be unlicensed, licensed for foster care or approved for guardianship or adoption. Unlicensed kinship care is addressed in the CFSD manual, section 402-4, Placement in Kinship Care Home. Only licensed and approved kinship care is addressed in the licensing manual.

**Kinship Foster Home:** A licensed foster home in which substitute care is provide to one to six children or youth other than the kinship parent's own children, step-children or wards.

Care may be provided by a member of the child's family, a member of the child's or family's tribe, the child's godparents or step-parents (only when the child is placed by the department) or a person to whom the child, child's parents or family ascribe a family relationship and with whom the child has had a

Child and Family Services Licensing Policy Manual: General Information  
Definitions and Facility Type Codes

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significant emotional tie that existed prior to the department's involvement with the child or family.

**Specialized Foster Family (SFF):** A youth foster home that is licensed to provide care and treatment for children with problems that cannot be adequately addressed through regular foster care services. Specialized Foster Care is addressed in section 406-1 of the CFSD manual.

**Guardianship Family:** A family in which an adult or adults have been approved by the department to become legal guardian(s) for a child or children in the custody of the department.

**(Pre)Adoptive Family:** A family that has been approved by the department for the adoptive placement of a child or children.

**Concurrent Planning Family:** A family licensed by the department as a foster home or kinship foster home that is also approved by the department as an adoptive home. A concurrent planning family works with the placing agency and the child's birth family toward reunification, while simultaneously committing to becoming a permanent family for a child should reunification be unsuccessful.

**Child Placing Agency (CPA):** An agency that is licensed by the State of Montana pursuant to Title 52, chapter 8 and that is expressly empowered to place children preliminary to a possible adoption.

**Therapeutic Foster Home Program:** A child placing agency licensed by and under contract with the department to provide therapeutic foster care services.

**Therapeutic Foster Family (TFF):** A licensed foster care provider who works under the direction of a licensed Child Placing Agency and is licensed by the department as a therapeutic foster family.

**Private Agency Foster Care Provider (PRI):** A youth foster home which is licensed by the department for the purpose of providing foster care services for a private (non-therapeutic) child placing agency such as The Casey Family Program, Catholic, Lutheran or LDS social services.

Child and Family Services Licensing Policy Manual: General Information  
Definitions and Facility Type Codes

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**Out of State Licensed Provider (OOS):** Any out of state licensed facility, including family foster homes, that provides substitute care for a Montana youth.

**Child Adoption Agency (CAA):** A child placing agency that is also licensed for the purpose and intent of placing children for adoption.

**Tribal Codes**

There are comparable facility type codes to many of the above codes that were established exclusively for tribal use. A full listing of these codes and definitions is accessible by reviewing the full CAPS Facility Type code table.

The one exception to the tribes exclusive use of the tribal facility type codes is:

**Tribal Youth Foster Home, Default Approval (TFN):** CFSD staff may use this code when the tribe has delegated authority to the local CFSD office for CAPS entry of a tribally licensed provider. TFN should be used as a status code for the tribally licensed provider instead of FPO (For Payment Purposes Only).

**References**

Mont. Code Ann. §52-2-602  
Admin. R. Mont. §37.93.101

**Child and Family Services Policy Manual: General Information  
CAPS Facility Status Codes and Definitions**

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**Regular  
License**

**REG - Regular**: Provider meets all licensing requirements and there are no special considerations to the license

The department shall issue a one-year youth care facility license to any applicant who meets the licensing requirements as determined by the department after a licensing assessment. A renewal notice should be provided to the YCF at least 30 days prior to the expiration date of the current license. The department shall renew the license annually if the YCF indicates an interest in being re-licensed and continues to meet licensing requirements.

**The duration of the regular license period must not exceed one year or 365 days.**

**Provisional  
License**

**PRO - Provisional**: A license, which is issued based upon a provider's agreement to comply with any or all missing requirements within a specific time frame.

The department may issue a provisional license for any period up to six months to any applicant who has:

- submitted a completed application for the type of care they wish to provide;
- met all applicable requirements for fire safety;
- for the purpose of conducting a criminal background and protective service check has submitted a completed
- DPHHS-DFS-018, Release of Information ;
- completed fingerprint cards on all adult members of the household;
- submitted a satisfactory DPHHS-DFS-033 (or DPHHS-DFS-033a), Personal Statement of Health on all members of the household;
- agreed in writing to fully comply with licensing requirements within the time period covered by the provisional license.

**Child and Family Services Policy Manual: General Information**  
**CAPS Facility Status Codes and Definitions**

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For youth foster care homes and kinship care homes, the worker and family may complete the DPHHS-CFS-LIC 020 to document the family's agreement to comply with requirements that are not met at the time that the provisional license is issued. Timelines noting the expected date of compliance should be clearly documented in the comments section of the DFS-LIC-020. A copy of this form should be given to the applicant's at the time of review and completion).

The department may renew a provisional license if the applicant shows good cause for failure to fully comply with all requirements within the time period covered by the provisional license. **The total time period covered by the initial provisional license and subsequent renewals may not exceed one year.**

<b>Temporary License</b>	<b><u>TMP - Temporary</u></b> : This status is entered when the provider has made timely and <b>complete</b> application for renewal of a license but the Department is unable to complete the re-licensing study before the expiration date of the previous year's license
<b>Restricted License</b>	<b><u>RES - Restricted</u></b> : Provider is licensed for the care of a specific child. The department may issue a restricted license for care of a specific child/ren with the written recommendation of the FRS and approval of the CSWS or RA. This status code is used for kinship foster home licenses.
<b>Approved status</b>	<b><u>APP - Approved</u></b> : Provider meets requirements. For use with adoption, guardianship and out of state providers
<b>Denied Status</b>	<b><u>DEN - Denied</u></b> : Provider does not meet requirements. Application is denied.
<b>Pending Status</b>	<b><u>PEN - Pending</u></b> : Provider has inquired or made application. Application status is undecided
<b>Reversed Status</b>	<b><u>RVS - Reversal</u></b> : A provider's previous negative license status has been overturned in an administrative review or fair hearing.
<b>License Suspended</b>	<b><u>SUS - Suspended</u></b> : Provider's license is temporarily suspended pending the outcome of an investigation, administrative review or fair hearing.
<b>Payment Purposes Only: Other</b>	<b><u>FPO - For Payment Purposes Only</u></b> : The "Other" category of license status. To be used when NO other category applies. Example: a provider's license has been suspended, but partial

**Child and Family Services Policy Manual: General Information**  
**CAPS Facility Status Codes and Definitions**

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payment is still owed to the provider for services provided.

**License  
Terminated**

**TRM - Termination**: Closure of a provider license without intent to re-license.

**Withdrawn**

**WTD - Withdraw**: Status assigned to an applicant who withdraws his or her name from consideration for licensure or approval.

**References**

Admin. R. Mont. 37.97.106

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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### **Inquiry**

Any person inquiring about becoming a resource parent is to be referred to a Family Resource Specialist (FRS) or Family Resource Specialist Supervisor (FRSS). The FRS or FRSS is responsible to describe to the person making the inquiry the licensing/approval process and requirements, and to answer any initial questions that the inquirer may have.

Neither the state nor any other entity in the state that receives funds from the federal government and is involved in adoption or foster care placements may deny to any person the opportunity to become a foster or adoptive parent on the basis of race, color, national origin or jurisdictional boundaries of the applicant or of the child involved; or delay or deny the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parents of the child involved. For adoption of an Indian child in state court, however, the Indian Child Welfare Act applies, and adoptive placement preferences must be followed. See Section 305-1, Indian Child Welfare Act of the CFSD manual.

All applicants shall have an equal opportunity to apply and to receive fair and equal treatment and consideration of their qualifications to become resource parents. Applicants must be fairly assessed on their abilities to successfully parent a child and not on other factors.

### **Department Employees**

CFSD staff may not become newly licensed to provide foster care for children in the department's custody unless the employee is determined to be the most appropriate **kinship** placement for a child. The Regional Administrator will determine who will conduct the licensing study.

CFSD staff who were licensed for foster care and had children in the care or custody of the Department in their home as of March 2002, may continue to be licensed as long as the youth is in their home, but may not accept additional children placed by or in the custody of the Department

If a person hired by the department is a licensed foster parent at the time they are hired and has foster children in the care or custody of the department in their home, the individual may continue to be licensed until those children have left their home. The individual may not accept placements of additional children who are in the care or custody of the department.

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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Division employees who want to adopt must be referred to a licensed private adoption agency.

### Application Process

If the person making an inquiry wishes to proceed with the process, they should be invited to the next available orientation and pre-service. They should also be provided an initial application packet within five working days of their inquiry. The initial application packet, at a minimum, includes:

- written information describing the licensing/approval process;
- information regarding adoption;
- information about the availability of other licensed agencies;
- information describing the types of children for whom the department is seeking resource families; and
- a copy of the DPHHS-CFS-090(A) Resource Family Application and Profile (Part I).

Additional information that must be provided once the initial application has been received includes:

- a copy of the Youth Foster Home Licensing Requirements;
- sufficient copies of the DPHHS-CFS-LIC-018 Release of Information for each applicant and adult member of the household;
- sufficient copies of the DPHHS-CFS-33 Personal Statement of Health for each member of the prospective applicant's household;
- sufficient copies of the HES-101 State of Montana Certificate of Immunization for each child under 12 years of age who is a permanent resident in the applicant's household; and

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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- W-9 Request for Taxpayer Identification Number and Certification.

Packets containing this information may be ordered using the order number of DPHHS-CFS-010.

Copies of the DPHHS-CFS-090(B) Resource Family Application and Profile (Parts II-VI) should be added to the packet as appropriate for the particular applicant.

Fingerprint cards and information regarding the fingerprinting process may be included in an initial or subsequent inquiry packet, or may be provided to an applicant at a later time during the licensing process.

### Documentation of Inquiries in CAPS

All inquiries regarding approval and/or licensure as a resource family should be entered in CAPS on RRD1. The FRS should complete a person search and a provider search on CAPS to determine if the prospective resource parents have previously been entered. If the person/persons cannot be found, they should be added to CAPS as persons and as (prospective) providers. The prospective provider status would be PEN.

### Review of Application

Upon receipt of a completed DPHHS-DFS-090(A) Resource Family Application and Profile (Part I), the application should be reviewed. The FRS should determine if there is any information on the application that might preclude the applicant from becoming a resource family.

### Recent Family Change

Unless an exception is granted by the regional administrator, no applicant(s) shall be approved as a youth foster family if any of the following has occurred within the 12 months of the application:

- death of a spouse or child in an applicant's family;
- marital separation of an applicant;
- divorce of an applicant;
- the adoption of a child by an applicant;
- the birth of a child to an applicant; or

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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- loss of employment by an applicant.

If a couple, the applicants must have lived together, not necessarily married, for at least 24 months.

If one or more of the above listed factors exist, the FRS should review the circumstances with the FRS supervisor and jointly determine what action should be taken.

### **Alien Status/IV-E Funding**

The FRS may request a copy of the applicant's birth certificate to verify citizenship status.

If the applicant indicates on the DPHHS-DFS-090(A) Resource Family Application and Profile (Part I) that they are not a U.S. citizen, the FRS should verify the applicant's legal entry status by requesting a copy of the applicant's I-94 Alien Registration Form. The FRS should consult with the regional financial specialist to make further determination as to whether or not the applicant is eligible to receive IV-E payments.

If the applicant is not eligible to receive IV-E payments, the FRS should process the application in the same manner as any other application. When completing PROD for applicants not eligible to receive IV-E payments, the FRS must enter "no" when answering the question as to whether or not the provider is IV-E eligible.

### **Incomplete Application Packet**

If the application or any of the other forms in the application packet are determined to be incomplete or erroneous, the FRS must notify the applicant within 15 working days of the deficiencies or errors.

The applicant must be notified that they have 60 days to submit the required or corrected information. If the requested information has not been received by the 60th day, the application may be considered withdrawn.

In addition, if an applicant has been invited to two orientation or training sessions and has not responded to the invitations, the application may be considered withdrawn.

