



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-8036

Kelly Howard
Director

MEMORANDUM

DATE: April 5, 2012

TO: Chief Circuit Court Judges
Presiding Family Division Judges

cc: Circuit Court Administrators
Family Division Administrators

FROM: Kelly Howard, Director

RE: SCAO Administrative Memorandum 2012-04
Young Adult Voluntary Foster Care Act

The *Young Adult Voluntary Foster Care Act* (YAVFC) and other recently-signed acts authorize the Department of Human Services to provide foster care services, adoption subsidy support, and guardianship assistance for eligible youth until they reach age 21 [2011 PA 225-230]. The following information will aid courts in the implementation of the new laws. SCAO forms CCFD 20 (Ex Parte Petition Regarding Voluntary Foster Care Agreement) and CCFD 21 (Order Regarding Voluntary Foster Care Agreement) are available at:
<http://courts.michigan.gov/scao/courtforms/youngadultfostercare/youngadultindex.htm>.

If you have questions regarding this administrative memorandum, please contact Casey Anbender at anbenderc@courts.mi.gov or 517-373-5234.

Background

The YAVFC and related new laws establish programs within the Department of Human Services (DHS) that will allow eligible youth between ages 18 and 21 (whose child abuse/neglect (NA) court file closed) to sign a voluntary agreement that will enable them to receive services until age 21. The YAVFC does not replace other existing law and policy allowing foster care to continue for foster youth until age 20. The YAVFC will allow Michigan to take advantage of Title IV-E federal funding that became available in the federal *Fostering Connections to Success and Increasing Adoption Act of 2008*. The purpose of the federal and state legislation is to improve outcomes for youth by providing extended support for those who otherwise would age out of the foster care system. There are three components of the program:

- Voluntary Foster Care
- Extended Juvenile Guardianship Assistance
- Extended Adoption Subsidy

1. Young Adult Voluntary Foster Care MCL 400.645-663

Participation in the YAVFC program requires the youth to enter into a voluntary agreement with DHS under which the youth agrees to comply with certain eligibility requirements, as defined in statute.¹ To be eligible, the youth must be: (1) actively completing high school or a program leading to a general equivalency diploma (GED); (2) enrolled at least part-time in a college, university, vocational program, or trade school; (3) employed either full- or part-time, or participating in a program that promotes employment (minimum 80 hours per month); or (4) unable to participate in any of the required activities due to a medical condition.

The voluntary agreement will include the statutory eligibility requirements, as well as any additional obligations that DHS requires the youth to satisfy to maintain eligibility throughout the duration of the agreement. See Appendix A for a copy of the standard voluntary agreement form. If the youth meets the eligibility requirements and maintains compliance, the youth may enter or reenter the YAVFC program at any time between the dismissal of the original NA court case and the age of 21. The voluntary agreement may not be signed until the youth reaches 18 years old **and** the court has terminated jurisdiction of the NA court case. Delinquency youth are **not** eligible for YAVFC unless they are dual wards.

Pursuant to DHS policy, each youth who transitions out of foster care at the age of 18 or older must have a 90-day discharge plan in place.² The caseworker is **required** to discuss the option of YAVFC at the annual transition meeting, the 90-day discharge meeting, and again at least 30 calendar days before the youth's 18th birthday.³ SCAO encourages courts to discuss the youth's options for voluntary foster care at review hearings beginning when the youth is 17 years old.

¹ MCL 400.649.

² DHS Policy FOM 722-15 prescribes what must be included in a discharge plan, including information about the youth's housing, education, mentors/supportive adults, continuing support services, and workforce/employment services.

³ DHS Policy FOM 722-16.

Court Procedure

A YAVFC court case will be opened when DHS files a petition.⁴ Within 150 days after the youth and DHS enter into a voluntary agreement, the caseworker will file a petition using SCAO form CCFD 20.⁵ The petition for entry into voluntary foster care will be filed in the county where the youth currently resides, which may be different than the county that had jurisdiction over the original NA case.⁶ The petition will include a written report by the caseworker detailing the reasons for the petition, as well as a copy of the signed voluntary agreement. The written report shall contain the following information: (1) the youth's name, date of birth, race, gender, and current address; (2) a statement of facts that support the voluntary foster care agreement and includes both the reasonable efforts made to achieve permanency for the youth and the reasons why it remains in the youth's best interests to continue in voluntary foster care; (3) a copy of the signed voluntary foster care agreement; and (4) any other information that DHS or the youth wants the court to consider.⁷

Federal law requires that there be a judicial determination that remaining in foster care is in the youth's best interests and also requires that there be judicial oversight of the agreement between the youth and DHS. Upon receipt of a petition, the court will open a case using case code "VF." The court shall review the terms of the voluntary agreement and make a best interests determination not later than 21 days after the date the petition and supporting documents are filed.⁸ Courts may use SCAO form CCFD 21 (Order Regarding Voluntary Foster Care Agreement). If the best interests determination is not made within 21 days, the youth will not be eligible for Title IV-E funding and DHS will cancel the agreement.

