

1.5.6 Removing Foster Children

This section contains provincial policy and standards pertaining to removal of a foster child from a foster home or a place of safety if the original 30 days has lapsed and the place of safety has not been converted to a foster home. It applies to child and family services agencies and their mandating authorities and to licensed foster homes.

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Standards

1. **Deciding to Remove a Foster Child** – Unless one of the criteria listed in [subsection 51\(2\)](#) of *The Child and Family Services Act* requires the immediate removal of a child, or where the court has ordered a child to be moved, the case manager shall:
 - Complete documentation and provide to foster parent about intent to move the child
 - complete the following, preferably with the active involvement of the caregiver(s) and, when appropriate, involvement of the child:
 - review the child’s progress in the foster home (see [Standard 7](#) in Section 1.1.2, Assessment), and
 - amend the child’s care plan any time a foster home placement move is proposed (see [Standard 2](#) below and [Standard 5](#) in Section 1.5.3, Foster Home Placements),
 - meet with his or her supervisor and when applicable, foster home worker or coordinator to review the updated assessment and amended care plan to arrive at a decision (see [Standard 5](#) in Section 1.1.3, Planning and [Standard 8](#) in Section 1.1.5, Evaluation),

If a child has to be removed due to safety concerns, a care plan must be in place in 30 days. The care plan should reference the reason for the move i.e. that child reunified with family or extended family or the child is being moved to a non-relative foster home. The amended care plan is approved and signed off by the case manager, the supervisor and the supervisor’s supervisor. When the supervisor’s supervisor is the

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chief executive officer or executive director of the agency, an alternate will be approved by the authority in writing due to actual or perceived conflict of interest should an agency be required to review the decision to remove the child from foster parents (section 51 of the Act). This provides an additional level of review of the plan to move a child, and will strengthen good case planning for children.

If the decision is to proceed with removing the child, the case manager prepares the documentation required under subsection 2 of the [Foster Parent Appeals Regulation](#).

2. **Contents of Amended Child Care Plan** – An amended care plan includes at minimum:
- explanation in writing on how the intended removal is in the best interest of the child
 - the appropriateness of moving the child in accordance with the following considerations:
 - stage of development, an assessment of the impact on the child
 - consideration by the agency of the degree of attachment to the caregiver(s)
 - opportunity to be safely reunited with his or her family or kin,
 - opportunity to support cultural and linguistic heritage
 - maintenance of kinship connections
 - need for continuity and impact on permanency planning
 - weighing out permanency versus stability options

Any or all of the above-referenced considerations may be the subject of a professional clinical assessment if deemed appropriate by the agency.

- if the decision is to move the child an overview of the proposed new placement and impact on the child.

The agency may, based on the best interests of the child, share portions of the care plan with the child, the child's birth family or caregiver, and/or other collaterals, in accordance with [subsection 76\(3\)](#) of *The Child and Family Services Act*.

3. **Agreeing to Alternative Dispute Resolution (ADR)** – When a placing agency offers an alternative process to resolving a dispute regarding the removal of a foster child (see section 4 of the [Foster Parent Appeals Regulation](#)), foster parents make a decision to accept or reject the offer within 15 days from the date it is received.

If the foster parent rejects the alternative dispute resolution option, the reasons the foster parent decided not to use ADR is documented in the file.

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4. **Reporting Results of ADR** – If a dispute between foster parents and a placing agency regarding a decision to remove a foster child is not resolved successfully the person who chaired the ADR process reports the results in writing to the executive director of the agency and the foster parents within five working days from the date the parties agree to discontinue the process.
 5. **Recording Decision to Remove Foster Child** – When a decision is made to remove a foster child, the case manager records the reasons for, actions taken and outcomes and why the removal is in the best interest of the child in the child-in-care record (see [Case Categories](#) in Section 1.7.1, Service Records). When applicable, the case manager notifies the person or agency responsible for licensing the home of the reasons and outcomes.
 6. **Tracking Reviews, Reconsiderations and Appeals** – The agency maintains an administrative record to monitor and track the progress of a request from foster parents to review a decision to remove a child. The record is used to:
 - ensure timelines required under section 51 of *The Child and Family Services Act*, the *Foster Parents Appeal Regulation* (see [Legislation](#) in this section), and the standards in this section are followed,
 - when applicable, document steps taken to resolve the issue through alternative dispute resolution and the results of the process, and
 - when applicable, assist in the preparation of documents required by the agency’s mandating authority to reconsider the agency’s decision and by an adjudicator appointed by the minister.
 7. **Reconsideration by Mandating Authorities** – When foster parents submit a written request to an agency’s mandating authority pursuant to section 6 of the [Foster Parent Appeals Regulation](#), the senior executive officer of the authority makes a decision in accordance with [subsection 51\(4\)](#) of *The Child and Family Services Act* and gives a copy of the decision, with reasons, to the foster parents and the agency within 30 days from the date the written request was received.

