

# **LEGAL STEPS**

## **KINSHIP CAREGIVER**

### **RESOURCE MANUAL, 2003 EDITION**

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## **PREFACE TO THE JANUARY 2003 EDITION** (updated August 1, 2003)

This manual is intended as a practical guide for social workers, attorneys, advocates, and others who work with kinship caregivers or kin who are considering taking a child into their care. Kinship caregivers may find it useful as well. It provides basic information on how to get the legal authority to make decisions for a child, legal custody of a child and the benefits and services available to help care for a child.

This manual should not be used as a substitute for legal counsel. **This manual cannot and is not intended to provide a complete answer to individual legal problems.** You should contact a lawyer for advice regarding your specific factual situation. The information in this manual is current as of August 1, 2003. Laws may change, and that may make information in this printed manual out-of-date. An updated manual will be available on the Minnesota Kinship Caregivers Association Website: [www.mkca.org](http://www.mkca.org).

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## INTRODUCTION

### Background

Increasingly, children are being raised by persons other than their biological parents. Six million children in the United States live in grandparent or other relative-maintained households, according to the U.S. Census.<sup>1</sup> Nationwide this represents a 30 percent increase, more than one million additional children, since 1990.<sup>2</sup> In Minnesota, over 71,000 children live in kinship households: 47,679 children live in grandparent-headed households,<sup>3</sup> and 23,911 live in households headed by close family friends and relatives other than grandparents.<sup>4</sup> Traditionally, grandparents took on the caregiving responsibilities when their adult children were unable to parent. Currently, however, maternal aunts are the fastest-growing group of kinship caregivers in the United States.

The term "kinship caregiver" means any relative or close family friend who is caring for children not his or her own. Kinship caregiving can be either temporary or permanent, formal or informal. Kinship caregiving is formal if the relative is a licensed foster care provider, and the children were placed with the relative either by a court order or by a voluntary agreement between the county child protection agency and the parent. It is informal if the arrangements have been made by the family, and either the parent or the caregiver has legal custody. Eighty-five percent of children in kinship care live in informal kinship care, and 15 percent in formal.

### Why are parents not parenting their own children?

The crack addiction epidemic, incarceration of single mothers, alcoholism, mental health problems, teenage pregnancy, death of a parent, divorce, poverty, and increased incidents of women with AIDS has resulted in more and more children living with kin. These numbers are expected to increase in the next decade, and more services, funding, and legal representation will be needed to meet the needs of the kinship caregivers and the children in their care.

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<sup>1</sup> Alison Frantz, *Generations United Fact Sheet: Challenges of Caring for the Second Family*, (January 10, 2002) available at <http://www.gu.org/Files/GP%general%201-02%final.pdf>.

<sup>2</sup> In the 1990 census, there was a 44 percent increase over the preceding decade in the number of children living with their grandparents or other relatives. See Esme Fuller-Thomson & Meredith Minkler, *America's Grandparent Caregivers: Who are They?*, in Grandparents Raising Grandchildren 3, 3 (Bert Hayslip, Jr. et al. eds., 2000.)

<sup>3</sup> This represents an increase of more than 100 percent. In 1990, 23,000 children lived in grandparent-headed households.

<sup>4</sup> 2000 U.S. Census Bureau Population Survey.

Kinship families are formed in a variety of ways. Some grandparents begin helping their troubled adult children by providing weekend child care. Over time, the duration of care becomes longer until finally the grandparent is caring for the grandchild on a full-time basis, and the parent shows up only when he or she needs sleep or money. Some relatives go to the hospital to visit a newborn and end up taking the child home because he or she was born crack-addicted and the county will not allow the child to go home with the parent. Others must provide care for the child right from birth because the parents are mentally ill or are teenagers and simply cannot or will not take on the responsibility for the child. Others become caregivers at the death of a parent who was terminally ill and who made a permanency plan prior to death. Others suddenly find themselves caregivers of kin at the death or incarceration of a parent.

### **What challenges do kinship families face?**

A major problem for many kinship families is that they do not have the legal authority to make decisions for or to protect the children in their care. Without legal custody or a formal delegation of authority to the kinship caregiver, a kinship caregiver may not be able to obtain medical treatment, enroll the children in school, or participate in the development of an Individual Education Plan (IEP) for children with disabilities. Further, without legal custody the kinship caregiver will have difficulty protecting the child from a parent who has not yet resolved the problem which led to placement in the kinship home in the first place. Kinship caregivers report that they cannot find or afford an attorney to advise them about their rights and responsibilities as kinship caregivers, or to represent them to obtain custody of the children in their care.

In addition, kinship caregivers frequently face significant financial burdens. Some must quit their jobs in order to care for the children because they cannot afford child care. Retirement or other savings are depleted not only by the added expense of raising a child, but also by the children's parents, who are often still dependent. Court costs associated with proceedings concerning custody, guardianship, and adoption can also create a financial strain.

The children may have physical and/or mental health problems as a result of parental drug and alcohol abuse. They may have emotional problems as a result of separation from their parents. The children's parents typically escalate the problem by drifting in and out of their lives, causing confusion and disruption. Some of the children are embarrassed when their peers tease them because they are being cared for by older persons. A large number of the children are also behind academically because they missed school while living with their parents. These children may have a hard time concentrating because they constantly worry about their parents. They also worry that they will be abandoned again, this time by their kinship caregiver.

Finally, the kinship caregiver may suffer stress-related illnesses, and neglect their own health while caring for the children. Those who were looking forward to retirement find themselves suddenly thrust back into the world of child-rearing, their dreams of relaxation and freedom from work destroyed. Further, grandparents often find that having young children around the house means that they no longer fit in with friends their own age, and they begin to feel isolated. They may feel

resentment and at the same time guilt because they think they have failed their own children.

### **The 2003 edition of the Kinship Caregiver Resource Manual.**

The first edition of this manual was published in 1995 to address legal solutions to problems kinship caregivers face, and to provide information about the public benefits, medical coverage, support groups and services available to kinship families, as well as how to go about securing those benefits and finding those resources. It was updated in 1998, and now again in 2003, due to the changes in the law concerning third party custody proceedings in family and juvenile courts and changes in public benefits programs. Further, the 2003 edition is necessary to provide up-to-date information regarding the expanding network of services available to kinship caregivers. We hope that this manual, along with emerging statewide advocacy groups and support groups, will serve to address some of the legal and financial challenges kinship caregivers face performing the extraordinary task of raising children who for whatever reason can no longer live with their parents.

## **RESOURCES FOR KINSHIP FAMILIES**

### **The Minnesota Kinship Caregivers Association (MKCA)**

The MKCA, a non-profit statewide association, was founded in 1996 by kinship caregivers and other concerned parties. The MKCA's mission is to provide advocacy, support, information, and referral to caregivers who are raising their grandchildren or other related children.

The MKCA provides assistance to caregivers by:

- Assisting individuals, social service providers, and legal services organizations in efforts to develop programs and services to help kinship caregivers and the children in their care.
- Educating public and private agencies, community organizations, and judicial and legislative systems concerning children in the care of kinship families.
- Providing information, education, and referral to appropriate services to kinship caregivers.
- Identifying the need for new services and improving the quality of existing services as they impact children and the families raising them.

MKCA has produced *First Steps*, an information and resource manual written specifically for kinship caregivers. *First Steps* addresses issues kinship caregivers often face such how to cope with a parent's visit and where to find child care, help for children with learning disabilities, and support groups. The manual may be ordered from MKCA and is available on MKCA's Website, [www.mkca.org](http://www.mkca.org). To contact the MKCA, call (651) 917-4640 or e-mail [mkca@mkca.org](mailto:mkca@mkca.org).

## Information and Referral

Caregivers may also obtain free information and referral to a wide range of services including legal assistance, support groups, financial assistance, home health care, yard work, minor home repair and more by calling the Senior LinkAge Line® at 1-800-333-2433 or visiting their website at [www.mnaging.org](http://www.mnaging.org); or by calling United Way at (2-1-1) or 1-800-543-7709 or visiting their website at [www.firstcallnet.org](http://www.firstcallnet.org).

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## OPTIONS FOR OBTAINING THE LEGAL RIGHT TO CARE FOR AND HAVE CUSTODY OF A CHILD

This section of the manual provides basic information about options available to kinship caregivers who want to establish the legal right to care for a child and make decisions about that child, including, for instance, decisions about medical care and school enrollment. Most of the options involve going to court. All require kinship caregivers to weigh important considerations before making a decision on what is best for them and their family.

This manual should not be used as a substitute for legal counsel. **This manual cannot and is not intended to provide a complete answer to individual legal problems.** You should contact a lawyer for advice regarding your specific factual situation. Each family is different, and a legal solution that fits one family may not be best for someone else's family. Further, the laws are complicated and subject to change.

Caregivers with additional questions, or who want legal advice or representation, should contact a lawyer. Legal Aid provides free legal services for people with low income and people 60 years of age or older regardless of income. A list of Legal Aid offices by county is included with this manual at Appendix A.

People who are not eligible for free legal services may get a referral to a private attorney by contacting the Minnesota State Bar Association Attorney Referral Service at 1-800-292-4152, or visiting their Website at [www.mnbar.org/attref-public](http://www.mnbar.org/attref-public), or by calling the Senior LinkAge Line® at 1-800-333-2433, or United Way 2-1-1 which can also provide information and referrals to agencies that have legal advice and advocacy services.

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**DELEGATION OF POWERS BY PARENT OR GUARDIAN**  
**MINN. STAT. § 524.5-211<sup>7</sup>**

**1. What is a Delegation of Powers?**

A Delegation of Powers is a formal document by which a child's parent, legal custodian or guardian gives another person the temporary authority to care for and make decisions regarding that child. A Delegation of Powers gives the caregiver important authority with regard to a child, but not legal custody of the child. The only way a person can get legal custody of a child is by court order.

**2. What rights does a Delegation of Powers give to a caregiver?**

A Delegation of Powers gives a caregiver the authority to make most decisions regarding the care, custody or property of a child. For example, a delegation may give the grandparent the power to:

- Authorize medical treatment for the child;
- Enroll the child in school; and
- Provide a home, care, and supervision for the child.

A Delegation of Powers does not give a caregiver authority to consent to a child's marriage or adoption.

**3. When should a Delegation of Powers be used?**

A Delegation of Powers is best suited for those situations where both the caregiver and the child's parent(s) agree that the caregiver should temporarily care for the child for a short period of time. It is important to have the agreement in writing so that schools, doctors, and others will accept the caregiver as legally able to act on the child's behalf. In addition, the child's parents can use the Delegation of Powers to help show that they have not abandoned the child. If the parent or caregiver believes that custody should be vested in the caregiver for a longer period of time, or if the parent is ill and likely to become incapacitated, a stand-by or temporary custody designation should be considered. (See pp. 7-10.)

**Caution:** A Delegation of Powers may be revoked by the parents at any time. It does not prevent the child's parent from removing the child from the caregiver's custody against the caregiver's wishes. Thus, a Delegation of Powers is not appropriate if the caregiver is worried about the child's safety should the parents try to remove the child from his or her home.

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<sup>7</sup> The manual includes references to Minnesota Statutes (MINN. STAT. §.) Statutes are available at public libraries and on line at [www.revisor.leg.state.mn.us/stats](http://www.revisor.leg.state.mn.us/stats).

#### **4. Is it necessary for both parents to sign the Delegation of Powers?**

If the parents of the child are married and living together, both parents need to sign the Delegation of Powers. If the parents are divorced or unmarried, the delegation only needs to be signed by the custodial parent.

The parent who signs the delegation must mail or give a copy of the Delegation of Powers document to any other parent within 30 days of signing the document unless:

- The other parent does not have visitation rights or has supervised visitation rights; or
- There is an existing order for protection against the other parent.

A legally recognized non-custodial parent can always contest a Delegation of Powers unless his or her parental rights have been terminated. Before the non-custodial parent can remove the child from the caregiver's home, he or she must take the necessary steps to invalidate the Delegation of Powers, which would include going to court to get an order of custody.

#### **5. How long does a Delegation of Powers last?**

A Delegation of Powers can last no longer than one year. It may be renewed for additional year-long periods. Should a parent or guardian want an arrangement that lasts longer than one year, he or she should consider designating a temporary custodian or entering into a custody consent decree. (See pp. 7-10.)

#### **6. How does a kinship caregiver get a Delegation of Powers? Is a lawyer necessary?**

A Delegation must be in writing and signed in front of a notary. The caregiver must also sign the form. A Delegation of Powers should specifically state the powers the parent wishes and does not wish to delegate. It is not necessary to have a lawyer to get a Delegation of Powers. A Delegation of Powers form can be found on MKCA's website at [www.mkca.org](http://www.mkca.org).

#### **7. What responsibilities does a Delegation of Powers give the caregiver?**

By accepting a Delegation of Powers, the caregiver agrees to provide food, clothing, and shelter to the child; protect the child from harm; obtain necessary medical care; enroll the child in school; etc. The caregiver does not become the legal custodian of, or financially responsible for, the child. The child's parents remain financially responsible.

#### **8. How does a Delegation of Powers end?**

A Delegation of Powers ends at the expiration of the stated time period or when a parent revokes the Delegation of Powers. A parent may revoke a Delegation of Powers at any time.

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**DESIGNATION OF TEMPORARY OR STANDBY CUSTODIAN**  
**MINN. STAT. § 257B**

**1. What is a standby custodian?**

A standby custodian is a person designated by a parent or legal custodian of a child (the “designator”) to have custody of and be responsible for the child when he or she no longer can care for the child. A designation of a standby custodian can be either temporary for a specific period of time not to exceed 24 months, or it can take effect upon the occurrence of a triggering event, such as the death or incapacity of the designator. A standby custodian will become the permanent legal custodian after the parent or legal custodian’s death, if the designation is approved by the court.

**2. How can a designation of a standby custodian help caregivers?**

It can help in different ways. First, it may help someone become a kinship caregiver. For instance, if a parent has breast cancer or a debilitating terminal illness, arrangements need to be made for the mother’s children upon her incapacity or death. By designating the grandmother as the standby custodian, and having that designation approved by the court, the mother can be assured her children will be with the grandmother when she is hospitalized and if she dies.

Second, if a kinship caregiver has legal custody of a child, the kinship caregiver may want to make plans to assure that the child will be safe in the event something happens to her. If she worries that upon her death, custody of the child will go back to a parent who is incapable of taking care of the child (that’s why she has the child in her custody in the first place), she can designate another custodian and get that designation approved prior to her incapacity or death.

Third, temporary designation is a good planning tool for parents or legal custodians who are unable to care for their children for a specific period of time. For instance, a parent may need to go overseas for a year for a job, enlist in the armed services, go on active duty, or enter a year-long treatment program. In such circumstances, the parent or legal custodian can appoint a temporary custodian for a period of up to 24 months.

In these examples, the designation provides parents and legal custodians with the security their children will be cared for in the event they can no longer provide for them. It also provides the caregivers – those designated – with the legal authority to carry out the designator’s wishes.

**3. Who can designate a standby or temporary custodian?**

A parent or other individual with an order of legal custody may designate a standby or temporary custodian.

#### **4. How does a parent or legal custodian designate a temporary or standby custodian?**

The designation must be in writing and identify the:

- Designator;
- Children;
- Other parent;
- Standby or temporary custodian; and
- Triggering event or events upon which the standby or temporary custodian takes over the responsibilities of legal and physical custodian of the child.

It must also include:

- The signed consent of the standby or temporary custodian; and
- The signed consent of the other parent or a statement why the other parent's consent is not required.

The designation must be signed by the designator in the presence of two witnesses. A designation is valid upon the signing of the document by all necessary parties.

#### **5. Does the other parent have to consent to the designation?**

If the child has another parent whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to carry out the daily custodial care and make decisions concerning the child, a standby custodian may be designated only if the other parent consents, or the court approves the designation after a hearing. MINN. STAT. § 257B .03.

If the other parent does not consent but the custodial parent or legal custodian believes that parent is unable or unwilling to carry out the daily custodial care of the child, a hearing will be necessary before the designation is approved by the court.

