

ACF

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

1. Log No: ACYF-CB-PI-07-02

2. Issuance Date: January 23, 2007

3. Originating Office: Children's Bureau

4. Key Word: Foster Care; Non-profits; Title IV-E Maintenance Payments; Interstate Placements; Home Studies; Foster and Adoptive Parents; Background Checks; Title IV-E State Plan Amendments

PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

SUBJECT: Title IV-E State Plan Amendments – New Legislation

REFERENCES: Fair Access Foster Care Act of 2005, Public Law (P.L.) 109-113; Safe and Timely Interstate Placement of Foster Children Act of 2006, P.L. 109-239; Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248; Child and Family Services Improvement Act of 2006, P.L. 109-288; Section 471, Section 472 and Section 475 of the Social Security Act; ACYF-CB-IM-06-01; ACYF-CB-IM-06-03 and ACYF-CB-IM-06-04.

PURPOSE: This Program Instruction (PI) provides guidance to States to implement the new statutory provisions in Title IV-E of the Social Security Act (the Act) and provides the effective dates for program implementation. The PI also transmits a Title IV-E State Plan Pre-Print, which incorporates the new statutory provisions.

INFORMATION: Several laws enacted during the 109th Congress amended Title IV-E of the Act. The new amendments are in addition to the changes to the statute legislated through the passage of the Deficit Reduction Act of 2005 (refer to ACYF-CB-PI-06-06). Basic information about the recently enacted laws and their impact on the Title IV-E statute, guidance on implementing the new Title IV-E statutory provisions and their effective dates, and instructions for modifying the Title IV-E state plan follow.

Summary of New Legislation Affecting Title IV-E Statutory Provisions

Fair Access Foster Care Act of 2005 (P.L. 109-113). P.L. 109-113 was signed into law on November 22, 2005. The law amended section 472(b) of the Act to allow foster care maintenance payments to be paid to a for-profit child-placement agency or child-care agency on behalf of eligible children.

Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239). P.L. 109-239 was signed into law on July 3, 2006. The law amended section 471(a), section 475(1), and section 475(5) of the Act and added sections 471(a)(25) and (26) to the Act. Through the enactment of Title IV-E statutory provisions pertaining to interstate foster and adoptive home studies; reasonable efforts; permanency hearings; caseworker visits; case plans and the case review system, the law seeks to improve protections for children and holds States accountable for the safe and timely placement of children into safe, permanent homes across State lines.

Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248). P.L. 109-248 was signed into law on July 27, 2006 and amended section 471(a)(20) of the Act to require States to institute revised procedures for conducting criminal background checks of foster and adoptive parents and new procedures for child abuse and neglect registry checks of prospective foster and adoptive parents and adult members of their household.

Child and Family Services Improvement Act of 2006 (P.L. 109-288). P.L. 109-288 was signed into law on September 28, 2006. The law amended section 475(5)(C) of the Act to require States to have procedural safeguards in place to ensure that in permanency hearings the court or administrative body conducting the hearing consults with children, in an age appropriate manner, regarding the permanency or transition plans proposed for them.

Summary of New Title IV-E Statutory Provisions

Interstate Placement Considerations: P.L. 109-239 amended several provisions in section 471(a) and section 475(5) of the Act to ensure interstate placements are considered in the areas pertaining to reasonable efforts, case planning and case review requirements. The provisions require States to:

- Consider in-State and out-of-State options when making reasonable efforts to place the child in accordance with the permanency plan and to finalize the permanency plan (section 471(a)(15)(C));
- Consider in-State and out-of-State permanent placement options at permanency hearings. If a child is in an out-of-State placement at the time of the hearing, the permanency hearing must determine whether the out-of-state foster care placement continues to be appropriate and in the child's best interests (section 471(a)(15)(E)(i) and section 475(5)(C)); and

- Visit at least every 6 months (previously every 12 months) children placed in out-of-State foster care. The required visits may be performed by either a caseworker from the State that has placement and care responsibility over the child or a caseworker from the State where the child is placed. Under the new legislation, caseworkers under contract with either State may also perform these visits (section 475(5)(A)(ii)). A report on the visit by the caseworker that details the child's circumstances and extent to which the out-of-State placement meets the child's best interest or special needs must be provided to the State agency of the state in which the child's parents reside.