Policy

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Reasons for Removing a Foster Child

There are three primary reasons for removing a child:

- immediate safety of a child cannot be addressed (i.e. abuse allegations)
- placement with family or extended family is available
- foster parents refusal or inability to adhere to the child in care plan that is ensuring family, cultural and best interest of the child

A decision to remove a child from a placement must be based on the best interests of the child. A balanced approach is needed, considering all relevant factors listed in [subsection 2\(1\)](#) of *The Child and Family Services Act*. Both agency staff and care providers are expected to focus on the needs of the child.

[Section 51](#) of the Act reflects the important role foster parents play in the care of children in care. It applies when a foster parent objects to a decision to remove a child. Foster parents have a right to request a review of a placing agency's decision to remove a foster and a reconsideration of an agency's decision by its mandating authority, and to appeal the decision of an authority to an adjudicator appointed by the minister. Unless the criteria listed in subsection [51\(2\)](#) of the Act apply, a child remains in a foster home until a final decision is made according to this section.

Section 51 does not apply when a foster parent does not object to the removal of a child. Appropriate reasons for removing a child include but are not limited to the following:

- Foster parents are no longer able to care for a foster child for personal or family reasons.
- A foster child has special needs that require more intensive care and supervision than a foster home can provide even with additional support and respite services (see Section 1.5.5, [Support and Respite](#)).
- An agency has concerns about the care a specific foster child is receiving despite open communication with and support to the foster parents. Concerns may be due to such things as:

- a lack of understanding of the child’s needs and developmental stages
- difficulty in managing the child’s behavior
- inability to support a plan with respect to birth family contact
- a lack of opportunity for culturally appropriate experiences for the child

Wherever possible all removals from a foster home should be planned as to mitigate additional losses in a child’s life, this supports best practices. Unless there are child protection concerns that necessitate immediate removal, pre-planning and involvement of the licensing agency, the foster home and children in care are essential in reducing the need for abrupt moves of children from foster homes.

Alternative Dispute Resolution

ADR is defined as a non-adversarial way of resolving disputes. It is an alternative to resolving a dispute through an administrative or adjudicative process. It looks at needs, interests, and solutions, and can promote healing. It must be voluntary, timely, confidential, balanced, fair and respectful. When a dispute is resolved through ADR, there is no need for the remaining steps of the appeal process described under [Legislation](#) in this section.

In addition to resolving the dispute between the placing agency and the foster parents, ADR may also result in a better understanding of the strengths of the home by the case manager and, when applicable, acceptance by the foster parents of an agency’s decision to remove a child.”

Section 4(1) of the [Foster Parent Appeals Regulation](#) requires an agency to offer alternative dispute resolution (ADR) in writing within seven days of receiving a request from a foster parent to review a decision to remove a child. Agencies are required to have written ADR policies and procedures developed in consultation with their mandating authorities. The regulation supports agencies and mandating authorities to employ culturally appropriate approaches to ADR.

General Policy Considerations:

The following considerations should be kept in mind when removals are contemplated / underway. Their application is dependent on the stage of the proceeding as well as individual agency and authority standards and procedures.

Adhering to Reasonable Timelines

The [standards](#) in this section require all parties to a section 51 review to adhere to reasonable response times. Delays occur due to factors beyond agency control; however, the reasons for the delay and how it was communicated to all parties must be documented. For example, the alternative dispute resolution (ADR) process may require more time pending a child abuse investigation or when a child protection investigation is ongoing; or to allow for travel.

When there is a delay caused by an agency, a foster parent has the option of filing a complaint to the agency's mandating authority under clause 4(1) (f) of *The Child and Family Services Act* (see Section 1.7.3, [Complaint Review Process](#)). To comply with the regulation, foster parents are required to submit requests for reviews, reconsiderations and appeals in writing. “

Relevant Records

Relevant records are limited to records that are associated with and used to support the decision to remove the child and/or the appeal. This would include:

- case notes leading to the decision to remove the child
- letter given to the foster parent notifying them of the decision to remove
- most recent child-in-care case plan
- investigation results
- letter from the Authority upholding the agency's decision

Agency and Authority staff must **redact** all information as necessary. If this occurs at the adjudication stage, records that are not fully redacted will be returned to the Authority and/or agency.

Historical social/family histories, home studies child in care records (not including the reason for the removal of the child) are **not relevant** and are **not included** in the package.

Placing Agency Responsibilities

The policy statements in this part are based on and complementary to the duties of agencies set out in the *Foster Parent Appeals Regulation*.

Informing Foster Parents – When serving notice on foster parents under subsection 2(2) of the regulation, placing agencies must inform them on how to initiate reviews, reconsiderations and appeals and where to send written requests and appeals.