#### **6. When does a standby or temporary custodian's responsibility to the child begin?**

A standby or temporary custodian assumes responsibility for the child upon the occurrence of a "triggering event." A triggering event is usually the death or incapacity or debilitation of the designator. The determination of debilitation or incapacity must be made by an attending physician. A triggering event can also be any event specified by the parent or legal custodian, such as notification of active duty status with the military or hospitalization. If the designation has been approved by the court, the appointment is effective until the designator resumes parental responsibilities, which may be never if the designator dies. If the designation has not been approved by the court, the appointment is effective for 60 days after the triggering event and the custodian must take action to make the designation effective for as long as the designator wanted it to last.

## **7. How is a delegation of standby or temporary custodian approved?**

First, the petition must be filed with the court. A petition for approval of a designation may be made at any time by filing a copy of the designation with the court. If the triggering event has not yet occurred, or if the filing is for the purpose of confirmation of a temporary custodian, only the designator may file the petition for approval.

If the triggering event has occurred, the standby custodian may file the petition and it must contain either a determination of the designator's incapacity; a determination of the designator's debilitation and the designator's signed and dated consent; or a copy of the death certificate.

The designation will be approved without a hearing if the designator is the only parent alive, if the parental rights of the other parent have been terminated, or if both parents consent to the designation.

If a hearing is necessary, the court will set a date and time for the hearing. The person who files the petition must serve any person named in the designation and any other current caregiver of the child with a copy of the petition and designation and notice of any hearing within ten days of the filing of the petition.

The court will then hold a hearing on the petition for approval or confirmation. The court will approve the designation if it is in the best interests of the child. The court will presume that the designated person is capable of serving as custodian or co-custodian. If the designator is the sole surviving parent, the parental rights of the other parent have been terminated, or both parents consent to the designation, the court will presume that entry of an order confirming the designation is in the best interests of the children.

## **8. When must a designator seek approval by the court?**

It depends upon the circumstances of each case. The designator can file the designation with the court either before or after the triggering event. The proposed custodian can file only after the occurrence of the triggering event. Be aware that the designation is only valid for 60 days after the occurrence of the triggering event, unless it has been approved by the court. If the standby or temporary custodian does not file for approval within 60 days, the standby or temporary custodian loses all authority to act as custodian or co-custodian.

If the designator anticipates death or debilitation in the near future, it is wise to get the designation approved immediately. That way, the proposed custodian automatically has authority to act as custodian when the triggering event occurs. If the designator dies, the custodian will be appointed guardian in probate court without having to file a separate petition.

If the designator anticipates family or friends will disagree with the choice of standby custodian and will try to get custody of the child after the triggering event despite the designator's wishes he

or she should seek court approval immediately. That way, the hearing about the custody of the child will take place while the designator is still alive and able to participate.

**9. What happens after the designation has been approved by the court? Do the parents lose any rights? MINN. STAT. § 257B .06**

Once the petition has been approved, the standby or temporary custodian's authority begins automatically upon the occurrence of the triggering event. Parents do not lose their rights by designating a standby or temporary custodian. Parents may retain co-parenting responsibilities by appointing another person to act with them as co-custodians for the times they are debilitated.

**10. Can the designation be revoked?**

Yes. The method of revocation depends on whether or not the designation has been approved by the court. Prior to the filing of a petition for approval, a designator may revoke the appointment of a standby or temporary custodian by destroying the designation and notifying the standby or temporary custodian. After it has been filed, the designator must revoke it in writing, file the revocation with the court, and notify the standby or temporary custodian in writing of the revocation.

**11. What is the difference between a standby custodian designation and a Delegation of Powers?**

A Delegation of Powers is valid from the time it is signed for a period of six months. A temporary custodian's responsibilities may be for up to 24 months and a standby custodian's responsibilities begin only upon the occurrence of a triggering event. Further, a Delegation of Powers ceases with the parent's death. A standby custodian designation is valid for 60 days after a triggering event, and if approved by the court, can be permanent, even after death. Finally, while both may be revoked, a Delegation of Powers may be revoked at any time, but once the designation of a temporary or standby custodian is approved by the court, it can be revoked only in a written document filed with the court.

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**THIRD-PARTY CUSTODY OF CHILDREN IN FAMILY COURT  
MINN. STAT. § 257C**

**1. What is third-party custody?**

Third-party custody is when someone other than a child's parent has court-ordered legal and physical custody of a child. A custodian is the person responsible for the care, control, and maintenance of a child. In Minnesota, a child born to a single mother is presumed to be in the legal custody of her mother. No court order is necessary. Similarly, married couples have

custody of a child born to them without needing a court order. An unmarried father's paternity must be established before he has the legal right to seek legal and physical custody of a child.

## **2. When and why should a caregiver seek custody?**

Third parties usually seek legal custody of a child when they need legal authority to obtain medical care, enroll the child in school, or provide the child with a safe, stable, and permanent home. People who have cared for a child in their home for a long period of time usually seek custody in order to have clear, enforceable guidelines regarding arrangements such as where the child is going to live and what sort of visitation the parents may have. They may want to ensure that the parent(s) cannot take the child from their care on a whim, thus disrupting school, other activities, and the child's sense of stability.

Third parties also seek custody when they believe that a child's physical or emotional health is at risk if he or she has to live or remain living with a parent. For instance, if a single mother of a child dies, and the father has had little or no contact with the child (or has a history of abusive behavior, extensive drug and/or alcohol use, etc.), the relatives who have a relationship with the child may believe that the child will be harmed emotionally if she has to leave them to reside with a virtual stranger. The relatives may then take steps to become third party custodians.

A third party can also obtain custody of a child in a CHIPS proceeding when the Juvenile Court has determined that a child cannot return home and a permanent home for the child is necessary. (See discussion of permanent legal and physical custody in Juvenile Court, pp. 36-39.)

## **3. What law governs third party custody proceedings?**

The De Facto Custodian and Interested Third Party law, MINN. STAT. 257C, governs all third party actions for custody and visitation of children in family court. It is a new law that went into effect on August 1, 2002. This law establishes clear requirements for third party custody court proceedings, defines de facto custodians and interested third parties, and sets forth specific burdens of proof and best interest analysis factors to be used at trial. It consolidates prior statutes governing third party actions into one chapter, and reconciles the two doctrines which have framed the discussion concerning custody disputes between a parent and a third party in Minnesota for years. Those doctrines are first, that a parent is entitled to custody of his or her child unless that parent "is unfit or has abandoned [his or her] right to custody or unless there are some extraordinary circumstances which would require [the parent] be deprived of custody," and second, that "the so-called best-interest of the child concept, according to which the welfare and interest of the child is the primary test, is to be applied in awarding custody."<sup>8</sup>

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<sup>8</sup> *Wallin v. Wallin*, 290 Minn. 261, 264, 187 N.W.2d 627, 629 (1971).

#### **4. How is the court process started?**

In order to get an order of custody, a petition for custody must be filed in the family court in the county in which the child resides or where there has been an earlier order of custody entered. The petition must state:

- The name and address of the person seeking custody (petitioner), the parents, and the children for whom custody is sought;
- The relationship of the petitioner to the child;
- Whether the petitioner is a de facto custodian or an interested third party;
- The current legal custodian of the child;
- All previous orders of custody and whether or not other actions for custody are pending;
- Whether or not the parents should pay child support or have visitation with the child; and
- That it is in the child's best interests to reside with the petitioner.

#### **5. Who is a de facto custodian?**

An individual is a defacto custodian if he or she can show by clear and convincing evidence that:

- He or she has been the primary caregiver for a child;
- During the two years immediately preceding the filing of a petition for custody, a child resided with an individual for 1) a total period of six months or more if the child is less than three years of age, or 2) a total period of one year or more if the child is three years of age or older; and
- The parent has refused or neglected to comply with the duties imposed upon the parent by the parent-child relationship, including but not limited to providing the child with necessary food, clothing, shelter, health care, and education, and by creating a nurturing and consistent relationship and exerting other care and control necessary for the child's physical, mental or emotional health and development.

## **6. Who is an interested third party?**

An individual is an interested third party if he or she can show by clear and convincing evidence that one of the following factors exists:

- The parent has abandoned, neglected or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;
- Placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child or both; or that
- Other extraordinary circumstances exist.

## **7. In third-party custody cases, how does the court determine what is in the best interests of the child?**

The court will look at various factors as required by MINN. STAT. § 257C.04. The court can give no preference to a parent over a defacto custodian or an interested third party simply because they are a parent. This law puts long-term caregivers on equal footing with the parents in custody disputes. To determine the best interest of the child, the court will evaluate the following factors, the:

- Wishes of the parties as to custody;
- Reasonable preference of the child, if the court considers the child to be of sufficient age to express preference;
- Identity of the child's primary caretaker;
- Intimacy of the relationship between each party and the child;
- Interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child's best interests;
- Child's adjustment to home, school, and community;
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- Permanence, as a family unit, of the existing or proposed custodial home;

- Mental and physical health of all individuals involved; except that a disability, as defined in MINN. STAT. § 363.01, Subd. 13, of a proposed custodian or the child must not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interests of the child;
- Capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;
- Child's cultural background; and
- Effect on the child of the actions of an abuser, related to domestic abuse, as defined in section MINN. STAT. § 518B.01, Subd. 2, that has occurred between the parents or the parties.

The court may not use one factor to the exclusion of all others. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

#### **8. What happens after the petition is filed with the court?**

The petition, along with a summons, must be personally served upon the child's parents, guardian or legal custodian. If the relative does not know the location of the child's parents, the court may allow the grandparent to give notice by publication in a newspaper.

Once they are served with the summons and petition, the parents have 20 days to file an Answer, a formal written response filed with the court. The parents can either ignore the case, support the grandparent's custody petition, or fight the petition and file an Answer.

#### **9. What happens if the parents do not file an Answer?**

If the parents choose to ignore the caregiver's petition, a default judgment will probably be issued. A default judgment is a judgment that is issued against someone who does not appear in court. The effect of a default judgment in a custody matter is usually the awarding of custody to the person who files the petition if the court finds that is in the child's best interests. Even though the other party is in default, the caregiver will have to go to court to provide evidence that the child should be placed in his or her custody.

#### **10. What happens if the parents want to fight the petition?**

In a case where the parents contest the petitioner's custody petition, several hearings may be held to determine if the petitioner is a de facto custodian or an interested third party and whether or not it is in the child's best interests to be with the petitioner. Every county has its own process for

determining custody matters. At the first hearing, the court will probably decide issues such as temporary custody during the pendency of the court case, the type of visitation the child will have with the party who does not have custody, temporary child support, etc. The court will usually order the petitioner's home and the parents' home to be evaluated. If, after the evaluation is received by the parties and the court, the parties still cannot reach agreement as to custody, a trial will be held. The court will take the recommendation of the evaluator into consideration when making its decision.

After a final hearing, the court will issue an order stating who is to be granted legal custody of the child (legal custody may be sole or joint) and who is to be granted physical custody of the child. The court's order will also address the issues of visitation and child support.

#### **11. What if the parents *want* to give custody to a relative or another third party?**

Parents and third parties, relatives and non-relatives alike, can agree to a custody order if the parents agree that it is in the best interests of the child to be in the care of a defacto custodian or interested third party. If the child's parents support the caregiver's custody petition, no final hearing is necessary.

Further, a parent may transfer legal and physical custody of a child to a third party by a custody consent decree. The custody consent decree must state that the custodian has the ability to determine the child's residence; make decisions regarding the child's education, religious training, and health care; and obtain information and public services on behalf of the child in the same manner as a parent. The consent decree must indicate whether it is temporary or permanent and provide for child support and visitation. The court will approve the custody arrangement if it is in the best interests of the child. This option gives the parties the most flexibility to tailor the custody order to their circumstances.

#### **12. What can a relative caregiver do in an emergency situation?**

Often, parents are quite content to allow caregivers to care for their children, as long as the caregiver takes no legal action. This changes, however, once they are served with the summons and petition for custody. Parents may get angry and come to take the child away. Without a temporary order, the caregiver is unable to keep the children from going with the parents. Therefore, it is wise to obtain an emergency temporary order of custody at the same time the petition for custody is filed, if there is any fear that the parents may come to get the child.

The courts have an emergency procedure that allows parties to get emergency orders quickly, so that the child remains where the child has been, or in a safe place, until the story can be sorted out by the court.

### **13. What about mediation?**

Parties in third party custody cases should always consider mediation as a means to solve the custody dispute. A mediator is professionally trained and does not take sides in a case. The mediator will assist the parties to come together and craft a solution that works for everyone. It is a difficult process, but it usually is in a child's best interests if the people in the child's life can work together to create a safe and stable home for the child.

### **14. How long does third-party custody last?**

For all intents and purposes, an order of custody is permanent. Parties can ask the court to modify the custody order after it has been in effect for a year. Getting the court to change custody is not an easy task.

A custody order can be changed if all of the parties agree to the change. If the parties do not agree, the court can change the custody order only if it finds that (1) a change has occurred in the circumstances of the child or the parties, and that (2) the modification is necessary to serve the child's best interests. Generally, if a grandparent has custody of a child the court will not change custody of the child unless the grandparent agrees to the modification, the child is back with his/her parent(s) with the grandparent's consent, or the court finds that living with the grandparent is harmful to the child.

However, child support and visitation orders can be more easily changed. Either the grandparent or the child's parent(s) may seek modification of child support provisions in a number of circumstances including: (1) a change in the grandparent's financial situation, (2) a change in the parents' financial situation, or (3) a change in the child's need or age. The visitation provisions can be changed if modification would be in the child's best interests. In both cases, the person wanting the change must go to court unless the other party agrees to the change.

### **15. Is a third-party custodian eligible to receive any public assistance for the child?**

Yes. A child living in the legal and physical custody of someone other than his or her parents is considered a dependent child and is eligible for MFIP-Child Only benefits. (See p. 50.) If the caregiver got the order of custody from juvenile court, the child may be eligible for Relative Custody Assistance, which also includes Medical Assistance. (See p. 63.) Once a caregiver obtains custody, the caregiver cannot be that child's foster parent.

### **16. How is third-party custody different from guardianship or adoption?**

A parent's parental rights to a child are not terminated if the child is placed in a third party's custody. The court will require the parents to contribute to the financial support of the child and allow visitation. If the caregiver gets custody, the child will still be the parents' child for purposes of inheritance and social security.

If the child is adopted, the parents' rights have been terminated, and the caregivers become the legal parents of the child. Adoption is covered in the next session.

Custody differs from legal guardianship because in order to get a legal guardianship, the parental rights of both parents or the only living parent must be terminated or both parents must be deceased. Legal guardianship is discussed later, beginning on p. 20.

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## **ADOPTION** **MINN. STAT. § 259**

### **1. What is adoption?**

Adoption is a process by which a court creates the legal relationship of parent and child between people who are not parent and child by birth.

If a caregiver's petition for adoption is granted, the child becomes the legal child of the caregiver, and the caregiver becomes the legal parent of the child with all the rights and duties between them of birth parent and birth child. Even the child's birth certificate is changed to reflect that the caregiver is the parent of the child. By virtue of the adoption, the child has the right to inherit from the caregiver the same as though the child was the birth child of the caregiver. In the case of the child's death without a will, the caregiver will inherit the child's estate as if he or she been the child's birth parent.

After a decree of adoption is entered, the birth parents of the adopted child are relieved of all parental responsibilities for the child, and cannot exercise or have any rights over the adopted child or the child's property. In addition, the child will not inherit from the birth parents or kindred unless the child is adopted by a stepparent who is married to the child's parent.

The adoption of a child whose birth parent(s) are enrolled in an Native American tribe will not change the child's enrollment in that tribe. (See Part III.)

### **2. Who may adopt? Who may be adopted?**

An individual who wants to adopt a child must be 18 years of age or older and a state resident for one year or more. The court may waive the residency requirement if the individual is related to, or a member of, a child's extended family or an important friend with whom the child has resided or had significant contact. The court may reduce the residency requirement to 30 days whenever it appears to be in the child's best interests.