### **CAPS**

The FRS should change the status on CAPS to WTD to indicate that the application was withdrawn.

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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### Release of Information Criminal/Protective Services/Motor Vehicle Checks

A criminal background check (including a Department of Motor Vehicles check) and a child and adult protective services check must be completed on each applicant and each adult member of the household. These checks cannot be completed until a signed release of information is received. When the FRS receives the signed DPHHS-CFS-LIC-018 Release of Information, the checks should promptly be initiated.

Montana motor vehicle checks are completed via an on-line process. FRS staff unfamiliar with this process should contact his/her supervisor for information.

Any applicant who has received services for substantiated abuse or neglect of a child, or whose own children have been in foster care should not be licensed or approved as a resource family unless the regional administrator grants a justifiable exception.

Any applicant whose criminal background check reveals a conviction for a crime that reasonably relates to the ability of the applicant to care for or protect a child may not be licensed or approved.

Detailed information on completing and responding to the results of protective services checks, criminal and motor vehicle checks is found in manual section 802-3, Criminal Records and Protective Services Checks.

### Youth Court Records

Youth Court Records for any person over age 13 living in a **prospective adoptive home** may also be reviewed. The applicant should sign a release of information for the criminal justice system for themselves and any teen aged children living in the home. The release should be sent to the juvenile probation office in the county where the family resides, or resided when family members were teenagers. If the family has moved from another state, the worker does not need to attempt to obtain these records.

### Personal Statement of Health

Applicants and all members of the applicant(s)' household must submit a DPHHS-CFS-33 Personal Statement of Health. The DPHHS-CFS-33 is to be completed by a parent for each minor child living in the home. If a health problem is reported on the DPHHS-CFS-33 or by another source, then a DPHHS-CFS-33a Licensed Care Provider Medical Report may be required.

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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If required, a physician, psychiatrist, psychologist or counselor must complete the DPHHS-CFS-33a at the applicant's own expense. Additional information may also be requested from any other professionals involved with an applicant.

### Immunization Records

An HES-101 State of Montana Certificate of Immunization **or** other proof of immunization must be completed by a physician, health officer or designee for each child under twelve years of age who is a permanent resident of the applicant(s)' home. A copy of the immunization record should be attached to each child's DPHHS-DFS-33 and both should be kept in the applicant(s)' file.

### References

The FRS should promptly send letters to the names listed as references on the DPHHS-CFS-090(A). Written responses are required from three references. The FRS should investigate any ambivalent, poor or incomplete references. The worker cannot guarantee the anonymity of the person making the reference. If a negative reference is a factor in denying an application, the applicant must be allowed an opportunity to respond.

### Family Profile

The DPHHS-CFS-090(B) Resource Family Application and Profile may be provided to an applicant at any time after an initial inquiry is made. It must be provided to an applicant within 10 working days of a determination that the application packet is otherwise complete providing grounds do not exist to deny the application.

The profile assists the FRS and the applicant in assessing motivation and capacity to provide for children in out-of-home placement. It also helps the applicant determine his or her ability to work with birth parents, DPHHS and other agencies

### Resource Parent Pre-Service Training

Prior to issuance of a **regular** license or approval, all prospective resource parents must attend foster care orientation and Keeping Children Safe (KCS) pre-service training provided by the department unless a specific exception has been granted in writing by the Regional Administrator or designee.

### Home Consultation

The initial home consultation may be scheduled at any time following an inquiry. Prior to the initial home consultation, the worker should review all documents that have been provided by the family. A home consultation **must** be scheduled within 30 days of receipt of all completed paperwork, including the DPHHS-DFS-090 (B) Parts II-VI, Resource Family Application

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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and Profile, providing no grounds to deny the application have been identified.

A completed application packet consists of:

- the DPHHS-CFS-090 (A) Part I and (B) Parts II-VI Resource Family Application and Profile,
- DPHHS-CFS-33 Personal Statements of Health for Licensure or Approval to Adopt for each member of the applicant(s)' household;
- DPHHS-CFS-33a Licensed Care Provider Medical Report, if required;
- immunization information, if required;
- DPHHS-CFS-LIC-018 Release of Information for each applicant and adult member of the household;
- a W-9 Request for Taxpayer Identification Number and Certification;
- satisfactory criminal, motor vehicle and protective service checks on all adult household members;
- satisfactory reference letters, and
- if the application is for adoption, the Youth Court Record for any person over age 13 living in the prospective adoptive home, as necessary.

The worker **must** visit the home and conduct at least one individual interview with all family members. These interviews provide an opportunity for the potential resource parents and FRS to share information and establish an understanding of roles and responsibilities. The number and duration of contacts (home visits, phone calls, etc.) with a family will vary depending on factors such as family size, concerns or questions.

At a minimum, the following issues should be addressed during the course of the home consultations:

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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- any concerns or questions that the family has regarding their role(s) as resource parents;
- review of any application documents, including a request for clarification on any incomplete, unclear or questionable responses;
- discussion of the family's motivation for applying to become resource parents;
- review of the type of child or children the family believes they can best provide for considering the physical space in the home and the needs/ abilities of current family members;
- review of parenting attitudes and beliefs in relation to needs/abilities of children in out-of-home placement;
- review of child behavior and discipline;
- review of the DPHHS-CFS-LIC 020 Resource Family Agreement; and
- an assessment of the applicant(s)' home as a safe environment for a child.

The FRS should utilize the home consultations to inform the family of concerns or issues which may result in the denial of the family's application.

### **W-9 Request for Taxpayer Identification Number and Certification.**

**Effective 10/1/04, FRS staff will not be entering the TIN on CAPS.** The W-9 must be sent or faxed (444-9763) to the DPHHS Fiscal Division so the tax payer identification number (TIN) from the W-9 can be entered and verified by the Fiscal Division. If the W-9 does not indicate that the provider is a CAPS provider, please write CAPS on the top of the W-9 before sending or faxing the form.

The TIN will be entered on a new screen (PTID). The fiscal staff will enter the TIN and business type, set the 1099 flag and enter the verified date. The TIN will be pulled to PROD and FACD. The FRS supervisor will not be able to approve a license on CAPS until the TIN has been entered.

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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If for some reason the license must be approved immediately, the FRS may contact the Fiscal Division (444-4060) to request that the TIN be entered or may contact the regional Fiscal Officer. The W-9 must still be sent or faxed to the Fiscal Division.

### Resource Family Agreement

The DPHHS-CFS-LIC 020 Resource Family Agreement must be reviewed and signed during a home consultation if the applicants are to be licensed for foster care. The purpose of the DPHHS-DFS-LIC 020 is to assure understanding between the department and prospective resource parents regarding compliance with the licensing requirements. The prospective resource parents must be informed that their signature on the DPHHS-CFS-LIC 020 indicates that they understand all of the licensing requirements and agree to comply with the requirements.

If the application is for guardianship, the DPHHS-CFS-013 Guardianship Home Assessment Guide must be completed and signed.

### Written Assessment CAPS

Prior to licensure or approval, the FRS must complete the FASD screen and a written assessment of the applicants and their family, including a recommendation regarding licensure or approval. The written assessment should be completed in WordPerfect and attached as TEXT associated with the FASD screen.

The purpose of the assessment is to clarify issues raised in the family profile and to document issues leading to the FRS's decision and recommendation regarding the licensure/approval of the applicants.

### Licensing/ Approval Action

Foster Care or Guardianship: The FRS sends a hard copy application and supporting documentation to the FRS supervisor. The FRS supervisor reviews the application and supporting documentation, along with the information that has been entered into CAPS, including the assessment and recommendation. The FRS supervisor approves or denies the application in CAPS.

## Child and Family Services Licensing Policy Manual: Resource Family Overview Initial Inquiry and Application/Assessment

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Foster Care: If the application for a license is approved, the FRS issues the license from the FALD screen. The license is Docgen 606 Provider License. The license is signed by the FRS supervisor and mailed to the applicant.

Guardianship: For specific information on the assessment and approval process for guardianship, refer to section 802-6 of this manual. The FRS supervisor approves or denies the guardianship application and enters the action into CAPS. The FRS or FRS supervisor notifies the applicants in writing of the approval or denial of their application for guardianship.

### Denial

For additional information regarding denial of foster care applicants (including licensed kinship providers), refer to section 802-10 of this manual.

For information regarding denial of guardianship applicants, refer to section 802-6 of this manual.

For information regarding denial of adoptive applicants, refer to section 602-2, Assessment and Pre-Placement Evaluation in the CFSD manual.

### References

Mont. Code Ann. § 41-3-1141 through 41-3-1143  
Mont. Code Ann. §42-3-201 through 42-3-213  
Admin. R. Mont. 37.52.101  
Admin. R. Mont. 37.97.106, 37.97.110 and 37.97.115  
Admin. R. Mont. 37.97.1001 through 37.97.1019  
42 USC 670 Sec. 471(20)(A)

## Child and Family Services Licensing Policy Manual: Resource Family Training Requirements

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### Preparation

The orientation and pre-service training currently used by the department is Keeping Children Safe. All prospective resource parents, including kinship parents, must attend this 18 hour training to receive a regular foster care license or to be approved for adoption or guardianship unless a specific exception has been granted in writing by the regional administrator or designee.

Applicants do not have to be kin to a child in order to receive an exception from attending KCS training.

Keeping Children Safe covers the following topics:

- goals and objectives of foster care services;
- the licensing assessment and evaluation process;
- licensing requirements;
- department policies and procedures, support services and groups, Medicaid coverage, the payment system, foster parent insurance and confidentiality; and
- other resource material as appropriate or available.

### Ongoing Training Requirements for Relicensure

Training is provided or approved by the department. Unless the Community Social Work Supervisor or regional administrator has approved a special exception, at least 15 hours of training is required annually for relicensure for foster parents (including kinship parents).

There is currently no requirement for prospective adoptive parents to meet any prescribed number of training hours in order to be reapproved to adopt. However, prospective adoptive parents should be encouraged to participate in training relevant to the type of child they hope to adopt.

Recommended topics include the following:

- separation and grieving;
- alternatives to physical discipline and a definition of the department's policy on physical discipline;

## Child and Family Services Licensing Policy Manual: Resource Family Training Requirements

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- department's and foster parents' roles and responsibilities;
- biological family rights and responsibilities;
- how and why children come into foster care;
- types and behaviors of children in care;
- placement process;
- confidentiality;
- sexual abuse;
- drugs and alcohol; and
- foster parent liability insurance.

Additional training topics may include issues related to family dysfunctions, child maltreatment, addictive disorders, permanency issues, cultural competency, transitioning youth from foster care to adulthood; or effective communication. Training can be in the form of workshop or foster/adoptive parent support group participation, audio or video cassettes, books or any other means by which the foster parent has opportunity to gain further understanding into the issues of child maltreatment, placement and permanency.

Foster parents may claim hour for hour any training they have participated in with the exception of reading books. As a rule of thumb foster parents may claim a maximum of two (2) hours training per book.

### **Therapeutic Foster Parents**

Therapeutic foster parents are expected to receive intensive training from the staff of the therapeutic foster home program with which they are affiliated.

- In addition to the meeting the initial and annual training requirements for a regular foster home found in Admin. R. Mont. 37.97.1019, the therapeutic foster parents must receive a minimum of 15 hours of additional training annually, for a total of 30 hours of annual training. The additional 15 hours of training must be directly related to:

## Child and Family Services Licensing Policy Manual: Resource Family Training Requirements

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- the special needs of youth with emotional disturbances receiving treatment for their emotional disturbances in a treatment family environment; and
- the use of non-physical means of controlling youth to assure the safety and protection of youth and others.

### **Training Record Review**

Training information should be recorded by the resource parents and the information entered on the DPHHS-CFS-021 Resource Family Renewal Application at the time of relicensing. The training information should be reviewed with the resource family at the time of the licensing assessment. Training should be varied yet reflect information that will be relevant to the type of children the family is licensed or approved for. If a couple, both foster parents are encouraged to participate in training.