The court's review of the petition and the entry of the order **do not** need to be conducted at a formal hearing on the record. It is sufficient that a judicial officer completes the review and authorization administratively ("paper review"). When the court has issued a best interests determination and served the appropriate parties with the order, the court shall terminate jurisdiction and close the VF court case. DHS retains full responsibility for the YAVFC case and all regular casework practice will continue, including monthly client visits. The best interests determination is required primarily to qualify for Title IV-E funding; therefore, once this finding is made and the order entered, active judicial oversight may end.

DHS Procedural Policy

DHS policy recommends that the YAVFC program be discussed with the youth and considered by the court as a potential component of the youth's transition plan **prior** to the court closing the NA case. While YAVFC is **not** a federally-recognized permanency

⁴ MCR 3.616 governs the procedure for opening a YAVFC case (see Appendix B).

⁵ While state law allows the petition to be filed within 150 days, DHS policy requires the caseworker to file the petition within 45 days to ensure timely filing. Additionally, when the plan is known in advance (the scenario that courts will see most often) the caseworker will file the petition immediately after the court closes the youth's NA case. DHS Policy FOM 722-16.

⁶ MCL 400.655.

⁷ MCL 400.655.

⁸ MCR 3.616.

goal, caseworkers should discuss the program as early as possible for youth who may transition out of care at age 18.

For a youth who may enter into voluntary foster care, DHS policy requires the caseworker to request a hearing to dismiss the foster care case on or within 30 days after the youth's 18th birthday. If the court terminates jurisdiction at this hearing, SCAO recommends, if possible, that the court provide the written order to the caseworker at the hearing or on the same business day. DHS policy instructs the caseworker to bring to the dismissal hearing all necessary paperwork for entry into YAVFC, including the petition (SCAO Form CCFD 20) and an unsigned copy of the proposed voluntary agreement. Upon receipt of the NA case dismissal order, the caseworker will have the youth sign the voluntary agreement. The youth is not eligible for YAVFC until the agreement is signed following the NA case closure. The caseworker will then immediately file the VF petition and the signed voluntary agreement with the court that same day. This contemporaneous process will guarantee timely filing.

DHS policy also includes the following information:

- A filing fee is required at the time the VF Petition is filed. The caseworker is responsible for payment to the court when filing the petition.⁹
- Funding for YAVFC will not affect the County Child Care Fund. Any extended services will be paid for with federal or state dollars only.
- YAVFC is an **additional** service/program for aging-out youth. It should not be implemented automatically for every young adult because some individuals are not developmentally ready for the program or will not meet the eligibility requirements. Moreover, the courts are not obligated to close the NA case when a youth turns 18 if it is not in the child's best interests to close the case right away. If the NA court case continues past age 18, as authorized under other laws, the funding stream will not automatically change.

2. **Extension of Juvenile Guardianship Assistance MCL 400.665-669**

This is the second of the three new programs authorized by the YAVFC and the other new laws.

Guardians of youth who transitioned from foster care to the guardianship assistance program between the ages of 16 and 18 may apply to DHS for a "Young Adult Guardianship Extension" (YAGE) in which the guardianship financial subsidy may continue until the youth's 21st birthday. Both the youth and the guardian must sign a voluntary agreement with DHS under which the youth and guardian pledge compliance with the same eligibility requirements as those listed for voluntary foster care (completing high school or a GED, enrolled in college/university/trade school program, employed at least part-time, or unable to participate in a required activity due to a medical condition). DHS determines the youth's initial and subsequent eligibility for extended guardianship assistance.

⁹ Legislation is being drafted to exempt these cases from the filing fee.

The extended guardianship assistance payments will be funded primarily with federal Title IV-E foster care funds. Funding for the YAGE program will not affect the County Child Care Fund.

