

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

DCFS Memo Series 2007 -16
December 20, 2007
Re: Adam Walsh Child
Protection Act Requirements for
Child Abuse or Neglect Registry
Checks and Fingerprinting

To: Area Administrators/ Human Services Area Coordinators
Bureau Directors
Child Placing Agency Directors
Child Welfare Agency 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
Indian Child Welfare Directors
Licensing Chiefs/Section Chiefs
Tribal Chairpersons/Human Services Facilitators

From:

Reggie Bicha
Administrator 

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. Wisconsin received permission to delay implementation of this provision until January 1, 2008. Not all states were able to implement by the 2006 effective date.

Among other provisions this federal law places new requirements on state agencies and their local governmental agencies or covered private agencies, to check prospective foster and adoptive parents, and other adults in their household, against child abuse and neglect registries in the licensing state and in other states under specified circumstances as part of the licensing process.

In addition, the Act requires those entities to fingerprint prospective foster and prospective adoptive parents as part of the criminal record check during the licensing process. This requirement applies to the prospective applicants only; agencies do not have the authority to fingerprint other household members except for the circumstances described in s. 48.685(2)(bm), Stats. The fingerprints must be run against the National Criminal Information Database (NCID) and the state criminal information database, by submitting the fingerprints to the Wisconsin Department of Justice.

The child abuse or neglect registry checks and fingerprint-based criminal record checks are required regardless of whether federal foster or adoption assistance payments are being or will be made for the child placed by the child welfare agency.

Agencies That Must Fingerprint or Conduct CAN Registry Checks on Prospective Foster and Adoptive Parents

State and county agencies responsible for Title IV-E and any other agency that acts as an agent or is under contract with a Title IV-E agency to issue licenses or approvals of foster or adoptive parents who will receive placement of children in the public child welfare system must fingerprint prospective foster and prospective adoptive parents prior to licensing them; and must conduct a child abuse or neglect (CAN) registry check on prospective foster or adoptive parents, and any adult residing in his or her home, who has lived outside of Wisconsin in the previous five years. Therefore, the State Adoption Program, the Bureau of Milwaukee Child Welfare, county human services or social services agencies and private

Document Summary

The Adam Walsh Child Protection and Safety Act creates new federal requirements to fingerprint prospective foster and adoptive parents, and to conduct Child Abuse or Neglect Registry checks on prospective foster and adoptive parents.

child placing agencies licensing prospective foster or prospective adoptive parents who will receive placement of a public welfare child must fingerprint and conduct CAN registry checks as described below.

Region V, of the Administration for Children and Families has provided the following guidance: The fingerprint-based checks of the NCID and other background check requirements related to Adam Walsh apply to any prospective foster or prospective adoptive parent that will be licensed or approved by the State's Title IV-E agency, another public agency operating the title IV-E program pursuant to an agreement, or other State licensing authority AND will provide care for a child who is a participant in the State's title IV-B/IV-E programs.

The Adam Walsh Child Protection Act does not apply to private agencies doing private domestic or international adoptions outside of the public child welfare system, but does apply to private agencies action as the agent of or under contract with the State or local public agency who are licensing prospective foster and prospective adoptive parents accepting children from the public child welfare system. However, state law as referenced in this memorandum and good practice may dictate background checks of applicants to private agencies. However, other federal or state law as referenced in this memorandum and good practice may require or allow fingerprinting of applicants to private agencies.

The following entities are not required under the Adam Walsh Child Protection Act, nor are they authorized to fingerprint prospective foster or adoptive parents or conduct CAN Registry checks under the Adam Walsh Child Protection Act: private agencies conducting foster care licensing or private agencies conducting private adoption if they are not acting as the agent of or under contract with a Title IV-E agency and private agencies conducting international adoptions.

Individuals Who Must Be Fingerprinted and Have CAN Registry Checks Completed

The Act requires that the above-referenced prospective foster and prospective adoptive parents must be fingerprinted and have child abuse or neglect registry checks completed, before they are licensed. In addition, any adult living in the home must have a child abuse or neglect registry check completed before the license is issued. Prospective is defined as first time applicants for a foster parent license, adoptive parent applicants who were not dually approved for foster care and adoption in a single process, but are separately approved for foster care and adoption, or those who are applying for licensure after a break in licensure. Fingerprint-based criminal record checks and child abuse or neglect registry checks are not required for individuals who are currently licensed and those who are licensed as foster parents and dually approved for adoption through a single approval process, i.e., in Wisconsin a Resource Family Assessment, unless they experience a break in licensure.

