



## Section 1 – Administration

## Standard 10.16

# Requirement to provide notice before taking a significant measure in relation to an Indigenous child or youth

### PURPOSE

This standard has two purposes:

1. To provide guidance to GNWT child and family services providers on the new notification requirements under the federal government's *Act respecting First Nations, Inuit and Métis children, youth and families* ('Federal Act') in relation to significant measures; and
2. To provide guidance to GNWT child and family services providers in distinguishing the notification requirements under the Federal Act from the NWT's *Child and Family Services Act* ('CFS Act').

### LIVING DOCUMENT

This Standard is meant to be a living document, also known as an evergreen document. It will be revised on an ongoing basis to ensure the Standard remains current and reflects the best ways for GNWT child and family services providers to work with Indigenous children, youth, and families.

The Department of Health and Social Services invites ongoing feedback and suggestions on this document from Indigenous governments, children, youth, families, and frontline service providers.

If you have any comments, please send them to: [CFS\\_StandardsFeedback@gov.nt.ca](mailto:CFS_StandardsFeedback@gov.nt.ca).

### OVERVIEW

Before taking any **significant measure** in relation to an Indigenous child/youth, the Director of Child and Family Services ('Director') must provide **notice** to the parents(s), the **care provider**, and the **Indigenous governing body** ('IGB').

**Paramount consideration:** When providing notice prior to taking a significant measure, the Director must always consider the **child/youth's best interests**. The Federal Act and the CFS Act both identify this principle as the primary consideration when making decisions affecting children/youth. The Federal Act sets out the best interests for Indigenous children/youth in section 10. The Federal Act prevails over the best interests of the child/youth provisions set out under the CFS Act, in the context of providing services to Indigenous children/youth.

The key to meeting the requirement under the Federal Act is to provide the necessary notice(s) prior to taking any significant measure. The purpose of the notice is to provide those affected by



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the proposed significant measure with an opportunity to have their views considered before taking the measure. Notice prior to the significant measure promotes involvement and participation in all stages of planning for the child/youth.

Providing notice before taking a significant measure is a legal requirement under the *Federal Act*. Because the *Federal Act* is paramount to the CFS Act, prior notice must be provided to parent(s), care provider(s), and IGBs even where the CFS Act does not require it. At times, the requirement to provide notice under the *Federal Act* and providing notice under the CFS Act will overlap.

### **DEFINING A “SIGNIFICANT MEASURE”**

A significant measure is an intervention the Child Protection Worker or Designate (including Authorized Persons, Foster Care and Adoption Worker, or Supervisor/Manager) takes after making a decision based on information gathered to put in place a plan or course of action for the child/youth. These include measures already requiring some form of notice under the CFS Act, as well as new measures. For example:

(a) Court proceedings: When the Child Protection Worker or Designate (designated by the Statutory Director) makes an application for a court proceeding that requires notice to any party under the CFS Act, and includes:

- An application to confirm an apprehension, s.12.1 (otherwise known as an application for an apprehension order); or
- An application for a child protection order, s.28 (a declaration that the child is in need of protection and a supervision, temporary custody or permanent custody order);
- An application for a youth protection order, s.29.2 (a declaration that the youth is in need of protection and a temporary custody or permanent custody order);
- An application for an extension of a child or youth protection order, s.47(3) for extension of a temporary custody order and s.48(2) for extension of a permanent custody order; and
- An application to discharge a child or youth protection order, s.28(9)(c) to discharge a temporary custody order and s.49 to discharge a permanent custody order.

(b) When the Child Protection Worker or Designate withdraws from a court proceeding, such as:

- Withdrawal of application before apprehension hearing, s.12.6 or 13(2)(b)



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(c) Reunification following a significant measure, such as:

- Return of child/youth to parent after apprehension (less than 72 hours), s.12
- Return of a child/youth from an out of home placement (POCA out of the home, TCO, PCO)

(d) When the Child Protection Worker or Designate apprehends a child, s.10, 11, and 31.

(e) Plan of Care Committees and Agreements (CFS Act) placing a child/youth out of the home.