Informing and Involving Managing Agencies – When the foster home is managed by another agency (see definition of *managing agency* under [Terminology](#) in 1.5.0), a placing agency may rely on an assessment by and recommendations from the managing agency in making a decision to remove a foster child. The placing agency must inform the managing agency of its decision and involve the managing agency as necessary in planning for the removal (see Managing Agency Responsibilities below).

Informing and Involving Licensing Agencies – When the foster home has been licensed by another agency, the placing agency must provide information on its decision and the outcome to the licensing agency immediately. It is the responsibility of the licensing agency to consider whether a review of the foster home licence is indicated (see Licence Suspension or Cancellation below).

Managing Agency Responsibilities

When a foster home is managed by an agency or service organization on behalf of a licensing agency (see [Managing Agencies](#) in Section 1.5.1, Resource Management), responsibilities of the managing agency with respect to a placing agency’s decision to remove a foster child include the following:

- identifying concerns regarding the care and supervision of a child and reporting them to the placing agency
- participating in the alternative dispute resolution process at the request of the placing agency or foster parents
- participating in reviews, reconsiderations and adjudications at the request of the placing agency or foster parents

Suspending or Cancelling a Foster Home Licence

Foster parents have a right to appeal a decision to remove a child under [section 51](#) of *The Child and Family Services Act* and the [Foster Parent Appeals Regulation](#) without fear of their licence being suspended or cancelled.

Suspension or cancellation of a foster home licence should not be considered unless the child is found to be in need of protection, abuse has been substantiated or section 15 of

the [Foster Homes Licensing Regulation](#) applies. The decision to remove a foster child is a separate process specific to the best interests of the child.

At the point a foster home licence is suspended or cancelled, section 51 of the Act no longer apply as the foster home is no longer licensed.

Legislation

The Child and Family Services Act

[Subsection 2\(1\)](#) of *The Child and Family Services Act* defines *best interests* of a child and lists criteria that must be considered in making a decision about a child. Other than proceedings to determine whether a child is in need of protection, the best interests of a child must be the paramount consideration. Subsection 8(1) requires foster homes to be licensed (see Section 1.5.2, [Licensing and Licensing Appeals](#)).

[Section 51](#) of the Act pertains to the removal of a child in care from the person with whom the child was placed.

- Subsection (1) gives agencies the authority to remove a foster child if considered in the child's best interests to do so.
- Subsection (2) lists the circumstances when a foster child can be removed from a foster home prior to a final decision being made if foster parents object to removal of a child.
- Subsections (3) and (4) give foster parents a right to request a review of a decision to remove a child by the executive director of the placing agency and reconsideration by the chief executive officer of the mandating authority.
- Subsections (5) and (6) give foster parents the right to an independent appeal and provides for the appointment of an adjudicator by the minister.

[Foster Parent Appeals Regulation](#)

The [Foster Parent Appeals Regulation](#) sets out the procedures and timelines for removing a child under section 51 of the Act. The table below highlights procedures and timelines for foster parents, the placing agency and the agency's mandating authority

Procedures and Timelines for Removal of a Child from a Foster Home

Section	Provision	Timeline
2	An agency must give foster parents written reasons for its decision to remove a foster child, written notice of their right to a review, reconsideration and appeal, a copy of this regulation.	2 days
3	Foster parents may object to a decision to remove a foster child by filing a written request for a review with the executive director of the agency.	12 days
4(1)	The executive director must offer the foster parents, in writing, an alternative process to resolve their dispute with the agency.	7 days
4(1.1)	The foster parents have up to 15 days from the day they receive the offer of an alternative process to advise whether they agree to the process.	15 days
4(2)	Foster parents and the agency may resolve their dispute through an alternative process. If not, either party may advise the executive director accordingly.	
5	The executive director must review the decision to remove the foster child if the foster parents did not agree to an alternative process or it was unsuccessful or the time line (see 4(1.1)) has expired. The executive director must give a copy of the decision to the foster parents and the agency's mandating authority.	7 days
6(1)	If not satisfied with the decision of the executive director, foster parents may request, in writing, a reconsideration by the senior executive officer of the agency's mandating authority.	7 days
6(2)	The agency must send agency and other records used by the executive director in making a decision to the mandating authority.	7 days
6(3)	The senior executive officer of the authority must make a decision and give a copy to the foster parents.	30 days
7	If not satisfied with the decision of the senior executive officer, the foster parents may file a notice of appeal to the Child Protection Division in writing.	14 days
8	The parties to the appeal are the foster parents and the agency that removed the foster child.	NA
9	The director (Child Protection Division) must give a copy of the notice of appeal to the agency and its mandating authority and request the minister to appoint an adjudicator.	7 days

Sections 10 and 11 of the regulation pertain to the appointment of adjudicators. Sections 12 through 20 apply to procedures and timelines with respect to adjudication hearings and decisions.

Counting Days

When counting days we are counting 'calendar' days as per Manitoba's *Interpretation Act*, C.C.S.M. c. 180.