Break in Licensure

A break in licensure is a period of time when the individual is not licensed by any agency. A break in licensure occurs if a foster parent's license expires and there is not a timely and sufficient application pending for the renewal of his or her license. If the parent is renewing their foster care license and has submitted their completed application to the agency 30 days prior to expiration of the license, and the application is pending at the time the license expires due to the actions of the agency, fingerprints are not required in this situation since it is not considered a break in licensure. [Ch. HFS 54.04(4)(b)]

If there is a new caregiver in the home who must be licensed, that is a license modification and the new caregiver must be fingerprinted, and have the child abuse or neglect registry check performed if appropriate, but the current caregiver does not need to be fingerprinted or receive a new background check. It is a break in licensure if the license is terminated or revoked or expires without a timely and sufficient renewal application.. A transfer of a license from one agency to another does not require new fingerprints or child abuse or neglect registry checks as long as there is not a period of time when the person is not licensed. This includes a foster parent who holds a license if the foster parent has a foster parent license under ch. HFS 56 and applies to be licensed under ch. HFS 38 as a treatment foster parent.

Child abuse or neglect registry checks on other adults who move into a licensed home are not required by the Act, but current caregiver background check requirements continue to apply.

Foster Parents Becoming Adoptive Parents

Agencies that complete the Resource Family Assessment (RFA) in its entirety and **approve the parents(s) as both a foster parent(s) and an adoptive parent(s)** are not required to re-fingerprint or do the CAN registry checks of foster parents when they request to become adoptive parents as long as there has not been a break in licensure.

Prospective adoptive parents who are already licensed as foster parents, and subsequently decide to be adoptive parents will need to be fingerprinted and have the CAN registry checks done under the following circumstances:

1. Agencies that complete the Foster Family Assessment, approve the family for a foster care license, and then later complete the Resource Family Assessment and approve the family as an adoptive resource are required to re-fingerprint the prospective adoptive parents.
2. Agencies that complete only the foster parent section of the RFA, and only approve the parent(s) as foster parents must re-fingerprint the prospective adoptive parents.

Adoptive Parents of At-Risk Infants

Prospective adoptive parents who apply for adoption assistance for at-risk infants must have the fingerprint caregiver background check completed before their application is approved. CAN Registry checks do not have to be completed on these prospective adoptive parents.

Shift Staffed Treatment Foster Home Staff

All prospective staff at shift-staff treatment foster homes must comply with the requirements of the Adam Walsh Child Protection Act as prospective foster parents.

WISCONSIN CHILD ABUSE AND NEGLECT CHECKS

Wisconsin does not have a child abuse and neglect (CAN) registry and is not planning to develop one. However, Wisconsin state, county, and private child welfare licensing agencies must continue to comply with the criminal history and child abuse record search under s. 48.685, Stats., which includes a review of information maintained by the Department of Health and Family Services regarding substantiated reports of child abuse or neglect for caregivers and individuals in their household over 12 years of age.

To ensure the accuracy of substantiation information stored in eWiSACWIS, the eWiSACWIS system release in September 2007 included new appeal functionality that makes it easier to ascertain whether a substantiated allegation of abuse or neglect is being appealed, or has been appealed and the outcome of that appeal.

- The new functionality will require the caseworker to make a determination that the child was maltreated and a separate determination regarding who maltreated the child.
- If the person identified as a maltreater appeals at any level it must be noted in the Appeals window, and will show either the decision or that the appeal is pending.
- The appeal will be linked to a specific allegation and assessment.
- The Outliner will show if there was/is an appeal on a maltreater substantiation.
- Only individuals with certain security and training will be allowed to enter information on appeals.
- Information on appeals will be able to be entered on closed cases.

Requests from Wisconsin Agencies to Other States

As of January 1, 2008, if a prospective foster or adoptive parent, or any adult residing in his or her home, has lived outside of Wisconsin in the previous five years, state, county, and private licensing agencies under contract with state or county agencies are now required to contact each state that individual has lived in during the previous five years to request a child abuse and neglect registry check of that individual. The foster parents cannot be licensed until CAN registry checks are complete. Located at the end of this Numbered Memo is a link to a chart created by the National Resource Center for Family-

Centered Practice and Permanency Planning entitled "Child Abuse Registries". It lists states which have registries and their procedures and contact information. A number of states are in the process of changing their procedures or developing a CAN registry. In addition, many states that do not have child abuse or neglect registries are developing alternative procedures to respond to inquiries from out-of-state licensing entities. Therefore, even if the chart does not indicate a state maintains a registry, a check with the state may be required under the law.