- Where there is no existing Plan of Care Agreement, notice is provided when the Child Protection Worker or Designate establishes a Plan of Care Committee for the purpose of a Plan of Care Agreement placing a child/youth out of the home.
- Where a Plan of Care Agreement already exists with the child placed in the home, notice is provided when the Child Protection Worker or Designate reviews the Plan of Care Agreement for the purposes of placing a child/youth out of the home. This is contingent on an apprehension not having occurred.
- Where a Plan of Care Agreement with an out of home placement exists, notice is provided when the Child Protection Worker or Designate reviews, extends, and/or terminates the Plan of Care Agreement.

(f) When the Child Protection Worker or Designate is placing the child/youth in an out-of-home living arrangement, starting a new placement, or changing the placement, such as under:

- Placement of child/youth through a plan of care agreement (out of the home)
- Placement of the child/youth through a temporary or permanent custody order.

(g) When the Child Protection Worker or Designate is placing a child/youth in a voluntary interim placement 30 days after a Permanent Custody Order (s.88) is granted for the purpose of adoption.

(h) When the Director of Adoption is placing a child for the purposes of adoption or the Director of Child and Family Services is consenting to an adoption, such as the:

- Director of Adoption placing a child with an approved applicant for a departmental adoption, under s.18(2) of the *Adoption Act*; and
- Director of Child and Family Services consenting to a departmental adoption, under s. 21 of the *Adoption Act*.



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### RECIPIENTS OF NOTICE

Notice must be provided to the parent(s), care provider(s), and the IGB(s) of an Indigenous child/youth. Under the CFS Act, notice may also need to be provided to applicable Aboriginal organizations for certain significant measures. See **Tool 10.16.2: Significant Measure Notice Schedule**.

(a) Parent(s):

- A person, other than the Director, who has lawful custody of a child.

(b) Care Provider(s):

- A person who has primary responsibility for the day-to-day care of a child or youth, other than a child or youth's parent, including in accordance with the customs or traditions of the Indigenous group, community, or people to which the child/youth belongs. This includes extended and provisional care providers (for example, extended family).
- This can include, but is not limited to, a person having "actual care of the child", as set out under the CFS Act.
- **It is important to note:** "Regular foster caregivers" are not considered 'care providers' for the purpose of this standard.

(c) Indigenous Governing Body ('IGB'):

- The IGB that acts on behalf of the Indigenous group, community, or people to which the child/youth belongs and that has informed the NWT's Department of Health and Social Services or the child and family services provider in another province/territory that they are acting on behalf of that Indigenous group, community or people.
- IGBs can be from outside of the NWT and anywhere across Canada.
- The IGB may or may not be the same as the applicable Aboriginal organization identified under the CFS Act.
- A list of IGBs will be maintained by the Director. A list of IGBs for the purposes of s.12 notice can be found [here](#).

(d) Applicable Aboriginal organization:

- The Indigenous government/organization in the NWT identified in a list maintained by the Director, through the authority of the CFS Act.
- Notice regarding some significant measures (i.e. outside of the notice for legal proceedings already established under the CFS Act) is only provided to IGBs and not to



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applicable Aboriginal organizations. See **Tool 10.16.2: Significant Measure Notice Schedule**.

- A list of Applicable Aboriginal organizations will be maintained by the Director. A list of Applicable Aboriginal Organizations can be found [here](#).

### REFERENCE

- NWT's *Child and Family Services Act*, s.12.3, 25, 29.3, and 31(7)
- Federal government's *Act respecting First Nations, Inuit and Métis children, youth and families*, s.12
- NWT's *Adoption Act*, s.18(2) and 21
- Standard 10.15 Commitment to Indigenous children, youth, and families
- Form 10.16.1 Notice of Significant Measure to Parent, Care Provider, and Indigenous governing body
- Standard 5.12 Service of Documents
- Standard 7.1 Placement Priorities for Children and Youth
- Standard 9.1 Concurrent Planning for Children and Youth
- Standard 9.5 Long Term Planning for Children and Youth

### PROCEDURES

All Child Protection Workers/Designates and Supervisors/Managers are responsible to ensure adherence to the procedures outlined below.