Only unduplicated hours of training are counted toward the required 15 hours, e.g., if both parents in a family attend the same 3 hour training, they are only given credit for 3 hours, not six hours

### **Reference**

Admin.R.Mont. 37.37.318  
Admin.R.Mont. 37.97.1002  
Admin.R.Mont. 37.97.1019

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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<b>Introduction</b>	<p>The process of screening and assessing an applicant's ability to provide a safe and nurturing environment for children includes the completion of both a criminal record and protective service background check on all applicants and adult members of their household.</p> <p>Mont. Code Ann. § 52-2-622(4) requires completion of a criminal records check for youth foster care applicants by means of a fingerprint check. Mont. Code Ann. § 42-3-203(2)(a) requires completion of a criminal records check for adoptive applicants. This check must be by means of a fingerprint check for adoptive applicants to the department.</p> <p>The results of both the criminal and protective service checks must be satisfactory in order to continue the provisional status of the license (if one has been issued) or to issue a <u>regular</u> license, or to approve the home for guardianship or adoption.</p>
<b>New Resource Families</b>	<p>New resource families are required to have fingerprint checks as a part of their initial application process.</p> <p>A formerly licensed family will be treated as a new applicant and must have a fingerprint based criminal check completed if the foster parents have not been licensed for more than one year or have lived out-of-state for any period of time since being licensed in Montana.</p> <p>If it has been less than one year since the foster parents were licensed and the family has lived in Montana the entire time, a name based check must be completed before the applicants are re-licensed.</p>
<b>Current Resource Families</b>	<p>As of April 2003 all currently licensed or approved resource families should have an initial criminal records check completed by means of a fingerprint check.</p> <p>Annual criminal records checks via a name check must be completed as part of the re-licensing process.</p>
<b>Costs Incurred From Criminal Records Checks</b>	<p><b>The regional CFSD office will pay the costs incurred in conducting a criminal records check for prospective (or licensed or approved) CFSD foster parents or guardians.</b></p> <p>Whenever possible, the department will arrange to be billed for the cost of obtaining the fingerprints. In some instances, the</p>

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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applicant may have to pay the cost of having the fingerprints taken and may request reimbursement from the department.

The Department of Justice (DOJ) will bill the department for the cost of conducting and providing the criminal history check.

Prospective adoptive parents must pay the agency taking their fingerprints and for the check to be completed by DOJ. The cost of the checks may be claimed as a non-recurring adoption expense.

Fees associated with fingerprint checks for applicants to a licensed child-placing agency are the responsibility of the agency or the applicants.

### Obtaining Fingerprints

**CFSD shall obtain a DPHHS-CFS/LIC-018, Release of Information form to conduct a criminal record and protective service background search from each applicant and each adult member of the applicant's household.**

To obtain results of a criminal record check, the FRS (or assigned worker) is responsible for assuring that a fingerprint card is provided to each applicant and adult member of the applicant's household and that the applicant is referred to the local law enforcement or other agency that takes fingerprints.

The applicant should be provided information on the local process for obtaining fingerprints. The applicant should be advised if there is a fee charged for taking the prints and how this cost is to be paid.

The FRS (or assigned worker) is also responsible for ensuring that fingerprint cards are reviewed for completeness prior to being sent to the Department of Justice (DOJ) to avoid cards being returned.

A memo should be attached to the fingerprint card indicating whether a Montana check or Federal check is being requested.

A **Montana check** may be requested for applicants who have only resided in Montana or one of the following states after the age of 18:

Alaska	Idaho	Nevada
Oregon	Utah	Wyoming

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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A **Montana and a Federal** check should be requested for applicants who have lived in states other than those listed above **or have lived on a reservation** after the age of 18.

**Note: Felonies committed on reservations are federal crimes. As with any criminal check, all crimes may not have been reported and may not appear on a criminal record.**

**If the family lives or has lived on a reservation, a check with tribal law enforcement should also be conducted.**

### Exceptions

If an applicant (or other adult household member) is missing ALL of their fingers, a name based check must be completed. If the applicant (or other adult household member) is missing some, but not all of their fingers, a fingerprint check must be completed. The person taking the fingerprints will note on the fingerprint card the fingers that are missing.

In rare instances, useful fingerprints cannot be obtained from an individual.

If the FBI rejects fingerprint cards on the same individual twice, a national name based check can be conducted on that individual. (The cards will have a white paper stapled to them.) The requesting worker should fax the person's name, date of birth and social security number to the DOJ (444-0689) and request that a name based check be completed based on the FBI rejections. DOJ will fax the results of a name-based search to the person making the request.

If after three attempts to obtain useable fingerprints from an individual to whom the FBI rejections do not apply, a name based check must be used to obtain the criminal record. Since a national name based check will not be completed if the request is not the result of FBI rejections, an attempt must be made to obtain criminal records from all states in which the applicant has lived.

In both of the above situations, information must be attached to the results of the check explaining why a fingerprint check was not used.

### Payment

If the fingerprint check is for a prospective (or licensed) foster parent or prospective guardian, a memo should be attached to

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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the fingerprint card instructing the DOJ to bill CFSD. The memo must indicate what region should be billed for the cost of the fingerprint check by including either the regional number or the regional billing number. The billing number for each region is available from the FRS supervisor.

If the fingerprint card is for a prospective adoptive parent, **payment in the form of a check or money order** made out to Criminal Records and Identification must be provided to the FRS (or assigned worker) and must accompany the fingerprint card. The cost is \$8 for a Montana fingerprint check only and \$32 for a Montana and Federal fingerprint check. Fingerprint cards are sent to:

Department of Justice  
Criminal Records and Identification  
P.O. Box 201403  
Helena, MT 59620

**The FRS (or assigned worker) must contact the Montana Motor Vehicle Division to obtain information about driving related offenses such as a DUI. This check is completed via an on-line process. FRS staff unfamiliar with the process should contact his/her supervisor for information.**

### Results of Criminal Checks

If an applicant or adult household member has been **charged** with a crime that bears upon the individual's fitness to assume care and responsibility for the safety and well being of children, the licensing or approval must remain in a pending status until there is a resolution to the charge.

If an applicant or adult household member has had a **felony conviction** at any time for one of the following crimes, the home can not be licensed or approved

- child abuse or neglect;
- child sexual abuse;
- partner or family member assault;
- a crime against children (including child pornography);
- or a crime involving violence, including rape, sexual

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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assault, or homicide.

If an applicant or adult household member has had a **felony conviction** within the past five years for one of the following crimes, the home can not be licensed or approved:

- physical assault;
- battery; or
- a drug related offense, including alcohol related convictions.

If an applicant or adult member of the applicant's household has a criminal history, but the crimes for which they were convicted do not fall into one of the above categories, the applicant should not automatically be denied a license or approval. The decision to recommend approval or denial of the application must be based on whether or not the crime(s) for which the person was convicted would directly impact the applicant's ability to provide safe care for children.

### **Satisfactory Criminal Records Check**

A satisfactory criminal records check is a check which reveals that the applicant or adult household member has not been convicted of or is not charged with a crime that bears upon the fitness to assume the care and responsibility for the safety and well being of children.

### **Documentation of Criminal Record Background Check**

Completion of a criminal record background check should be documented on PRPD. Codes should be entered as follows:

**NCH = No Criminal History.** A criminal record check has been completed and no criminal history exists

**YCH = Yes Criminal History.** A criminal record check has been completed which revealed a criminal history.

If there is existing criminal history, but the history does not require that the application be denied (not a crime listed on page 3), the code would be still be YCH (Yes Criminal History). The rationale for recommending approval or denial of the application should be clearly documented in TEXT associated with PRPD and addressed in the written assessment completed on the applicant.

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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### Denial of Application

If the criminal history information is the used to deny an application, the applicant must be notified of the reason for denial and directed to the Criminal Records History Section (406-444-9024) if they want to challenge the record.

In addition, if a **foster care application** is denied based on the criminal history information:

- the FRS must clearly document the reason for the denial as it relates to the crime's impact on the applicant's ability to provide safe care for children; and
- documentation must be included in the negative licensing action/fair hearing notice letter.

### Youth Court Records Checks

**Adoptive Applicants Only:** Youth Court Records for any person over age 13 living in the home of adoptive applicants may be reviewed. A release of information signed by the applicant for him or her self and any teenage children living in the home should be sent to the juvenile probation office in the county where the family resides, or resided when family members were teenagers. If the family has moved from another state, the worker does not need to attempt to obtain these records from another state.

### Protective Service Background Check In-state

The FRS (or assigned worker) is also responsible for assuring that a thorough CAPS person search has been completed **and** that the appropriate protective service offices have been contacted to ascertain whether an applicant or member of the applicant's household has been a perpetrator in a substantiated referral of abuse or neglect.

If a protective service check reveals that an applicant has been named as a perpetrator in a referral of abuse or neglect in Montana, the FRS (or assigned worker) should determine:

- if a notice of substantiation of abuse or neglect has been sent to the person or persons named as the perpetrator; and
- whether the deadline for requesting an appeal has passed.

If the applicant has requested an appeal of the substantiation

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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within the allowable time frames, the appeal should be resolved prior to the FRS (or assigned worker) taking further licensing or approval action.

Detail regarding notice to perpetrators of abuse and neglect is found in Section 202-4, Documentation of Investigation of the CFSD manual.

If allegations of abuse and neglect have been substantiated against an applicant and the FRS (or assigned worker) determines that no notice of substantiation of abuse or neglect has been sent to the person or persons named as the perpetrator, the FRS should:

- defer action on the application;
- notify the appropriate CSWS of the omission; and
- request that a letter of substantiation be sent to the applicant following the policy set forth in Section 202-4 Documentation of Investigation.

Once the perpetrator has been sent the notice of substantiation and the deadline for appeal has passed, the FRS (or assigned worker) can proceed with licensing or approval action.

If the perpetrator appeals the substantiation, licensing or approval action should be deferred until the appeal process has ended and the substantiation is upheld or denied.

Completion of an applicant's protective service background check should be documented on PRPD. Codes should be entered as described in Documentation of Protective Service Background Check.

### **Out-of-state**

If an applicant has lived out-of-state, the FRS (or assigned worker) is also responsible for contacting the appropriate protective service office(s) in the other state(s) to ascertain whether an applicant or member of the household has been a perpetrator in a substantiated referral of abuse or neglect.

If sending a written request, the FRS (or assigned worker) must include in the request the reason that the information is being requested, that a CPS history may result in denial of a license

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

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or approval, and information regarding the appeal process if there is CPS history which the applicant wishes to appeal.

If making an inquiry by telephone, the FRS (or assigned worker) must ask for the appeal process information and must document the CPS information and the appeal process information in TEXT associated with PRPD.

If the applicant wishes to appeal, licensing or approval action should be deferred until the appeal process has ended and the results have been provided by the other state to this department.

### Documentation of Protective Service Background Check

**NPS = No Protective Service History.** A protective services record check has been completed and no protective service history exists.

**YPS = Yes Protective Service History.** A protective service record check has been completed which revealed a protective service history.

If there is existing protective services history, the code entry would be YPS (Yes Protective Services History) even if the applicant will be approved. In any case, the rationale for recommending approval or denial of the application should be clearly documented in TEXT associated with PRPD and addressed in the written assessment completed on the applicant.

### References

Mont. Code Ann. §52-2-622  
 Mont. Code Ann. §42-2-203  
 Admin. R. Mont. 37.97.115(10)(g)  
 Admin. R. Mont. 37.97.132  
 Admin. R. Mont. 37.97.125

## Child and Family Services Licensing Policy Manual: Kinship Foster Care Licensing Procedure

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### Definitions

A **kinship care home** is an unlicensed home in which substitute care may be provided to children placed by the department when such care is provided by:

- a member of the child's extended family;
- a member of the child's or family's tribe;
- the child's godparents;
- the child's stepparents; or
- by a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.

A **kinship foster home** is a licensed youth foster home, in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren or wards.

The care may be provided by:

- a member of the child's extended family;
- a member of the child's or family's tribe;
- the child's godparents;
- the child's stepparents **if the child is placed with the stepparent by the department**; or
- a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.