If the contacted state responds that it does not maintain a CAN registry and does not have an alternative process for responding to CAN registry checks and therefore cannot provide information, that response should be documented in the applicant's licensing file and the check will be considered completed. If the agency has verified that another state does not maintain a CAN registry or an alternative process, it is not required to contact that state for every new case. However, it should be noted that this is an area of rapid change across the nation at this time and the document listed is updated intermittently.

Some states are requiring that the individuals being checked provide an authorization to release information.

Requests from State, County, Tribal or Private Licensing Agencies

The Division has created an alternative procedure to reply to CAN registry inquiries from state, county, and tribal government agencies and private licensing agencies under contract with state or local government agencies. This procedure requires the participation of county child welfare agencies.

The initial CAN registry inquiries will be responded to by the Division's Child Protective Services staff. The Division has established a specific telephone number (888-787-0376) and fax number (608-266-0260) to respond to CAN registry inquiries. That contact information will be shared with other states, tribes, and Wisconsin county and private child welfare agencies.

Requests from out of state must be in writing on agency letterhead and signed by an individual. The request must include

- the name of the person being investigated,
- the address or at least the city or county the person resided in while living in Wisconsin
- the dates that he or she resided in Wisconsin
- the requesting person's telephone and fax information.

Requests may be faxed or mailed.

State CPS staff will search for the individual person in eWiSACWIS and provide preliminary information to the requesting agency. Preliminary information must include:

- whether the person appears in eWiSACWIS,
- that Wisconsin is a county-administered, state-supervised system, that e-WiSACWIS does not consistently contain state-wide information prior to 2004, and does not contain tribal child welfare information,
- that the agency should contact the appropriate county agency for additional information; and
- the contact information for the appropriate county or tribe.

State CPS staff may respond to the requesting agency in writing or verbally.

When the county child welfare agency receives a request, county staff will respond in writing directly to the requesting agency. County staff will check paper and electronic records and provide the following information to the requesting agency:

- Whether there are any reports of child maltreatment involving the person.
- Whether there are pending allegations of child maltreatment against the person.
- Whether the person has been substantiated for child abuse or neglect.
- Whether the person has been unsubstantiated for child abuse or neglect.
- Whether any substantiation of maltreatment has been appealed and is pending.
- Whether any substantiation of maltreatment has been appealed and the outcome if the appeal is complete.

- A description of the maltreatment.
- What the relationship of the person was to the maltreated child.
- The date of the substantiation.

Information on mental health or alcohol or other drug abuse issues and on Mutual Sexual activity cannot be released to the requesting agency.

Both state and county staff must respond to inquiries within five working days.

Other Information

Under the Adam Walsh legislation responses to requests for child abuse and neglect information will be provided only to: state, local, or tribal government child welfare licensing agencies, or to private agencies under contract with government child welfare agencies to license foster or adoptive parents who will accept placement of children from the public child welfare system.

In addition, Wisconsin has established law under s. 48.981(7)(a)9 Stats., which states that abuse and neglect reports and records may be disclosed to “a court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.” Agencies are directed that this provision is interpreted by the Division of Children and Family Services to mean that agencies may share information from child abuse and neglect records with the Department, tribes, county agencies and private child placing agencies in Wisconsin and in the United States that are seeking the information on applicants for child welfare licenses (i.e., foster care, group home, treatment foster care and residential care centers.) For further discussion on this refer to DCFS No. Memo 2002-07, **Sharing of Abuse and Neglect Records With Existing Agencies.**

The Adam Walsh Child Protection states that in order for a state to receive Title IVE funds, information obtained through a CAN registry check of another state for purposes of licensing a prospective foster or adoptive parent to be used for any other purpose. However, in some cases, state law, s. 48.981, Stats., pertaining to the confidentiality of child protective services records, may allow or require disclosure in limited circumstances. If a need to release such information is identified, consultation with legal counsel is advisable.

FINGERPRINTING OF PROSPECTIVE FOSTER AND ADOPTIVE PARENTS

The Act requires that prospective foster and prospective adoptive parents must be fingerprinted before they are licensed. The Division has been notified that some states appear to be directing their child placing agencies to fingerprint all prospective foster and prospective adoptive parents, including those outside of the child welfare program. This means that some sending states in interstate adoptions are requiring adoptive parents in Wisconsin be fingerprinted even if there is no connection with public child welfare. In these situations child placing agencies may be able to submit fingerprints under the Volunteers for Children Act. Agencies should consult with their legal counsel.

