

## **Section 2.1J CAPTA, Assurances and Requirements, Criminal Background Checks (Revision of existing Q/A)**

**2. Question:** Does the requirement at section 106(b)(2)(A)(xxii) of the Child Abuse Prevention and Treatment Act (CAPTA) for criminal background checks for prospective foster and adoptive parents and other adults living in the household apply if no title IV-E foster care or adoption assistance payments are made?

**Answer:** Yes. The CAPTA requirement applies to all prospective foster and adoptive parents licensed or approved under the State’s licensing authority, as well as other adults living in the home, regardless of the funding source for the child’s placement.

- **Source/Date:**
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) – section 106(b)(2)(A)(xxii)

## **Section 8.3C TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements**

**Question:** Section 471(a)(26) of the Social Security Act (the Act) requires the State to conduct and complete an interstate home study and return a report on the results of the study within 60 days (or 75 days under certain circumstances). Must the State include the results of the criminal background checks and child abuse registry checks on the prospective foster or adoptive family required by section 471(a)(20) of the Act in the 60-day report?

**Answer:** No. Section 471(a)(26) of the Act requires that if a State receives a request to conduct a “study of a home environment” to assess the safety and suitability of placing a child in the home, the State must within 60 days conduct, complete, and provide a report of the study to the requesting State. This requirement for an interstate “home study” does not encompass the Federal provisions for criminal background checks and child abuse registry checks in section 471(a)(20) of the Act. Rather, these checks are required before the State can license or approve a prospective foster or adoptive family. Ideally, however, the receiving State would include the results of the criminal background check and child abuse registry check in the report to the sending State so that the State could more readily determine the suitability of the home for the child.

- **Source/Date:**
- **Legal and Related References:** Social Security Act – sections 471(a)(26) and 471(a)(20)

**Question:** How will ACF determine compliance with the interstate home study requirements in section 471(a)(26) of the Social Security Act (the Act)?

**Answer:** Section 471(a)(26) of the Act is a title IV-E State plan requirement; therefore, ACF has the authority to apply the partial review process described in 45 CFR 1355.32(d), if warranted, to determine the State's compliance.

- **Source/Date:**
- **Legal and Related References:** Social Security Act – section 471(a)(26)

**Section 8.3C.1 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case plans  
(Revision of existing Q/A)**

**5. Question:** Section 475(1)(C) of the Social Security Act states that the case plan must include “the most recent information available” regarding the health and education records of the child. How can a State meet the requirements in order to continue eligibility for Federal financial participation (FFP) if the records are not available?

**Answer:** States are required under this provision to include the child's most recent available health and educational records in the child's case plan. If the information is unavailable as a result of Federal or State confidentiality restrictions or for any other reason, the State should explain this in the case plan and describe the steps being taken to obtain such records. Including recent health and education records in a case plan is a State plan requirement, rather than a title IV-E eligibility criterion upon which FFP is conditioned. Therefore, we may determine whether the State is in substantial compliance with this requirement through a Child and Family Services Review or a partial review (45 CFR 1355.32 and 1355.34).

- **Source/Date:**
- **Legal and Related References:** The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239); 475(5)(C) of the Social Security Act

**Section 8.4F TITLE IV-E, General Title IV-E Requirements, Criminal Records Checks  
(Deletion of existing Q/A)**

**1. Question:** Does the criminal background check provision require checks at the State level, Federal level, or both?

**Answer:** The statute is silent with respect to this issue. Therefore, the State may exercise its discretion in choosing whether to conduct criminal records checks at the State or Federal level.

- **Source/Date**
- **Legal and Related References:** Social Security Act - section 471(a)(20)(A)

**Question:** Must a State complete the fingerprint-based check of national crime information databases required by section 471(a)(20)(A) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

**Answer:** No. The State is not required by Federal law to complete the fingerprint-based checks before placing a child in the home of a prospective foster or adoptive parent. Rather, section 471(a)(20)(A) of the Act makes a fingerprint-based check of the national crime information databases an integral part of a State's criminal records check procedures that the State must complete before licensing or approving a prospective foster or adoptive parent.