### Philosophy of Kinship Care

The department must give preference to the use of kinship caregivers when placement with kin is in the best interests of the child and the caregiver's home meets the requirements for the type of care the kin wishes to provide. Kinship care is intended to:

## Child and Family Services Licensing Policy Manual: Kinship Foster Care Licensing Procedure

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- preserve the continuity of family relationships and connections for children;
- minimize the loss of family;
- reduce the trauma of placement;
- provide permanency for children within their families; and
- financially support families so they can protect and nurture their children.

The licensing assessment process is intended to reflect what is in the child's best interests regarding his or her emotional security and physical safety.

### **Non-Licensed Kinship Care**

A kinship family is not required to become licensed. If the kinship family chooses not to become licensed, the family may be approved for placement following the process outlined in the CFSD manual, Section 402-4, Placement in Kinship Care Home.

### **Kinship Care Agreement**

The CSW and the kinship care provider must complete a kinship care agreement whether or not the family wishes to become licensed. The signed agreement must be provided to the FRS at the time the referral for licensure is made. A sample kinship care agreement is in section 402-4, Placement in a Kinship Care Home.

### **Requests for Licensure or Approval of a Kinship Home**

A referral to assess a home for a kinship license, approval to adopt or approval as a prospective guardian should be made by the social worker to the FRS within three days of the family's expression of interest.

A prospective kinship family must follow the same application process as any other applicant who applies to become licensed or approved.

Kinship families who wish to become licensed for foster care or approved for adoption or guardianship must meet the same requirements as any other applicant. However, exceptions to specific requirements may be made when the exception does

## Child and Family Services Licensing Policy Manual: Kinship Foster Care Licensing Procedure

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not pose a threat to the health or safety of the child to be placed in the kinship home and the exception is allowed by rule and has been approved by the Regional Administrator or designee.

### Assessment

In addition to the issues identified in section 702-1, Initial Inquiry and Application, issues that should be addressed by the FRS during the home consultation with the family include

- the nature and quality of the relationship between the child and the prospective kinship provider;
- the ability and desire of the prospective kinship provider to protect the child from further abuse or neglect and any family dynamics in the home related to the abuse or neglect of the child;
- the safety of the home and the ability of the prospective kinship provider to provide a nurturing environment for the child;
- the nature and quality of the relationship between the child and the prospective kinship provider;
- the willingness of the kinship family to accept the child into their home;
- the ability of the prospective kinship provider to meet the developmental needs of the child;
- the nature and quality of the relationship between the birth parents and the prospective kinship provider, including the birth parent's preferences about placement of the child with kin;
- the prospective kinship provider's ability and willingness to cooperate with CFSD; and
- the existing support system of the prospective kinship family.

If available, kinship providers should be given contact information regarding kinship care support groups

## Child and Family Services Licensing Policy Manual: Kinship Foster Care Licensing Procedure

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### **CAPS**

A kinship care license is restricted to a specific child or children. The license type code used for a kinship provider is **KIN**.

If the kinship family wishes to provide care to children who are not kin, a regular foster home license should be issued (YFH).

### **References**

Mont. Code Ann. §41-3-101  
Mont. Code Ann. §52-2-602

## Child and Family Services Licensing Policy Manual: Specialized Foster Care Licensing Procedure

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### Definitions

A specialized foster home is a youth foster home that is providing care to children with problems that cannot be adequately addressed through regular foster care.

Specialized foster care may be used to bridge the transition of a child with special needs from a higher level of care back into the community, or to prevent placement in a higher level of care

A professional support person is a person who has experience and training related to the type of medical problem for which the specialized foster parents are expected to provide care. The professional support person is available to consult with the foster parents on specific concerns.

### Number of Children Per Home

A specialized foster home may not be licensed for more than one child without prior approval of the regional administrator.

### Eligible Children

A child who requires specialized foster includes a child who has:

- a medical condition making the child non-ambulatory;
- a colostomy or feeding tube;
- severe or profound mental retardation;
- a terminal illness;
- cancer;
- blood disorders;
- multiple handicaps;
- burns;
- serious emotional disturbance;
- HIV or AIDS;
- been exposed to drugs or alcohol and exhibits moderate to severe symptoms;
- been diagnosed with fetal alcohol syndrome or effect and exhibits moderate to severe symptoms;

## Child and Family Services Licensing Policy Manual: Specialized Foster Care Licensing Procedure

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- other severe physical or mental health problems, but whose needs are more appropriately met in a family setting; or
- a child who is receiving prescribed physical therapy.

The child's social worker will determine if the child's needs require specialized foster care.

**Licensing process** Once the regional administrator has provided written approval of the specialized foster care plan for the child, the child's social worker shall work with the FRS to determine the ability of the prospective specialized foster family to meet the needs of the child, or to request assistance in identifying a family able to meet the child's needs.

When an FRS determines that a foster home is able to meet the child's special needs, the recommendation for approval as a specialized foster home is submitted to the FRS supervisor. The FRS supervisor will approve or deny the specialized foster home license.

**CAPS** The FRS should notify the placing worker when the specialized license has been approved. **The specialized license must be approved before the worker will be able to enter the specialized foster care service on SERP.**

**Intensive Training and Supervision** In addition to meeting the training requirements for a family foster home license, the specialized foster parents must have a demonstrated ability to meet the specific needs of the child or receive pre-service training on the special problem area.

**CAPS** The training must be approved by the FRS and will be recorded in the same manner as regular foster parent training on PRTD (Provider Training Detail).

**Payment**  
**CAPS** The specialized foster care rate will be paid only for those children named on the license specifically identified as requiring specialized foster care. Payment will be entered on SERP, using service code PSFPC.

If a child in specialized foster care needs hospitalization, the foster parents may continue to receive payment for up to one month or longer with the approval of the regional administrator. During the child's hospitalization, the foster parent is expected

**Child and Family Services Licensing Policy Manual: Specialized Foster Care  
Licensing Procedure**

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to continue regular contact with the child, such as visitation in the hospital.

**References**

Admin. R. Mont.37.50.310-320

**Child and Family Services Licensing Manual:  
Guardianship Home Assessment**

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**Definitions**      A legal guardian is a person who has qualified as a caretaker of a child in the custody of the department pursuant to court appointment.

A person qualifies as a prospective guardian by having a positive guardianship home assessment recommending that they become the legal guardian for a child or children who have lived with the prospective guardian for at least six months.

A legal guardianship is a judicially created relationship between a child and a caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the child, custody of the child and decision making.

**Application**

A guardianship family is a resource family in which the adult(s) in the home have been approved to become legal guardians for a child or children in the custody of the department who has or have lived with the prospective guardian for at least six month. The prospective guardian must complete a DPHHS-CFS-090(A) Resource Family Application and Profile (Part I) to initiate the guardianship assessment process.

Licensed Foster  
Parent Applicants

If the prospective guardian is a licensed foster parent, there are no other forms that must be completed by the applicant.

Non-licensed  
Applicants

If the prospective guardian is **not** a licensed foster parent, he/she must submit a completed application packet including:

- the DPHHS-CFS-090(A) Part I and (B) Parts II-V (as appropriate) Resource Family Application and Profile;

**Child and Family Services Licensing Manual:  
Guardianship Home Assessment**

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- DPHHS-CFS-033 Personal Statement of Health for Licensure or Approval to Adopt for each member of the applicant's household;
- DPHHS- CFS-033A Licensed Care Provider Medical Report, if required;
- immunization information if required;
- DPHHS-CFS-LIC-018 Release of Information for applicant and adult member of the household;
- satisfactory criminal, protective service and Montana motor vehicle checks on all adult household members; and
- four satisfactory reference letters.

**Training**

A prospective guardian must participate in KCS training unless the regional administrator or designee approves a special exemption. The prospective guardian does not have to be kin to the child in order to receive an exemption from training.

**Guardianship Home Assessment**

At least one visit to the home of the prospective guardian for the express purpose of assessing the appropriateness of the family to become the legal custodian of the child must be made **even when the family is already licensed as a foster family.**

During the home visit(s), the worker should explore with the prospective guardian(s) their reasons for wanting to become a guardian for a particular child or children, their understanding of the rights and responsibilities of a guardian, their willingness to make a permanent commitment to the child, other permanency options available to the child and the advantages and disadvantages of becoming a guardian.

In addition, the following should be addressed:

**Child and Family Services Licensing Manual:  
Guardianship Home Assessment**

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- review of application documents;
- any concerns or questions the applicant has regarding their role as a guardian;
- a discussion of the family's strengths and needs relative to providing a permanent home for the specific child or children including a consideration of the physical space in the home and the needs/abilities of family members;
- review of parenting attitudes and beliefs in relation to the needs/abilities of the specific child or children for whom the applicant wishes to become a guardian including acceptance of the child's cultural, racial and religious heritage and their knowledge of the child's history including placement and loss history and the potential effect on the child's development and future functioning; and
- review of child behavior and discipline.

**Written  
Assessment**

A written assessment of the prospective guardian and home of the prospective guardian, which meets the requirements of Mont. Admin R. 37.50.1101, must be completed. The assessment must include a statement that the prospective guardian and home of the prospective guardian meets the youth foster home requirements contained in ARM 37.97.1001, 37.97.1002; 37.97.1006, 37.97.1011, 37.97.1014, 37.97.1014, 37.97.1016, 37.97.1018 and 37.97.1019.

The worker conducting the assessment should utilize the DPHHS-CFS-013 Guardianship Home Assessment Guide when conducting the assessment. This guide contains the text of the rules referenced above.

The assessment must include a determination that the prospective guardian is appropriate to become the legal custodian for the specific child or children. Factors to be

**Child and Family Services Licensing Manual:  
Guardianship Home Assessment**

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considered in determining the appropriateness of the proposed guardian which should be addressed in the assessment include:

- acceptance of the child's cultural, racial and religious heritage;
- knowledge of the child's history, including placement and loss history and the potential effect on the child's development and future functioning;
- understanding and acceptance of the continued role of the child's birth family;
- understanding and acceptance of the powers and duties of a guardian; and
- the desire of the prospective guardian to become the child's guardian.

**Written  
Assessment  
CAPS**

The FRS must complete the FASD screen and a written assessment of the applicant(s) and guardianship home, including a recommendation regarding approval or denial of the guardianship application.

The guardianship home must be entered in CAPS as a licensed facility using the appropriate facility type code. CFSD staff will use either:

GKS Guardian Kinship  
GNK Guardian Non-Kinship

for all guardianship homes approved by the department.

Tribal staff will use either:

TGK Tribal Guardian Kinship

**Child and Family Services Licensing Manual:  
Guardianship Home Assessment**

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TGN Tribal Guardian Non-Kinship

when entering guardianship information on a prospective guardian who intends to become the guardian for a child or children participating in the IV-E Demonstration Project.

**Guardianship  
Home  
Approval/Denial**

The guardianship subsidy service code of PGUAR must be entered on FSPL if a subsidy is to be provided.

The FRS sends a hard copy application and supporting documentation to the FRS supervisor. The FRS supervisor reviews the application and supporting documentation, along with the information that has been entered in CAPS, including the assessment and recommendation. The FRS supervisor approves or denies the application in CAPS.

**Notification to  
Applicant  
Re-Assessment**

The FRS or FRS supervisor notifies the applicants in writing of the approval or denial of the application for guardianship.

If guardianship for children for whom a guardianship assessment was completed is not established within one year of the approval of the guardianship assessment, an addendum to the assessment must be completed. The addendum should address the reasons why the guardianship has not been completed, whether the requirements for guardianship are still being met, and a recommendation as to continued approval or denial of the guardianship application.

The reassessment should be sent to the FRS supervisor following the same process as is required for an initial assessment.