Background Checks Required by Section 471(a)(20) of the Act. P.L. 109-248 amended section 471(a)(20) pertaining to the criminal record and child abuse registry checks for prospective foster and adoptive parents. The new statutory provisions apply to a prospective foster or adoptive parent who is newly licensed or approved after the State's authorized date for implementation of the new background check provisions. States that opted out of the criminal records check requirement at section 471(a)(20) prior to September 30, 2005 have until October 1, 2008 to implement the fingerprint-based check requirement. (Refer to the "Delayed Effective Date" section in this PI.) The fingerprint-based check and child abuse and neglect registry check are not required for foster and adoptive licenses or approvals that exist before the effective date of these provisions; however, these checks are not prohibited by the statute. Once the prospective foster or adoptive parent is licensed or approved, subsequent criminal background checks or child abuse and neglect checks are not required as long as the home remains continuously licensed or approved. Under amended section 471(a)(20):

- States must complete a fingerprint-based check of the national crime information databases (NCID) and the results must be received before approving or licensing the foster or adoptive family regardless of whether Title IV-E foster care maintenance payments or adoption assistance payments are to be made on behalf of the child. Title IV-E foster care maintenance or adoption assistance payments may not be claimed for a child placed in a foster or adoptive home where the criminal records check is not conducted as required or the check reveals a felony conviction of any type enumerated in section 471(a)(20)(A);
- States must check their child abuse and neglect registry, if they maintain one, and request a check of each State that maintains a registry in which the prospective foster or adoptive parent and any other adult living in the prospective parent's home have resided in the preceding five years. These checks must be made prior to the State finally licensing or approving the foster or adoptive family regardless of whether Title IV-E foster care maintenance or adoption assistance payments are to be made on behalf of the child (new section 471(a)(20)(C)(i)). Title IV-E foster care maintenance or adoption assistance payments may not be claimed for a child placed in a foster or adoptive home where the child abuse and neglect registry check is not conducted within the State, or requested of another State, as required (new section 471(a)(20)(C)(ii));

- States must comply with child abuse and neglect registry check requests received from other States (new section 471(a)(20)(C)(ii)); and
- States must have safeguards in place to: 1) prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State; and 2) prohibit the State from sharing the information obtained from the registry for a check required by section 471(a)(20)(C) for any purpose other than to conduct background checks for foster or adoptive placements.

Foster and Adoptive Home Study Requirements. P.L. 109-239 added two new State plan requirements at sections 471(a)(25) and (26) of the Act.

- Under section 471(a)(25), States are required to have in effect procedures for the orderly and timely interstate placement of children. Procedures that are implemented consistent with the interstate compact and meet the timely home study requirements at section 471(a)(26) will satisfy this provision.
- Under section 471(a)(26), States are required to complete, report, and return the results of a home study within 60 days after the State receives from another State a request to conduct a study of a home environment to evaluate the safety and suitability of placing a child in the foster or adoptive home. The home study generally is conducted in accordance with the requirements that are applicable to the State in which the home is located. The report to the requesting State must address the extent to which the proposed placement will meet the specific needs of the child, including the child's safety, permanency and well-being. Further, States that receive the request are permitted to contract with another public agency or a private agency to conduct the home study.

