



## Tennessee Department of Children's Services

### Protocol: Facility & Group Care IV-E Compliance

Supplemental to DCS Policy: 4.1

#### Background:

The Department of Children's Services (DCS) is subject to the rules and requirements set forth in 42 U.S.C. §672 and 45 CFR §1356.71 of the Title IV-E section of the Social Security Act (SSA). This statute sets forth standards for Federal payments for foster care and adoption assistance (sections 470-479a of the SSA). Foster Care includes all other out-of-home congregate care provided to children in the custody of the State. Failure to comply with these standards can result in the loss of Federal funding for a limited period of time or for the duration of the foster care placement.

The Title IV-E Foster Care Eligibility Review Guide, available on the Administration for Children and Families website ([www.acf.hhs.gov](http://www.acf.hhs.gov)), provides a consistent and uniform approach for Federal, State and contract agency staff to utilize as a resource in complying with safety requirements of the Title IV-E program. The Guide contains policy and procedural guidance on adherence to all facets of Title IV-E compliance. It is intended to complement, not supplant, applicable statutory and regulatory provisions. In the event of conflict or inconsistency between the Guide and the statute or regulations, the latter shall govern. These rules include safety requirements for contractor staff delivering services in group home or facility settings. Affected staff members will include all those responsible for providing direct-care and supervision to children in State custody.

**Note:** Direct-care staff shall be defined as any person, as part of his or her regular job duties and regardless of title or position, has face-to-face interaction with or unsupervised access to children.

In response to these Federal requirements, and to serve as a more effective steward of public funds, DCS has developed an internal infrastructure that will provide oversight to ensure compliance with IV-E safety documentation requirements of direct-care staff. The following protocol will guide this process.

**Initial Implementation for new Contract Agency or for expansion of contract services to include a new location or sub-contract.** Follow "Guidelines for Contract Agency Expansion of Services for Out of Home Residential and Group Care Protocol" prior to beginning this process.

The initial implementation of this process will require the following actions:

- ❑ The Primary Contracting Agency (PCA) will contact the Central Office Resource Eligibility Program Manager and request the Safety Documentation Spreadsheet template for documenting all direct care staff documentation;
- ❑ The PCA will complete, or collect (in the case of a sub-contract), all required background checks on all direct care staff associated with the new or expanded residential treatment facility or group home. Each current direct-care staff will be listed and each safety check will be identified on the spreadsheet by the date each check was completed with the PCA ensuring compliance with policy. The CEO/Executive Director (or designee), through signatory, will attest to the validity of the agency's internal review process. Upper management sign off on this document will be considered

assurance that all safety requirement documents have been verified as compliant with policy and are contained within the Human Resources or Personnel file for each direct care **Subject: Protocol: Facility and Group Care IV-E Compliance**

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staff listed on the spreadsheet. The spreadsheet will then be forwarded to the Central Office Resource Eligibility Program Manager.

- ❑ A review of the background checks will be completed (including any corrections or completion of new background checks) and determined IV-E compliant. The PCA will be notified of the results.
- ❑ Placement approval will not occur until IV-E compliance is determined and the expansion of services is fully approved.
- ❑ **Sub-Contractors** - The Department shall interface directly with all PCA's sub-contractors that operate facilities or group homes after initial implementation has been completed.

### **Continuing Oversight:**

The following process will take effect after initial implementation:

- ❑ Each Contract Agency will be responsible for completion and submission of the spreadsheet on a monthly basis. The spreadsheet must be submitted to the Central Office Resource Eligibility Program Manager the first week of each month. All monthly spreadsheets submitted must include an updated list of all new direct-care staff beginning their employment with the agency. Agencies must also include on the spreadsheet employees that are no longer with agency. The spreadsheet will follow the same process as detailed above:

Note: If an agency experiences no changes in direct-care staff within a particular month, signed communication must still occur by the CEO/Executive Director (or designee) verifying that fact.

- ❑ Safety documentation and the Criminal History and IV-E Eligibility Checklist for each newly hired direct-care staff is to be submitted in addition to the monthly spreadsheet. Documentation will be reviewed in accordance with policy and a subsequent determination as to compliance.
- ❑ Contract Agency staff will comply with any request for additional documentation or corrections.
- ❑ Program Accountability Review (PAR) and Licensing will continue their random monitoring of direct-care staff's safety documentation during their annual audit process.

### **Determined Non-compliance:**

Contract Agency direct-care staff's safety documentation found to be non-compliant with policy shall be assessed in the following manner:

- ❑ Reviews of safety checks for all new hires are conducted on a monthly basis. All non-compliant findings will be determined on a monthly basis and a flat fee applied on an incremental scale for continued findings of non-compliance.

A fee will be assessed for each staff's finding of non-compliance during the month in which the review was conducted. The fee will be assessed on any finding of non-compliance regardless of the number of errors identified for an individual staff member. Fees are assessed based on the following scale:

1<sup>st</sup> non-compliant finding(s) = \$250.00 per non-compliant staff finding;

2<sup>nd</sup> non-compliant finding(s) = \$500.00 per non-compliant staff finding;  
3<sup>rd</sup> non-compliant finding(s) = \$750.00 per non-compliant staff finding;  
4<sup>th</sup> non-compliant finding is subject to corrective action and referral to PQI (DCS Yellow Zone team) for further monitoring and review of provider's compliance of safety standards.

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Examples:

1. John Jones was hired on June 01, 2010. His fingerprint results were completed on June 05, 2010 and his local checks were completed on June 10, 2010. The fee for that review month will be assessed at \$250.00.
  2. If there is a second staff member whose checks were non-compliant in the same month as John Jones the fee will be \$250.00 X 2 = \$500.00.
- ☐ If, in subsequent audits, a previously fined provider is found to be non-compliant for a second/third/fourth time, the rate would increase as stated above multiplied by the number of staff found to be in error.
  - ☐ The assessment of non-compliance findings and the resulting calculations will be calibrated (refreshed) each July 01.
  - ☐ The procedures detailed herein will also apply to Sub-Contractors. The Sub-Contractor will be required to submit to the State the amount of the fee on or prior to a specific date and time. Failure of the Sub-Contractor to remit reimbursement within the time frame specified will cause the Department to assess the fee amount in equal proportion between the various Primary Contractors.

**Appeal Process:**

Contractors for whom a penalty is applied are afforded an avenue for redress by way of formal appeal. The following is the accepted process for the filing, handling and resolution of these appeals.

1. Initial appeal requests and all collateral documentation shall be submitted to the Office of Finance and Program Support (OFPS). Appeals must come in writing (either electronically or by mail) and must be submitted to OFPS no later than five (5) business days after the agency's receipt of the initial OFPS penalty notification. OFPS will then engage the Resource Eligibility Program Manager within 24 hours for review of the appeal documentation. Resource Eligibility Program Manager will, in turn, bring this documentation to a Central Office Appeals Panel for discussion and resolution. If, after comprehensive review, the panel finds that documentation was indeed timely according to established DCS policy and protocol, the penalty will be cancelled or reversed. However, if after comprehensive review, the panel finds that the appealing agency did not sufficiently appeal their case and documentation clearly shows the documentation was not completed timely, the appeal will be denied.
2. Resource Eligibility Program Manager will inform OFPS of the panel's decision. OFPS shall then immediately notify, in writing, the appealing agency of the appeal decision.