#### When to provide notice of significant measure:

- Provide notice of an intended significant measure. If the notice is not in the best interests of the child/youth, with a Supervisor/Manager's approval, and consultation with the Deputy Director of Practice, do not provide notice.
- Determine the notice time period based on the type of significant measure to be taken and the level of urgency.
- The notice period should balance the urgency to make decisions with providing sufficient time for a response. The notice period should allow an opportunity for those affected by the significant measure to express their views for the Director's



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consideration.

- A default notice period of **10 days** is recommended for most Significant Measures.
- In urgent circumstances, if notice must be less than 10 days, the notice period should be determined in consultation with a Supervisor/Manager.
- See **Tool 10.16.2: Significant Measure Notice Schedule**.

### How to provide notice of significant measures:

- Use **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body**, designated for this purpose.
- This form should be provided via fax, registered mail, email, or personal service.
  - Personal service is the preferred method of providing notice, as it helps foster relationship building and promotes the involvement in decisions affecting children/youth.
- Record provision of notice in MatrixNT as a **Case Note** and place a copy of the notice on the hard file.

It is important to note that notice requirements under the *Federal Act*, as well as the notice requirements under the CFS Act, do not replace any opportunities to engage or collaborate with Indigenous governments. Engagement and collaboration can include areas where notice is not required but where the child/youth may benefit from an Indigenous governing body's support, such as case plans or Prevention Support Services Agreements. Ultimately, the best interests of the child/youth are paramount and where the best interests of the child/youth are best served by the Director engaging or collaborating in programs/services related to children, youth, and families, the Director shall do so with parental/care provider consent. Please see **Standard 10.15: Commitment to Indigenous children, youth, and families** for more details on how to engage and collaborate on child and family services with Indigenous governing bodies.

### How to give notice of significant measures related to Court proceedings:

- If providing notice to an applicable Aboriginal organization under the NWT's CFS Act, follow the existing processes as set out under the **Standard 5.12 Service of Documents**.
- If providing notice to a Parent, Care Provider, and Indigenous governing body under the *Federal Act*, use **Form 10.16.1 Notice of Significant Measure to Parent, Care Provider, and Indigenous governing body**.
- Where the IGB and the applicable Aboriginal organization are the same, notice is required (as set out under the **Standard 5.12 Service of Documents**) and the Form



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### 10.16.1 Notice of Significant Measure to Parent, Care Provider and Indigenous Governing Body

must be completed.

- The IGB, acting on behalf of the Indigenous group, community, or people to which the child/youth belongs, has the right to make representations in the court proceedings.
- Where the care provider is the same person or people as set out under the CFS Act, one notice is sufficient.
- Under the CFS Act, notice is already provided to: parents or person(s) having actual care of the child at the time of the investigation, apprehension or application for a youth protection order; child who is 12 years and older, youth for a youth protection order, members of the plan of care committee, and applicable Aboriginal organizations for most legal processes involving children/youth and their families. This notice must be extended to other care providers and IGBs, as per the section above titled, "Current Court Processes (CFS Act)". See **Standard 5.12 Service of Documents**.

## Responsibilities

### Child Protection Worker/Designate:

#### Cultural Identity of an Indigenous Child or Youth:

- When initially communicating and throughout involvement with the family, ask the child or youth and their parent(s) or care provider(s) about whether they identify as Indigenous. If the child or youth does identify as Indigenous, document in MatrixNT the Indigenous group, community, or people or groups, communities, or peoples to which the child or youth belongs, including both maternal and paternal Indigenous identities and adoptive relations.
- Use the **Genogram Code Key Tool 9.1.1** as per **Standard 9.1 Concurrent Planning for Children and Youth** to map out the family relationships and other significant relationships that can assist with identification of a child/ youth and family's Indigenous group, community, or people.
- Consult with the parent(s) or care provider(s) if there are questions about whether the child/ youth is Indigenous and if applicable, consult with members of the child or youth's extended family, Aboriginal Organization and/or Indigenous Governing Body with parental/care provider consent.



