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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Administration on Children, Youth and Families

1. Log No: ACYF-CB-PI-10-02

2. Issuance Date: March 26, 2010

3. Originating Office: Children's Bureau

4. Key Words: Criminal Record Checks and Other Safety Considerations; Foster Parents; Childcare Institutions; Title IV-E Foster Care Eligibility Reviews

## PROGRAM INSTRUCTION

**TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

**SUBJECT:** Title IV-E Foster Care Eligibility Reviews and Monitoring of Certain Provisions under the Adam Walsh Child Protection and Safety Act of 2006

**LEGAL AND RELATED:** Title IV-E of the Social Security Act (the Act); Code of Federal Regulations 45 CFR §1356.30 and 45 CFR §1356.71; Program Instruction ACYF-CB PI-07-02

**PURPOSE:** This Program Instruction (PI) provides guidance to State title IV-E agencies on how the Children's Bureau (CB) will enforce compliance with the criminal record check (CRC) requirement amended by the Adam Walsh Child Protection and Safety Act of 2006. Specifically, we will monitor the fingerprint-based check requirement through the Federal regulatory foster care eligibility reviews in Fiscal Year (FY) 2010 for reviews with the period under review (PUR) of October 1, 2009 – March 31, 2010. The PI also provides further clarification on what constitutes acceptable documentation of compliance with the title IV-E provisions for background checks of criminal records and evidence that the State's safety considerations for childcare institutions have been addressed.

**INFORMATION:** The Adam Walsh Child Protection and Safety Act of 2006 (hereafter, Adam Walsh Act) was signed into law on July 27, 2006 and amended section 471(a)(20) of the Act to require States to institute procedures for conducting CRCs of prospective foster and adoptive parents that included fingerprint-based checks of the National Crime Information Databases (NCID) and to institute new procedures for checks of child abuse and neglect registries on prospective foster and adoptive parents, including adult members of their households. The law also removed a State's ability to opt-out of the CRC requirement.

Through regulations at 45 CFR §1356.71, the title IV-E foster care eligibility review, among other things, assesses whether a child's foster care provider during the PUR meets the Federal safety requirements as outlined in section 471(a)(20)(A) of the Act and 45 CFR §1356.30.

Therefore, beginning with the title IV-E foster care eligibility reviews in FY 2010 for reviews with the PUR of 10/01/2009 – 03/31/2010, CB will verify compliance with section 471(a)(20)(A) of the Act which requires title IV-E agencies to conduct CRCs that include fingerprint-based checks of the NCID, as detailed below. The eligibility review does not monitor compliance with section 471(a)(20)(B) of the Act that requires title IV-E agencies to conduct checks of child abuse and neglect registries. However, this is covered under regulations at 45 CFR §1355.32(d), which provide for a partial review process.

**Requirements for Prospective Foster Parents/Foster Family Home Licensure:**

The Children's Bureau considers a "prospective" foster parent as one who is being newly licensed. The term "newly licensed" refers to a home being licensed for the first time, or a home for which a previous license expired, in accordance with State policy, or was terminated. For title IV-E eligibility purposes, once the prospective foster family home is licensed, subsequent CRCs<sup>1</sup> are not required as long as the home is continuously licensed. This is true even if the State requires the completion of a new CRC at the time of license renewal. A foster family home that is required to go through periodic licensure to remain valid under a governing licensure provision is not considered "prospective" for the purpose of the Federal CRC requirements. However, if a foster family home license expires and cannot be renewed pursuant to State requirements, or if the license is terminated for any reason, the foster parent(s) must be considered "prospective" with any new application for licensure and a new CRC must be conducted in connection with the new license. As examples:

- 1) A State requires annual re-licensure and the license expires on October 31<sup>st</sup>. The new license is issued on November 1<sup>st</sup>. There is no break in licensure, so the home would be considered continuously licensed for title IV-E eligibility purposes.
- 2) Same scenario as in (1), but the home is not re-licensed until December 15<sup>th</sup> instead of November 1<sup>st</sup>. In the case of a lapse between a re-licensure or license renewal, we look to State policy. If State policy considers the home continuously licensed when there is a lapse in licensure, the home would be considered continuously licensed for title IV-E purposes under those circumstances, as well, and title IV-E maintenance payments can be claimed for November and December on behalf of an otherwise-eligible child placed in the home. If State policy does not consider such homes

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<sup>1</sup> When we use the term "CRC" in the discussion under "Requirements for Prospective Foster Parents/Foster Family Home Licensure," it also refers to the safety considerations in 45 CFR 1356.30(e) for the former opt-out States.

continuously licensed, the home would not be licensed for the month of November and title IV-E maintenance payments would not be allowed. Accordingly, any future licensure would be for "prospective" foster parents and the requirement for a CRC (with a fingerprint-based check of the NCID for the prospective foster parent licensed on or after October 1, 2008) would apply. (Note that a title IV-E maintenance payment can go back to the first of the month in which all eligibility criteria are met, so in this latter case, payment could begin again on December 1<sup>st</sup> if the child is in the home at that time and all other eligibility criteria are met.)