A child or an adult may be adopted, regardless of age. An individual may petition for the adoption of two or more persons in one petition.

### **3. When is adoption an appropriate alternative?**

Adoption of a child is appropriate when the caregiver wants to take complete and permanent responsibility for the child without the threat of legal interference by the child's parents.

Adoption is permanent. Therefore, adoption is not the right option if the caregiver hopes the child will be able to reunite with his or her birth parents some day or if the caregiver feels willing and able to care for the child on only a temporary basis. Also, since adoption cuts off the child's rights to inherit from the birth parent or to receive the birth parent's social security, (unless the birth parent was deceased prior to the adoption) it may not be the wisest option. Finally, adoption may not be the best option for other financial reasons. (See p. 20.) A grandparent cannot be forced by the county social service agency to adopt his or her grandchild.

### **4. Who must consent to the adoption?**

The child's parents and/or guardian must consent to the adoption. A guardian who is not the child's parent, including the Department of Human Services or an adoption agency, cannot unreasonably withhold consent to an adoption.

If the birth parent consenting to the adoption is an unmarried minor, that person's parents or guardians must also consent to the adoption. When someone is trying to adopt a child who is 14 years of age or older, the child must also consent in writing to the adoption.

A birth parent's consent is not required if:

- The parent is not entitled to notice of the adoption according to MINN. STAT. § 259.49;
- The parent has abandoned the child or lost custody through a divorce decree or decree of dissolution, provided that the parent is served with notice of the adoption hearing;
- The parent has had the parental rights of the child terminated by a juvenile court or lost custody of the child through a final commitment of the juvenile court or through a decree in a prior adoption proceeding;
- There is no parent or guardian qualified to consent to the adoption, in which case the consent may be given by the Commissioner of Human Services; or
- The Commissioner or the agency having the authority to place a child for adoption has the exclusive right to consent to the adoption of the child.

## **5. How does a parent or guardian give consent?**

All consents must be in writing, executed before two competent witnesses, and acknowledged by the consenting parties. With the exception of step-parent, adult, and agency adoptions, all consents must also be witnessed by an agent of the Commissioner of the Department of Human Services. The consent form must include a statement that the parent's consent may be withdrawn for any reason within ten working days after the consent is executed and acknowledged. In addition, the consent must contain specific language as required by MINN. STAT. § 259.24.

Within the ten working day period, a parent may withdraw consent by providing written notice of the withdrawal of consent to the agency to which the child was surrendered. After that, consent can be withdrawn only if it is shown that the consent was obtained by fraud.

## **6. What happens if one of the parents will not consent to the adoption?**

If one of the parents does not consent to the adoption, the adoption may proceed only if that parent's rights to the child have been terminated. A caregiver can ask the court to terminate the rights of the parent who does not consent. MINN. STAT. § 260C.307. In general, a court will terminate parental rights if the non-consenting parent has abandoned the child, has refused or neglected to comply with the duties imposed upon the parent by virtue of the parent-child relationship, has continually failed to support the child, or is unfit.

## **7. How does a caregiver start an adoption proceeding?**

To start an adoption proceeding, a petition for adoption must be filed in the juvenile court of the county in which the petitioner lives. The proceeding may be transferred to a juvenile court of another county if the grandparent changes residence and the transfer is in the child's best interests. The petition must contain information regarding the petitioner, the child, the birth parents, and must state that it is in the child's best interests to be adopted by the petitioner. The petitioner must file the consents or a statement that a guardian or the Commissioner's consent has been unreasonably withheld. Pre-printed adoption forms may be purchased at a store which carries legal forms or may be obtained from the juvenile court. It is wise to talk to the adoption clerk before filing the petition to ensure that you have all the necessary information. If the child is an Indian child, the Indian Child Welfare Act applies. (See p. 38.) Because adoption is a complex proceeding, an attorney should be consulted.

## **8. What happens after the petition is filed?**

Since the court must make a finding that the adoption is in the child's best interests, an adoption study on the prospective adoptive parents must be completed. Step-parents and relatives do not need an adoption study. The court will do a background check. The court will schedule a hearing once the adoption file is complete. (The court clerk will tell the petitioner when it is complete.)

After the hearing, if the court finds it is in the child's best interests to be adopted by the grandparent, it will enter a decree of adoption, ordering that the child shall be the child of the grandparent. The decree makes the adoption final. The court may change the legal name of the child. On the other hand, if the court is not satisfied that the proposed adoption is in the child's best interests, the court can deny the petition and order the child returned to the custody of the person or agency legally vested with permanent custody of the child, or certify the case for appropriate action and disposition to the court having jurisdiction to determine the custody and guardianship of the child.

**9. What public assistance is available after adoption?**

Only if a caregiver is financially eligible for benefits will he or she or the child be able to receive Minnesota Family Investment (MFIP), Medical Assistance, food stamps, and other benefits after adoption. If the caregiver was caring for the child before the adoption and was receiving foster care payments, child support payments, or MFIP child-only benefits, these will end with adoption. The family may be eligible for Adoption Assistance. The caregiver must find out if the child is eligible for Adoption Assistance before the adoption is final. (See p. 67.) In addition, because the caregiver is now the legal parent, the child will be eligible for social security benefits if the caregiver is retired or disabled. (See p. 58.)

**10. Can birth parents visit with the children after a decree of adoption is entered?**

A caregiver adopting a child may enter a communication agreement regarding communication with, or contact between, the adopted child and the parent. See MINN. STAT. § 259.58. This must be completed at the time the adoption is ordered. Relatives seeking to enforce the terms of an adoption order may do so in family court but failure to comply with terms of a communication agreement is not grounds to set aside the adoption.

If there is no communication agreement, the adoptive parent can set the rules regarding visitation with birth parents, the same as with any non-relative. In other words, visitation may occur as the adoptive parent thinks appropriate.

A caregiver will need to get letters of guardianship instead of third-party custody if both parents are deceased or their parental rights have been terminated.

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**APPOINTMENT OF GUARDIAN OF MINOR IN PROBATE COURT  
MINN. STAT. §§ 524.5-201 - 524.5-210**

**1. What is a guardianship?**

A guardianship is another form of legal custody of a minor child. Although people often use the word guardian to describe anyone who is caring long-term for someone else's child, in Minnesota

a person becomes a guardian by acceptance of a testamentary appointment or upon appointment by the probate court.

## **2. What is a testamentary appointment?**

A person who is appointed guardian of a child in the last will and testament of the child's parent has a "testamentary appointment." The testamentary appointment becomes effective immediately when the guardian files an acceptance in the court in which the will is probated if both parents are dead or the surviving parent is adjudged incapacitated. In the case where both parents are dead, the testamentary guardian appointed by the parent who died last will be appointed. After the guardian has filed an acceptance, he/she must give written notice within five days to (1) the minor, (2) the person having the minor's care, and (3) the minor's adult siblings, grandparents, aunts and uncles. The notice must inform those persons of their right to file a written objection to the appointment with the court. The appointment is effective unless a written objection has been filed. Then, a hearing must be held to resolve the issue. If no one files an objection, the court will uphold the testamentary appointment.

## **3. How can a caregiver become the guardian if there was no will?**

If there was no testamentary appointment in a will, and both parents are dead, adjudged incapacitated, or have had their parental rights terminated, a person can petition the probate court to become guardian of a child. The petition must include:

- The petitioner's name, address, and telephone number and the petitioner's relationship to the child;
- The minor child's name, address, birth date, and telephone number;
- Whether or not the minor is married;
- The mother and father's name and dates of death or, alternatively, the date the parents' rights were terminated or the fact that the father is unknown;
- Whether or not a standby custody designation was made;
- A statement that the welfare and best interests of the minor will be served by appointing the petitioner guardian of the child;
- The circumstances requiring the appointment and, if appropriate, the nature of the petitioner's relationship to the child, including how long and for what reason the child has been in the petitioner's care; and
- The name, address, and relationship to the child of each person entitled to notice.

Notice of the hearing on the petition must be given to:

- The minor if older than fourteen years of age;
- The person who has had the principal care and custody of the minor during the sixty days proceeding the date of the petition;
- Any living parent of the minor; and
- The relative nearest in kinship to the minor.

The court will have the proposed guardian's home evaluated and will consider several factors before approving the guardianship including the preference of the child, the relationship between the child and the proposed guardian, the ability of the proposed guardian to provide for the child, and the existence of a family relationship. If no objections are filed and upon hearing the court finds that a qualified person seeks appointment, the court will make the appointment if it serves the best interests of the minor.

#### **4. Who can become a guardian?**

The court may appoint any person the guardian of a child if the appointment is in the child's best interests. The court will follow the wishes of a parent as stated in a will if no objections to the appointment are filed. If a child 14 years of age or older chooses a certain person to be appointed, the court must appoint that person unless it finds the appointment contrary to the child's best interests.

A child who is 14 or more years of age or any adult interested in the child's welfare, may prevent an appointment of the testamentary guardian from becoming effective, or may seek termination of a previously accepted appointment by filing a written objection. The written objection must be filed with the court in which the will is probated before the appointment is accepted or within thirty days after it is accepted.

#### **5. What are the rights and responsibilities of a guardian?**

The guardian has the rights and responsibilities of a parent to:

- Care for, educate, feed, clothe, shelter, protect, and discipline the child;
- Consent to necessary medical, dental, psychological and surgical care for the child;

- Provide routine medical, dental, and psychological care for the child; and
- Consent to social and school activities of the child;

A guardian cannot give consent for psycho surgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by the court.

The court will usually order the guardian to report the condition of the child and to give the court a written accounting regarding the child's money, benefits and property.

#### **6. What is a guardian's financial responsibility to the child?**

The guardian is not legally obligated to provide from his or her own funds for the child. The guardian may apply for MFIP child-only benefits on behalf of the child, and the child is considered a dependent child for purposes of a family MFIP grant. (See p. 49.)

#### **7. How long does a guardianship last?**

The guardianship terminates automatically upon the death, marriage, or attainment of majority of the child. In all other cases, the guardian's responsibility and authority continues, even if the child leaves the guardian's home to live with someone else, until the court terminates the guardianship.

A guardian must petition the court for permission to resign. Resignation does not terminate the guardianship until it has been approved by the court. Any person interested in the welfare of the child or the child, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interests of the child. The petition may, but need not, include a request for appointment of a successor guardian. Termination of the guardianship does not affect the guardian's liability for prior acts, nor the obligation to account for the funds and assets of the child.

#### **8. Who should consider making a testamentary appointment?**

A testamentary appointment is made in a last will and testament. Everyone, particularly parents with serious illnesses such as HIV/AIDS are urged to make a testamentary appointment.

A kinship caregiver who has serious health problems should also consider executing a will and naming a testamentary guardian to care for the children in his or her care. While a testamentary appointment is always subject to the court's approval, the testamentary guardian can be appointed immediately after death and care for the child during the court proceeding. However, if a parent whose parental rights have not been terminated is still alive and that parent wants custody of the child, probate court cannot appoint a guardian. Either a designation of standby custodian must be used, or custody must be determined in family court.

A grandparent who is named as a guardian in a will or who wishes to petition the probate court to be appointed guardian of a child should contact an attorney.

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**CHILD IN NEED OF PROTECTION OR SERVICES (CHIPS) PROCEEDINGS IN  
JUVENILE COURT  
MINN. STAT. § 260C**

**1. In General**

Generally, the government does not interfere in family matters. However, the law does allow the county to take action to protect a child from harm within the family. One action the county may take is to file a Child in Need of Protection or Services (CHIPS) petition in juvenile court.

**a. How does the law define a child in need of protection or services?**

The law defines child in need of protection or services as a child who:

- Is abandoned or without a parent, guardian, or custodian;
- Has been a victim of physical or sexual abuse or lives with a victim or perpetrator of domestic child abuse or is a victim of emotional maltreatment;
- Is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- Is without special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- Is medically neglected;
- Is one whose parent, guardian, or custodian for good cause wishes to be relieved of the child's care and custody;
- Has been placed for adoption or care in violation of law;
- Is without proper parental care because of the emotional, mental, or physical disability or state of immaturity of the child's parent, guardian or custodian;

- Is one whose behavior, condition, or environment is injurious or dangerous to the child or others;
- Is experiencing growth delays, which may be referred to as failure to thrive, due to parental neglect;
- Has engaged in prostitution;
- Has committed a delinquent act or juvenile petty offense before becoming ten years old;
- Is a runaway;
- Is an habitual truant;
- Has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency matter or a juvenile petty offense; or
- Has been found by the court to have committed domestic abuse, ordered excluded from the parent's home by order for protection, and the parent or guardian is unable or unwilling to provide an alternative safe living arrangement for the child.

**b. How do these children come to the county's attention?**

The law requires that the county social services agency (also referred to here as “child protection” or “the county agency”) accept reports of child maltreatment. Some individuals who work with children and families are required to make a maltreatment report if they have reason to believe a child has been neglected or physically or sexually abused. These individuals include, for instance, teachers, doctors, and social workers. Anyone else may make a report if they know of or suspect maltreatment. (MINN. STAT. § 626.556).

For instance, if a grandparent suspects that a grandchild is being abused or neglected, or is otherwise in danger, the grandparent can call the county social services office and make a report. If it is after hours or on weekends, the report can be made to the police.

In response to a report, child protection may conduct an investigation to determine whether or not maltreatment has occurred. The county agency will also determine whether the child needs protective services. If the county agency determines that

the child needs protection and the parent is unable or unwilling to accept services voluntarily, the county may start a CHIPS proceeding.<sup>9</sup>

**c. When can the child be taken away from the parents?**

If the county agency believes that the child is in danger, it may go to court to get an emergency order to take the child into custody and place the child in temporary foster care. Law enforcement officers may take a child into custody without a court order if they determine that a child is in surroundings or conditions which endanger the child's health or welfare.

**d. Who can start a CHIPS proceeding?**

CHIPS proceedings are usually started by the county agency. However, if the county agency declines to provide adequate services for a child, any responsible person may start a CHIPS proceeding by filing a private CHIPS petition asking the judge to order that the county provide services. Private CHIPS petition forms are available at the district courthouse in each county. The CHIPS petition must include a statement of facts showing that the child fits at least one of the definitions of a child in need of protection or services listed on pages 24-25 above. The person will not be allowed to file the petition unless she, or someone else acting on the child's behalf, has asked the county for services to protect the child and the county has failed to provide adequate services. A grandparent should contact an attorney for assistance before filing a CHIPS petition. The attorney can explain the risks and benefits of court involvement.

**e. Who are the parties in a CHIPS proceeding? What does it mean to be a party? (Rule 57, Rules of Juvenile Procedure.)<sup>10</sup>**

Generally, parties include:

- The child's guardian ad litem;

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<sup>9</sup> Several counties have adopted a program called Alternative Response to deal with child maltreatment reports. In those counties, when the county child protection agency receives a report of maltreatment, it will initially screen the report to determine whether to do a traditional investigation or to do a family assessment. If the county determines the case would be appropriate for family assessment, and the family agrees to use that approach, the county will assess the family's needs and strengths and work with the family to develop a plan to enhance the strengths and respond to the needs. In these Alternative Response cases, the county will not make a determination of maltreatment.

<sup>10</sup> The Rules of Juvenile Procedure are being revised. Substantial changes may be adopted by the Supreme Court in 2003. The revised Rules will be posted on the Court's web site: [www.courts.state.mn.us](http://www.courts.state.mn.us).

- The child's legal custodian;
- The petitioner;
- Any person who intervenes or is joined as a party; and
- And any other person the court determines is important to a resolution in the best interests of the child.

In CHIPS actions alleging that a child is habitually truant, a runaway, or engaged in prostitution, the child is also a party.

Parties have the right to receive notice, be present at hearings, bring motions, participate in settlement agreements, present evidence, request review of disposition orders, appeal from court orders and otherwise take part in the court proceedings.

