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## **Fingerprint Background Check Requirements Update During 2020 COVID-19 Public Health Emergency DCF Order #30**

This memo provides information on flexibility with respect to the timeframe of fingerprint background checks for congregate care workers and licensees, foster parents, and adoptive parents, due to the 2020 COVID-19 public health emergency. These changes apply to all congregate care workers and licensees, foster parents, and adoptive parents.

States were provided authority under the [Stafford Act flexibility provisions](#) issued by the federal Administration for Children and Families to modify timelines required under federal law. 2019 Wisconsin Act 185, the state's legislative response to the COVID-19 crisis, provided similar authority for agencies to modify timelines. The department is providing this authority due in part to the inability to complete fingerprint checks during the public health emergency. The state's main contractor for completing fingerprint background checks has closed due to safety concerns for staff and those they serve.

What follows is an analysis of all background checks done on caregivers, and how those waiving the fingerprint check can ensure safety for children. **The deadline extension only applies to fingerprint based criminal history checks. All other checks remain required under the usual timeframes.**

### **Current Background Check Requirements**

All adults who care for children in the child welfare system are required to submit to several background checks to ensure that they are safe to care for children. These caregivers include foster parents, adoptive parents, and congregate care workers. In general, the following background checks are conducted to ensure caregivers are safe to care for children:

- Department of Revenue checks regarding any fiscal fraud
- In-state and out-of-state child protective services background checks regarding any substantiations of child abuse or neglect
- Elder-abuse background checks
- Sex offender registry checks
- In-state and out-of-state criminal history checks
  - Name-based checks through police departments and state registries
  - As an additional layer of protection, fingerprint-based FBI criminal history checks are also completed. This check relies on sheriff's departments or other agencies to gather fingerprints in person. Many of these services have been temporarily discontinued during the public health emergency due to the close personal proximity required to obtain fingerprints.

### **Authority for Flexibility of Fingerprint Background Check Requirements**

The federal government has notified states of [flexibility related to the federal requirements](#) of obtaining fingerprint-based FBI background checks for congregate care workers, foster parents and adoptive parents. Furthermore, 2019 Wisconsin Act 185 provides the Department discretion to toll certain deadlines required in statute or administrative rules. The Department is exercising this authority to toll timeline requirements as described below related to fingerprint background checks during the public health emergency in the following instances:

- Completion of fingerprint background checks for all current congregate care workers by April 1, 2020
- Completion of fingerprint background checks for congregate care workers prior to employment by a congregate care facility
- Completion of fingerprint background checks prior to approval of license for prospective foster or adoptive parents.

### **Modified Criminal Background Check Requirements**

Based on the federal flexibility provisions and state law, the following requirements regarding fingerprint checks for congregate care workers, foster care licensing and adoption approving agencies still must be followed during this major disaster:

- Name-based criminal background checks and all other usual checks must be conducted for all adults working in a congregate care facility in the usual required timeframes, specific to each type of facility. Adults may work in a congregate care setting if determined appropriate according to name-based background check requirements and as provided below.
  - Fingerprint checks must be completed on all required individuals where it remains feasible to do so, and otherwise, as soon as it is feasible to do so.
- The Department will conduct name-based criminal background checks and all other usual checks on all new licensees of congregate care facilities and at continuation for all licensees.
  - Fingerprint background checks will be completed where it remains feasible to do so, and otherwise, as soon as it is feasible to do so.
- Foster Care licensing agencies and public adoption approving agencies must continue to conduct all name and address-based criminal background checks and all other usual checks for prospective foster and adoptive parents, licensees, and household members as required under Wis. Stat. § 48.685, Wisconsin Administrative Code DCF 56.055, and DCF 12.
  - The agency may issue the foster home license without completion of the fingerprint-based FBI check. However, the agency must complete the fingerprint-based FBI check where it remains feasible to do so, and otherwise, as soon as it is feasible to do so.
- Public adoption agencies must complete the fingerprint-based background checks prior to an adoption finalization, in situations where only name or address-based checks were completed. An adoption should not be finalized until fingerprint background checks have been completed.

Please note that the information in this memo should not be considered legal guidance. Local child welfare agencies and providers should contact their legal representative with any questions about compliance with the law.

### **Congregate Care Facilities – Federal and State Law**

The federal Family First Prevention Services Act (FFPSA) was passed and signed into law (P.L. 115-123) as part of the Bipartisan Budget Act on February 9, 2018. The FFPSA includes provisions related to the use of federal Title IV-E funding for prevention services and congregate care placements, Chafee Independent Living funds, out-of-home care licensing requirements, federal reporting requirements, and federal funding. The FFPSA requires criminal fingerprint background checks for all workers in congregate care facilities, including residential care centers, group homes and shelter care facilities in order to claim federal Title IV-E funds. Wisconsin has promulgated statutory law to reflect this federal provision under Wis. Stat. § 48.685. The Department issued a [Child Welfare Licensing memo 2020-03-lic](#) with guidance on the procedures for fingerprint checks for congregate care workers. All fingerprint checks for existing staff were required to be completed by April 1, 2020 and ongoing checks required for all new staff. Furthermore, DCF administrative rules, including Wisconsin Administrative Code DCF 12, 52, and 57 require congregate care settings to comply with all background check requirements outlined in 48.685. The Department issued Child Welfare Licensing [memo 2020-03-lic](#) and [2020-04-lic](#) which outline the specific requirements and procedures for meeting current name-based and fingerprint-based background check requirements.

### **Foster Care and Adoption – Federal and State Law**

The federal Adam Walsh Child Protection and Safety Act (P.L. 1090248) was signed into law on July 27, 2006 requiring fingerprint background checks and child abuse and neglect registry checks for prospective foster and adoptive parents in order to completed safety checks of the home and claim federal Title IV-E funds. Wisconsin codified fingerprint background check requirements into law in Wis. Stat. § 48.685 and Wisconsin Administrative Code DCF 12 and 56.055 effective January 1, 2008 to ensure foster care and adoption requirements continued to meet federal licensing standards and federal reporting requirements, and to maintain federal funding. Fingerprint background checks, in addition to other name and address based checks, are required for foster care licensing and approval of adoption. A series of memos, [DCF Memo Series 2007-16](#); [DCF Memo Series 2008-03i](#); and [DCF Memo Series 2011-05](#), outline specific requirements and procedures for conducting, documenting, and analysis of the background check requirements.