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### **How to provide notice of significant measure:**

- Where a parent or care provider is actively involved in creating and signing a Plan of Care Agreement, written notice to that parent or care provider is not required. Notice to a parent, care provider, or IGB may be provided verbally, as long as a hard copy of the notice is provided as soon as practicable (with the approval of a Supervisor/Manager).
- Notice does not have to be given where a parent or care provider cannot be located after best efforts. The efforts to locate a parent or care provider must be documented.
- Notice of significant measures does not require the parent(s) or care provider(s)' consent. If a parent or care provider objects to the involvement of the IGB, notice must still be provided.
- If an Indigenous child/youth is under a permanent custody order, provide notice of significant measures to the parent.
- If a parent, care provider, or IGB provided their views during the notice period, follow up with those who provided input and inform them of the final decision about the significant measure. Continue to collaborate/engage with each party and let them know they are still welcome to provide input beyond the significant measure.
- If circumstances change during the notice period and it is determined that it is in the best interests of the child/youth to take the proposed significant measure without delay or to take a different significant measure, inform those who were provided notice on the significant measure taken about the decision.

### **Notice of Significant Measures:**

- Provide the child/youth(s)' parent(s), care provider (s), and IGB (on both the maternal and paternal side when this is known to Child and Family Services) with the completed **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** as soon as possible, but at a minimum in compliance with the **Tool 10.16.2: Significant Measure Notice Schedule**.
- In most cases, the IGB will have advised the Director of the name/function of the person acting as a Liaison for the IGB. The Director will inform regional offices of the names/functions of the delegated Liaison and advise of the agreed upon mechanism to share the Notice of Significant Measures. If a Liaison is not identified, the Notice of Significant Measures can be provided in person, by fax, or by email and must be directed



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to the Chief or Chief Administrative Officer.

- Depending on the required Significant Measure, i.e. if other than an immediate placement, the Child Protection Worker or Designate will arrange a case conference with the parent(s) or care provider(s), the child 12 years of age or older, and the IGB to give notice of and discuss any significant measure beforehand. If the child 12 years of age and over does not want to attend the meeting, the Child Protection Worker or Designate **must** obtain their views privately at another time and report those views at the meeting. Decisions made at the meeting should be made collaboratively, and respecting the value of all input, but the final plan must be agreed upon by the parent(s) or care provider(s), and Child Protection Worker or Designate.
- If there is disagreement about the plan to address the significant measure, consult with the Supervisor/Manager and Deputy Director of Practice about referring the matter to an alternative dispute resolution process.
- Follow up with the parent(s) or care provider(s) and IGB, to inform them of the final decision to address the significant measure.
- If circumstances change during the notice period, either because it is in the child's best interest to take the proposed significant measure without delay, or to take another significant measure, the Child Protection Worker or Designate will immediately inform the parent(s) or care provider(s) and IGB(s) about the Significant Measure and document this in a **Case Note** and save it to MatrixNT.
- After multiple attempts, if the Child Protection Worker or Designate is unable to locate the parent(s), care provider(s), and/or the representative of the IGB to provide the Notice of Significant Measures, the Worker must document the efforts made to locate them in MatrixNT as a **Case Note**.
- Document **how** and **when** the Notice of Significant Measure as provided to the child or youth's parent(s) or care provider(s) and IGB(s) in MatrixNT as a **Case Note** and place a copy of the form on the hard file. Also, upload the **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** to the file on MatrixNT and place a copy of the form on the hard file. Alternatively, document in a **Case Note** **why** it was not safe or possible to provide notice to these individuals.

### Supervisor/Manager:

- Ensure the Child Protection Worker or Designate has obtained both maternal and paternal Indigenous group identities or IGB information from the child/youth and their



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family during initial communication.

- Determine during case management discussions or during supervision, whether the Child Protection Worker or Designate has inquired and understood the child or youth's views and ensured engagement and collaboration with the IGB.
- Ensure when signing off on the Investigation Report on MatrixNT, that the Indigenous heritage of each child or youth and their parent(s) is documented.
- Remind the Child Protection Worker or Designate of the need to follow the required priority of placement and to seek collaboration from the IGB whenever there is a change in placement or a new placement of a child/youth.
- Ensure **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** is completed and provided in the timelines set out under **Tool 10.16.2: Significant Measure Notice Schedule** to the parent(s) or care provider(S) and relevant Indigenous group(s) whenever there are placement changes, apprehensions, or other court proceedings as well as when a Plan of Care Agreement is being contemplated.