**f. Who else may participate in Chips proceedings? (Rule 58, Rules of Juvenile Procedure)**

Participants include:

- The child;
- Noncustodial parents;
- Alleged, adjudicated, or presumed fathers;
- The local social services agency in cases where it is not the petitioner;
- An Indian child's Indian custodian and tribe;
- Grandparents with whom the child has lived within the two years preceding filing of the petition;
- Relatives providing care for the child and other relatives who request notice;
- Current foster parents and persons proposed as long-term foster care parents;

- The spouse of the child; and
- Any other person deemed by the court to be important to a resolution.

Generally, participants may receive notice, attend hearings and offer information at the discretion of the court. The court must permit foster parents, pre-adoptive parents, relatives providing care for the child or relatives to whom the local social services agency recommends transfer of permanent legal and physical custody of the child to be heard in any hearing involving the child.

**g. May a participant become a party?**

Yes.

Some participants have the right to intervene as parties. They include:

- The child;
- The Indian custodian and Indian tribe;
- Grandparents if the child has lived with the grandparent within the two years preceding the filing of the petition;
- Any parent who is not a legal custodian of the child; and
- The local social services agency in cases where it is not the petitioner.

These participants may intervene by serving a notice of intervention on all parties and the county attorney. If no one files an objection, the intervention is accomplished as of the date of service. If there is an objection, the court will hold a hearing to determine whether the participant has the right to intervene.

Other participants may intervene if permitted by the court. They may make the request by filing with the court and serving on the parties and the county attorney a notice of motion and motion to intervene. The court may allow intervention if it will serve the best interests of the child.

**h. What happens during a CHIPS proceeding?**

A CHIPS proceeding involves a number of hearings in juvenile court. These hearings used to be closed to everyone except the parties. However, these hearings are now open to the public.

At the hearings, the child and the child's parent or legal guardian have the right to be represented by a lawyer. The court will appoint a lawyer free of charge for financially eligible parents and legal guardians.

The court may also appoint a lawyer for the child, depending on the child's age. Practice varies around the state. Some counties appoint a lawyer for every child, some require that the child be at least 10 years old.

The court must appoint a *guardian ad litem* for the child. The *guardian ad litem's* role is to advocate for the child's best interests. When the child's wishes conflict with the *guardian ad litem's* recommendation, an attorney should be appointed for the child.

Under federal law, additional rules apply to Native American children in CHIPS cases. (See Part II below.)

### **I. What happens at the first hearing?**

If the child is removed from home, a hearing must be held within 72 hours of the removal. At that hearing the court decides whether the child will remain in out of home care or whether services are available which would make it possible for the child to be safe living at home. The court will also appoint lawyers for the parent and child if they are eligible and a *guardian ad litem* for the child. The parent and/or the child may also be asked to admit or deny the statements in the CHIPS petition.

If the court orders that the child remain in out-of-home placement, the court must decide:

- Where the child will be placed;
- Whether the parents or others should be allowed to visit the child;
- If social services are needed by the parents and/or the child; and
- If medical, mental health, or drug/alcohol evaluations should be ordered.

If the child is to remain out of the parents' home, the child is entitled to foster care payments and services. (See p. 66.) The child must be placed in a licensed foster home. Relatives may be licensed as foster parents and the children may be placed with relatives immediately pending licensing. (See p. 31.)

If the child is not placed with a grandparent or other relative, the court must set reasonable visitation with the grandparent and other relatives if such visitation is consistent with the child's best interests. (MINN. STAT. § 260.191, Subd. 1d.)

**j. Will there be a trial?**

There will be a trial if the parent (or the child when appropriate) denies that the child needs protection or services. The court may schedule a pre-trial conference. This gives the parties, including the county agency, a chance to see if they agree on whether the child needs protection or services. If the parties cannot agree, the court will hold a trial to determine whether the allegations of the CHIPS petition are proved.

**k. How will the Judge decide what services the family needs?**

If the parties agree the child needs protection or services, or the court finds after a trial the child is in need of protection or services, the court will hold a disposition hearing to determine what services are needed by the parents and the child.

That hearing may be held at the same time as the trial, or scheduled for another day. At the disposition hearing, the court will determine, among other things, whether the child should live at home. The court will also review, modify, and adopt a case plan which has been prepared by the county worker, the parents, the *guardian ad litem* and the child, if the child is old enough to understand. The case plan must discuss the child's and family's need for care, rehabilitation, and services; describe the services needed to prevent out-of-home placement or safely reunify the child and parents; address visitation rights and obligations of parents or other relatives, and specify the actions to be taken by the parent, the social worker and/or the child to comply with the case plan and the disposition order. (MINN. STAT. § 260.191, Subd. 1e.)

**l. Is the disposition hearing the end of the case?**

No. Any out-of-home placement ordered by the Court must be reviewed at least every 90 days to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home. When the child remains at home, the case must be reviewed at least every six months from the date of placement. Any party may schedule a disposition review hearing if the child's needs or circumstances change.

A permanent placement hearing must be held when a child remains in out-of-home care. See pp. 35-38 below for more information about permanency decisions.

**m. How can relatives have input in decisions made about the child?**

Grandparents may intervene in the proceedings and participate to the same extent as a parent if the child lived with them during the two years before the filing of the CHIPS petition. In unusual circumstances, the court may allow other relatives to intervene. (See p. 26 above.) Even if the grandparent or other relatives do not formally intervene, they have the right to ask to be notified of the hearings, to attend the hearings and to offer information to the judge.

The child's *guardian ad litem* must make an independent investigation of the child's circumstances and make recommendations to the court based on an assessment of the child's best interests. Relatives should make their views known to the *guardian ad litem*.

Relatives should also contact the county agency if they want the child to live with them or if they want to visit and maintain contact with the child. The law requires that relatives be considered as the first foster care placement resource. Relatives should make their availability and interest known to the assigned social worker.

**2. Relative Placement and Foster Care**

**a. Introduction**

Foster care benefits are available for a child only if the child cannot live in his or her parents' home and is placed in a foster care home, either by an agreement between the parent(s) and the county agency or by a juvenile court order. The county agency or juvenile court may only place a child in a relative's home if that relative is licensed as a foster parent or agrees to obtain an emergency license. This section discusses whether and when a "relative placement" has occurred that allows the relative to receive foster care benefits on behalf of the child.

**b. What is the purpose of foster care services?**

Foster care provides substitute care for a child while an intensive effort is made to correct or improve the conditions causing placement and to reunite the family or, if the child cannot be returned home, to provide some other permanent plan. Foster care maintenance payments are made to the licensed person providing the foster care services.

**c. When is a child eligible for foster care?**

A child is eligible for foster care when he or she has been placed away from his or her parents. A child may be placed in one of two ways: by a Voluntary Placement

Agreement (VPA), which is a signed agreement between the parent(s) and the county agency; or by order of the juvenile court.

If a child is already living with a relative, and the county agency obtains a court order granting the county custody of the child and leaves the child with the relative, the county agency has made a relative foster care placement. The child is eligible for foster care as of that date.

**d. How can a relative request foster care services for a child if child protection is not involved with the family?**

If a relative is currently caring for a child because the child's parent is unable or unwilling to care for the child, the relative may contact the county to request services for the child. The county should consider the request a child protection report. That means that the county will evaluate whether or not the child could safely return to his/her parents. If the child cannot live with the parents, the county may enter into a VPA with the parents or go to court to seek an order placing the child away from the parents.

If someone who is not caring for a child knows the child is being abused or neglected, that person can make a child protection report. The agency will conduct the evaluation described above.

If the agency fails to take action to protect the child, a private CHIPS action can be filed to request that foster care services be given to the child and if appropriate, that the child be placed with a relative as a foster care provider.

**e. If child protection gets involved, can a relative be sure that the child will be placed in that relative's home?**

No. The relative may serve as a foster parent if he or she is licensable and the county agency or the court determines the placement is in the child's best interests. The law provides that extended family members are the preferred foster parents. However, if no relative is licensable or if the county determines placement with a relative is not in the child's best interests, it can recommend placement elsewhere. Then the court decides what is best for the child.

When the county social services agency or the court is involved in determining what is best for a child, the family loses decision-making authority. Before a relative files a private CHIPS petition, he or she should get legal advice concerning the risks and advantages.

**f. How can a relative request that a child be placed in his or her care if the child is already in foster care placement?**

If the child is already in placement, the relative should contact the child's county agency case worker and request that the child be placed in his or her home. A relative does not need a lawyer to do this unless the county agency is unwilling to place the child with the relative and the relative wants to fight for the placement. In this case, the relative should apply to become a licensed foster care provider and obtain the services of an attorney to obtain a hearing before the juvenile court regarding placement.

**g. How can a relative become a licensed foster care provider?**

**I. Emergency Licensing (MINN. STAT. § 245A.035)**

Before a child can be placed with a relative, the relative must be licensed or must be willing to get an emergency license. A county may place a child with a relative who is not licensed to provide foster care if the following requirements for emergency licensing are met:

- The county agency must conduct an initial inspection of the home where the foster care is to be provided to ensure the health and safety of any child placed in the home. The county agency shall conduct the inspection using a form developed by the Commissioner of Human Services. The initial inspection must be conducted, whenever possible, prior to placing the child in the relative's home, but no later than three working days after placing the child in the home;
- At the time of the inspection or placement, whichever is earlier, the relative being considered for an emergency license shall receive an application form for a foster care license; and
- Whenever possible, prior to placing the child in the relative's home, the relative being considered for an emergency license shall provide information required for the background study.

The child will be removed from the home if the relative fails to cooperate with the county agency in securing the foster care license. The emergency license holder must complete the foster care license application and paperwork within ten days of the placement and the agency must assist the license holder in completing the application.

If the Commissioner denies an application for an emergency foster care license, the relative may request that the Commissioner review the denial. No further appeal is allowed, and the child may not remain with the relative during the course of the Commissioner's review.

**ii. Licensing**

Whether or not an emergency license has been granted, the following steps must occur for the relative to become a licensed foster care provider:

- The relative must contact the county agency and request a license application;
- The relative must complete and return the application to the county agency;
- The agency must complete a background study of the applicant and any person over the age of 13 living in the applicant's household, and a safety inspection of the home;
- The agency will ask for references, doctor statements and school reports on the children;
- A licensing worker will be assigned to work with the applicant; and
- The foster parents must participate in annual training.

The licensing process takes at least 90 days and the Minnesota Department of Human Services will determine whether to grant a license. If the application is denied, the applicant has the right to appeal. The written denial notice must be sent by certified mail. If the applicant wants to appeal the denial, he/she must send a written request for appeal to the Commissioner of Human Services by certified mail within 20 calendar days after receiving notice that the application was denied. If the appeal is not on time, it will be denied.

**h. Can the county place my grandchild with a relative who is not willing or able to be licensed?**

No. The county must place a child in a licensed home whenever the county has responsibility for that child.

**I. What are the responsibilities of a relative foster care provider?**

The foster care provider has a duty to provide for the day-to-day care of the child. The provider must also cooperate with the goals of the placement plan. The goals of foster care services are to correct the circumstances that led to placement, and to reunify the child and the parents if the child will be safe in their care and if reunification is in the best interests of the child.

The county agency will have general authority over the care of the child in placement. The placement plan will specify decisions that will be made by the county agency and decisions that require consent of the parent or the court. If the matter is in court, the court has ultimate decision-making power over the child. This includes authority to return the child to the parents or to move the child to another home. The court may order the agency to arrange visits for the parents, therapy for the child, and other services that the child needs. The relative foster parent must comply with the court orders and ensure that the child is made available for appointments and for visitation with the parents.

**j. How long does a court ordered placement last?**

A placement lasts until the court determines that the child's parents are able to care for the child or that some other permanent plan is best for the child. (See Section 3, below.)

**k. Can a relative be sure the child will remain with her/him?**

No. The goal of foster care is to reunite the child with his or her parent(s). If the court finds the parents are able and willing to meet the child's needs, it will order the child returned to the parents. The county agency or the court may decide that it is in the child's best interests to live with someone other than the relative. In making a decision to move a child, the court must consider the relationship developed by the relative caregiver with the child. The foster care provider does not have a legal right to the child.

**l. Can a relative receive foster care benefits for the child after the relative has obtained an order for custody of the child?**

No. Once legal custody of the child is transferred to the relative, the child is no longer eligible for foster care benefits. However, the relative may be eligible to receive MFIP and relative custody assistance (RCA.) RCA supplements MFIP. (See pp. 50-54 and 69-70 for details of those programs.)

**3. Permanent Placement Decisions in CHIPS Actions (MINN. STAT. § 260C.201, Subd. 11)**

**a. In General**

If a child remains in foster care, the court must conduct a hearing to determine where the child will live on a permanent basis. These hearings differ, depending on the age of the child. For children eight years of age or older, the court must hold the hearing no later than 12 months after the child has been placed away from the parents' home. If the child is not returned home, the court must order one of the following: transfer of physical and legal custody to a relative; termination of parental rights; long term foster care; foster care for a specified period of time; or transfer of custody and legal guardianship to the Commissioner of the Department of Human Services.

For children who were under eight years of age at the time the CHIPS petition was filed, the court must hold a hearing no later than six months after the child's placement to review the parents' progress on the case plan. If the court determines that the parent is complying with the terms of the case plan, maintaining contact with the child, and that the child would benefit from reunification, the court may return the child to the care of the parents or continue the matter for six months. If the court determines that the parent is not making progress on the case plan and is not visiting the child according to the terms of the case plan, the court may order the county agency to file a petition to transfer permanent legal and physical custody to a relative or to terminate parental rights. (MINN. STAT. § 260C.201, Subd. 11a)

**b. When will the court transfer permanent legal and physical custody to a relative?**

The juvenile court may transfer permanent legal and physical custody to a relative if such an outcome is in the child's best interests. The court does not need to terminate parental rights in order to transfer custody. The juvenile court will use the same standards that family court uses in determining the best interests of the child.

The county agency may bring a petition naming a fit and willing relative as a proposed custodian, but the county attorney does not represent the relative in connection with this proceeding. Proposed custodians must be given information about their legal rights and obligations as custodians, together with information on financial and medical benefits for which the child is eligible. For instance, the child will no longer be eligible for foster payments once a caregiver has been awarded custody.

A relative may bring a custody petition on his or her own behalf, if the county agency is not recommending him or her as a permanent placement resource<sup>11</sup>. If any party in the CHIPS action objects to transfer of legal and physical custody to that relative, it is unlikely the relative will prevail. If the parties approve of the proposed custodian the relative may then negotiate a plan to get an order transferring custody.

The juvenile court may maintain jurisdiction over the case after the transfer of custody to ensure that the custodian and the child receive appropriate services.

The order for permanent legal and physical custody of a child may be changed in the same way as custody orders in family court. (See p. 16.) When the juvenile court has transferred custody, the county agency must be notified of any proceeding for modification of the custody order.

**c. What is involved in the termination of parental rights?**

The result of some CHIPS cases is that the child is placed for adoption. In order to place a child for adoption the court must first terminate the parents' rights to the child. A petition for Termination of Parental Rights is usually filed by the county agency. The parents may consent to terminate their parental rights. If they do not consent, the court will conduct a trial. If the petition is granted, guardianship is usually awarded to DHS and the agency will seek an adoptive placement for the child.

The juvenile court can also transfer guardianship and legal custody to a licensed child-placing agency or an adult over 21 years of age who is willing and capable of assuming the appropriate duties and responsibilities to the child. If the child is an Indian child, the child's tribe can be appointed as the child's guardian. (See p. 38.)

A relative can file an adoption petition even if the Commissioner or a licensed child-placing agency refuses to consent or supports someone else as the adoptive parent. It is difficult, but not impossible, for a relative to adopt the child if the Commissioner objects to the relative's petition.

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<sup>11</sup> The juvenile court act defines "relative" as: "a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact." MINN. STAT. § 260C.007, Subd. 27. This includes current foster parents. "For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903." MINN. STAT. § 260C.007, Subd. 27.

If a caregiver adopts a child he or she may be eligible for federally-funded Adoption Assistance through the Department of Human Services. (See p. 67.)

Adoption Assistance is a cash payment available for special needs children on an ongoing basis after the adoption. The caregiver should look into Adoption Assistance before finalizing the adoption since an adoption assistance agreement must be entered into before the adoption occurs.