Unlike a voluntary **foster care** case, an extension of **juvenile guardianship assistance** requires formal judicial oversight throughout the remainder of the case. After the youth enters the YAGE program, courts are required to review the juvenile guardianship extension at a yearly **court hearing**. Note that prior to the youth turning 18, the court is required only to *review* the juvenile guardianship (e.g., could be conducted by a paper review). Until age 18, there is no specific *hearing* requirement.

DHS Procedural Policy

The caseworker will mail an application and notice of eligibility for YAGE to the guardian no later than 90 days before the youth's 18th birthday.¹⁰ Simultaneously, the caseworker will send a copy of the notice to the court that has jurisdiction over the juvenile guardianship. The notice functions to inform the court that the youth may be eligible for an extension, and requests the court to keep the guardianship case open for 120 calendar days following the youth's 18th birthday to allow time to complete the application and eligibility determination process. Note that the juvenile guardianship case must remain **open** for the youth to be eligible for YAGE; this is the exact opposite of the voluntary foster care program in which the court must first close the NA case.

If DHS approves the application, it will send a copy of the signed voluntary agreement to the court, requesting the court to continue the guardianship.¹¹ The court shall determine whether the juvenile guardianship remains in the youth's best interests and issue an order.¹² SCAO recommends that, upon receiving a voluntary agreement and request to keep the case open, the court schedule the required annual review hearing to ensure that a best interests determination is made within 365 days after the youth's 18th birthday and annually thereafter. The proposed court rules will require the court to serve the orders on the youth, the guardian and DHS.

The court order should be served on DHS at the following address:

DHS Adoption Subsidy Office
P.O. Box 30037
Lansing, MI 48909.

Service on DHS will ensure the continuation of guardianship assistance payments without interruption, and is also required for federal Title IV-E audit purposes.

3. Extension of Adoption Subsidy MCL 400.671

This is the third and last of the new programs authorized by YAVFC and the related new laws.

¹⁰ DHS Policy GDM 716.

¹¹ The central DHS Subsidy Office will provide this notice to the court.

¹² Amendments to MCR 3.979(A)(1) are pending.

This program does not require any court involvement or oversight. The law allows DHS to extend adoption subsidy assistance for an adoptee who was adopted between the ages of 16 and 18, and who meets the eligibility requirements (i.e., completing high school or a GED, enrolled in college/university/trade school program, employed at least part-time, or unable to participate in a required activity due to a medical condition).

Conclusion

Michigan's plan is still awaiting federal approval, but DHS currently plans to implement all three of the new *Young Adult Voluntary Foster Care Act* programs on April 2, 2012, even if it has not yet received formal approval.

Important Distinctions Between Voluntary Foster Care and Extended Juvenile Guardianship

Voluntary Foster Care (VF)	Extended Juvenile Guardianship (JG)	Extending Foster Care in NA case	Notes
NA case closes. <i>MCL 400.645-663 and MCL 712a.2a(2)-(3)</i>	DHS notifies court to keep JG case open for extended juvenile guardianship program. <i>MCL 400.665-669</i>	Michigan law authorizes court jurisdiction in an NA case to continue to age 20. This was not affected by the YAVFC Act. <i>MCL 712a.2a(1)</i>	Extending foster care means the court continues jurisdiction, quarterly review hearings, etc. The funding source remains the same (it does not change to Title IV-E when the youth turns 18).
DHS petitions court, where youth resides, to open a VF case.	JG court case remains open.	NA court case remains open.	Filing fee applies unless/until waived by statute.
Within 21 days of receiving petition, court opens VF case and determines if VF is in youth's best interests. After best interests determination, court closes VF case.	Upon receiving notice of potential JG assistance extension, court will keep case open for 120 days. DHS will determine eligibility within that time frame and notify the court. If eligible, court will keep JG case open.	NA court case remains open.	"Paper review" of VF petition and entry of order is permissible. No formal hearing required for entry into voluntary foster care.
No court involvement (including no annual review) after best interests finding and case closure.	Court must hold annual review hearings.	Court must hold quarterly review hearings.	Life of a VF court case is 21 days max, whereas JG case and extended foster care case may remain open for years.

<p>DHS assumes all further responsibility and oversight of youth's foster care case.</p>	<p>Court continues to provide oversight. DHS determines continued eligibility for extended JG assistance.</p>	<p>Court continues to provide oversight. DHS continues to provide case management and services.</p>	
<p>Youth is the payee.</p>	<p>Guardian is the payee.</p>		<p>Neither program impacts the county's CCF.</p>

YOUNG ADULT VOLUNTARY FOSTER CARE AGREEMENT

Michigan Department of Human Services
Young Adult Voluntary Foster Care Program

SECTION I

Check the appropriate box.