**A guardianship assessment or re-assessment is only valid for the specific child or children identified on the application. If a person wishes to become a guardian for additional children, a new application and assessment must be completed.**

**Child and Family Services Licensing Manual:  
Guardianship Home Assessment**

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**References**

Mont. Code Ann. ' 41-3-401  
Mont. Code Ann. ' 41-3-406  
Mont. Code Ann. ' 41-3-421  
Mont. Code Ann. ' 41-3-444  
Mont. Code Ann. ' 41-3-607  
Mont. Code Ann. ' 72-5-231  
Mont. Admin. R. 37.50.1101

## Child and Family Services Licensing Policy Manual: Therapeutic Foster Care Licensing Procedure

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### Definition

A therapeutic foster home is a licensed foster home which, in addition to meeting all of the licensing requirements for a regular foster home, must meet additional requirements found in Admin. R. Mont 37.37.310. A provisional license may not be issued to a therapeutic foster home at the time of initial licensing.

Therapeutic foster parents, in addition to the usual family foster parent responsibilities, implement treatment strategies and provide treatment interventions under the supervision of the clinical director of the Therapeutic Foster Home Program (TFHP) with which they are associated.

Therapeutic foster homes are recruited and trained by staff of the TFHP. Staff of a TFHP completes the licensing study. The FRS supervisor approves or denies the licensing application of the therapeutic foster home applicant based on the review of the licensing material submitted by the TFHP and the recommendation by the TFHP.

**Note:** In addition to the individual licenses that are issued to each therapeutic foster home operating under a TFHP, the TFHP must be licensed as a Child Placing Agency.

### Intensive Training and Supervision

Therapeutic foster parents are expected to receive intensive training, supervision, consultation and support services from the staff of the TFHP to enable them to provide appropriate care and treatment for children whose problems cannot be addressed through regular foster care services.

In addition to the meeting the initial and annual training requirements for a regular foster home found in Admin. R. Mont. 37.97.1019, the therapeutic foster parents must receive a minimum of 15 hours of additional training annually, for a total of 30 hours of annual training. The additional 15 hours of training must be directly related to:

- the special needs of youth with emotional disturbances receiving treatment for their emotional disturbances in a treatment family environment; and
- the use of non-physical means of controlling youth to assure the safety and protection of youth and others.

## Child and Family Services Licensing Policy Manual: Therapeutic Foster Care Licensing Procedure

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<b>Restrictions</b>	<p>Therapeutic foster homes may only care for a maximum of two children who are receiving therapeutic services. Placement of the second child in the therapeutic foster home requires a written approval process that includes a sign-off by the appropriate FRS or FRS supervisor. (See sections 406-2 and 406-3 of the Children's Services Policy Manual for additional information.)</p> <p>If a second placement is approved, the license will be increased to cover the care of two children. The approval is "child specific." When that child leaves the home, additional children cannot be served without a new "child specific" approval.</p>
<b>Dual Licenses</b>	<p>Youth not approved for therapeutic foster care may be placed in a therapeutic foster home which has a youth approved for therapeutic care when doing so:</p> <ul style="list-style-type: none"><li>• will maintain an intact sibling group;</li><li>• will maintain a parent-child relationship when the parent is a youth who has been approved for therapeutic care; or</li><li>• disruption of a child already placed in the foster home would place that youth at risk of medical treatment in a more restrictive environment.</li></ul>
<b>CAPS</b>	<p>A therapeutic foster home must be issued a license under a license number issued to the individual provider not under the license number of the Therapeutic Foster Home Program with which they are affiliated.</p>
<b>References</b>	<p>Mont. Code Ann. §41-3-101 Mont. Code Ann. §52-2-602 Admin. R. Mont. 37.37.301 - 37.37.336 Admin. R.Mont.37.97.1001-37.97.1019</p>

## Child and Family Services Licensing Policy Manual: Youth Foster Care Foster Home Relicensing Assessment

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### Introduction

A relicensing assessment is conducted annually to evaluate whether the applicant has provided acceptable care for children in accordance with department licensing requirements.

The re-licensing assessment process should include:

- DPHHS-CFS-LIC 021, Foster Parent Reapplication and Relicensing Questionnaire includes the foster parent training record. Family foster homes are required to obtain 15 hours of training annually;
- documentation of an annual name based criminal record check;
- DPHHS-CFS-033, Personal Statement of Health completed on all members of the household;
- Completed DPHHS-CFS-033a's Licensed Care Provider Medical Record as determined necessary;
- input from the foster family, including all household members, obtained during a family consultation, usually conducted in the applicant's home;
- input from the placing worker(s) and/or supervisors either verbally or through their completion of the DPHHS-DFS-LIC 022, Placing Worker Evaluation of Foster Home;
- DPHHS-CFS-LIC 020, Foster Home Licensing/ Relicensing Agreement completed and signed by the applicant(s) and the Family Resource Specialist;
- DPHHS-DCFS-LIC 019, Foster Family Relicensing Summary, which is completed by the licensing worker with input from the foster family, including recommendations regarding the applicants continued licensure;
- documentation that a satisfactory CPS, APS and Criminal Records check has been completed on any new adult member(s) of the household.

### FASD: Written Assessment

The content of the DPHHS-DFS-LIC 019 should be attached to TEXT associated with FASD.

## Child and Family Services Licensing Policy Manual: Youth Foster Care Foster Home Relicensing Assessment

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### Incomplete Application

If the Family Resource Specialist (FRS) determines that the application packet or accompanying information is incomplete or erroneous, the FRS notifies the applicant of the specific deficiencies or errors in writing. The applicant shall submit the required or corrected information within 60 days. The department shall issue a license or renew a regular license upon receipt of all required or corrected information.

If there are children in the foster home, a provisional license should be issued pending compliance with all licensing requirements. A regular license can only be backdated to the date the applicant met **all** of the licensing requirements.

### Licensing Authority

The FRS supervisor is the department's licensing authority in his or her region. The supervisor is responsible for designating which FRS is to conduct a particular licensing assessment. The FRS sends the hard copy application, and hard copy evaluation materials to the supervisor. The supervisor reviews the material and documentation and recommendations entered into CAPS and either approves or denies the application.

### License DOC GEN

To issue a license the FRS must complete FALD in CAPS. If the recommendation is for licensure and the license is approved, a DOC GEN: Provider License, is generated from FALD and signed by the FRS's CSWS.

If a provider is issued a provisional license, at the point the provider meets all of the licensing requirements, the provider should be issued a regular license, effective for one year from the date of issuance.

### Negative License Action

Refer to Policy Section 802-10.

### References

Mont. Code Ann. §§41-3-1141 through 41-3-1143  
Admin. R. Mont. 37.97.106  
Admin. R. Mont. 37.97.110  
Admin. R. Mont. 37.19.115  
Admin. R. Mont. 37.97.1001 through 37.97.1019

## Child and Family Services Licensing Policy Manual: Youth Foster Care Foster Home Incidents

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### Introduction

Foster parents must be able to show evidence of their ability to work with children without recourse to physical punishment or psychological abuse and must be positive in their approach to discipline.

The Family Resource Specialist (FRS) makes the initial determination of the family's capacity to meet the above noted requirement through his or her assessment of the family's participation in pre-service training and through interviews conducted with the family in the course of the home consultation.

Opportunities for ongoing assessment and support for the foster family may include the provision of training opportunities including pre-service training, family participation in local support groups or membership in the Montana State Foster Adoptive Parent Association (MSFAPA), social worker contacts conducted as a part of "Foster Home Supervision" (Child and Family Services Policy Section 303-5) and the annual licensing assessment.

### Foster Home Report of Incident

As cited in [ARM 37.97.1011\(10\), Discipline](#), in the event that a foster parent is involved in physical punishment of a foster child, the foster family shall report the incident to the placing agency and to the FRS. A written report should be completed utilizing the DPHHS-DFS-LIC-067

The FRS should advise the foster family applicant at the time of licensure and relicensure that any such reports should be made by phone to the local Child and Family Services office within 24 hours of the incident. The CFS staff that receives the report is responsible for assuring that both the Family Resource Specialist responsible for foster home licensing and the placing worker are notified of any such reports.

### CAPS completion of RRD1 Serious Incident

When the department receives a report, it should be entered on the CAPS system. If the report received involves CPS issues or a "serious incident", it must be called into Centralized Intake. A "serious incident" includes a suicide attempt by a foster child, excessive physical force by a foster parent or facility staff, sexual assault by another youth, foster parent or facility staff, injury to a child which requires hospitalization, or the death of a child in the foster home or facility.

## Child and Family Services Licensing Policy Manual: Youth Foster Care Foster Home Incidents

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The worker calling in the report should provide the CI worker with the information, including the CAPS provider ID number and any CAPS ID numbers of persons involved. The CI worker will then enter the report as a CPS category.

If the report received involves a licensing violation, it should be entered on the RRRL screens as a LIC category. The worker entering the report will need to include the CAPS provider ID number and CAPS ID numbers of persons involved.

Following these procedures will alert the FRS responsible for licensing the home and any CPS workers with youth in the home.

### **DPHHS-DFS-067 Investigation of Incident in Foster Home**

The DPHHS-DFS-067, Incident Report, should be completed and returned to the local CFSD office by the foster parent(s). If reasonable (per age and mental capacity), the child(ren) involved in the incident may be requested to complete an incident report separate from the foster parent(s). A hard copy of the incident report(s) must be retained in the foster family's licensing file.

Upon receipt of the foster parent's report, the FRS and the CSW should notify their respective supervisors of the incident. The CPS and FRS supervisors shall make a determination regarding the appropriate response.

Note: See section 202-5 of the Children's Services Policy Manual for report and investigation protocol for reports of abuse in out of home care.

Any license investigation summary reports and recommended license status changes that are a result of this incident should be attached to text associated with FASD (Facility Assessment Detail) in CAPS.

### **Determination of Licensing Action**

Upon making a determination regarding licensing action, a follow-up letter should be sent to the foster family advising them as to the status of the investigation and the status of their license. If it is recommended that a negative licensing action be taken, the FRS should follow the protocol set forth in CFS Licensing Manual Section 802-10.

**Child and Family Services Licensing Policy Manual: Youth Foster Care  
Foster Home Incidents**

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**Reference**

Admin. R. Mont. 37.97.1011(10)

Admin. R. Mont. 37.97.130(5)

## Child and Family Services Licensing Policy Manual: Youth Foster Home Adverse Licensing Action

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### Adverse Action

The department, after written notification to the applicant or licensee, may **deny, suspend, restrict, revoke or reduce to provisional status**, a license upon finding that the youth foster home:

- is not in compliance with fire safety standards (license must be suspended or revoked); or
- is not in substantial compliance with any licensing requirements established by rule; or
- has made misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility; or
- has failed to use the foster care payments for the support of the foster child(ren); or
- has been named as the perpetrator in a substantiated report of abuse or neglect; or
- has failed to report an incident of abuse or neglect to the department or its local affiliate as required by §41-3-201, Mont. Code Ann.; or
- anyone living in the household may pose any risk or threat to the safety or welfare of any youth placed in the home.

### Written Notice

Prior to notifying a foster home of adverse licensing action, the FRS must consult with his or her supervisor. Whenever an adverse licensing action is taken against a youth foster home, the licensing worker must send written notice to the home including:

- a statement of the proposed adverse action;
- the date the proposed adverse action shall become effective;
- the reason for the proposed adverse action;
- the specific regulations supporting the proposed adverse action;

**Child and Family Services Licensing Policy Manual: Youth Foster Home  
Adverse Licensing Action**

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- an explanation of the claimant's right to a hearing;
- how to obtain a hearing;
- a telephone number to call for additional information; and
- the right to be represented by legal counsel, friend, relative, or other spokesperson.

If the rationale to the proposed adverse action includes a history of licensing violations from previous incidents, those incidents and the corresponding rules must be cited to the licensee/applicant in the letter of notification.

**Hearing Request**

A foster parent or applicant to become a foster parent who is dissatisfied with the department's adverse licensing action must request a hearing as provided in Mont. Admin. R. 37.5.307 within 30 days of receipt of a certified letter notifying the person or provider of denial, suspension or revocation of his or her license.