The documentation requirements for the CRCs differ based on whether a prospective foster parent was licensed before or after October 1, 2008 (or the State's approved delayed effective date in either case), as differentiated below.

A. **For a State that did not opt-out of the 1997 CRC requirements** at section 471(a)(20)(A) of the Act and 45 CFR §1356.30(a), the title IV-E agency must have conducted a CRC at either the local, State or Federal law enforcement level for a prospective foster parent who was newly licensed on or after November 19, 1997 (the effective date of the original criminal records check provision), or the State's approved delayed effective date for the 1997 requirement, but before October 1, 2008 or the State's approved delayed effective date for implementing the fingerprint-based CRC requirement.

**Documentation expectations for the 1997 CRC requirements:** The preferred documentation is the actual results of the CRC conducted by the State where the prospective foster parent's home is located. However, other acceptable documentation may include a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results, electronic documentation of the CRC results maintained in the State automated information system, or other official evidence that: 1) clearly verifies that a CRC was conducted at either the local, State or Federal law enforcement level for the prospective foster parent who was newly licensed between the dates noted above; and 2) sufficiently substantiates that the prospective foster parent had not been convicted of any of the prohibited felonies listed in sections 471(a)(20)(A)(i) and (ii) of the Act. If the documentation presented is not the actual results of the CRC, inclusion of information such as the date the CRC was completed and the evidence reviewed, and by whom, will greatly improve the quality and validity of the documentation.

B. **For a State that opted-out of the 1997 CRC requirement** at 45 CFR §1356.30(a), the State must have assured that the safety considerations established by the title IV-E agency in accordance with 45 CFR §1356.30(e) were addressed for a prospective foster parent who was newly licensed on or after March 27, 2000, but before October 1, 2008, or the State's approved delayed effective date to implement the fingerprint-based check of the NCID.

**Documentation expectations for such safety considerations:** The State title IV-E agency must provide documentation that verifies all of the safety standards prescribed by the State where the foster family home is located were met for the prospective foster parent prior to a title IV-E payment being made on behalf of a child in the home. Accordingly, in the title IV-E eligibility review, CB will look to the governing State policies to determine how to review for safety considerations under 45 CFR 1356.30(e). For example, if the State's safety standards require a check of the State child abuse registry, domestic violence registry and the State criminal history database, then the documentation must substantiate that each condition is satisfied before a title IV-E foster care maintenance payment may be made on behalf of a child placed in the foster family home. The preferred documentation in this case would be the actual results of the various safety checks. However, other acceptable documentation may include, but is not limited to, such official material as a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results; or electronic data maintained in the title IV-E agency's automated information system that records the results of the evidence examined to determine compliance with the governing safety requirements. The documentation will be accepted based upon the degree that the documentation clearly specifies the safety measures completed, the date completed and the evidence reviewed.

C. *For a foster parent who is newly licensed on or after October 1, 2008*, or the State's approved delayed effective date for implementing the fingerprint-based CRC requirement, the title IV-E agency must conduct a CRC that includes a fingerprint-based check of the NCID.

**Documentation expectations for the NCID CRC requirements:** The preferred documentation is the actual results of the CRC, which includes a finger-print based check of the NCID, conducted by the State where the prospective foster parent's home is located. However, other acceptable documentation may include a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results, electronic documentation of the CRC results maintained in the title IV-E agency's automated information system, or other official evidence that: 1) clearly verifies that a CRC of the NCID was conducted for the period in question, and 2) sufficiently substantiates that the prospective foster parent was not convicted of any of the prohibited felonies listed in sections 471(a)(20)(A)(i) and (ii) of the Act. If the documentation presented is not the actual results of the CRC, inclusion of information such as the date the CRC is completed and the evidence reviewed, and by whom, will greatly improve the quality and validity of the documentation.

**Requirements for Childcare Institutions:**

The CRC requirement at 45 CFR 1356.30(a) does not cover childcare institutions. However, consistent with 45 CFR 1356.30(f), the State title IV-E agency must provide evidence that safety considerations with respect to the caregiver staff of the

childcare institution have been addressed in accordance with the requirements of the State where the childcare institution is located.

The safety requirement at 45 CFR 1356.30(f) applies to childcare institutions that undergo a licensure process on or after March 27, 2000. The safety requirement applies in every situation regardless of the purpose of the conduct of the safety checks for the institution even when the safety checks are performed to satisfy the requirements for the initial license, a license renewal, or a re-licensure on or after that date.