**d. What about long-term foster care?**

The preferred permanent placements of a child are transfer of legal and physical custody to a relative or termination of parental rights and adoption. The court may order a child into long-term foster care only if the court finds that neither an award of legal and physical custody to a relative, nor termination of parental rights is in the child's best interests. Generally, the court may only order long-term foster care if the child has reached 12 years of age and reasonable efforts by the county agency have failed to locate an adoptive family for the child. However, if a child under 12 years of age has a significant relationship with a sibling over the 12 years of age, and they are going to be living in the same foster home, the court may order long-term foster care for both children.

If a child remains in foster care, within six months of the child's eighteenth birthday, the agency must notify the child and the child's parents or guardian and the foster parents of the availability of foster care benefits up to 21 years of age. Upon the request of a child in foster care, the agency shall develop with the child a specific plan related to that child's needs and shall assure that any maintenance or counseling benefits are tied to the plan. If the child disagrees with the agency's proposed plan, the child may appeal.

An order for long-term foster care is reviewable upon motion to the juvenile court. To regain custody, the parent must show a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that return of the child to the parent's care would be in the best interests of the child.

**e. When will the court order foster care for a specified period of time?**

The court may only order foster care for a specified of time if it is in the child's best interests and there are compelling reasons that neither transfer of legal and physical custody to a relative nor termination of parental rights is in the child's best interests. This permanency option is only available when the sole basis for finding the child in need of protection or services is the child's behavior. The period of foster care cannot exceed 12 months.

**f. When will the court order guardianship and legal custody to the Commissioner of Human Services?**

The court may order this option when there is an identified prospective adoptive home that has agreed to adopt and the court has accepted the parent's voluntary consent to adopt.

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**INDIAN CHILDREN: THE INDIAN CHILD WELFARE ACT (ICWA) AND THE MINNESOTA INDIAN FAMILY PRESERVATION ACT (MIFPA)**

**A. What is ICWA? What is MIFPA?**

ICWA (25 U.S.C. § 1901) and MIFPA (MINN. STAT. §§ 260.751 to 260.781) are laws designed to protect Indian children from being arbitrarily removed from their families and tribes. ICWA is a federal law. MIFPA is a Minnesota statute. These laws protect the rights of Indian children to be raised in their own culture and protect a tribe's right to its future in its children.

**B. What kind of cases are covered by ICWA and MIFPA?**

All juvenile, family, and probate court actions discussed in this manual involving an Indian child's placement outside of the home of a parent are covered by the ICWA and the MIFPA. These laws apply even if the caregiver is a relative and a member of the same tribe as the child.

**C. Who is an Indian child?**

A child who is a member of an Indian tribe or who is eligible for enrollment in a tribe is considered an "Indian child." It is each tribe's right to decide who is and who is not a member of the tribe. The law defines Indian tribes as those tribes recognized by the Federal Bureau of Indian Affairs. For purposes of ICWA, Alaska Native villages also qualify as tribes.

**D. What's different when an Indian child is involved?**

ICWA and MIFPA have specific procedures that must be followed and legal standards that apply in all cases involving an Indian child's placement outside the parental home. For instance, the parent or Indian custodian and the child's tribe must receive notice, by registered mail, at least ten days before the proceeding. 25 U.S.C. § 1912(a). The Indian custodian and the child's tribe have the right to intervene at any point in the proceedings. 25 U.S.C. § 1911(c). The court may not order placement unless it finds by 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. 25 U.S.C. § 1912(e). Evidence must include testimony by an expert in tribal child-rearing customs. In some situations, the case may be transferred to a tribal court. 25 U.S.C. § 1911(b).

The ICWA sets out special timetables and rules governing the parents' consent to an adoption and their right to revoke consent. The child's tribe must be given notice of the adoption proceeding.

ICWA mandates preferences for placement and adoption, which apply in the absence of good cause to the contrary. 25 U.S.C. § 1915. In adoption, preference is given to a member of the child's extended family; other members of the child's tribe; or other Indian families. In other placements, preference is given to a member of the extended family; a foster home licensed, approved, or specified by the Indian child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. 25 U.S.C. § 1915. These placement preferences must be followed except in extremely limited circumstances.

**E. What responsibility does a kinship caregiver raising an Indian child have under these laws?**

The laws are quite complex and this manual cannot give detailed information about all of its provisions. **HOWEVER**, if the caregiver knows, or has reason to suspect that the child has American Indian heritage or ancestry, the caregiver should tell his/her attorney so that the attorney can comply with the law's requirements. Many problems can arise later if these laws are not followed.

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## **LONG-TERM PLANNING FOR CHILDREN WHOSE PARENTS HAVE HIV, AIDS, OR OTHER TERMINAL ILLNESSES**

**A. In General**

This section explores the potential issues parents, family members, and caregivers encounter when planning for the custody and care of children in the face of parental illness or death. Although the context for this discussion is diagnosis of HIV, the infection which later may develop into AIDS, the ideas and potential solutions are applicable to any situation in which a parent or legal custodian suffers from a life-threatening illness.

While any terminal illness is tragic and painful, situations where a parent has contracted HIV or AIDS are especially difficult. Feelings of anger, depression, denial, dread of negative social reaction, and fear of impending disability or death overwhelm even the best intentions to make arrangements. Thus, it is no surprise that HIV infected mothers make legal custody arrangements in only 25 percent of the cases, even though the majority of children (91 percent) will reside with

a family member after the mother's death<sup>12</sup>. Parents and legal custodians, however, cannot be assured that the desired family member or friend will gain custody of their children. Early and proper planning helps to ensure that their decisions are honored and that kinship caregivers are prepared financially, emotionally and logistically to meet the needs of the children in these special situations.

## **B. What is involved in long-term planning?**

Parents and legal custodians, not just those diagnosed with a terminal illness, are encouraged to prepare custody and care plans for their children as early as possible in order to avoid having to make decisions during a crisis – or worse, a situation where the parent or legal custodian is incapacitated to the extent that decision-making must be left to others who may or may not respect the individual's wishes. Faced with the prospect of being unable to care for their children, parents and legal custodians may well undergo a premature sense of loss long before the illness takes over. They often feel insecure about relinquishing their parental or custodial roles to someone else and fear they will be replaced in the hearts of their children by the new caregiver. These emotions must be recognized and respected before a parent or legal custodian can move forward with the planning process and explore options available for future custody of his or her child. The planning process can become an empowering experience for the parent or legal custodian. Feelings of guilt or pain are soothed when plans are finalized for their children's care. The goal is always peace of mind for both parent and children.

Relatives or close family friends who are able and willing to serve as caregivers for a child can assist a parent in navigating the complex legal and social issues surrounding the custody process. A careful analysis of the situation should be undertaken, preferably with the assistance of an attorney, a social worker, and/or other qualified professionals. Questions and issues needing to be addressed include the following:

- Is there more than one child? If so, can a plan be created that keeps siblings together?
- Does the child have any special medical or psychological needs?
- Is there is a surviving non-custodial parent, and does she or he want custody of or contact with the child?
- Does the proposed caregiver have the health, space, and time to devote to a child?

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<sup>12</sup> R. Forehand, J. et al, Orphans of the AIDS Epidemic in the United States: Transition-related Characteristics and Psychosocial Adjustment in 6 Months After Mother's Death, *AIDS Care* (1999) at 715-22 (quoting A.M. Boxer, Child Care Arrangements of Children Whose Mothers Have Died of AIDS, Paper presented at the International AIDS Conference, Geneva, Switzerland (1998).

- Does the proposed caregiver have sufficient financial resources?
- What are the desires and needs of the child?<sup>13</sup>
- Is there any family member or friend who may contest the plan?

The planning process is much more difficult if a non-custodial parent contests the plan, or if the nature of the parent's relationship with his or her family and/or the non-custodial parent is strained. A non-custodial parent is usually a parent's first choice unless that individual is not willing or able to care for the child. However, the non-custodial parent and parent may have a history of domestic violence or substance abuse that influences whether the child should be placed in his or her care. Court hearings may be necessary to determine the best interests of the child.

If a fit non-custodial parent does not exist, family members usually care for the child when the parent cannot. However, this is not always the case. Sometimes, parents do not want their child to live with grandparents or other family members because of demonstrated negative attitudes toward HIV disease, a history of physical or substance abuse, or differing cultural or religious beliefs. If any of these conflicts are present, the parents need to determine, again as early as possible, who will have custody of the child when the parent is unable to care for him or her. Early planning can help avoid an emergency situation where the parent has become too ill to participate in intense family discussions and critical decision-making about the custody of the parent's child. If the parent cannot participate in these discussions, the very people with whom the parent did not want his or her child living, may end up the custodians.

As discussed below, there are legal tools available to help ensure that a parent's wishes will be followed. If there is disagreement among family members as to placement, formal mediation should be considered to reach resolution.

### **C. What should a plan include?**

Once the parent, legal custodian, grandparent, or other third party, and the child have made an initial analysis of the situation, the next step in the process is to create the plan. The plan should include:

- Legal options;
- Potential sources of financial assistance to parents and caregivers;

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<sup>13</sup> Geballe, S. et al, *Forgotten Children of the AIDS Epidemic* at 132 (Yale Press, 1995)

- Documentation of the family's history by the biological parent; and
- Compilation of support services for parent, children, caregivers.<sup>14</sup>

#### **D. What are the legal options?**

There are several legal options available for the permanent or temporary transfer of custody from a biological parent or legal custodian to another adult, all of which are explored in detail in this manual:

- Appointment of a testamentary guardian through a will;
- Designation of a temporary or stand-by custodian;
- Order of custody for the third party in family court prior to death;
- Termination of parental rights leading to adoption by an adult of the parent's choice;
- Filing a private CHIPS petition or making a child protection report; or
- Delegation of Parental Authority.

Parents and potential caregivers must candidly discuss each of these options in light of the child's best interests to find the appropriate legal relationship to define the plan. Each of these options is fully described in this manual.

Kin who become guardians or custodians after the death of a child's parent should be prepared for many changes in their own lives. The child will require support throughout the bereavement process. The caregivers may need to move into a larger home, or even relocate to a new community, in order to accommodate the child. Finally, kin, especially grandparents, may need to reevaluate their parenting philosophy in light of the different needs of children in a new generation.<sup>15</sup>

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<sup>14</sup>Lisa Merkel-Holguin, *Children Who Lose Their Parents to HIV/AIDS: Agency Guidelines for Adoptive and Kinship Placement*, pp. 50-54 (Child Welfare League of America, 1996)

<sup>15</sup> Geballa at 135.

**E. What financial assistance is available?**

Resources are available to provide financial support to the kinship or third party caregiver, the parent, and the child, including social security, cash assistance and medical benefits as well as ongoing child support obligations from non-custodial parents. These options are discussed fully beginning at p. 45.

**F. How is a family legacy for the children created?**

Parents and legal custodians can create a legacy for their children by documenting their time together as a "family history." Grandparents can help parents construct these special histories and ensure that after the parent is gone, the child will always have access to a tangible memory of his or her parent. Suggested legacy projects include:

- Writing a letter to each child;
- Making a family tree;
- Making a video or audio tape recording;
- Creating a family photo album;
- Developing a family scrapbook; and
- Putting aside a meaningful gift from the parent or legal custodian to be given to the child on a special occasion.<sup>16</sup>

**G. What support services are available?**

Many types of support services are available to kinship caregivers, third party custodians, parents, family members and children affected by HIV disease. Suggested services range from counseling to respite care, case management, special education programs, support groups, hospice care, budgeting, and much more. The Minnesota AIDS Project AIDSLine can provide links to all of these services. Call 612-373-AIDS (612-373-2465 TTY) or 1-800-248-AIDS (888-820-2437 TTY) or visit [www.mnaidsproject.org](http://www.mnaidsproject.org).

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<sup>16</sup> Merkel-Holguin at 54.

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**VISITATION OF CHILDREN BY THIRD PARTIES**  
**MINN. STAT. § 257C.08**

A grandparent or great-grandparent may obtain an order allowing visitation with his or her grandchild or great-grandchild under these circumstances:

- When the parent is deceased;
- In family court proceedings (dissolution, custody, legal separation, annulment, or parentage) after the commencement of the proceeding or at any time after completion of the proceedings;
  
- When a child has resided with grandparents or great-grandparents for one year or more and is subsequently removed from the home by the child's parents (other relatives or third parties may be granted visitation rights when the child has resided with them for two years or more);
  
- When a child is adopted by a step-parent, if the grandparent is the parent of a deceased parent of the child or a parent of a child whose parental relationship was terminated by an order of adoption.

If a child has resided in a household with a person for two years or more, that person may obtain an order of visitation with the child if he or she and the child have established emotional ties creating a parent and child relationship,

The court may only grant visitation rights to a third party in all of the above circumstances if it would be in the child's best interest and would not interfere with the parent-child relationship. The court cannot deny visitation based on an allegation of interference with the parent-child relationship unless it holds a hearing and the parent proves by a preponderance of the evidence (more likely than not) that interference would occur. If the court considers the child to be of sufficient age to express a preference, it must consider the reasonable preference of the child with regard to visitation.

When a child is adopted by a person other than a step-parent, the child's biological grandparents cannot have visitation rights if the adoptive parents object. However, the grandparent or relative does have the right to enter into a communication agreement at the time of adoption, if he or she lived with the child before adoption or if the child is adopted by a relative and both birth parents are deceased. (See MINN. STAT. § 259.58 for further information.)

It is not necessary to have an attorney to obtain a visitation order, although it is advisable. It is best to find an attorney with experience in family law, particularly visitation issues.

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## PUBLIC ASSISTANCE PROGRAMS

Grandparents who find themselves with the extraordinary responsibility of raising grandchildren may discover they are financially unprepared to do so. While they may have prepared adequately for their own retirement, they may not have enough money to support children. Grandparents may also find that the children have special needs.

Various public assistance programs are available to help grandparents. Some are cash benefit programs and others are programs which provide health care and/or social services. This section contains descriptions of the various programs available, how to apply for them, and, if denied, how to appeal.

Many of the programs are designed to assist a child living with a parent. Grandparents should be persistent in the application process to ensure that the children get the benefits to which they are entitled. They should be aware that each of the programs has different eligibility criteria and benefits. Grandparents do not need to have an order of custody to obtain benefits for their grandchildren. It is important that grandparents not allow themselves to "go without" when these programs are available to assist them and their grandchildren.

**CAUTION:** *The information contained in this section is correct as of January 1, 2003. Proposals in Congress and the Minnesota legislature could alter the current programs. Please check with your local human services office or Legal Aid office to ensure that the information is correct.*

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## APPLICATION PROCEDURE FOR PUBLIC ASSISTANCE PROGRAMS

### 1. How and where to apply.

An individual may apply for the Minnesota public assistance programs discussed here by calling, writing, or visiting their county social services office or county department of economic assistance (county agency). A complete listing of county agencies may be found by:

- calling the Minnesota Department of Human Services at (651) 297-3933, or visiting their Website at: [www.dhs.state.mn.us](http://www.dhs.state.mn.us); or
- calling the Senior LinkAge Line<sup>®</sup> at 1-800-333-2433; or
- calling United Way (2-1-1) or 1-800-543-7709; or
- visiting the MKCA website at [www.mkca.org](http://www.mkca.org).

The county agency must give an application for assistance to anyone who requests one, and must also explain the application and the process.

The intake worker will give the caregiver a Combined Application Form (CAF). This form allows the caregiver to apply for more than one assistance program with one application. The caregiver should immediately fill out and file Part I of the form which is one page long. The date Part I is signed and submitted is the “date of application.” If an applicant waits to file Part I of the form, he or she may get a smaller amount of benefits or have to wait to get benefits. Applicants should be sure to sign and date the CAF, Part I, and they should be sure to say whether or not an emergency need exists.

## **2. What if the county intake worker refuses to take an application?**

The county cannot refuse to take an application. An individual has a right to apply for public assistance, even if the receptionist or financial worker at the county agency says that he or she does not appear to be eligible. If the county worker does not allow a caregiver to fill out an application, the caregiver may want to ask to speak with the worker’s supervisor. If they still refuse to take the application, the caregiver should contact his or her local legal services office at once.

