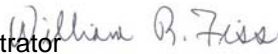


STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

To: Area Administrators/ Human Services Area Coordinators
Bureau Directors
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Section Chiefs/Licensing Chiefs
Tribal Chairpersons/Human Services Facilitators

From: William R. Fiss 
Interim Administrator

Re: Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248

The federal Adam Walsh Child Protection and Safety Act, Public Law (P.L.) 109-248, was signed into law on July 27, 2006, and became effective on October 1, 2006. This federal law places new requirements on both federal agencies and on state agencies or their local counterparts, regarding the fingerprinting of foster parents and proposed adoptive parents, child abuse and neglect registries, and direct access to national criminal information databases.

Request of Exception to Implementation Deadline

The Division of Children and Family Services (DCFS) has made a request to the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), to delay implementation of the following provisions until January 1, 2008 in order to allow for the revision of state statutes, administrative rules, and Wisconsin's Title IV-E State Plan:

- That the state has procedures for conducting fingerprint-based checks of the National Criminal Information Database (NCID) for all prospective foster and adoptive parents.
- That the state must check any child abuse and neglect registry in each state in which prospective foster and adoptive parents and any other adults living in the home have resided in the preceding five years.
- That the state must have safeguards in place: to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state; to prohibit the state from sharing the information obtained from a registry for purposes of background checks of foster and adoptive parents for any other purpose; and to respond to child abuse and neglect registry check requests made by other states.

DCFS has not received a response from ACF, but has been informed that federal Program Instructions are being developed.

Provisions of New Law

Background Checks

As noted above, the Act amends the State IV-E Plan for foster care and adoption assistance to require that criminal records checks for any foster or adoptive parent must include fingerprint-based checks of national crime information databases, regardless of whether federal foster or adoption assistance payments are being or will be made for the child. The Act mandates that the state plan require that foster and adoptive parents be checked through the state's child abuse registry, if any, and, if the parent has lived in another state in the preceding five years, that the other state's registry, if any, be checked before

the parent is finally approved, regardless of whether federal foster or adoption assistance payments are made (i.e., whether or not the child is IV-E-eligible). States must also comply with requests from other states to check their registries for cases involving an out-of-state parent or other adult living in the household, and must have in place safeguards to prevent the unauthorized disclosure of information from any child abuse and neglect registry maintained by the state or any other state, or the national background check from being used for any purpose other than conducting background checks on foster or adoptive parents. Section 152 of the Act became effective on October 1, 2006.

The Act requires the U.S. Department of Justice to conduct a fingerprint-based check of the national crime information databases for child welfare agencies when requested to do so through the appropriate state agency, the Wisconsin Department of Justice. The child welfare agency must be seeking this information to conduct background checks on individuals under consideration as foster or adoptive parents, or to investigate a report of child abuse or neglect. The US Attorney General (A.G.) should, when possible, check the state criminal history databases. The US A.G. and states may charge for the service. The information obtained may be released only to appropriate individuals and there are criminal penalties for obtaining or releasing information in violation of the federal statutes. For purposes of this section of the Act, a child welfare agency is defined as 1) a state or local agency responsible for administering the Title IV-B or IV-E Plan, 2) any other public agency that is responsible for the licensing or approval of foster or adoptive parents, and 3) any private agency that has contracted with the state or a local agency under section 1) and that is responsible for the licensing or approval of foster or adoptive parents.

P.L. 109-248 also requires the United States A.G. to give direct access to specific national crime information databases to governmental social service agencies with child protection responsibilities. The information may be used only for investigating or responding to reports of child abuse, neglect, or exploitation. The US A.G. is authorized to create regulations regarding access to and dissemination of database information and may limit access to those agency personnel who have met training, certification, and background screening requirements.

As noted above, a review of state statutes indicates changes are needed before the state can assure ACF that all agencies are required to do more than name-based criminal background checks and current requirements for fingerprinting.

National Child Abuse and Neglect Registry

The Act also requires HHS to create a national registry of substantiated cases of child abuse or neglect from information that is supplied by states, or, at the option of the state, its political subdivisions, and tribes. For states that do not have an existing registry, HHS will create an electronic form that states must use to report information. The form must contain case-specific identifying information, including the name of the maltreater and the nature of the substantiated case of child abuse or neglect, and comply with Child Abuse Prevention and Treatment Act (CAPTA) requirements on confidentiality. The national registry will be accessible to federal, state, Indian tribe, or local government entities or any agency of such entities that has a need for the information to carry out its responsibilities to protect children from child abuse or neglect. HHS will create standards which comply with the CAPTA confidentiality requirements for dissemination of information in the national registry.

