May 2: “Walk for Foster Care,” 2nd annual community 2-mile walk fundraiser for foster and adoptive parents sponsored by IFAPA (the Iowa Foster and Adoptive Parents Association; 9 a.m., Gray’s Lake Park, Des Moines. For registration or more information, go to www.walkmehome.org

Iowa Senate Refuses to Confirm DHS Director: The Iowa Senate has denied confirmation of Gene Gessow as Director of the Iowa Department of Human Services (DHS). Governor Culver appointed Gessow to serve as DHS Director in September of 2008. Previous to his appointment, Gessow served as Iowa’s Medicaid Director. The Senate was required to take action on Gessow’s nomination by April 15th, and, on the final day, the appointment failed to garner enough votes for confirmation. Appointments of the governor need 34 votes in the 50-member Senate. Because Democrats hold 32 of the Senate's seats, Director Gessow needed the vote of all 32 Democratic senators as well as the votes of two Republican senators. The vote ended up strictly along party lines (31-19), leaving Gessow short of confirmation by two votes.

Governor Culver was disappointed that the Iowa Senate failed to confirm Gessow's appointment, but the Governor said he wants Gessow in his administration regardless of the confirmation failure. According to the Governor, Gessow will stay on as DHS Director until at least May 1.
**State Legislative Update:** As the Iowa General Assembly continues in session, we continue to report on the progress of bills of interest to child advocates:

**HF 315 – YOUTH COUNCILS:** This bill creates an Iowa Collaboration for Youth Development Council and an Iowa Youth Advisory Council in the Department of Human Rights (DHR). The bill defines youth to include persons through age 21. It establishes the duties, membership and reporting requirements of the councils, including that the members of the Youth Advisory Council be aged from 14-20. *The House PASSED the bill, 65-30; the Senate PASSED the bill, 39-11. This bill has now been signed by the Governor.*

**HF 580 – IOWACARE PAYMENTS II:** This bill requires that the waiver that DHS submits to continue the IowaCare program after July, 2010 include provisions to pay nonparticipating providers who serve expansion populations and meet certain requirements. The bill also requires the provider to show that it was not possible to postpone the treatment of transfer the member to an eligible provider. Amendment S-3170 allows DHS to not make these payments if it determines, after consulting with the Governor, that doing so would adversely affect the IowaCare waiver. *The Senate PASSED the bill, as amended, 50-0; it now goes to the House.*

**SF 323 – FOSTER CARE RECORDS:** This bill requires DHS to give foster care providers additional health care records as they become available and to allow the provider to ask for specific records. The bill also requires the foster care family to receive notice if a foster child is required to register on the Sex Offender registry. The House added Amendment S-3205 which makes a correction to the provision requiring notice if a foster child is required to register as a sex offender by requiring DHS to track the records of foster children supplied to foster parents including when the parent requested additional records. The amendment also prohibits a registered child care provider from providing foster care for a child who has committed abuse against a child while providing child care. *The bill, as amended, returned to the Senate which REFUSED TO CONCUR, with Amendment S-3205, 32-18.*

**SF 236 – PMIC PAYMENTS:** This bill directs DHS to work with PMIC providers on a new reimbursement system to begin July, 2010. The bill also sets the PMIC reimbursement rate for FY 2010 as a percentage of average costs but allows DHS to make exceptions. The bill requires DHS to apply for authority to reimburse PMICs at 100% of costs and allows the providers to submit a projected cost report for setting the rate. The bill also sets the rate for psychiatric providers at the cost settled rate for FY 2010. The Senate added Amendment S-1147 which requires the treatments be in the best interest of the child and family. *The House PASSED the bill, as amended, 97-0; it now RETURNS to the Senate.*
SF 236 – PMIC PAYMENTS: This bill directs DHS to work with PMIC providers on a new reimbursement system to begin July, 2010. It sets the PMIC reimbursement rate for FY 2010 as a percentage of average costs but allows the DHS to make exceptions and requires DHS to apply for authority to reimburse PMICs at 100% of costs. The bill allows the providers to submit a projected cost report for setting the rate. The bill also sets the rate for psychiatric providers at the cost settled rate for FY 2010. House Amendment S-3265 requires the treatments be in the best interest of the child and family. The Senate CONCURRED & PASSED the bill, 50-0; it now goes to the Governor.

HF 562 – STATE CHILD CARE ADVISORY COUNCIL: This bill requires one of the seven members of the Council on Human Services to be a member of the Child Care Advisory Council, and makes changes to the membership on the council, including that a slot for an unregistered child care home provider be for a "family, friend, and neighbor child care" provider. The bill identifies four additional slots for the advisory council (business, from nominees by the Chamber of Commerce executives, community empowerment office, and Iowa after-school alliance, the statewide preschool program for four-year-old children). The bill also makes the seven members of the Council voting members and adds four ex officio legislative members. It allows the council to advise DHS on additional matters, including the federal Child Care and Development Block Grant and other funding sources. The bill adds a member from the Early Childhood council and gives the Council on Human Services duties to advise the Early Childhood Council. The bill also adds additional language on the duties of the council to give advice and to assist the Early Childhood Council in reporting requirements and requires DHS to give the council various financial information. House Amendment H-1443 was adopted by Senate (this amendment deletes language that a member of the Council on Human Services be a member of the Child Care Advisory Council, and adds an unregistered provider or a family, friend or neighbor as one member on the advisory council. The House CONCURRED & PASSED the bill, as amended, 97-0; it now goes to the Governor.