- The youth is entering Young Adult Voluntary Foster Care for the first time. *If checked, skip ahead to Section III.*
 The youth is re-entering Young Adult Voluntary Foster Care. *If checked proceed to Section II.*

SECTION II

If re-entering Young Adult Voluntary Foster Care:

Today's date:

Date of the (most recent) Young Adult Voluntary Foster Care best interest judicial determination:

Is today's date more than 180 calendar days from the most recent best interest judicial determination? Yes No

If **Yes** is checked: Complete Section III and proceed.

If **No** is checked: Skip Section III and proceed.

SECTION III

Placement Agreement

I, _____ DOB: _____ Age: _____ hereby request to participate in Young Adult Voluntary Foster Care (YAVFC). By signing this agreement, I understand I am voluntarily agreeing to enter foster care placement. I agree to be placed in a supervised foster care setting under the care and supervision of the Michigan Department of Human Services (hereafter referred to as DHS in this document). I agree to participate in YAVFC as required by DHS policy and I understand that if I do not, I am no longer eligible to remain in the program.

Youth's Signature: _____ Date: _____

SECTION IV

Youth Eligibility Requirements

The youth must check the appropriate box.

- I am actively completing high school or a program leading to a general equivalency diploma (GED).
 I am enrolled at least part-time in a college, university, vocational program, or trade school.
 I am employed in either full- or part-time work or participating in a program that promotes employment, (such as Job Corps, Michigan Works!, or another employment skill-building program). I am employed/participating at least 80 hours per month.
 I am incapable of the above educational or employment activities due to a documented medical condition.

Youth must initial each line.

_____ I agree to immediately inform my caseworker if there is any change in the requirements listed above (e.g., enrollment/employment status, graduation or completion date, reduction of work hours).

_____ I agree to inform my caseworker of any other change within three business days of the change (e.g., address, phone number, household composition).

_____ I understand that I must provide documentation of the above eligibility requirements on an approved eligibility verification form, at least quarterly.

_____ I understand that I am responsible for maintaining my own documentation of the above requirements and that upon request I must provide my caseworker with this documentation. Forms of documentation may include but are not limited to: pay stubs, letters from employers or program staff, current class schedule, current medical records, etc.

_____ I agree to meet with my caseworker, in-person, for monthly home visits.

_____ I agree to assist my caseworker in completing the DHS-1295, Young Adult Monthly Visit Report, at the monthly visit.

_____ I agree to attend and actively participate in all Permanency Planning Conferences (PPC).

_____ I understand that as a young adult age 18 or above, DHS has no legal or financial responsibility in the event that I am charged with a crime, or found liable for money damages.

I understand that certain living arrangements will make me ineligible for YAVFC (e.g., jail, parental home, an unsafe environment). I understand that if I intend to remain in YAVFC, I must have my living arrangement approved by my case worker prior to moving.

I understand DHS may terminate this agreement if I no longer meet eligibility requirements.

I understand that I will become ineligible for YAVFC if any of the following situations occur:

- Discontinue educational, vocational, or trade program, and not in compliance with another eligibility requirement within the 30 calendar day grace period.
- No longer employed at least 80 hours per month, and not in compliance with another eligibility requirement within the 30 calendar day grace period.
- No longer incapacitated due to a medical condition, and not in compliance with another eligibility requirement within the 30 calendar day grace period.
- Failure to contact caseworker for more than 30 calendar days.
- Incarcerated for more than 30 calendar days.
- 21st birthday.
- Enter military service.
- Adoption.
- Marriage.
- Death.

I understand that if I am no longer meeting eligibility requirements, I am allowed a 30-day grace period in which to re-establish eligibility.

I understand that I only have three (3) 30-day grace periods per fiscal year (October-September).

I understand that the grace period begins the day immediately following the day I become ineligible.

I understand that a grace period will not be applied after the following ineligibility situations:

- 21st birthday.
- Military service.
- Adoption.
- Marriage.
- Death.

I understand that although YAVFC payments and Medicaid coverage continues during grace period status, they will not continue if I enter a non-reimbursable placement, such as jail or parental home.

I understand that this is a voluntary agreement and I may terminate this agreement at any time. If I choose to terminate this agreement, I will no longer be eligible for foster care maintenance payments or services.