**Fair Hearing Procedure**

The hearing officer assigned to the case will schedule the fair hearing and notify the parties of the date and time set for the hearing. Notification will be sent by certified mail at least 10 days prior to the scheduled hearing. The hearing will be held by telephone conference unless one of the parties specifically requests an in-person hearing.

Detailed information regarding the hearing procedure may be found in Mont. Admin. R. 37.5.325 and detailed information regarding the powers and duties of a hearing officer are found in Mont. Admin. R. 37.5.322.

**Settlement Conference**

A formal administrative review process is no longer a part of the fair hearing process in cases involving adverse licensing action. However, a case may still be settled prior to a fair hearing through the use of a settlement conference.

A settlement conference, as it applies to adverse licensing action, is a meeting or meetings between department representatives and the party against whom the adverse action was taken. A settlement conference is held with the intention of resolving the adverse action in a manner that is acceptable to both parties. A settlement may be reached at any time following

## Child and Family Services Licensing Policy Manual: Youth Foster Home Adverse Licensing Action

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notice of adverse licensing action (including following the fair hearing) up till the issuance of a proposal for decision by a hearings officer.

Following review of the specifics of a case, the FRS supervisor and regional administrator will decide if a settlement conference is appropriate. Along with the FRS, they may want to identify possible settlement terms prior to the actual settlement conference. The supervisor and/or regional administrator will determine the place and time of the conference and who from the department should attend.

Department representatives at a settlement conference will include the FRS and/or FRSS, and may include other social worker staff, regional administrator or department attorney. In addition to the aggrieved party, the settlement conference may include representatives of the aggrieved party, including his/her attorney.

If successful resolution of the adverse action is reached during a settlement conference, a written document that can be signed by all parties must be drafted. The document must spell out the terms of the agreement reached by the parties, and **must** include a statement that the aggrieved party agrees to withdraw their request for a fair hearing.

**The regional administrator has final approval authority of the settlement agreement for the department, whether or not he/she participated in the actual settlement conference(s). The regional administrator's signature on the settlement agreement is required on all settlement agreements unless the regional administrator has designated this authority to the FRSS.**

### Proposal for Decision

The proposal for decision is the formal document issued by a hearing officer following a fair hearing. The proposal for decision consists of proposed findings of fact, proposed conclusions of law and a recommended order. It also includes a statement of a party's right to appeal. If either party within the required time frames does not appeal the proposal for decision, it is the final agency decision.

### Appeal Process Department Director

The party whose position was not upheld may appeal the proposal for decision issued by a hearings officer to the department director. If the department's position was not

## Child and Family Services Licensing Policy Manual: Youth Foster Home Adverse Licensing Action

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upheld, and an appeal is planned, approval from the regional administrator **must** be obtained before proceeding with an appeal.

A notice of appeal must be made in writing to the department director and sent to:

Gail Gray, Director  
DPHHS  
111 N. Sanders  
P.O. Box 4210  
Helena, MT 59604-4210

The director must receive the appeal within 15 days of the mailing of the proposal for decision. The 15 day time limit can be extended if good cause for the delay can be shown, up to a maximum of 45 days.

If a request is received within the specified time period, the director (or the director's designee) will review the proposal for decision, the exceptions filed, briefs and oral arguments presented and the record of the hearing.

### **Judicial Appeal**

The director, or director's designee, will notify the parties of the decision and also of the right to pursue the appeal to district court.

Within 30 days of the decision of the director or director's designee, a party may request judicial review in district court. The court will only review what constitutes the hearing record.

It is unlikely that judicial review will be pursued by the department when the decision of the director or director's designee uphold the proposal for decision made by a hearings officer. In any case, approval must be obtained from the division administrator and the legal unit before appealing to district court.

### **References**

Mont. Code Ann. §41-3-201  
Mont. Admin. R.37.97.115  
Mont. Admin. R. 37.97.118  
Mont. Admin. R. 37.5.307

## Child and Family Services Licensing Policy Manual: Child Placing Agency Licensing and Relicensing

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- Introduction** A Child Placing Agency is an agency licensed by the state of Montana pursuant to Title 52, chapter 8 that is expressly empowered to place children as a preliminary to adoption.
- It is a misdemeanor to maintain, operate or assist in maintaining or operating a Child Placing Agency in Montana without obtaining a license. The **Child Placing Agency Licensing Requirements** booklet contains licensing requirements. Copies of the booklet are available from the local Child and Family Services licensing office or DPHHS Internal Support Division.
- The Family Resource Specialist shall provide a copy of the licensing requirements to the prospective licensee and should also make an effort to assure that licensed agencies are provided a copy of all booklet updates.**
- Child Placing Agency Licensing Evaluation** Licensing evaluations of a Child Placing Agency are conducted on an annual basis to ensure that each provider is in compliance with licensing requirements.
- Documentation** The initial and annual licensing assessment should include:
- DPHHS-CFS-015 Application;
  - DPHHS-CFS-033 Personal Statement of Health (one for the director and each staff member);
  - DPHHS-CFS-033A Licensed Care Provider Medical Report (as requested by the department pursuant to health problems reported by the applicant or staff member on the DFS-033 or by another source;
  - Assurance that no persons hired by the agency pose any potential threat to the health, welfare or safety of the children placed by or in care of the agency;
  - completed DPHHS-LIC 70 Licensing/Relicensing report form;
  - annual budget; and
  - annual audit of expenditures.

## Child and Family Services Licensing Policy Manual: Child Placing Agency Licensing and Relicensing

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### **Conducting the Assessment**

An opening interview should be conducted with the Executive Director and/or the Placement Supervisor of the Child Placing Agency. The meeting should include discussion about any current or foreseeable changes in the administrative structure, policy, program and procedures.

The program is assessed using the DPHHS-LIC 70 as a guide.

### **Final Assessment and Recommendation**

A written assessment should accompany the application and DPHHS-CFS-070 submitted to the FRS supervisor for the purpose of licensing or relicensing the Child Placing Agency. The assessment should be attached to TEXT associated with FASD. The 'MISSING REQUIREMENTS': FIELD should be completed for any provider who is not in full compliance with any licensing requirement.

The complete licensing packet is submitted to the FRS's CSWS who has the authority to approve or deny the license recommendations.

### **License DOC GEN**

To issue a license the FRS must complete FALD in CAPS. If the recommendation is for licensure and the license is approved, a DOC GEN: Provider License, is generated from FALD and signed by the FRS supervisor.

Copies of all correspondence directed to the Program Supervisor should be copied to the Executive Director and/or the Chairperson of the Board of Directors of the placing agency. Both the Executive Director and the Board of Directors should be apprised of licensing status determination.

Either of the following two methods may be used to communicate the status to the Executive Director and the Program Supervisor:

- Send a new or re-issued license attached to a cover letter accompanied by copies of the licensing assessment; or
- Send the new or re-issued license attached to a letter that addresses all agency improvements and licensing concerns.

**Regardless of which format is used, expected dates for**

## Child and Family Services Licensing Policy Manual: Child Placing Agency Licensing and Relicensing

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**correction of cited deficiencies must be addressed in the correspondence as well as the means by which the FRS will verify any noted corrections.**

### **Negative License Action**

The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to a provisional status a license upon finding that the agency:

- is not in substantial compliance with licensing requirements established by rule;
- has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility; or
- the agency or a member or its staff have been named as a perpetrator in a substantiated report of child abuse or neglect.

### **Written Notice**

Prior to notifying a child placing agency of adverse licensing action, the FRS must consult with his or her supervisor. Whenever an adverse licensing action is taken against a child placing agency, the licensing worker must send written notice to the agency including:

- a statement of the proposed adverse action;
- the date the proposed adverse action shall become effective;
- the reason for the proposed adverse action;
- the specific regulations supporting the proposed adverse action;
- an explanation of the claimant's right to a hearing;
- how to obtain a hearing;
- a telephone number to call for additional information; and
- the right to be represented by legal counsel, friend, relative, or other spokesperson.

## Child and Family Services Licensing Policy Manual: Child Placing Agency Licensing and Relicensing

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If the rationale to the proposed adverse action includes a history of licensing violations from previous incidents, those incidents and the corresponding rules must be cited to the licensee/ applicant in the letter of notification.

### Hearing Request

A licensed child placing agency or an applicant to become a child placing agency who is dissatisfied with the department's adverse licensing action must request a hearing as provided in Mont. Admin. R. 37.5.307 within 30 days of receipt of a certified letter notifying the person or provider of denial, suspension or revocation of his or her license.

Refer to section 802-10 Adverse Action, for information regarding the fair hearing process.

### References

Mont. Code Ann. §52-8-101 through 52-8-108  
Mont. Admin. R.37.93.210  
Mont. Admin. R. 37.5.307

**FLOW FOR ADDING REPORT, PERSONS, RELATIONSHIPS:**

RRRL - REPORT/REQUEST LIST

|

RRD1 - REPORT/REQUEST DETAIL 1

|

RRD2 - REPORT/REQUEST DETAIL 2

|

(RRD3 - REPORT/REQUEST DETAIL 3)

|

F12 ON CAPS ID

|

PERS - PERSON SEARCH

|

PERL - PERSON LIST

|

PERD - PERSON DETAIL (CAN ADD MULTIPLES WITH THE SAME LAST NAME)

|

SHIFT + F9 (RETURN PERSON TO RRD2)

|

F10 - WITH PRIMARY AND RELATIONS SELECTED

|

RELL - RELATIONSHIP LIST (CHG REL CODE TO MATCH REL FOR PERSON)

|

ENTER TAKES YOU BACK TO RRD2 AND YOU CAN F10 AGAIN

**FLOW TO ADD PERSON/CLIENT INFORMATION:**

PERS - PERSON SEARCH  
|  
PERL - PERSON LIST  
|  
PERD - PERSON DETAIL  
|  
RELL - RELATIONSHIP LIST  
|  
RELD - RELATIONSHIP DETAIL  
|  
ADDL - ADDRESS LIST  
|  
ADDD - ADDRESS DETAIL - F10 COPY ADDRESSES TO REL  
|  
AXED - ASSIGNMENT/TRANSFER  
|  
CLID - CLIENT DETAIL  
|  
AKAD - PERSON NAME AKA DETAIL  
|  
EMPL - EMPLOYMENT LIST  
|  
EDHL - EDUCATION HISTORY LIST

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FINL	SPND	MEDS	ICWD
FINANCIAL	SPECIAL	MEDICAL	ICWA
LIST	NEEDS	SUMMARY	DETAIL
FIND			
FINANCIAL			
DETAIL			
	MDTD	MMHD	
	MEDICATION	MEDICAL/MENTAL	
	DETAIL	HEALTH DETAIL	

**SERVICES**

**TO PLACE A CLIENT PERFORM THE FOLLOWING FLOW:**

PERS - PERSON SEARCH

|

PERL - PERSON LIST

|

PERD - PERSON DETAIL

|

AXED - ASSIGN PERSON

|

CLID - CLIENT DETAIL (SEE ABOVE IN PERSON FOR CLIENT TYPES)

|

IARL - INITIAL ASSESMENT LIST

|

IARD - INITIAL ASSESMENT DETAIL

|

SERL - SERVICES LIST

|

SERN - SERVICES NON-PAYABLE (SERVICE CODE = SEMRM)

|

CREI/AREI - CPS REMOVAL/APS REMOVAL

|

CRTL - COURT LIST

|

CRTD - COURT DETAIL (FOR DFS CUSTODY)

|

CPHL - PLACEMENT HISTORY

|

PLAD - PLACEMENT DETAIL

|

SERL - SERVICES LIST

|

SERP - SERVICES PAYABLE - ENTER LOTS OF SERVICES

|

-----SSJD - SPECIAL SERVICES JUSTIFICATION DETAIL

Additional Information screens

PROB - PROBLEM DETAIL

|

TASK - TASK DETAIL

|  
LINK - PROBLEM/TASK LINK

**ENTER THE FOLLOWING FOR BUILDING SKILLS FOR ADULTHOOD:**

SERL - SERVICE LIST

|  
SERN - SERVICES - NON-PAYABLE (SERVICE CODE - SBSAA)

|  
SERN - SERVICES - NON-PAYABLE (SERVICE CODE - SBSAP)

|  
BSAS - BUILDING SKILLS PLAN SUMMARY

|  
SHIFT + F1

|  
BSAE - BUILDING SKILLS EVALUATION

**FLOW FOR CLIENT BASED INVOICED SERVICES:**

SERL - SERVICE LIST

|

SERP - SERVICES (PAYABLE) OR 3830 WARRANT PROCESSING IF NOT 1ST TIME

|

3810 - BATCH FOR CLIENT BASED SERVICES INVOICING (*process that sends the invoice to the provider*)

|

CBPD - CLIENT BASED PAYMENT DETAIL, (*Central Office uses when invoice is returned*)

|

PAYA - PAYMENT APPROVAL LIST

|

CBPL - CLIENT BASED PAYMENT LIST

|

3830 - BATCH WARRANT PROCESSING (*CREATES FILES FOR SBAS & SAWWS*)

|

3832 - BATCH WARRANT NUMBER UPDATE (*WARRANT #S CREATED BY SAWWS*)

|

3833 - WARRANT STATUS UPDATE (*CASHED, STOP PAYMENT, ETC....*)

**FLOW FOR NON-INVOICED CLIENT BASED PAYMENTS:**

SERL - SERVICE LIST

|

SERP - SERVICES (PAYABLE)

|

3815 - BATCH CLAIMS PROCESSING

|

PAYA - PAYMENT APPROVAL LIST

|

CBPL - CLIENT BASED PAYMENT LIST

|

3830 - BATCH WARRANT PROCESSING (CREATES FILES FOR SBAS & SAWWS)

|

3832 - BATCH WARRANT NUMBER UPDATE

|

3833 - BATCH WARRANT STATUS UPDATE (CASHED, STOP PAYMENTS, ETC...)