Fingerprints Cannot Be Obtained

In rare and case-specific situations an applicant may not be able to submit fingerprints because of a physical disability or the low quality of their fingerprints. In these rare cases the following procedures must be used:

1. If the applicant does not have fingers, then the agency must complete the caregiver background check under s. 48.685, Stats., and must request a name-based check of the NCID. This request may be submitted to the FBI through the Wisconsin Department of Justice. The agency must document this in the applicant file.
2. If the applicant has another disability that prevents fingerprinting, that must be confirmed by a fingerprint specialist and documented in the applicant's licensing file. The agency must then complete the caregiver background check under s. 48.685, Stats., and must request a name-based check of the NCID. This request may be submitted to the FBI through the Wisconsin Department of Justice.

3. If the applicant has low quality fingerprints as a result of age, occupation or another reason then fingerprints must still be collected and submitted for processing. The rejection of the fingerprints by the FBI and Wisconsin Department of Justice must be documented in the applicant's licensing file. The agency must then complete the caregiver background check under s. 48.685, Stats., and must request a name-based check of the NCID. This request may be submitted to the FBI through the Wisconsin Department of Justice.

Collection of Fingerprints

The Division is not prescribing how fingerprints must be collected. Agencies may work with local law enforcement, contract with a private company, or train their own staff to collect fingerprints electronically or on paper. The Wisconsin Department of Justice has provided regional training for agencies that want to train staff to take fingerprints on paper.

Agencies can obtain background check results that include all required caregiver background information (both name-based and fingerprint-based checks) by designating "Adam Walsh Act – Caregiver" in the Reason Fingerprinted section of the applicant fingerprint card. For checks of the Wisconsin Department of Justice and NCID systems only, but no IBIS information, agencies should document "Adam Walsh Act." That will not meet all the requirements of the name-based caregiver background checks, and a separate name-based caregiver background check will need to be submitted. The cost of either type of check is \$34.25. For fingerprint checks of the staff of the agency who will receive and retain the fingerprint background check reports that agency should document "NCIC Security." There is no charge for processing the fingerprints of agency staff. Entities that review fingerprint background reports solely for compliance purposes (e.g., Bureau of Regulation and Licensing, Maximus, federal reviewers, etc.) do not have to be fingerprinted.

Based on licensing information in eWiSACWIS it appears that many applicants for foster parent licenses do not complete the process. To reduce the cost of fingerprinting the Division suggests the following:

- Advise applicants at the start of the licensing process that they will be required to submit fingerprints that will be processed through both the FBI and Wisconsin Department of Justice criminal information databases.
- Collect and process fingerprints towards the end of the licensing process with the exceptions listed below. The Division is aware that it is common practice to conduct criminal background checks at the beginning of the licensing process however; agencies may want to reconsider this practice because of the increased cost. Agencies can still run preliminary background checks through the Circuit Court Automated Program.
 - Delaying the collection should not be done if it is an Interstate Compact on the Placement of Children (ICPC) case.
 - Delaying the collection of fingerprints is less problematic if fingerprints are collected electronically since those can be processed within two weeks.

Fingerprinting Supplies

Agencies should contact the Wisconsin Department of Justice at (608)266-9585 to obtain blank applicant fingerprint cards. The cards can be pre-printed with the agency's identification number for easier processing.

Supplies for collecting fingerprints, such as ink pads or card holders, can be obtained from a variety of sources. The Department of Justice has previously obtained supplies from Sirchie, Finger Print Laboratories Inc. 1-800-356-7311, www.sirchie.com, a company that specializes in fingerprint supplies.

Processing of Fingerprints

All fingerprints of prospective foster and prospective adoptive parents that are collected under this Act must be submitted to the Wisconsin Department of Justice and must be identified as submitted in compliance with the Adam Walsh Child Protection and Safety Act. The Wisconsin Department of Justice

will process the fingerprints through the Wisconsin criminal information database and submit the fingerprints to the FBI for processing through the appropriate national criminal information databases. Each agency submitting fingerprints must have an account established with the Department of Justice to use for payment and to ensure that fingerprint results are provided to the correct agency. The fingerprint card will be returned to you from the Department of Justice and must be kept in a locked place.

Agencies should be aware that if fingerprints are submitted on paper cards and cannot be processed successfully because of the quality of the print, those prints must be re-collected and re-submitted and the processing fee must be paid again.