The State is responsible for determining the type and frequency of background checks necessary to meet the standards established by the State in which the foster care provider is located. Accordingly, CB will look to governing State provisions to determine how to review for safety considerations under 45 CFR 1356.30(f). The reviewers will examine documentation provided by the State title IV-E agency to determine: 1) whether the State's established policies with respect to safety considerations for caregiver staff of childcare institutions were followed for the most recent period of the State's safety check schedule prior to (or, if applicable, during) the PUR; and 2) whether the safety requirements were satisfied before the title IV-E foster care maintenance payments were paid on behalf of a child during the PUR. For example:

- 1) If the State's safety provisions require that childcare institutions perform a CRC (or other safety checks) for each staff member prior to employment in order to receive a new or renewed license, then the licensing file must document that this condition is met for the license that is in effect during the child's placement in the PUR. The safety requirement is considered met for title IV-E eligibility review purposes, if documentation verifies the condition is fully met in accordance with the State's requirement prior to the payment for foster care maintenance under title IV-E on behalf of a child in the childcare institution during the PUR.
- 2) Or, if the State's policy is to annually verify that a sample of the childcare institution's direct services staff have met the State's safety requirements, then documentation that the licensing authority had followed this process and confirmed that safety requirements were met for the sample would be acceptable for the title IV-E review purposes. Say, for example, the title IV-E review is conducted the week of February 22, 2010, for the PUR 4/1/2009 – 9/30/2009, and State policies require the State licensing authority to review a sample of the childcare institution's new staff every June to assure that criminal background checks of the State databases were performed prior to new staff employment for the previous 12-month period. Reviewers would look to the licensing agency's documentation completed for June 2009 to assure that the agency verified that the sample of new staff hired between June 1, 2008 and May 31, 2009 met the safety requirements. In this case, since the State's policy requires an annual sampling to verify

compliance with the safety requirements for childcare institutions, if documentation confirmed that the State followed those procedures, then the requirements in 45 CFR 1356.30 will be met for the PUR. Since staff hired after the State's June 2009 review would be subject to the June 2010 verification, reviewers would not consider a case an error case because the licensing authority's sample did not consider new staff hired between June 1, 2009 and the end of the PUR. Reviewers also would not consider a case an error case if there were sampled staff who had not met the safety requirement timely, but the safety requirement was met for those staff before the title IV-E maintenance assistance being paid for the child in the PUR.

**Documentation expectations for safety considerations in childcare institutions:**

Documentation can include, but is not limited to, such official material as a checklist or monitoring report completed by the licensing authority; a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results; or electronic data maintained in the title IV-E agency's automated information system that records the results of the evidence examined to determine compliance with the governing safety requirements. The documentation will be accepted based upon the degree that the documentation clearly specifies the safety measures completed, the date completed and the evidence reviewed (and by whom). For the title IV-E eligibility review, the documentation must verify all of the governing safety requirements were met prior to the title IV-E maintenance payments being made on behalf of a child in the childcare institution during the PUR. A mere review of the title IV-E agency's or childcare institution's policy and regulation, however, is not sufficient to document compliance with the safety requirement. A statement by the title IV-E agency staff that simply declared "all CRCs had been completed and persons cleared" also is not sufficient. As noted above, the documentation should explicitly reflect the evidence the title IV-E agency staff had reviewed.

**Summary of CRC/Safety Consideration Compliance for Foster Family Homes and Childcare Institutions in the Title IV-E Eligibility Reviews:**

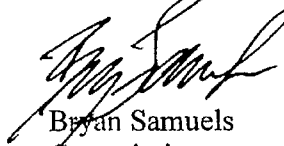
Under the provisions at 45 CFR 1356.71, CB assesses through the title IV-E foster care eligibility reviews whether the foster care provider met the applicable CRC or safety requirements before a title IV-E maintenance payment was made on behalf of a child residing with the foster care provider during the PUR. The State title IV-E agency must clearly document that all CRC or safety requirements, as applicable, are met prior to the State providing a title IV-E payment for the child in the foster family home or childcare facility. This means that, for either a foster family home or childcare institution, if it is determined that the foster care provider does not meet the CRC or safety requirements, as applicable, the State cannot claim Federal financial participation under title IV-E on behalf of a child who is placed in the foster family home or childcare institution until all the title IV-E requirements are met. When title IV-E foster care maintenance payments are made for a period in

the PUR in such situations, the case will be in error and the title IV-E foster care maintenance payments and applicable administrative costs will be disallowed for the entire time the ineligible payments are claimed. When an ineligible title IV-E foster care maintenance payment is made for a period outside the PUR in respect to either situation described here, the case will not be in error for this reason, but the title IV-E foster care maintenance payments and applicable administrative costs will be disallowed for the entire time the ineligible payments are claimed.

The documentation requirements in this PI apply to all foster care providers regardless of the State in which the foster care provider is located. Therefore, if the child is placed in an out-of-State foster family home or childcare institution, the State must provide documentation consistent with the type described above. That is, the documentation must verify that the prospective foster parent or the caregiver staff in the childcare institution where the child is placed has complied with the applicable CRC or safety requirements established by the State in which the foster care provider is located. The documentation will be accepted based upon the degree that the documentation clearly specifies the safety measures completed, the date completed and the evidence reviewed.

Please consult the Child Welfare Policy Manual, Section 8.4F, for further guidance on the criminal record check requirements, and Section 8.4H for further guidance on the safety requirements.

**INQUIRIES TO:** Children's Bureau Regional Program Managers



Bryan Samuels  
Commissioner

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