**FLOW FOR CLIENT BASED CONTRACT PAYMENTS:**

CONL - CONTRACT LIST

|

COND - CONTRACT DETAIL

|

CONA - CONTRACT APPROVAL

|

3815 - BATCH CLAIMS PROCESSING

|

COPD - CONTRACTED PAYMENT DETAIL

|

3830 - BATCH WARRANT PROCESSING (CREATES FILES FOR SBAS & SAWWS)

|

3832 - BATCH WARRANT NUMBER DATE

|

3833 - BATCH WARRANT STATUS UPDATE (CASHED, STOP PAYMENT, ETC.....)

**FLOW FOR NON-CLIENT BASED CONTRACT PAYMENTS:**

CONL - CONTRACT LIST

|

COND - CONTRACT DETAIL

|

CONA - CONTRACT APPROVAL

|

3820 - BATCH CONTRACTED SERVICES INVOICING

|

COPD - CONTRACTED PAYMENT DETAIL (ENTER INVOICES)

|

ALER - ALERTS (SENT TO APPROVER)

|

COPL - CONTRACTED PAYMENT LIST (APPROVE INVOICES)

|

3830 - BATCH WARRANT PROCESSING (CREATES FILES FOR SBAS & SAWWS)

|

3832 - BATCH WARRANT NUMBER DATE

|

3833 - BATCH WARRANT STATUS UPDATE (CASHED, STOP PAYMENT, ETC.....)

**FLOW FOR ONE-TIME SERVICES:**

SERL - SERVICES LIST

|

SERP - SERVICES (PAYABLE)

|

PAYA - PAYMENT APPROVAL LIST

|

CBPL - CLIENT BASED PAYMENTS LIST

|

3830 - BATCH WARRANT PROCESSING (CREATES FILES FOR SBAS & SAWWS)

|

3832 - BATCH WARRANT NUMBER DATE

|

3833 - BATCH WARRANT STATUS UPDATE (CASHED, STOP PAYMENT, ETC.....)

**FLOW FOR ADJUSTMENTS FOR CLIENT-BASED PAYMENT (FUNDING SOURCE):**

CBPL - CLIENT-BASED PAYMENT LIST OR PAYA - PAYMENT APPROVAL

|

CBPD - CLIENT-BASED PAYMENT DETAIL

|

PAFD - PAYMENT FUNDING DETAIL

|

PFAD - PAYMENT FUNDING ADJUSTMENT DETAIL

|

CBPD - CLIENT-BASED PAYMENT DETAIL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

**FLOW FOR ADJUSTMENTS FOR CLIENT-BASED PAYMENT (AMOUNT):**

CBPL - CLIENT-BASED PAYMENT LIST OR PAYA - PAYMENT APPROVAL

|

CBPD - CLIENT-BASED PAYMENT DETAIL

|

ADJD - ADJUSTMENTS DETAIL

|

CBPD - CLIENT-BASED PAYMENT DETAIL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

**FLOW FOR ADJUSTMENTS FOR CONTRACTED PAYMENT (FUNDING SOURCE):**

COPL - CONTRACTED PAYMENT LIST

|

COPD - CONTRACTED PAYMENT DETAIL

|

CPFDD - CONTRACTED PAYMENT FUNDING DETAIL

|

CFAD - CONTRACTED FUNDING ADJUSTMENTS DETAIL

|

COPD - CONTRACTED PAYMENT DETAIL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

**FLOW FOR ADJUSTMENTS FOR CONTRACTED PAYMENT (AMOUNT):**

COPL - CONTRACTED PAYMENT LIST

|

COPD - CONTRACTED PAYMENT DETAIL

|

ADJD - ADJUSTMENT DETAIL

|

COPD - CONTRACTED PAYMENT DETAIL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

**FLOW FOR ADJUSTMENTS FOR CONTRACTED PAYMENT (BUDGETS):**

COPL - CONTRACTED PAYMENT LIST

|

COPD - CONTRACTED PAYMENT DETAIL

|

CPBD - CONTRACTED PAYMENT BUDGET DETAIL

|

CBAD - CONTRACTED BUDGET ADJUSTMENTS DETAIL

|

COPD - CONTRACTED PAYMENT DETAIL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

**FLOW FOR TRUST ACCOUNTS INCOME ENTRY:**

TIDL - TRUST INCOME DOCUMENT LIST

|

TACL - TRUST ACCOUNT CHECK LIST

|

TACE - TRUST ACCOUNT CHECK ENTRY

## **FLOW FOR TRUST ACCOUNTS PLAN AND EXPENDITURE**

TAPL - TRUST ACCOUNT PLAN LIST

|

TAPD - TRUST ACCOUNT PLAN DETAIL

|

TAEL - TRUST ACCOUNT EXPENDITURE LIST

|

TAED - TRUST ACCOUNT EXPENDITURE DETAIL

|

3830 - BATCH WARRANT PROCESSING (CREATES FILES FOR SBAS & SAWWS)

|

3832 - BATCH WARRANT NUMBER DATE

|

3833 - BATCH WARRANT STATUS UPDATE (CASHED, STOP PAYMENT, ETC.....)

**FLOW FOR ADJUSTMENTS FOR TRUST ACCOUNT (AMOUNT):**

TAEL - TRUST ACCOUNT EXPENDITURE LIST

|

TAED - TRUST ACCOUNT EXPENDITURE DETAIL

|

ADJD - ADJUSTMENT DETAIL

|

TAED - TRUST ACCOUNT EXPENDITURE DTL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

**FLOW FOR ADJUSTMENTS FOR TRUST ACCOUNT (FUNDING SOURCE):**

TAEL - TRUST ACCOUNT EXPENDITURE LIST

|

TAED - TRUST ACCOUNT EXPENDITURE DETAIL

|

PAFD - CLIENT BASED PAYMENT DETAIL

|

PFAD - PAYMENT FUNDING ADJUSTMENT DETAIL

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TAED - TRUST ACCOUNT EXPENDITURE DTL (SHIFT + F1 TO BALANCE, RELEASE)

|

3830 - BATCH WARRANT PROCESSING

## CHILD SUPPORT ENFORCEMENT REFERRALS

**CAPS Alerts** (placement change or new placement)

? Financial specialist will receive an alert upon removal of the child. Financial specialist will review children in paid placements monthly (review children's cases 90 days after initial placement and every 6 six months thereafter).

? Financial specialist will receive an alert when IV-E has been determined and notify social worker to submit the child support referral.

### CAPS

Complete these screens prior to starting the flow below: For the parents/putative parents: PERD, ICWD, EMPL, ADDL, and MEDS. For the Child: SERL, RELL, ICWD, MEDS.

**SIID** (Searches Initial Inquiry Detail)

?

**CSED** (Child Support Enforcement Referral Detail)

?

**CSCD** (Child Support Child-In-Foster Care Detail)

?

**CSFD** (Child Support Father Detail)

?

**CSF2** (Child Support Father Detail 2)

?

**CSMD** (Child Support Mother Detail)

?

**CSM2** (Child Support Mother Detail 2)

?

**PRID** (Private Insurance Detail)

?

**SIID** (Searches Initial Inquiry Detail) – PLACE AN "E" to execute the electronic referral

?

**ACTD** (Activity Detail) – Complete re: Good Cause; identify documentation utilized to make the determination and list the dates of those documents.

## ALPHABETICAL MENU LIST

<b>SCREEN</b>	<b>DESCRIPTION</b>
CONM	Contract Menu
INTM	Interface Menu
JPSM	Juvenile Probation/Parole System Menu
MAIN	Main Menu
PAYM	Payments Menu
PPLM	Permanency Plan Menu
PRIM	Provider Information Menu
PSNM	Person Identification Menu
RRRM	Report/Request Menu
SERM	Services Menu
TRAM	Trust Account Menu
UTLM	Utilities Menu
WOPM	Workplan Menu

## ALPHABETICAL SCREEN LIST

<b>SCREEN</b>	<b>DESCRIPTION</b>
ACMD	Address/Contact Maintenance Detail
ACML	Address/Contact Maintenance List
ADDD	Address Detail
ADDL	Address List
ADJD	Adjustments Detail
ADOD	Adoption Detail
AKAD	Person Name AKA Detail
ALER	Alerts
ALRD	Alert Maintenance Detail
APPD	Application Detail
APPL	Application List
AREI	APS Removal Eligibility Info
AXED	Assignments/Transfers Detail
BSAE	Building Skills Evaluation
BSAS	Building Skills Plan Summary
CBAD	Contracted Budget Adjustments Detail
CBPD	Client Based Payment Detail
CBPL	Client Based Payment List
CELL	Client Eligibility List
CFAD	Contracted Funding Adjustments Detail
CLFD	Client Funding Detail
CLID	Client Detail
CLPD	Client Payment Detail
CLPH	Client Payment History
CLTD	Client Types Detail
CLTL	Client Types List
CMPL	Client Monthly Payment List
CNTD	Contact Detail
CNTL	Contact List
CON2	Contract Detail 2
CON3	Contract Detail 3
CON4	Contract Detail 4
CONA	Contract Approval
CONB	Contract Budget
CONC	Contract Costs
COND	Contract Detail
CONF	Contract Funding
CONI	Contract Inquiry
CONL	Contract List
COPD	Contracted Payment Detail
COPL	Contracted Payment List

COTL	Code Table Lookup
CPBD	Contracted Payment Budget Detail
CPFD	Contracted Payment Funding Detail
CPHL	Client Placement History List
CREI	CPS Removal Eligibility Info
CRTD	Court Detail
CRTL	Court List
CSCD	Child Support Child-In-Foster-Care Detail
CSED	Child Support Enforcement Referral Detail
CSF2	Child Support Father Detail 2
CSFD	Child Support Father Detail
CSLL	Caseload List
CSM2	Child Support Mother Detail 2
CSMD	Child Support Mother Detail
CSOD	Child Support Other-Child-In-Foster-Care Detail
CTMD	County Table Maintenance Detail
EA1L	EA1 Application List
EA11	EA1 Application
EA12	EA1 Application Detail 1
EA13	EA1 Application Detail 2
EA13	EA1 Application Detail 3
EA14	EA1 Application Detail 4
EA15	EA1 Application Detail 5
EA16	EA1 Application Detail 6
EA17	EA1 Application Detail 7
EAR2	Emergency Assistance Request Detail 2
EARD	Emergency Assistance Request Detail
EAWD	Emergency Assistance Wishlist Detail
EDHL	Education History
EMPL	Employment History
EVEL	Event List
EVD	Event Maintenance Detail
FACD	Facility Detail
FALD	Facility Approval/Licensing Detail
FALL	Facility Approval/Licensing List
FARD	Facility Approval Requirement Detail
FARL	Facility Approval Requirement List
FASD	Facility Assessment Detail
FASL	Facility Assessment List
FCLL	Facilities Caseload List
FIID	Financial Institution Maintenance Detail
FIIL	Financial Institution Maintenance List
FIND	Financial Information Detail
FINL	Financial Information List
FSCD	Funding Source Code Detail
FSCL	Funding Source Code List