Reimbursement for the Cost of Processing of Fingerprints

The Division has funding to pay for the **processing** of fingerprint-based background checks for public agencies and agencies directly under contract with BMCW or the Special Needs Adoption Program to license prospective foster and adoptive parent who will accept placement of a child in the public child welfare system. The cost of processing fingerprints by private agencies that license foster parents who will accept placement of a child in the public child welfare system, but do not have a direct contract with the Division will not be paid by the Division.

All agencies submitting fingerprints for processing under the Adam Walsh Act will be billed directly by the Wisconsin Department of Justice. The Division will establish CARS lines for each county human services or social services agency and for the agencies that contract directly with BMCW or the Special Needs Adoption Program, to use to submit the cost of fingerprint processing for reimbursement.

County or private agencies will be reimbursed for costs, incurred for Adam Walsh fingerprint background checks processed by the Wisconsin Department of Justice, utilizing the CARS system. Addenda will be issued to county and private agencies in the near future. The addenda will be for the calendar year 01/01/2008 - 12/31/2008 with an estimated contract level based on the methodology used to establish the Department budget level. Because of the uncertainty of the level of funding usage, no advances will be issued to county or private agencies. A survey will be conducted later in 2008 for counties/agencies to report projected annual spending so contract allocations can be corrected if necessary. The reimbursement amount of \$34.25 is subject to change depending on the number of requests and funding available.

The three following CARS profiles are in the process of being established:

CARS 324 - To be used by county agencies

CARS 521205 - To be used by Lutheran Social Services - Appleton, Lutheran Social Services - Eau Claire and Children's Service Society of Wisconsin - Madison

CARS 570023 - To be used by Children's Service Society of Wisconsin - Milwaukee.

Use of Information Obtained Through Fingerprint Criminal Record Checks

Reports from the FBI and Wisconsin Department of Justice will be electronically delivered to the requesting agency's account and will remain available for 30 days. The report must be printed off and retained by the licensing agency in a secured location with restricted access to only those staff that are authorized to view the information. Any staff person who has access to the results of the FBI fingerprinting results must be fingerprinted according to NCID requirements. The results of the fingerprinting checks of prospective foster or adoptive parents must be accessible to the Department's Regulation and Licensing staff and to other appropriate staff of the Department or federal government.

Under the Adam Walsh Act agencies may request fingerprint based criminal records checks from the FBI for the purpose of licensing prospective foster and prospective adoptive parents and for an investigation relating to an incident of abuse or neglect of a child. The information obtained may only be released to:

1. Appropriate staff of a child welfare agency
2. Public or private elementary or secondary schools, or educational agencies
3. Or other persons authorized by law to receive the information.

If a foster parent's license is transferred to another agency without a break in licensure, a copy of the fingerprint background check results must be provided to the new licensing agency, unless the agency is conducting a new finger print background check.

A child welfare agency for purposes of this provision of the Adam Walsh Act is defined as:

1. The state or local agency responsible for services funded in part under Title IV-B or Title IV-E programs.
2. Any other public or private agency under contract with the Title IV-B or Title IV-E agency that is responsible for licensing or approving foster or adoptive parents who will accept placement of a child from the child welfare system.

The FBI requires agencies to maintain a dissemination log to record all authorized releases of fingerprint background check results which must include:

1. The person who received the information
2. The specific information shared
3. The date the information was shared
4. The authorization under which the person had permission to access or receive the information

Current Law

As mentioned above, the fingerprint-based criminal background check results include information to satisfy existing background check requirements; however, the current law which requires name-based caregiver background check requirements every four years has not changed. Agencies are still required to conduct name-based background checks in subsequent years.

In addition, the current state law on fingerprinting in s. 48.685(2)(bm), Stats. has not changed.

REGIONAL OFFICE CONTACT: DSP Area Administrator

CENTRAL OFFICE CONTACT: **For CAN Registry Checks**
Background Check Specialist
Division of Safety and Permanence
608-422-7026

For Fingerprinting
Out of Home Care Specialist
Division of Safety and Permanence
Bureau of Permanence and Out of Home Care
608.422.693

Out of Home Care Section Chief
Division of Safety and Permanence
Bureau of Permanence and Out of Home Care
608-422-6930

MEMO WEB SITE: <https://dcf.wisconsin.gov/cwportal/policy>

Attachment: State Child Abuse Registries,
http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/policy-issues/State_Child_Abuse_Registries.pdf