States are permitted an exception to the 60-day requirement if the reporting State's failure to complete the home study within 60 calendar days is due to circumstances beyond the State's control (e.g., delays in receipt of Federal agency criminal records checks or the failure by any entity to provide completed medical forms requested by the State at least 45 days before the end of the 60 day period). The reporting State must document the circumstances involved in the delay and certify that completing the home study is in the best interests of the child. The exception to the 60-day requirement gives the reporting State 15 additional days (i.e., 75 calendar days) to complete and report on the home study to the requesting State. However, the 15-day extension is permissible only for a home study begun on or after October 1, 2006, but before September 30, 2008, regardless of the reason for a State's failure to timely complete a home study (section 471(a)(26)(A)(ii)).

The parts of the home study involving education and training of prospective foster and adoptive parents do not have to be completed within the same 60- (or 75-) day timeframe (section 471(a)(26)(A)(iii)).

The State that requests the home study must accept the ensuing report as meeting any requirements imposed by the State unless, within 14 calendar days of receiving the report from the other State, a private agency under contract with the other State or an Indian Tribe, the State determines based on grounds specific to the report that reliance on the report will be contrary to the child's welfare (section 471(a)(26)(B)).

Fair Access to Foster Care. P.L. 109-113 amended section 472(b) to permit Title IV-E foster care maintenance payments to be paid to a for-profit child-placement agency or child-care agency on behalf of eligible children. Under section 472(b) States may claim Title IV-E funds for children in a licensed or approved:

- Foster family home of an individual, whether the payments are made to the individual or to a public or private child-placement or child care agency (section 472(b)(1)), or
- Child care institution, whether the payments are made to the institution or to a public or private child-placement or child care agency, which payments must be limited to payments for only those items included in the term "foster care maintenance payments" (as defined in section 475(4) and section 472(b)(2)).

Case Plans. P.L. 109-239 modified the existing definition of "case plan" in section 475(1) of the Act to:

- Require case plan inclusion of the most recent information available regarding the health and education records of the child (rather than the previous requirement to include such information to the extent available and accessible) (section 475(1)(C)); and
- Require case plan documentation of child-specific recruitment efforts made by the State to facilitate an orderly and timely in-State and interstate permanency placement (section 475(1)(E)).

Case Review System. P.L. 109-239 and P.L. 109-288 modified the definition for the "case review system" in section 475(5) of the Act to require States to:

- Establish procedural safeguards for permanency hearings to ensure that the court or administrative body that conducts the hearings consults with the child, in an age-appropriate manner, about the permanency plans developed for the child. The procedural safeguards must be applied to any permanency hearings pertaining to the child, including those hearings that review plans to transition the youth from foster care to independent living (section 475(5)(C));
- Provide a free copy of the child's health and education record to the child at the time the child exits from foster care at the age of majority under State law (section 475(5)(D)); and

- Provide the child's foster caregiver with notice of and the right to be heard in any foster care proceeding held concerning the child, in lieu of the previous requirement for an opportunity to be heard in any review or hearing. However, the notice and right to be heard at a foster care proceeding for the child does not make the foster caregiver a party to the proceeding (section 475(5)(G)).

Effective Dates for Implementing New Title IV-E Statutory Provisions per New Legislation

States are required to comply with the additional requirements imposed by the amendments to Title IV-E of the Act as of the effective date of the enactment of a new or modified statutory provision, unless otherwise indicated. ACF may apply the partial review process described in 45 CFR 1355.32(d), if warranted, to determine a State's compliance with a Title IV-E State plan provision in the Act.

General Effective Dates

Fair Access Foster Care Act of 2005 (P.L. 109-113)
Effective November 22, 2005 [amended section 472(b)].

Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239)
Effective October 1, 2006, unless State legislation (other than legislation appropriating funds) is required to implement the new or amended Title IV-E State plan requirements. If State legislation is required, see the "delayed effective date" section below (amended sections 471(a)(15), 475(1) and 475(5) and new section 471(a)(25) and (26)).

Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248)
Effective October 1, 2006 for the criminal record checks procedures for prospective foster and adoptive parents, including fingerprint-based checks of the NCID, unless the State has opted out of the former criminal record check requirements at section 471(a)(20) prior to September 30, 2005, or State legislation is required to implement the fingerprint-based checks. If the State opted out, the provision is effective October 1, 2008 (section 471(a)(20)(B) of the Act and section 152(c) of P.L. 109-248). If the State needs legislation, see the "delayed effective date" section below.