FSPL	Facility Services Provided List
GRSL	Group Services List
IARD	Initial Assessment and Review Detail
IARL	Initial Assessment and Review List
ICAD	Interstate Compact Action
ICPD	Interstate Compact Detail
ICWD	ICWA Detail
JCSD	Juvenile Probation Community Service Detail
JCSL	Juvenile Probation Community Service List
JDET	Detention Placement Detail
JJBD	Juvenile Justice Reserve Bed Detail
JJBL	Juvenile Justice Reserve Bed List
JJKD	Juvenile Justice Risk Assessment
JJOD	Juvenile Justice Offense Detail
JJOL	Juvenile Justice Offense List
JJPD	Juvenile Justice Placement Detail
JJQD	Juvenile Justice Request for Field Investigation
JPAD	Juvenile Probation Action Detail
JPAL	Juvenile Probation Action List
JPAX	JPIS Assignments/Transfers Detail
JPOD	Juvenile Probation Offense Detail
JPR1	Juvenile Probation Referral Detail 1
JPR2	Juvenile Probation Referral Detail 2
JPR3	Juvenile Probation Referral Detail 3
JPRL	Juvenile Probation Referral List
JPVD	Juvenile Probation Victim Detail
JPVL	Juvenile Probation Victim List
JPVS	Juvenile Probation Victim Search
JRSD	Juvenile Probation Restitution Detail
JRSL	Juvenile Probation Restitution List
LINK	Problem/Task Link
MDTD	Medication Treatment Detail
MEDS	Medical Summary
MIR2	MACCS Interface Resolution Detail 2
MIRD	MACCS Interface Resolution Detail
MMHD	Medical/Mental Health Detail
NADE	Non-DFS Adoption Data Entry
OPAR	Overpayment Recovery
ORAD	Overpayment Recovery Activity Detail
PADD	Provider/Facility Address Detail
PADL	Provider Address List
PAFD	Payment Funding Detail
PAKD	Provider AKA Detail
PASL	Provider Active Services List
PAYA	Payment Approval List
PBID	Provider Banking Detail

PERD	Person Detail
PERL	Person List
PERS	Person Search
PFAD	Payment Funding Adjustment Detail
PIGD	Provider Information General Detail
PLAD	Placement Detail
PRCD	Provider Contact Detail
PRCL	Provider Contact List
PREL	Provider Event List
PRFL	Provider/Facility List
PRGR	ICJ Progress Report
PRID	Private Insurance Detail
PRLB	Provider Labels
PROB	Problem Detail
PROD	Provider Detail
PROE	Provider Entry
PROL	Provider List
PROM	Provider Matching
PROS	Provider Search
PRPD	Provider Person Detail
PRPH	Provider Placement History
PRPL	Provider Person List
PRRL	Provider Rate List
PRTD	Provider Training Detail
PRTL	Provider Training List
RELD	Relationship Detail
RELL	Relationship List
RESO	Client-Person Resolution Detail
RRD1	Report/Request Intake Detail 1
RRD2	Report/Request Intake Detail 2
RRD3	Report/Request Intake Detail 3
RRRL	Report/Request List
SATD	Supervisor Approval Task Detail
SCMD	Service Code Maintenance Detail
SCML	Service Code Maintenance List
SEAL	See All Client Screens
SECM	Security Matrix
SERL	Services List
SERN	Service Detail: Non-Payable
SERP	Service Detail: Payable
SIID	SEARCHS Initial Inquiry Detail
SIR2	SEARCHS Interface Resolution Detail 2
SIRD	SEARCHS Interface Resolution Detail
SPND	Special Needs Detail
SPTK	Supervisory Task List
SSJD	Supplemental Services Justification Detail

STFL	Staff List
TABD	Code Table Maintenance Detail
TABL	Code Table Maintenance List
TACE	Trust Account Check Entry
TACL	Trust Account Check List
TAED	Trust Account Expenditure Detail
TAEL	Trust Account Expenditure List
TAHD	Trust Account History Detail
TAHL	Trust Account History List
TAPD	Trust Account Plan Detail
TAPL	Trust Account Plan List
TASK	Task Detail
TIAD	Trust Income Adjustment Detail
TIDL	Trust Income Document List
TIID	Teams Initial Inquiry Detail
TIRD	Teams Interface Resolution Detail
TXTL	Text Record List
USMD	User Maintenance Detail
USML	User Maintenance List
WMSG	Warning Message
WRND	Provider Warrant Detail
WRNH	Provider Warrant History

## **R/R CATEGORIES - WHEN TO USE A CODE, AND WHO GETS ALERTED**

- ? If CPS is used, a provider number IS entered on RRD1, and individual CAPS IDs are NOT entered on RRD2:
- 1) The provider number will automatically carry over to RRD2
  - 2) An alert is generated to the assigned worker of the provider/facility (Report ##### on provider ##### please read)
  - 3) An alert is generated to the assigned worker of any client placed with that provider/facility (Allegation rec'd for provider #####. Check client #####)
  - 4) An allegation and determination must be entered for the provider on RRD2 before the system will allow closure of the report
  - 5) Because the category is CPS, only CPS-related allegations and determinations can be entered on RRD2. For example, the system will not allow an allegation of "LIC" (Licensing Violation) or determinations of "LVS/LVU" (Licensing violation substantiated/unsubstantiated)
- ? If CPS is used, a provider number IS NOT entered on RRD1, and individual CAPS IDs ARE entered on RRD2:
- 1) If a CAPS ID on RRD2 is identified as a perpetrator, an alert is generated to the assigned worker of any facility that ID is associated with (Provider ##### / Employee ##### indicated as perpetrator) as long as that individual has been entered on PRPL/PRPD
  - 2) An allegation and determination must be entered on RRD2 before the system will allow closure of the report. Because allegations/determinations are not tied to a perpetrator, individual CAPS IDs for victims would also need to be entered on RRD2
  - 3) An alert is generated to the assigned worker of a client if they are an individual associated to a report regardless if they are identified as a perpetrator or a victim (Report ##### received for client ##### on 01/01/98)
- ? If CPS is used, a provider number IS entered on RRD1, and individual CAPS IDs ARE entered on RRD2:
- 1) All of the above would apply, depending on what the worker entered. (i.e., is the allegation against the provider/facility as a whole, or against an individual associated with that provider/facility. Either way, as long as the person is associated to the provider/facility on PRPL/PRPD, the assigned worker for that provider/facility will receive an alert that the report was received)
  - 2) If the allegation is against an INDIVIDUAL associated with the facility, that individual's name should be what is entered in the REPORT NAME field on RRD1

- ? If LIC is used:
- 1) LIC should only be used if the allegation is a licensing issue (i.e., exceeding maximum number of children licensed for, license has expired but still providing care, etc.) If the allegation is one of abuse or neglect, then the category of CPS should be used
  - 2) LIC category will require a provider number on RRD1
  - 3) An allegation and determination must be entered on RRD2 before the system will allow closure of the report
  - 4) Because the category is LIC, only LIC-related allegations and determinations can be entered on RRD2
  - 5) An alert is generated to the assigned worker of the provider/facility (Report ##### on provider ##### please read)
  - 6) An alert is generated to the assigned worker of any client placed with that provider/facility (Allegation rec'd for provider #####. Check client #####)
- ? If LII is used:
- 1) LII should only be used for licensing information requests (somebody not currently licensed and wanting to become licensed) or for referrals against a non-licensed provider
  - 2) NO ALERT is sent out for LII requests because they are not tied to a specific provider number. For example, if it is a report being called in on somebody that is providing care to several children, and the reporter does not believe that person is licensed, it is up to the worker entering the report or the assigned worker of that report to follow up with any investigation on these issues

## **AFCARS TIMELINESS ERRORS**

AFCARS = Adoption Foster Care Analysis Reporting System

CAPS submits information to the ACF (Administration for Children and Families) AFCARS system for statistical purposes. AFCARS checks to make sure that certain information put into CAPS has been done in a timely manner. If the information is not put into the system in a timely manner, AFCARS flags it as a timeliness error, and the State of Montana can be penalized by having federal monies withheld.

The following can create a timeliness error:

1. If the removal service information is entered on SERN more than 60 days after the removal actually took place.  
EXAMPLE: Removal actually took place on 1/1/98  
Removal not entered on system until 3/2/98
  
2. If the placement exit information is entered on PLAD more than 60 days after the exit actually took place.  
EXAMPLE: Placement actually ended on 1/1/98  
Placement exit date not entered until 3/2/98
  
3. On IARL/IARD, either a FCR (Foster Care Review), CRT (Court Review) or DIS (Dispositional Review) must be entered on the system every six months.  
\* Court Reviews (CRT) will automatically update IARL when a review is entered on CRTD (Court Detail)
  
4. For Department of Corrections clients, all of these timeliness errors apply, but only if the client is receiving IV-E funding.

CHILD PROTECTIVE SERVICES  
COMMONLY USED ACRONYMS

AFCARS	Adoption and Foster Care Analysis and Reporting System
APS	Adult Protective Services
ARM	Administrative Rules of Montana
ASFA	Adoption and Safe Families Act
BSA	Building Skills for Adulthood
CA/N	Child Abuse and Neglect
CAPS	Child and Adult Protective Services (electronic database)
CAPTA	Child Abuse Prevention Treatment Act
CFSD	Children and Family Services Division
CPA	Child Placing Agency
CPS	Child Protective Services
CRB	Citizens Review Board
CSED	Child Support Enforcement Division
CSS	Catholic Social Services
CSW	Community Social Worker
CSWS	Community Social Worker Supervisor
DOC	Department of Corrections
DHHS	U.S. Department of Health and Human Services
DPHHS	Montana Department of Public Health and Human Services
FAIM	Families Achieving Independence in Montana
FCRC	Foster Care Review Committee
FRS	Family Resource Specialist
FRSS	Family Resource Specialist Supervisor
ICAMA	Interstate Compact on Adoption and Medical Assistance
ICPC	Interstate Compact on the Placement of Children
ICWA	Indian Child Welfare Act
ITP	Individual Treatment Plan
IV-E	Title IV, Subpart E, of the Social Security Act (foster care)
JTPA	Job Training Partnership Act
LCS	Lead Clinical Staff
LDS	Latter Day Saints Adoption Agency
LSS	Lutheran Social Services
MACCS	Montana Automated Child Care System
MCA	Montana Code Annotated
MCP	Montana Community Partners
MEPA	Multi-Ethnic Placement Act
NCANDS	National Child Abuse and Neglect Data System

OPA	Office of Public Assistance
OPI	Office of Public Instruction
PIPPS	Prevention, In-Home, Post-Placement Services
PLC	Permanent Legal Custody
PM	Program Manager
SACWIS	Statewide Automated Child Welfare Information System
SEARCHS	System for the Enforcement and Recovery of Child Support
SFH	Specialized Foster Home
SSB	Social Security Benefits
SSI	Supplemental Security Insurance
TANF	Temporary Assistance for Needy Families
TEAMS	The Economic Assistance Management System
TFC	Therapeutic Family Care
TFHP	Therapeutic Foster Home Program
TIA	Temporary Investigative Authority
TLC	Temporary Legal Custody
TYGH	Therapeutic Youth Group Home
VA	Veterans Administration
YCF	Youth Care Facility