Review MatrixNT and the hard file to ensure the Child Protection Worker or Designate documented providing notice in a **Case Note** as well as uploaded the **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** to MatrixNT and placed copy of both forms on the hard file.

### NTHSSA Deputy Director of Practice:

- Ensure that all Supervisors/Managers are aware of and inform all Child Protection Workers and Designates of the importance of the **Act Respecting First Nations, Inuit and Métis children, youth and families**, and its impact on practice.
- Ensure that all open files clearly identify the Indigenous heritage of the children, youth and their parent(s) accessing services through Child and Family Services.
- Ensure that when a child/youth is placed in an out of home placement, there is a written rationale that outlines the efforts made to attend to priority placement considerations, engage and collaborate with IGB and why priority placement was not possible.
- Provide consultation in matters where it is not in the child/youth's best interest to notify the parent(s), care provider(s), or IGB of the need to take a Significant Measure.
- Provide consultation in matters where there is disagreement about the plan to address



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the significant measure based on the views and advice received from the IGB.

- Conduct quarterly reviews on all placements to ensure compliance to the placement priorities.

### DHSS Director of Adoption or Deputy Director:

- The Director of Adoption or their Designate will provide a copy of **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** to the parent(s), care provider(s), and IGB when the Director of Child and Family Services is placing a child/ youth delivered to the Director of Child and Family Services for the purpose of adoption in a Voluntary interim placement of a child/youth 30 days after permanent custody order was granted (s.88).
- The Director of Adoption or their Designate will provide a copy of **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** to the parent(s), care provider(s), and IGB prior to placing a child or youth with an approved applicant for the purposes of adoption pursuant to **section 18(2) of the Adoptions Act**.
- The Director of Adoption or their Designate will provide a copy of **Form 10.16.1: Notice of Significant Measure to Parent, Care Provider, and Indigenous Governing Body** to the parent(s), care provider(s), and IGB when the Director of Child and Family Services is consenting to an adoption pursuant to **section 21 of the Adoption Act**.

### DHSS Director of Child and Family Services or Deputy Director:

- Where these do not already exist, the Director will work with the child/youth's Indigenous governing body to advance regional Community Planning Tables\* as a means to formalize engagement opportunities and protocols.
- Maintain a list of applicable Aboriginal Organizations and IGBs
- Receive the Quality Reviews on a quarterly basis from the Deputy Director of Practice or their Designate.

\* Community Planning Tables will be established when Indigenous governing bodies inform the GNWT they want to receive notice of Significant Measures (Section 12 of the Federal Act). Community Planning Tables will include the Statutory Director (or their Designate) and person(s) nominated by the Indigenous governing body. The regional Manager/Supervisor and the Deputy Director of Practice will also be represented, and the group will establish a Terms of Reference to identify mechanisms for working collaboratively.



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FORMS
<ul style="list-style-type: none"><li>• <b>Form 10.16.1 Notice of Significant Measure to Parent, Care Provider and Indigenous Governing Body</b></li><li>• <b>Form 6.1.1 Case Notes</b></li></ul>
TOOLS
<ul style="list-style-type: none"><li>• <b>Tool 9.1.1 Genogram Code Key</b></li><li>• <b>Tool 10.16.1 Notice of significant measures flowchart</b></li><li>• <b>Tool 10.16.2 Significant Measure Notice Schedule</b></li><li>• <b>Tool 10.15.2 Bill C-92 Compliance Guide for Social Workers and Service Providers Wahkohtowin Law and Governance Lodge</b></li><li>• <b>Tool 10.16.3 Notice to Parent and Care Provider Brochure</b></li><li>• <b>Tool 10.16.4 Notice to IGB Brochure</b></li><li>• <b>Tool 10.16.5 POCA Notice Flow Chart</b></li></ul>