## **3. How long does the application process take?**

After Part I is submitted, the applicant will be scheduled to meet with a financial worker from the county agency. He or she will need to fill out and bring Part II of the CAF to that meeting along with requested documentation such as proof of income, assets, birth dates, etc. (If a caregiver is applying for a child-only grant, he or she does not have to provide information regarding the caregiver’s income and assets, only those of the child). The type of proof you need to bring depends upon the program for which the caregiver is applying. Failure to bring this information to the meeting may mean a delay in getting benefits. The county will not process the application until it is complete.

Applications for the Minnesota Family Investment Program (MFIP) must be processed within 30 days. A decision on an application for Medical Assistance (MA) must be made within 45 days (ten days if the applicant is a pregnant woman and 60 days if he or she is applying because of a disability). A decision on a General Assistance (GA) application must be made within 30 days (60 days if the individual is applying because of a disability). A decision on a Food Stamp application must be made within 30 days. Applications for Emergency Assistance should be processed on an expedited basis.

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## APPEAL RIGHTS AND PROCEDURES

### 1. Can a person appeal the county's decision regarding benefits?

A person has the right to appeal any denial of assistance, the failure of an agency to act in a timely way, and any change in his or her assistance, whether it be a reduction, suspension, termination, or use of vendor payments.

The following appeal process must be used for each of the public assistance programs described below except for SSI.<sup>17</sup>

The county agency must give written notice of the action the county has taken. This written notice is called a Notice of Action. The Notice of Action will tell the applicant/recipient:

- The reasons for the action;
- The law supporting the action;
- That he or she has a right to file an appeal;
- That he or she has 30 days from the date of the Notice of Action to file a written appeal;
- How to file the appeal;
- That he or she may be represented by another person;
- That he or she has a right to look at his or her file before the hearing;
- That he or she has a right to question any testimony or evidence given at the hearing;
- That he or she has a right to present evidence and testimony at the hearing;

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<sup>17</sup> For the appeal procedure for SSI, see p. 59.

- That he or she may continue to get assistance while the appeal is pending, but may have to repay the county if the appeal is not successful; and
- That he or she has a right to reapply for eligibility or additional eligibility.

If an applicant or recipient does not receive a Notice of Action, or if any employee of the agency tells the applicant or recipient that he or she cannot file an appeal, the applicant or recipient should contact a legal services office immediately.

## **2. How does a person file an appeal?**

Generally, an individual has 30 days from the date of the Notice of Action to file a written appeal. (For some programs, the appeal time is 30 days from the date of receipt of the Notice of Action.) An appeal should be filed right away in order to protect the individual's right to appeal. In addition, an individual has up to 90 days to appeal if there is good cause for missing the 30-day deadline. In the food stamp program, an individual has 90 days from the date of the notice. **In order to continue to receive benefits during the appeal, an individual must appeal within ten days or before the effective date of the action.**

The appeal can be sent to the county agency or directly to the Department of Human Services, Appeals Division, 444 Lafayette Road, St. Paul, MN 55155. When the appeal request is made, the person appealing should request a hearing and explain why his or her case has been treated unfairly or inappropriately. A copy of the appeal letter should be made and kept for future reference.

## **3. What happens after the appeal is filed?**

The Department of Human Services will send the appellant (the person who appeals) a notice of the time and date for the hearing. If the appellant cannot attend the hearing, he or she should call the referee immediately to get the hearing rescheduled. The hearing referee's telephone number will be on the notice.

The county agency will send the appellant an Appeal Summary which explains the county's decision and the laws upon which the decision is based. The appellant should make sure to read this before the hearing so that he or she goes to the hearing adequately prepared.

## **4. What happens at the appeal hearing?**

The hearing is held in a regular office at the county agency and is more informal than a court trial. Sometimes the hearing is done over the telephone. However, if the appellant wants a hearing in person, he or she should call the referee upon receipt of the notice, and request a hearing in person.

The appeals referee, the county worker who made the decision, a lawyer or advocate for the county, and the appellant and his or her lawyer or advocate will be at the hearing. The appellant may also bring friends or witnesses.

First, the Referee will ask people questions and then the county will present its evidence. The appellant will have the opportunity to present evidence. Everything that is said at the hearing is recorded. Once both sides have had a chance to present their cases, the referee will either make a decision then or will mail the decision to both sides.

If the appellant disagrees with the referee's decision, he or she may file an appeal with in the local district court. The appellant should contact an attorney to file the appeal.

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## **MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP)**

### **1. What is MFIP?**

MFIP is a monthly cash and food assistance program for low-income families with children. It covers children up to 19 years of age if the child is a full-time student. Low income children and adult women who are pregnant may also receive MFIP.

### **2. Can a grandparent or other relative receive MFIP for the child?**

A low-income caregiver may be eligible for an MFIP grant for herself and the child if the caregiver is a relative or has legal custody. Relative is defined as grandfather, grandmother, brother, sister, half-brother, half-sister, stepbrother, stepsister, uncle, aunt, first cousin, first cousin once removed, nephew, niece, great, great-great or great-great-great relatives, or a spouse of any person named in the above group even after the marriage ends by death or divorce. To be eligible for MFIP, the relative caregiver must have income and resources below certain prescribed levels.

Even if the relative has income or assets that make them ineligible for MFIP on their own account, they may be able to get a “child only” grant for a child in their care, unless the child's income and resources exceed the eligibility standards. The child is eligible for the child only grant regardless of the relative’s income.

If the relative does not have an order of custody, he or she must provide proof of the relationship. Birth certificates or Recognition of Parentage forms can be helpful to verify relationship. If a paternal relative is denied MFIP because the county agency determines he or she is not an eligible caregiver, the caregiver may want to either obtain an order of custody in family court or contact the county attorney for assistance in establishing paternity. He or she should also apply for GA.

### **3. Are There Financial Eligibility Requirements?**

Yes. To be eligible for MFIP, an applicant must meet income and asset limitations. Many rules concerning whose income and resources to count and what type of income to count govern a determination of eligibility and the amount of the grant. This section outlines some of the basic information. When a caregiver applies for MFIP, the county will figure the grant and give the caregiver a notice that explains how the grant was calculated.

#### **a. Whose income and assets count?**

In determining financial eligibility for MFIP, the county will look at the assets and income received on behalf of the child and each household member included on the grant. If the caregiver is applying for a child-only grant, only the child's income and assets will be counted. If the caregiver wants to be included on the grant, her income and assets will be counted as well.

#### **b. What kind of assets count?**

A new applicant must have no more than \$2,000 in cash, stocks, bank accounts, and other non-excluded assets. An ongoing recipient must have no more than \$5,000 in cash, stocks, bonds, bank accounts or other non-excluded assets, etc.

The homestead, clothing, and normal household goods (ie. furniture, appliances, jewelry, bicycles, and clothes) are not counted. If you have questions about what may be counted as an asset, contact your local legal services office.

A caregiver who is on the MFIP grant can own one car which has a loan value less than or equal to \$7,500. The value of special equipment for a handicapped member of the assistance unit is excluded.

#### **c. What kind of income counts?**

All income received on behalf of a child or by household members who are on the MFIP grant must be included except for income explicitly excluded by law. For instance, tax refunds and most educational loans and grants are not counted as part of the family's income. "In-kind" income, the value of the food, clothing, and shelter that you are providing your grandchild, is not included as income to the grandchild. The earned income of children who are in school at least half-time is not counted.

**d. What is the initial income test?**

In order to be eligible for MFIP, the assistance unit's countable income minus allowable disregards must be below the MFIP transitional standard for that family size. The transitional standard is the total of the cash grant and the food portion of the grant. (See chart below.)

**4. What is the amount of the grant?**

**MONTHLY STANDARD  
\*AS OF OCTOBER 1, 2002**

<b>Number of Eligible Person(s)</b>	<b>Full Transitional Standard</b>	<b>Cash Portion</b>	<b>Food Portion</b>
<b>1</b>	<b>\$ 370</b>	<b>\$ 250</b>	<b>\$ 120</b>
<b>2</b>	<b>658</b>	<b>437</b>	<b>221</b>
<b>3</b>	<b>844</b>	<b>532</b>	<b>312</b>
<b>4</b>	<b>998</b>	<b>621</b>	<b>377</b>
<b>5</b>	<b>1,135</b>	<b>697</b>	<b>438</b>
<b>6</b>	<b>1,296</b>	<b>773</b>	<b>523</b>
<b>7</b>	<b>1,414</b>	<b>850</b>	<b>564</b>
<b>8</b>	<b>1,558</b>	<b>916</b>	<b>642</b>
<b>9</b>	<b>1,700</b>	<b>980</b>	<b>720</b>
<b>10</b>	<b>1,836</b>	<b>1,035</b>	<b>801</b>
<b>Each Additional Person</b>	<b>\$ 136</b>	<b>\$ 53</b>	<b>\$ 83</b>

\* The cash and food portions of the grant may change, depending on state and federal law. The food portion and the whole chart generally changes in October. For updated information contact either DHS or your county. The Full Transitional Standard is the total of the cash and food portions.

**5. What about food assistance?**

Relative caregivers who have opted not to be included in the assistance unit may still be eligible for food support benefits.

**6. Are there other eligibility requirements to consider?**

There are additional requirements. Failure of parents to meet these requirements will affect their eligibility for MFIP, which may mean they will turn to relatives to provide care for their children. These provisions include the following:

**a. Sixty-month lifetime limit**

Federal and state law limits MFIP eligibility to parents and caregivers who have received less than 60 months of MFIP cash assistance in their lifetime. Minnesota began counting toward the 60 month lifetime limit on July 1, 1997. This limit is tracked per caregiver and does not need to be consecutive. The following are some exceptions where months are not counted towards the limit:

- Months caregivers are 60 years of age or older;
- Months parents under 18 years of age comply with approved living arrangement requirements and with education requirements;
- Months 18 and 19-year-old parents comply with Employment Services;
- Months relative caregivers are not receiving assistance. (Child benefits only);
- Months victims of domestic violence comply with an approved alternative employment plan (formerly called the "safety plan;") and
- Months persons live in Indian country with 50 percent or more adults not employed.

Some families can qualify for a hardship extension and receive benefits beyond 60 months.

**b. Restrictions for some caregivers**

- If a caregiver was convicted of a drug felony on or after 7/1/97, the county must pay the recipient's shelter and utility costs directly to the providers of those services, and the caregiver is subject to random drug testing.
- Parole violators are ineligible for benefits until the violation is cured.
- Fleeing felons are ineligible for benefits until the issue is resolved.

**7. What about minor parents?**

Parents under 18 years of age, unless exempt, must attend school and must live with an adult relative, or in an adult-supervised, supported living arrangement. In addition, MFIP must be paid in the form of a protective payment on behalf of the minor caregiver and the minor child.

**8. What are the responsibilities of relative caregivers?**

- a. Child Support.** Caregivers must provide information on each non-custodial parent's whereabouts because the natural or adoptive parents are still financially responsible for the children.
  
- b. Work Requirements.** Caregivers who receive assistance themselves must engage in work activities. However, individuals 60 years of age or older, ill or disabled persons, or caregivers needed in the home to care for an ill or disabled household member are not subject to the work requirements. Note: Effective July 1, 2004, these exemptions no longer apply and all caregivers receiving MFIP for themselves will be required to develop an employment plan with a job counselor. However, the employment plans must reflect the needs of the caregivers. Caregivers should talk to their job counselors about appropriate activities to be included in the plan. Caregivers who do not receive assistance for themselves do not have to engage in work activities. There are no work exemptions for caregivers who receive an extension of benefits beyond the 60-month limit.

**9. Are relative caregivers and children eligible for any other assistance?**

Generally, caregivers and children who receive MFIP are eligible for health care benefits. Families on MFIP are eligible for the food portion. Caregivers who do not receive MFIP themselves may be eligible for the food support programs.

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**GENERAL ASSISTANCE (GA)**

**1. What is GA?**

GA provides monthly cash grants to individuals and childless couples who are low-income, unable to work, and not eligible for any other government program (such as MFIP). The maximum benefit is \$203 per month for a single person and \$260 per month for a married couple. A minor not living with a parent, step-parent, or legal custodian is entitled to \$250 per month. Minor GA recipients are eligible for Medical Assistance (MA), and adult recipients, depending on the circumstances, may receive health care under the MA, MinnesotaCare, or GAMC (General Assistance Medical Care) programs. GA is funded by the state government, and GA recipients must take steps to become eligible for other programs such as the SSI or MFIP programs.

## **2. When would a caregiver or minor child get GA instead of MFIP?**

There is no MFIP eligibility if a caregiver does not have legal custody of a child or cannot establish a relative relationship with the child (i.e., paternity has not been established). In such cases, the caretaker may be eligible for GA and the child could get a GA for minors grant. People under the age of 18 years who are not living with a parent, step-parent or legal guardian may get GA if they meet one of the following conditions:

- They are legally emancipated. A minor who has been married, or is on active duty in the uniformed services of the United States, or has been declared by a court of competent jurisdiction or is otherwise considered emancipated under Minnesota law is considered to be legally emancipated;
- They are at least 16 years of age and the director of the county agency or the director's representative approves GA as part of a social service case plan; or
- They live with an adult with the consent of a legal custodian and the county agency.

The child must be referred to social services to develop a social services case plan. As GA for the adult and for minors is a safety net, caregivers should advocate for a case plan and GA eligibility, and appeal any adverse decision immediately.

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## **EMERGENCY ASSISTANCE (EA)**

### **1. In General**

Families may face financial difficulties when they unexpectedly take on the care of a relative's child. Money may be spent on the child instead of rent, mortgage, or utilities. Each county has its own program and spending limit to help with crisis situations which threaten a family's health and safety and which, if not resolved, will cause severe problems for the family.

Each county may provide assistance to resolve the emergency. For instance, it can be used to pay past-due rent, past-due mortgage or contract-for-deed payments, utility bills, moving expenses or home repair bills. If the request is for assistance to prevent foreclosure or eviction, EA payments in combination with other available resources must be sufficient to resolve the emergency, not just delay it. Counties are setting limits as to how much they will spend.

## **2. When can a caregiver use Emergency Assistance?**

Caregivers of children under 21 (18 in some counties) years of age are eligible for Emergency Assistance if an emergency exists that causes or threatens to cause destitution to the caregiver's family, or jeopardizes the health and safety of the children. There must be one U.S. citizen in the household and there is a 30-day residency requirement. Caregivers may be eligible for EA even if they are not eligible to receive MFIP, but must have a household income below 200% of poverty.

To be eligible, at least one member of the household must have lived in Minnesota for 30 days.

## **3. When can a caregiver use Emergency General Assistance (EGA)**

A caregiver may be eligible for EGA, whether or not he or she is a General Assistance applicant or recipient, as long as:

- There is an emergency relating to shelter, utilities, food, clothing, or other items the loss or lack of which is determined by the county agency to pose a direct, immediate threat to the physical health or safety of the caregiver;
- The emergency is temporary and does not exceed 30 days;
- The caregiver does not have enough income or assets to resolve the emergency and the money will resolve the immediate crisis;
- The caregiver is not a current recipient of MFIP or EA benefits; and
- At least one member of the household has lived in Minnesota for at least 30 days.
- May use EGA only one time in a 12-month period.

## **4. What are Emergency Food Support Benefits?**

If a caregiver's household is in immediate need of food and has little or no income or resources in the month the caregiver applies for food stamps (or any other benefit), the household may be entitled to expedited food support benefits. This means that the county agency is required to provide food support benefits to the caregiver's household within one day of the date of application.

## **5. What About Appeal Rights?**

The county agency must act quickly on a written application for Emergency Assistance. Depending upon the urgency of the emergency need, this can mean responding the same day a caregiver applies for help.

When a caregiver applies for Emergency Assistance and is denied, he or she is entitled to an "expedited appeal." This means that a hearing must be scheduled within a few days to review the decision of the local county agency. When appealing a the denial of EA or EGA, the caregiver must be sure to request an "expedited appeal" from the financial worker. A full description of the appeal procedure can be found beginning at p. 47.