Effective October 1, 2006 for the provisions relating to child abuse and neglect registry checks, unless State legislation is required to implement these provisions. If legislation is required, see the "delayed effective date" section below (new section 471(a)(20)(C) of the Act).

Child and Family Services Improvement Act of 2006 (P.L. 109-288)
Effective October 1, 2006 for the Title IV-E amendments (section 12(a)). ACF has determined that no delay is warranted.

Delayed Effective Date

A limited period of delay is permitted when the Secretary of the U.S. Department of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required for a State to comply with the additional State plan requirements under Title IV-E of the Act imposed by the amendments detailed earlier. A "delayed effective date" for implementation applies only to those State plan requirements listed in Attachment A. The "delayed effective date" is defined as the beginning of the first day of the first calendar quarter following the close of the first regular session of the State legislature that begins after the applicable effective date of the amendment. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

Actions Required

Certification

States that require legislation to comply with the new Title IV-E State plan requirements should submit the attached certification (Attachment A) to the Children's Bureau Regional Offices indicating those State plan requirements that will necessitate State legislation. The certification must include the "delayed effective date" in accordance with the above definition of such date. States that do not require any legislation must also submit the certification indicating that State legislation is not necessary and that a "delayed effective date" is not applicable. All certifications must be signed by the designated State agency official and submitted to the Children's Bureau Regional Program Manager for approval no later than 30 days from the date of this program instruction.

State Plan Pre-Print

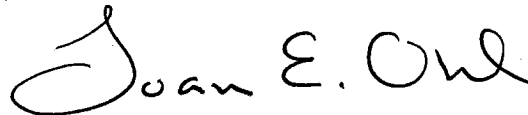
Each State must submit to ACF a revised Title IV-E State Plan Pre-Print that reflects its implementation of, and compliance with, the new Title IV-E statutory requirements that are discussed in this PI and in ACYF-CB-PI-06-06 pertaining to the Deficit Reduction Act of 2005. In completing the Pre-Print, States must record the applicable State statutory, regulatory or policy references and citations for the affected Federal requirement. States may submit their Title IV-E State Plan Pre-Print using the attached pages (see attachment B), or may use the electronic version found at the Children's Bureau web page at <http://www.acf.dhhs.gov/programs/cb>. States may use a different format, provided that the format used includes all of the applicable Title IV-E State plan requirements of the Act as set forth in the new laws. If a State chooses to use its own format, it must include all applicable State statutory, regulatory or policy references and citations for each requirement.

States must submit the completed State Plan Pre-Print to the appropriate Children's Bureau Regional Program Manager for approval 120 days from the date of this program instruction. State compliance with all statutory and regulatory provisions continues to be mandatory, regardless of the approval status of the State Plan Pre-Print. Please note that the State Plan Pre-Print must be submitted electronically or on a compact disk. Where States are unable to submit electronic signatures for purposes of certification, they may submit the appropriate pages with original signatures. In addition, States must submit copies of referenced material to document compliance for any cited statute, regulation, policy and procedure.

Evaluate Impact on Child Welfare Information Systems

States with child welfare information systems, including a Statewide Automated Child Welfare Information System (SACWIS), should determine if compliance with the statutory and regulatory provisions will require system enhancements to support new or modified child welfare procedural or business practices. If States determine that such enhancements are needed, an As Needed Advance Planning Document must be submitted to the Division of State Systems if the cost of the enhancement exceeds the thresholds defined in 45 CFR 95.611.

INQUIRIES: Direct inquiries to Children's Bureau Regional Program Managers, ACF Regions I - X.



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Attachment A - Certification of Required State Legislation

Attachment B - Title IV-E State Plan Pre-Print

Attachment C - Listing of the Children's Bureau Regional Program Managers