April Statistical Summary: During the month of April, the Iowa Supreme Court rendered no opinions in juvenile cases, but did render one opinion concerning a noncustodial parent’s rights to a child’s mental health records, which is discussed below. During the month of April, the Iowa Court of Appeals rendered 25 opinions in
juvenile-related cases. Of those 25 cases, 23 were Termination of Parental Rights (TPR) cases, 1 was a delinquency case, and 1 was a case involving placement on the child abuse registry. Here are the results in those cases.

**TPR Cases:** In 22 of the 23 TPR cases, the parent(s) appealed the trial court’s order terminating parental rights, and the Court of Appeals affirmed the termination of parental rights. In 1 of the TPR cases, the Iowa Court of Appeals reversed the lower court’s order terminating parental rights. (This case was reported in the April 10, 2009 edition of *Child Views*).

**Delinquency Case:** In the delinquency case, the Court of Appeals reversed the trial court’s adjudicatory order, finding that evidence was not established beyond a reasonable doubt.

**Child Abuse Registry Case:** In the child abuse registry case, the Court of Appeals affirmed the trial court’s order affirming the administrative order finding child abuse and placing the perpetrator on the child abuse registry (see below).

**Placement on the Child Abuse Registry: M.S. v. Iowa D.H.S. (Iowa Court of Appeals, April 22, 2009):** In this case, the Iowa Court of Appeals affirmed the trial court’s order finding that the father had committed child abuse and placing him on the Child Abuse Registry. First, the Court of Appeals set forth the standard of proof in judicial review of administrative decisions:

> On review, the question is not whether the evidence supports a different finding, but whether the evidence supports the findings the agency actually made. *(citation omitted)* In other words, the agency's findings are binding on appeal unless a contrary result is compelled as a matter of law.

The Court of Appeals also stressed the relaxed evidentiary rules in administrative hearings:

> At the hearing, the Department conceded there was no physical evidence to support the allegation of sexual contact. The Department’s case was based primarily upon hearsay evidence. Hearsay is admissible in administrative proceedings. *(citation omitted)* The Department presented no corroborative evidence, not atypical in this kind of matter.
Finally, the Court of Appeals expressed its discomfort with the rules under which it is forced to review agency decisions in cases like this:

This “he said/she said” matter is both troubling and difficult for this court. There are only two persons on this earth who know the truth: M.S. and L.S. As is characteristic of this kind of case, there are no other witnesses, and there is no corroborating evidence. Administrative procedures do not afford an accused the same Due Process protections provided to one accused of a crime, but the consequences are no less serious. The Department’s findings are based largely on hearsay and attestations of credibility.

The shackles that confine our judicial review of this administrative action prohibit us from re-weighing the evidence. We are obliged to broadly and liberally apply the agency’s findings to uphold rather than defeat the agency’s action. Acutely mindful of these constraints, we cannot say as a matter of law that the deputy director’s final decision is not supported by substantial evidence. We must therefore affirm the agency’s final decision and deny expungement of the child abuse report.

**Dual Roles or One Role for a Minor Parent:** *In Re G.S. (Iowa Court of Appeals, April 22, 2009)*: In this TPR case, the Court of Appeals examined (in a footnote) a situation where an attorney was appointed for a minor parent, but no G.A.L. was appointed:

A.J. claims in the alternative that a guardian ad litem should have been appointed for her. We note that A.J. was just one month short of her seventeenth birthday at the time of G.S.’s removal, an attorney was appointed for her and zealously represented her, and the record does not demonstrate any substantial reason why a guardian ad litem should also have been appointed for her.

**Parental Access to a Child’s Mental Health Records:** *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson and Sanger, L.L.P. and PINI, ___ N.W. 2d ____ (Iowa 2009) -- decided on April 17, 2009*: In this case, the Iowa Supreme Court was faced with the issue of whether or not a non-custodial parent has unrestricted access to the mental health records of his or her child. The Iowa Supreme Court first held that a parent does not have absolute access to the records:

Susan fails to appreciate that although section 598.41(1)(e) guarantees both parents “legal access” to a child’s medical records, section
598.41(1)(e) does not give either parent an absolute right to those records. Under chapter 598, the best interests of the child always prevail.

The Iowa Supreme Court went on to rule that access to the information must be based upon a “best-interest-of-the-child” test:

Applying this reasoning to the situation where a parent requests his or her child’s mental health records, when a mental health provider claims the release of such information is not in the child’s best interest, the court must determine whether the records should be released applying the best-interest-of-the-child test. To the extent our decision in this case is inconsistent with Leaf, that case is overruled.

Comparatively Speaking Part 2: The following information (in addition to that offered in the previous edition of Child Views) is provided by The Measure of America, America’s first-ever human development report:

- Asian males have the highest life expectancy for males in the county, at an average of 83.6 years. The average life expectancy for Black/African American males is 69.4 years. African Americans today have a shorter lifespan than the average American in the 1970s.

- Women take home 78 percent, on average, of what men earn. If benefits are factored in, the disparity is even larger.

“I've learned that no matter what happens, or how bad it seems today, life does go on, and it will be better tomorrow.” – Maya Angelou