SECTION V

Youth Name		Youth Signature		
Youth Address		City	State	Zip Code
Telephone Number	Email Address		Date	
Foster Care Caseworker Name		Foster Care Caseworker Signature		Date
Supervisor Name		Supervisor Signature		Date

Authority: P.A. Pending
Completion: Required.
Penalty: Service delays.

Department of Human Services (DHS) will not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to a DHS office in your area.

Order

Michigan Supreme Court
Lansing, Michigan

February 1, 2012

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2012-05

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Adoption of Rule 3.616 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is adopting Rule 3.616 of the Michigan Court Rules, effective April 1, 2012, but to ensure the rule's compliance with federal Title IV-E funding requirements, Rule 3.616 has been adopted pending public comment. Before determining whether the proposal should be changed, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at

www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

[The text of the rule is new.]

Rule 3.616. Proceeding to Determine Continuation of Voluntary Foster Care Services.

- (A) Scope of Rule. This rule governs review of all voluntary foster care agreements made pursuant to article II of the Young Adult Voluntary Foster Care Act, MCL 400.645 through MCL 400.663.
- (B) Jurisdiction. Upon the filing of a petition under this rule, the family division of the circuit court has jurisdiction to review an agreement for the voluntary extension of foster care services after age 18.
- (C) Court File. Upon the filing of a petition under subrule (E), the court shall open a file using the appropriate case classification code from MCR 8.117(A)(9). The file shall be closed following the issuance of the court's determination under subrule (F).
- (D) Form. The petition and the judicial determination shall be prepared on forms approved by the state court administrator.

- (E) Ex Parte Petition; Filing, Contents, Service. Within 150 days after the signing of voluntary foster care agreement, the Department of Human Services shall file with the family division of the circuit court, in the county where the youth resides, an ex parte petition requesting the court's determination that continuing in voluntary foster care is in the youth's best interests.
- (1) Contents of Petition. The petition shall contain
 - (a) the youth's name, date of birth, gender, and current address;
 - (b) the name, date of birth, and residence address of the youth's parents or legal custodian (if parental rights have not been terminated);
 - (c) the name and address of the youth's foster parent or parents;
 - (d) a statement that the youth has been notified of the right to request a hearing regarding continuing in foster care;
 - (e) a showing that jurisdiction of a court over the youth's child protective proceeding has been terminated, including the name of the court and the date jurisdiction was terminated;
 - (f) a statement of facts that supports the voluntary foster care agreement and includes both
 - (i) the reasonable efforts made to achieve permanency for the youth, and
 - (ii) the reasons why it remains in the youth's best interests to continue in voluntary foster care; and
 - (g) any other information the Department of Human Services, parent or legal custodian, youth, or foster parent wants the court to consider.
 - (2) Supporting Documents. The petition shall be accompanied by a written report prepared pursuant to MCL 400.655 and a copy of the signed voluntary foster care agreement.
 - (3) Service. The Department of Human Services shall serve the petition on
 - (i) the youth;

- (ii) the court that had jurisdiction pursuant to MCL 712A.2(b) during the neglect/abuse proceeding, if different than the court in which the petition is filed; and
 - (iii) the foster parent or parents, if any.
- (F) Judicial Determination. The court shall review the petition, report, and voluntary foster care agreement filed pursuant to subrule (E), and then make a determination whether continuing in voluntary foster care is in the best interests of the youth.
 - (1) Written Order; Time. The court shall issue an order that includes its determination and individualized findings that support its determination. The findings shall be based on the Department of Human Services' written report and other information filed with the court. The order must be signed and dated within 21 days of the filing of the petition.
 - (2) Service. The court shall serve the order on
 - (i) the Department of Human Services;
 - (ii) the youth;
 - (iii) the court that had jurisdiction pursuant to MCL 712A.2(b), if different than the court in which the petition is filed; and
 - (iv) the foster parent or parents, if any.

Staff Comment: New MCR 3.616 implements the judicial action requirements of 2011 PA 225, the Young Adult Voluntary Foster Care Act, MCL 400.641 *et seq.*

This Court adopted the new rule to become effective April 1, 2012, to coincide with implementation of the Department of Human Services' new program to provide continuing voluntary foster care for youth between the ages of 18 and 21, which will begin operating on April 1, 2012. Having this new court rule in place will enable Michigan to receive federal Title IV-E funding for that program.

By this same order, the Court is inviting public comment to allow interested persons an opportunity to comment and to provide an opportunity to be heard at a future public hearing. This will allow the Court to consider amending the rule in response to any comments that it receives.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2012-05. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 1, 2012

Corbin R. Davis

Clerk