Although the State may place a child in the home prior to completing the required criminal records check, doing so prior to completing thorough safety checks has serious practice implications. Further, States must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care maintenance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

- **Source/Date:**
- **Legal and Related References:** Social Security Act – 471(a)(20)(A)

**Question:** Must the State conduct the child abuse and neglect registry checks required by section 471(a)(20)(C) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

**Answer:** No. The State is not required to conduct a check of the State's child abuse and neglect registry before placing a child in the home of a prospective foster or adoptive parent. Rather, a State must check, or request a check of a State-maintained child abuse and neglect registry in each State the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years before the State can license or approve a prospective foster or adoptive parent.

Although the State may place a child in the home prior to completing the required registry checks, doing so prior to completing thorough safety checks has serious practice implications. Further, States must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care

maintenance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

- **Source/Date:**
- **Legal and Related References:** Social Security Act – section 471(a)(20)(C)

**Question:** Does section 471(a)(20) of the Social Security Act (the Act) require the State to conduct a child abuse and neglect registry check on an adult who moves into a licensed/approved foster or adoptive home?

**Answer:** No. The new child abuse and neglect registry check requirements in section 471(a)(20) of the Act apply to “prospective” adoptive or foster parents, as well as all adults living in the prospective family’s home. Thus, once a foster or adoptive home has been approved or licensed by the State, section 471(a)(20) of the Act does not require the State to complete additional child abuse and neglect checks on other adult(s) living in the home.

- **Source/Date:**
- **Legal and Related References:** Social Security Act – section 471(a)(20)

### **Section 8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program**

**Question:** May a State claim title IV-E administrative costs as permitted under section 472(i) of the Social Security Act (the Act) for a child placed in an unlicensed or unapproved relative home before completing the background check requirements in section 471(a)(20) of the Act?

**Answer:** Yes. The State may claim title IV-E administrative costs in accordance with 472(i) of the Act absent the results of the relative’s background checks, although the State must complete the background check requirements in section 471(a)(20) of the Act before the relative’s home can be licensed or approved by the State. The State may claim the administrative costs only during the period specified in the statute and while an application for foster family licensure or approval of the relative home is pending.

- **Source/Date:**

- **Legal and Related References:** Social Security Act – sections 471(a)(20) and 472(i)

### **Section 8.3B TITLE IV-E, Foster Care Maintenance Payments Program, Payments**

#### **(Revision of existing Q/A)**

**Question:** May title IV-E foster care maintenance payments flow through a for-profit entity to the foster care provider?

**Answer:** Yes. The Fair Access Foster Care Act of 2005 (Public Law 109-113), which took effect on November 22, 2005, amended section 472(b) of the Social Security Act to eliminate the prohibition against making foster care maintenance payments through a for-profit entity.

- **Source/Date:**
- **Legal Reference:** Social Security Act, section 472; Public Law 109-113

### **8.3C.2b TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, notice and right to be heard**

#### **(Revision of existing Q/A)**

**2. Question:** Do the notice requirements in section 475(G) of the Social Security Act apply to all court hearings? Do they apply to shelter care, emergency removal, adjudication and disposition hearings? Do they apply to procedural hearings, such as pretrial hearings or hearings on motions for discovery?

**Answer:** The revised statutory language confers a “right” to be heard instead of an “opportunity,” as well as changes such right to be heard to a “proceeding” instead of “review or hearing” as in the previous language. Thus, we are interpreting this change to mean that in having a “right” to any “proceeding” to be held with respect to the child, the foster parents, pre-adoptive parents or relatives providing care for a child must, at a minimum, be provided with notice of their right to be heard in all permanency hearings, as well as six-month reviews, if held by the court.