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## SUPPLEMENTAL SECURITY INCOME (SSI)

### 1. What is Supplemental Security Income?

Supplemental Security Income (SSI) is a federal cash benefit program for low-income persons 65 years and older and for blind and disabled persons of any age, including children. SSI recipients receive cash benefits and are automatically eligible for Medical Assistance.

### 2. Are children eligible for SSI?

Children with health problems, including drug-exposed infants, may qualify for SSI benefits. A child is considered disabled if his/her physical or mental impairment is as severe as a condition that would prevent an adult from working. This condition must be expected to last at least 12 months or result in the child's death.

As a standard for childhood disability, Social Security has developed categories of physical and mental health problems which have age-specific descriptions of symptoms. These categories are called "*listings*." If the child's condition is found in the listings, Social Security will find the child disabled. If the child's condition is not in the listings, Social Security must decide whether the child's condition is medically or functionally as serious as a listed impairment. If it is, Social Security will find the child disabled.

### 3. What are SSI income and asset standards?

Once disability has been established, Social Security will determine whether the child's income and resources are under the SSI limits.

To qualify for SSI, an individual (including a child) must have countable income which does not exceed the current federal benefit rate. In 2003, that amount is \$552 per month. If a child receives support payments from a parent, one-third of the payment is not counted as income. If a child works, the first \$85 of earned income and half of the remainder received in a calendar month is not counted.

There are also asset limits. Individuals may have:

- No more than \$2,000 cash;

- One automobile with a value of \$4,500, or of any value if it meets the SSI standard of necessity;
- A home of any value;
- Burial space (plots, caskets, headstones, etc.) for self and members of immediate family;
- Burial funds set aside for burial expenses up to \$1,500;
- Household and personal goods with an equity value of up to \$2,000.

#### **4. Does a caregiver's income count?**

If a child is living with his/her parents, SSI has formulas to determine how much of the parent's income is considered available to the child. If a child is living with someone other than a parent, only the child's income and assets are counted in determining eligibility. No income or assets of a grandparent are deemed available to a grandchild.

However, a grandchild living with a grandparent may not receive the full SSI benefit. In most cases, the child receives only two-thirds of the full cash grant. Social Security reduces the benefit by one third because it considers that amount to be the in-kind support and maintenance a child receives from a caregiver. This is called the "one third" reduction rule. This rule does not apply if the child actually contributes a pro-rata share of income to the household expenses; then the child will receive the higher benefit. To determine this share, Social Security divides the total household expenses by the number of people in the household. For example, if there are three people in the household and the total household expenses are \$900, then the pro-rata share is \$300. Since the grandchild's SSI benefits will be at least \$552, that child will be able to contribute \$300 to the household expenses.

#### **5. How does a caregiver apply for SSI?**

To apply for SSI, contact your local Social Security Office. A complete listing of Minnesota Social Security Offices may be found by:

- calling the Social Security Administration at 1-800-772-1213 (by TDD 1-800-325-0778) or by visiting their Website at [www.ssa.gov](http://www.ssa.gov); or
- calling the Senior LinkAge Line<sup>®</sup> at 1-800-333-2433; or
- calling United Way (2-1-1) or 1-800-543-7709; or
- visiting the MKCA website at [www.mkca.org](http://www.mkca.org).

## **6. What if SSI is denied?**

The Social Security Administration will send a written decision stating whether or not the child is eligible for SSI. A reconsideration of the decision may be requested. A written request for reconsideration must be filed at the local Social Security office within 60 days of the denial. Social Security will then review the decision and send a letter outlining their decision.

To appeal the decision upon reconsideration, a request for hearing form must be filed at the local Social Security office within 60 days from the date of the decision. A hearing will be held before an Administrative Law Judge where the caregiver can explain why he or she believes the child is disabled. The caregiver can bring as witnesses persons who know the child.

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## **SOCIAL SECURITY BENEFITS**

If the grandchild's parent worked, paid social security taxes and earned credits, surviving children may receive Social Security Survivor Benefits if they are unmarried and under 18 years of age, (19 years of age if currently attending elementary or secondary school full-time, and 21 years of age if attending college). A child who is adopted after the death of both of his or her parent, will continue to receive Social Security Survivor Benefits after the adoption. Further, if a caregiver adopts a child, that child will be eligible for social security on the caregiver's record, in the event the caregiver dies or receives social security benefits.

In order to apply for many of these benefits, the children will need social security numbers. Caregivers can apply for a social security card for children in their care. In order to apply, you must bring a certified copy of the child's birth certificate and one or more documents showing the child's identity. If you are the person to sign the form, you must bring a form of identification. You can also obtain the social security card by mail. To request an application or obtain social security benefits, contact your local Social Security Office. (See immediately above.)

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## EARNED INCOME TAX CREDIT

### 1. In General

Low-income wage earners are eligible for a number of credits and deductions which could reduce their income tax liability and could even mean they receive a refund check. This section of the manual highlights the Earned Income Tax Credit. For information about other credits and deductions, consult an attorney or a tax preparer.

### 2 What is the Earned Income Tax Credit (EITC)?

The EITC is a tax credit for people who work and meet income limits. The maximum credit for tax year 2002 is \$4,140.<sup>18</sup> This credit reduces the amount of tax you owe and may give you a refund. Grandparent caretakers may be eligible for this tax credit.

### 3. What are the income limits?

For tax year 2002, you must have worked during the year and your earned income must be less than:

- a. \$33,178 if you have two or more qualifying children (\$34,178 if married and filing a joint return);
- b. \$29,201 if you have one qualifying child (or \$30,201 if married and filing a joint return);
- c. \$11,060 if you have no qualifying children and are between 25 and 65 years (or \$12,060 if married and filing a joint return).

### 4. Who is a qualifying child?

A qualifying child may be: your son, daughter, adopted child, grandchild, stepchild, brother, sister, stepbrother, stepsister, or any descendants of such relatives, whom you cared for as if your own child, or an eligible foster child;

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<sup>18</sup> The income figures used here are for tax year 2002. For updated figures refer to <http://www.irs.gov/individuals/article0,,id=96406.00.html>

Who is: under age 19 on December 31, 2002; a full time student under age 24 on December 31, 2002; or permanently and totally disabled at any time during 2002, regardless of age; and the child must have lived with you in the United States for more than half of the year.

**5. Are there other requirements?**

An individual must:

- Have a valid social security number for you, your spouse, and any qualifying children;
- Have a filing status other than married filing separately;
- Be a U.S. citizen or resident alien for all of 2002;
- Not have earned income from a foreign country;
- Have earned income; and
- Have investment income that is less than \$2,550.

**6. How do I get the EITC?**

To receive the EITC, the caretaker must file an income tax return.

**7. What is the Working Family Tax Credit (WFTC)?**

The WFTC is a credit you may claim on your Minnesota Income Tax return. The rules are similar to the rules for the EITC. Caretakers who qualify for the EITC will also qualify for the WFTC if the income was earned in Minnesota.

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**FOOD ASSISTANCE**

**1. Food Support Program (formerly known as Food Stamps)**

**a. In General**

The Food Support program provides benefits in the form of debit cards, which recipients may use to purchase food. Food support benefits are issued to “households” who meet certain asset and income limits. More than one household can live under one roof. A household may consist of just one person. A caregiver does not need an order of custody to obtain food stamps for a child.

In general, a grandchild under 18 years of age living with his or her grandparent(s) will be considered as part of the grandparents' household, because the child is dependent. However, there is one exception. If a grandparent is 60 years of age or older and is unable to purchase food and prepare meals because of his or her disability, then the grandparent and his or her spouse will be considered a separate household from the grandchild if the income of the other household members does not exceed 165 percent of poverty.

**b. Who is eligible for food assistance?**

The amount of food support benefits a household receives depends upon the size and net income of the household. To be eligible for food support, a household's gross income must be below 130 percent of poverty and net income must be below 100 percent of poverty. Households containing a person 60 years of age or older or a disabled person receiving SSI, SSDI, or Veterans Administration disability benefits may have gross income exceeding 130 percent of the poverty level, but income after subtracting the deductions must still be less than 100 percent of the poverty level. An asset limit also applies.

For households receiving MFIP, food support benefits will be issued as the "food portion" of the total MFIP grant. Applicants not receiving MFIP may still be eligible for food support if they meet income and asset limits.

Caregivers should apply for food support at the county office.

**c. Are expedited food support benefits available?**

If a caregiver's household is in immediate need of food and has little or no income or resources in the month for which he or she is applying for food support, the caregiver's household may be entitled to expedited food support benefits. This means that the county agency is required to provide food support benefits to the household within one day of the date of application if they qualify.

A denial of expedited food support benefits should be appealed immediately.

**2. What is the Women, Infants and Children (WIC) program?**

The WIC Program is a supplemental food and nutrition program that may help grandparents purchase food for infants and children up to 5 years of age. To be eligible for the program, an applicant must have a nutritional need as determined by a qualified health professional and family income of less than 185 percent of the Federal poverty level. Grandchildren are automatically eligible for WIC if they receive food stamps, Medical Assistance, or MFIP, or if they are members of families that have an MFIP recipient, an infant, or a pregnant woman receiving Medical Assistance.

If eligible, under the WIC program, the children will receive:

- Nutrition education services;
- Referrals for health care and other services; and
- Specific nutritious food such as iron-fortified infant formula, milk, cheese, juice, cereal, eggs, peanut butter, and dried peas, beans, or lentils.

To obtain the number to the program in your area, contact the WIC Information Line, toll free at 1-800-WIC-4030. You can apply for WIC when you apply for other benefits at the County. You may also request an emergency application if your grandchild is a "special nutritional risk."

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## **HEALTH INSURANCE COVERAGE**

### **1. In General**

A very significant issue for caregivers is health insurance coverage for themselves and for the children in their care. As a general rule, a child not living with his or her parent is eligible for health insurance through the Medical Assistance program. This is true regardless of the caregiver's income. If, for some reason the child is not eligible for Medical Assistance, some employer-provided health insurance may be available for the child, but rarely will an employer cover a child in these circumstances and only if the caregiver has obtained court-ordered custody. If a child is not eligible for Medical Assistance, MinnesotaCare may be available for the child.

Health insurance options for caregivers are the same as those available for any adult. A caregiver may have private insurance, or, if eligible, obtain coverage through the Medicare, Medical Assistance, General Assistance Medical Care, or MinnesotaCare programs. Medical Assistance also has programs available to help Medicare recipients pay for prescription drugs and co-pays and deductibles. These programs are all explained below. This manual has income eligibility figures current for 2002. Many of the figures are based on a percentage of the Federal Poverty Guidelines (FPG), which change each year. Updated figures can be found on the Department of Human Service's Website at <http://edocs.dhs.state.mn.us/live/DHS-3461-2002-ENG.pdf>, or by calling the Senior LinkAge Line<sup>®</sup> at 1-800-333-2433.

## **2. Medical Assistance**

### **a. What is Medical Assistance?**

Medical Assistance (MA) is Minnesota's Medicaid program. It is funded by the state and federal governments which pays for medical care for low-income individuals and families. MA pays for almost all health care services including:

- Physicians' services;
- Ambulance and emergency room;
- Inpatient and outpatient hospital care;
- Early periodic screening, diagnosis, treatment (Child & Teen Checkups);
- Family planning;
- Home health services for people 21 years and older;
- Lab, X-ray;
- Nurse midwife;
- Nursing facilities;
- Family and certified pediatric nurse practitioner;
- Rural health clinics;
- Preventive health services;
- Prescription drugs, including birth control;
- Dental services;
- Chiropractic services;
- Physical, occupational, speech and respiratory therapy;
- WIC;
- Eye exams, glasses, hearing aids;
- Transportation services;
- Mental health treatment;
- Alcohol and drug treatment;
- Hospice care;
- Home health care for those under 21 years;
- Private-duty nursing;
- Personal care services;
- Group homes for people who are mentally retarded;
- Prosthetics; and
- Podiatry.

### **b. Who is eligible for MA?**

In order to be eligible for MA, an individual must be a US citizen or "qualified" non-citizen, meet the income and asset guidelines, and be a resident of Minnesota. Any caregiver or child who receives SSI or MSA (Minnesota Supplemental Aid) is eligible for MA. Most children in foster care, children receiving MFIP child-only

benefits, and children receiving GA for Minors are also eligible for MA.

The following people are entitled to receive MA as long as they meet the income and asset tests: pregnant women; parents and caretakers of children under 21 years of age; individuals who are aged, blind, or disabled, children under the age of 21 years; an infant whose mother was eligible for and receiving MA at the time of birth and who remains in the mother's household; and disabled children.

**c. What are the asset limitations?**

There is no asset limit for children under age 21 and pregnant women. The limits are \$15,000 for a family of one and \$30,000 for a family of two or more. The asset limit for people who are blind, disabled or age 65 and older is \$3,000 for a single person, \$6,000 for a household of 2, plus \$200 for each dependent.

**d. What are the income guidelines?**

Income guidelines vary depending on various factors. Most are based on the FPG and change every July. Most children receiving MFIP child-only grants or in foster care will be eligible for MA. Similarly, individuals receiving MSA and SSI will have meet the income guidelines for MA.

**e. Can a person with excess income still be eligible for MA?**

A person whose income is too high to qualify for Medical Assistance may still get help for medical bills by applying any income over the Medical Assistance limit to pay medical bills. This is called a "spenddown. A spenddown is much like an insurance deductible. After excess income is spent on medical care, Medical Assistance will pay the rest. You can have your spenddown figured every month or every six months.

**3. Help for Co-pays, Deductibles and Prescription Drugs for Medicare Beneficiaries.**

If an individual is on Medicare and is low-income, MA has programs to help pay for deductibles, co-payments and Part A and B premiums. These programs, the Qualified Medicare Beneficiary (QMB) Program, the Service Limited Medicare Beneficiary (SLMB) Program, and the QI-1 Program, all have different income eligibility criteria. The Minnesota Prescription Drug program helps Medicare beneficiaries with prescription drug costs.

All programs have the same asset guidelines. Countable assets must be no more than \$10,000 for an individual and \$18,000 for a couple. In figuring out countable assets, the QMB program uses the same rules as the MA program. Program benefits and income guidelines are as follows:

**a. Qualified Medicare Beneficiary (QMB)**

The QMB program pays for co-payments, deductibles, and the Part A and B premiums. To be eligible for the QMB program an individual must be enrolled in or eligible to enroll in Medicare Part A. The QMB program can help individuals not enrolled to enroll. Gross income can be no more than 100 percent of the FPG. The figures change in July of each year. Beginning July 1, 2002, a individual's income could be no greater than \$759 for an individual and \$1,015 for a couple

**b. Service Limited Medicare Beneficiary (SLMB)**

The SLMB program will pay only the Part B premium. To be eligible for the SLMB program an individual must be enrolled in Medicare Part A. In addition, gross income can be no more than 120 percent of the FPG. The figures change in July of each year. Beginning July 1, 2002, gross income can be no greater than \$906 for an individual and \$1,214 for a couple.

**c. Qualifying Individuals (QI)**

QI-group 1 pays the Part B premium. Eligibility for QI requires enrollment in Medicare Part A. Gross income can be no more than 135 percent FPG. The figures change in July of each year. Beginning July 1, 2002, gross income can be no greater than \$1,017 for any individual per month and \$1,364 for a couple per month. Be aware that the QI program ends March, 30, 2003, unless congress extends the program.

**d. Prescription Drug Program**

A person who is eligible either for the QMB or SLMB program, and who does not have (or has not had in the past four months) an insurance policy that pays for prescription drugs, is eligible for Minnesota's Prescription Drug Program.

The individual must pay the first \$35 of his or her prescription costs each month, and the Prescription Drug Program pays for the rest. Any amount of money the PDP pays for prescriptions can be used toward that person's monthly MA spenddown.