Wisconsin does not have an identified child abuse and neglect registry; therefore, Wisconsin will have to either comply with the new reporting form, modify eWiSACWIS to act as a child abuse and neglect registry, or create a new child abuse and neglect registry that conforms to the federal registry.

To date, HHS has not provided an electronic form for states to use to report to a national registry and has provided no direction regarding the creation of a national registry. P.L. 109-248 appropriates \$500,000 to HHS in federal fiscal years 2006 and 2007 to conduct a feasibility study to address issues arising from the creation of a national child abuse and neglect registry.

This requirement appears fluid at the national level. As additional information is received from the federal government and decisions are made at the state level, the Division will consult with and notify county agencies and tribes.

Review of Current Caregiver Background Check Requirements

Currently, according to s. HFS 56.05(1)(f), Adm. Code, licensing agencies are required to have foster parents and any non-client residents aged 12 or older complete the HFS-64 "Background Information Disclosure" form and receive a report based on submission of that form before a foster home or treatment foster home license is issued or renewed. Agencies are also required to conduct a criminal history search of records from the Wisconsin Department of Justice for anyone obtaining a foster home license, as required in s. 48.685(2), Stats., every four years.

If the proposed foster or adoptive parent is not a resident of Wisconsin or was a non-resident of the state at any time within the previous three years, or the licensing agency has a reasonable basis to believe that more information is needed, the agency must make a good faith effort to obtain a background check equivalent to a Wisconsin background check from the other state(s), and may require the individual to submit two sets of fingerprints to be submitted to the Wisconsin Department of Justice, which submits the fingerprints to the FBI for purposes of verifying identity and seeking records of criminal arrests or convictions. [s. 48.685 (1)(bm)]

At this time, licensing agencies should continue to conduct the current background checks as required by state statute and administrative rule. The name-based background check of the Wisconsin Department of Justice system connects with other state data systems that the national fingerprint-based check does not include.

Review of Current Requirements for Maintaining Records of Substantiated Maltreaters

DCFS Numbered Memo 98-09, "Record-Keeping in Substantiated Cases of Child Maltreatment," includes current requirements to maintain a record of all substantiated child maltreaters by their name. The policy further directs that children who have been substantiated as "mutual sexual activity between minors" should not be included in the record system. Finally, the policy notes that s. 48.981(7) does not allow for case finding information to be shared with private entities, even with a signed release from the subject of the report. Until and unless the statutes are modified, queries as to the presence or absence of a substantiated case finding of child abuse or neglect may only be honored for appropriate staff within the Department, other county departments and other entities as specifically described in sec. 48.981(7). The Division will seek a statutory change to conform the confidentiality provisions in Wisconsin child abuse and neglect law with the new federal requirements.

Additional Resources

The National Resource Center for Family-Centered Practice and Permanency Planning has developed a list of contacts for checking the state child abuse and neglect registry information from other states. You can access that directory at the following link:

http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/policy-issues/State_Child_Abuse_Registries.pdf

REGIONAL OFFICE CONTACT: Area Administrator

CENTRAL OFFICE CONTACT: For information about background checks for foster parents contact:

S. Kate Johnson
Out-of-Home Care Planner
DHFS/DCFS/BPP
P.O. Box 8916
Madison, WI 53708-8916
Phone: (608) 266-6874
FAX: 608-264-6750
e-mail: johnssk@dhfs.state.wi.us

For information about state and federal requirements about child abuse and neglect registry reporting, contact:
Cathleen Connolly
Legislative and Policy Consultant
Bureau of Programs and Policies
1 West Wilson Street
P.O. Box 8916
Madison, WI 53708-8916
(608) 261-8306
connoc1@dhfs.state.wi.us

MEMO WEB SITE: http://dhfs.wisconsin.gov/dcfs_info

Attachments: ACYF-CB-IM-06-04 ACF Information Memo
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/im0604.htm

Infomemo/dcfs/adam walsh.doc