**4. MinnesotaCare**

MinnesotaCare is a subsidized health care program for Minnesotans who do not have access to health insurance and who meet income, asset, and program guidelines. MinnesotaCare is funded by enrollee premiums, the State of Minnesota, a tax on health care providers and some federal

matching dollars. MinnesotaCare was created in 1992 by the Minnesota Legislature and is administered by the Minnesota Department of Human Services

Relative caretakers with incomes below 275 percent of poverty (\$2,737 for a family of two in 2002) and asset of less than \$15,000 for a household of one and \$30,000 for a household of two are eligible for Minnesota care. Enrollees pay a monthly premium for their health coverage. The premium is based on income and family size. Enrollees get all their services from a health plan, which they choose when they enroll in the program. Coverage includes medical care (clinic and hospital), dental care, mental health and chemical dependency services, and prescription drugs.

## **5. General Assistance Medical Care (GAMC)**

Parents and caretakers of children who are not eligible for the Medical Assistance program may be eligible for GAMC if their income is no more than 75 percent of FPG, which in 2002, is \$747 for a family of one adult and one child or \$1,132 for a family of four. Further, caretakers must have assets not greater than \$1,000 per household. GAMC covers most of the same services as the MA program, except it does not cover nursing home care or home health care. An individual who has more income than the eligibility level may still receive GAMC by spending excess income on medical expenses. This works the same way as the spenddown in the Medical Assistance program. (See above.)

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## **BENEFITS FOR CHILDREN INVOLVED WITH JUVENILE COURT CHIPS CASES**

### **1. Foster Care Payments**

#### **a. What is a foster care payment?**

A foster care payment is money that the social service agency pays monthly to a licensed foster care provider for the care of a child placed by the juvenile court or by a voluntary placement agreement between the county and the parent. The payment includes a basic rate, called a maintenance payment, and may also include a supplement called a difficulty of care payment. Relatives may be foster care providers.

#### **b. When is a child eligible for foster care?**

A child who is living away from his or her parents and who was placed there, either by a voluntary agreement between the county and the parents, or by a juvenile court order, is eligible for foster care benefits, including maintenance payments. (See discussion of relative placement and foster care pp. 31-35.)

**c. How much are foster care payments?**

The State sets the foster care maintenance payment rates and bases them on the child's age. It reviews rates each year and adjusts them for the cost of living. Children in foster care receive the same maintenance payments whether they are with a relative or a non-relative foster care provider. As of January 1, 2003, the maintenance rate for a child age 11 and younger is \$17.15 per day; for a child 12-14 years of age, \$20.32 per day; and for a child 15-18 years of age, \$20.75 per day.

A foster child with special needs may also be eligible for a difficulty-of-care supplement. The county evaluates each foster child to determine the difficulty-of-care rate. Foster parents may appeal the amount of the difficulty-of-care payment if they disagree with the county's assessment of the child's needs.

**d. What is the difference between foster care maintenance payments and MFIP?**

Some important differences between foster care and MFIP are:

- Foster care payments are substantially higher than MFIP benefits;
- In order to receive foster care benefits for a child, a caregiver must be licensed as a foster parent by the Minnesota Department of Human Services. A caregiver need not be licensed to qualify for MFIP, but must be an eligible caregiver as defined by law. (See p. 50.)
- A caregiver is not eligible for foster care benefits if he or she has an order of custody of the child.
- A caregiver can get MFIP for a child whether or not there is an order of custody. If a caregiver is not related to the child, an order of custody is necessary to get MFIP benefits.

**e. How do I become a licensed foster care provider?**

The process is explained in the Relative Placement and Foster Care section, pp. 31-35.

## **2. Adoption Assistance (MINN. STAT. § 259.67)**

If a child to be adopted is a Minnesota resident, under the legal guardianship of the Commissioner of the Department of Human Services or of a Minnesota licensed child-placing agency, and has special needs that prevent adoptive placement without an adoption subsidy, a person who adopts the child may be eligible to receive adoption assistance.

Adoption assistance is available to "special needs" children if an adoption assistance agreement is entered into between the county and the adoptive parents prior to the adoption and the Commissioner of the DHS has determined that other resources or programs to meet the special needs are not available.

A prospective adoptive parent should be sure to talk to the county social worker before going to court for the adoption because, with limited exceptions, the law prohibits DHS from granting adoption assistance after an adoption order has been granted.

## **3. Relative Custody Assistance (MINN. STAT. § 257.85)**

### **a. What is Relative Custody Assistance?**

The Relative Custody Assistance (RCA) program provides financial assistance for eligible children who are being placed in the permanent legal and physical custody of a relative following a CHIPS proceeding. "Relative" includes "a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903." (MINN. STAT. § 257.85, Subd. 3(d); MINN. STAT. § 260.007, Subd. 27.)

### **b. Who is an eligible child?**

To consider RCA for a child, the agency must certify: 1) the juvenile court has determined that the child cannot be returned to the home of the parent; 2) the juvenile court has issued or will issue an order transferring permanent legal and physical custody of the child to the relative; and 3) the child is either a member of a sibling group being placed together or has a physical, mental, emotional or behavioral disability that requires financial support. MINN. STAT. § 257.85, Subd. 6.

**c. How does a relative secure RCA for a child?**

An RCA agreement must be signed by the local agency and the relative custodian within thirty days (30) of a court order transferring permanent legal and physical custody, unless there is a delay that is not the fault of the relative custodian. There must be a separate agreement for each child for whom a relative custodian will be receiving RCA. The agreement is effective as of the date of the order transferring custody.

**d. What is the payment amount?**

To calculate the monthly RCA payment for a child, the agency first determines the amount that a child of the same age and the same special needs would receive through the adoption assistance program. Then the agency must offset that amount by the child's income, including the portion of MFIP grant relating to the child. The resulting figure is the maximum RCA payment. The actual amount of the RCA payment will be adjusted for those relatives whose gross family income, including the income of children for whom they accepted custody, exceeds 200 percent of the FPG.

**e. What are the responsibilities of the relative custodian who receives the RCA payment?**

Each year the relative custodian must submit an affidavit documenting 1) that the child remains in the physical custody of the relative custodian; 2) that there is a continuing need for RCA payments due to the child's physical, mental, emotional, or behavioral needs; and 3) the current gross income of the family. The payment may be modified based on the information provided. RCA payments are subject to the availability of state funds and may be reduced or suspended by order of the commissioner if insufficient funds are available.

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## **HEAD START**

Head Start is a pre-school comprehensive child development program with an emphasis on health, social service, and family involvement. Children must be three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located.

Ninety percent of the children enrolled in the Head Start program must be from families whose income does not exceed 100 percent of the poverty level. A grandchild living with a grandparent is eligible as long as the grandparent's income qualifies the child. If you feel that you need a

comprehensive child development program for your grandchild, you should apply, even if your income is higher than 100 percent of poverty, because the program will accept a child who has special needs. For more information visit <http://www.headstartinfo.org>

## APPENDIX A LISTING OF LEGAL SERVICES OFFICE BY COUNTY

### ABBREVIATIONS:

<b>ANISHINABE</b>	ANISHINABE LEGAL SERVICES
<b>ANOKA</b>	JUDICARE OF ANOKA COUNTY
<b>CMLS</b>	CENTRAL MINNESOTA LEGAL SERVICES
<b>LASNEM</b>	LEGAL AID SERVICE OF NORTHEASTERN MINNESOTA
<b>LSAP</b>	LEGAL SERVICES ADVOCACY PROJECT
<b>LSNM</b>	LEGAL SERVICES OF NORTHWEST MINNESOTA, INC.
<b>MLSC</b>	MINNESOTA LEGAL SERVICES COALITION
<b>MMLA</b>	MID-MINNESOTA LEGAL ASSISTANCE
<b>SMRLS</b>	SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES
<b>NOTE:</b>	ANISHINABE LEGAL SERVICES serves Indian and non-Indian residents of Leech Lake, White Earth and Red Lake Reservations.

*- This listing is to be used for client referrals only -*

<u>County</u>	<u>Office</u>	<u>Client Referral Numbers</u>
Aitkin	LASNEM - Baxter	(800) 933-1112
Anoka	ANOKA - Blaine	(763) 783-4970
Anoka (seniors only)	MMLA - Cambridge	(800) 622-7772
Becker	LSNM - Moorhead	(800) 450-8585
Beltrami	LSNM - Bemidji	(800) 450-9201
Benton	MMLA - St. Cloud	(888) 360-2889
Benton	CMLS - St. Cloud	(800) 622-7773
Big Stone	MMLA - Willmar	(888) 360-3666
Big Stone	CMLS - Willmar	(800) 622-4011
Blue Earth	SMRLS - Mankato	(800) 247-2299
Brown	SMRLS - Mankato	(800) 247-2299
Carlton	LASNEM - Duluth	(800) 622-7266
Carver (LSC clients)	SMRLS - Prior Lake	(952) 440-1040
Carver (seniors)	SMRLS - Prior Lake	(952) 440-1040
Cass	LASNEM - Baxter	(800) 933-1112
Chippewa	MMLA - Willmar	(888) 360-3666
Chippewa	CMLS - Willmar	(800) 622-4011
Chisago	MMLA - Cambridge	(800) 622-7772
Chisago	CMLS - St. Cloud	(800) 622-7773
Clay	LSNM - Moorhead	(800) 450-8585
Clearwater	LSNM - Bemidji	(800) 450-9201
Cook	LASNEM - Duluth	(800) 622-7266
Cottonwood	SMRLS - Worthington	(800) 233-0023
Crow Wing	LASNEM - Baxter	(800) 933-1112
Dakota (family law)	*LADC	(952) 431-3200
Dakota (LSC clients)	SMRLS - Prior Lake	(952) 440-1040
Dakota (seniors only)	SMRLS - St. Paul	(651) 222-4731
Dodge	SMRLS - Rochester	(866) 292-0080
Dodge	SMRLS - Winona	(800) 372-8168

Douglas	LSNM - Alexandria	(800) 450-2552
Fairbault	SMRLS - Albert Lea	(800) 223-0280
Fairbault (seniors only)	SMRLS - Mankato	(800) 247-2299
Fillmore	SMRLS - Winona	(800) 372-8168
Freeborn	SMRLS - Albert Lea	(800) 223-0280
Goodhue	SMRLS - Winona	(800) 372-8168
Goodhue	SMRLS - Rochester	(866) 292-0080
Grant	LSNM - Alexandria	(800) 450-2552
Hennepin	MMLA - Minneapolis	(612) 334-5970
Hennepin	CMLS - Minneapolis	(612) 334-5970
Houston	SMRLS - Winona	(800) 372-8168
Hubbard	LSNM - Bemidji	(800) 450-9201
Isanti	MMLA - Cambridge	(800) 622-7772
Isanti	CMLS - St. Cloud	(800) 622-7773
Itasca	LASNEM - Grand Rapids	(800) 708-6695
Jackson	SMRLS - Worthington	(800) 233-0023
Kanabec (LSC)	LASNEM - Pine City	(800) 382-7166
Kandiyohi	MMLA - Willmar	(888) 360-3666
Kandiyohi	CMLS - Willmar	(800) 622-4011
Kittson	LSNM - Moorhead	(800) 450-8585
Koochiching	LASNEM - Grand Rapids	(800) 708-6695
Lac qui Parle	MMLA - Willmar	(888) 360-3666
Lac qui Parle	CMLS - Willmar	(800) 622-4011
Lake	LASNEM - Duluth	(800) 622-7266
Lake of the Woods	LSNM - Bemidji	(800) 450-9201
Leech Lake Reservation	ANISHINABE - Cass Lake	(800) 422-1335
LeSueur	SMRLS - Mankato	(800) 247-2299
Lincoln	CMLS - Willmar	(800) 622-4011
Lincoln	MMLA - Willmar	(888) 360-3666
Lyon	CMLS - Willmar	(800) 622-4011
Lyon	MMLA - Willmar	(888) 360-3666
Mahnomen	LSNM - Bemidji	(800) 450-9201
Marshall	LSNM - Moorhead	(800) 450-8585
Martin	SMRLS - Mankato	(800) 247-2299
McLeod	SMRLS - Mankato	(800) 247-2299
Meeker	CMLS - Willmar	(800) 622-4011
Meeker	MMLA - Willmar	(888) 360-3666
Mille Lacs	MMLA - St. Cloud	(888) 360-2889
Mille Lacs	CMLS - St. Cloud	(800) 622-7773
Mille Lacs (seniors only)	MMLA - Cambridge	(800) 622-7772
Morrison	CMLS - St. Cloud	(800) 622-7773
Morrison	MMLA - St. Cloud	(888) 360-2889
Mower	SMRLS - Albert Lea	(800) 223-0280
Murray	SMRLS - Worthington	(800) 233-0023
Nicollet	SMRLS - Mankato	(800) 247-2299
Nobles	SMRLS - Worthington	(800) 233-0023
Norman	LSNM - Moorhead	(800) 450-8585
Olmsted	*LAOC	(507) 287-2036
Olmsted	SMRLS - Winona	(800) 372-8168
Olmsted	SMRLS - Rochester	(866) 292-0080

Ottertail	LSNM - Alexandria	(800) 450-2552
Pennington	LSNM - Moorhead	(800) 450-8585
Pine	LASNEM - Pine City	(800) 382-7166
Pipestone	SMRLS - Worthington	(800) 233-0023
Polk	LSNM - Moorhead	(800) 450-8585
Pope	LSNM - Alexandria	(800) 450-2552
Ramsey	SMRLS - St. Paul	(651) 222-4731
Red Lake	LSNM - Moorhead	(800) 450-8585
Red Lake Reservation	ANISHINABE - Cass Lake	(800) 422-1335
Redwood	SMRLS - Worthington	(800) 233-0023
Renville	MMLA - Willmar	(888) 360-3666
Renville	CMLS - Willmar	(800) 622-4011
Rice	SMRLS - Albert Lea	(800) 223-0280
Rock	SMRLS - Worthington	(800) 233-0023
Roseau	LSNM - Moorhead	(800) 450-8585
Scott (LSC clients)	SMRLS - Prior Lake	(952) 440-1040
Scott (seniors only)	SMRLS - Prior Lake	(952) 440-1040
Sherburne	CMLS - St. Cloud	(800) 622-7773
Sherburne	MMLA - St. Cloud	(888) 360-2889
Sibley	SMRLS - Mankato	(800) 247-2299
St. Louis (north)	LASNEM - Virginia	(800) 886-3270
St. Louis (south)	LASNEM - Duluth	(800) 622-7266
Stearns	CMLS - St. Cloud	(800) 622-7773
Stearns	MMLA - St. Cloud	(888) 360-2889
Steele	SMRLS - Albert Lea	(800) 223-0280
Stevens	LSNM - Alexandria	(800) 450-2552
Swift	MMLA - Willmar	(888) 360-3666
Swift	CMLS - Willmar	(800) 622-4011
Todd	CMLS - St. Cloud	(800) 622-7773
Todd	MMLA - St. Cloud	(888) 360-2889
Traverse	LSNM - Alexandria	(800) 450-2552
Wabasha	SMRLS - Winona	(800) 372-8168
Wadena	LSNM - Alexandria	(800) 450-2552
Wadena (seniors only)	MMLA - St. Cloud	(888) 360-2889
Waseca	SMRLS - Mankato	(800) 247-2299
Washington	*LAWC	(651)351-7172
Washington	SMRLS - St. Paul	(651) 222-4731
Watonwan	SMRLS - Mankato	(800) 247-2299
White Earth Reservation	ANISHINABE - Cass Lake	(800) 422-1335
Wilkin	LSNM - Moorhead	(800) 450-8585
Winona	SMRLS - Winona	(800) 372-8168
Wright	CMLS - St. Cloud	(800) 622-7773
Wright	MMLA - St. Cloud	(888) 360-2889
Yellow Medicine	CMLS - Willmar	(800) 622-4011
Yellow Medicine	MMLA - Willmar	(888) 360-3666

\*LADC-Legal Assistance of Dakota County, Ltd., LAOC-Legal Assistance of Olmsted County and LAWC-Legal Assistance of Washington County are Non-MLSC offices.

NOTE: SMRLS-Migrant Legal Service offices (St. Paul-800-652-9733 and Fargo-800-832-5575) serve migrant farm workers throughout Minnesota and North Dakota.