

# Position Statement

2021

## Background Studies

### Proposal

#### Issue:

The federal Families First Prevention Services Act (FFPSA) requires that all individuals working in congregate care settings complete enhanced background checks, which include fingerprint-based criminal records checks of national crime information databases and child abuse registry checks for any adult working in a Child Care Institution. Every employee must have enhanced background studies in order for a facility to be eligible for payment under Title IV-E. State law was amended in 2019 to comply with this requirement, effective July 1, 2019. State statute also gave March 1, 2020, as the date for facilities to come into compliance with this requirement.

The discrepancy between these two dates, combined with lack of clear and timely guidance from DHS to counties or providers to implement these changes in law, resulted in providers not coming into compliance with the background requirements. Counties are not able to be reimbursed for claims for Title IV-E payments after July 1 for facilities not in compliance. Thus, counties are placed into the financial hardship of not being reimbursed for services budgeted to have a 50% federal reimbursement for Title IV-E eligible CCI facility costs in 2019 and into 2020. **It is expected that counties have lost out on XXXX Title IV-E eligible federal reimbursements due to poor implementation and enforcement by DHS.**

This issue is not just a one-time issue, it will also be an ongoing tracking issue to ensure that facilities remain in compliance through turnover and staff changes. The requirements would have meant that every time a new staff is hired the facility would not be in compliance and IV-E reimbursable until their background check is done unless that person does not work at all until the background check is completed. MACSSA was able to work with DHS to pass a change in law during the 2020 special session that included a new provision requiring a facility to complete a background check prior to staff beginning in that position. A study subject affiliated with a children's residential facility or foster residence setting may not work—regardless of supervision—until receiving either a clearance notice or notice that more time is needed to complete the study. If someone is affiliated with a Title IV-E-eligible facility or setting receives a more time is needed notice, they may not work until they receive a set aside or a variance. This should remedy some of the concerns about facilities continually see-sawing in and out of compliance, addressing both legitimate safety concerns and some federal IV-E billing concerns.

However, there remain significant ongoing issues with how background studies are completed and tracked and with how background studies are completed during the Peacetime Emergency temporary modification or waivers.

Ongoing Background Study Issues:

CANR Check: Enhanced background studies include a requirement for name-based out-of-state search of the child abuse and neglect registry for every state where that the individual resided during the past five years.

The processing of this information has continually caused delays in the clearing of new employees for providers. There lacks an urgency from other states to respond in a timely manner. DHS has offered to work with MACSSA and our federal delegation to address the serious financial impact for background studies that have not cleared due to out-of-state registry checks that have been delayed.

Tracking Out of State Facilities Enhanced Background Studies Compliance: Licensing of Children's Residential Facilities in Minnesota is the responsibility of DHS and DOC. DHS is best equipped to be the central processor and tracker of approved facilities list for IV-E reimbursement for out of state facilities as well. Current process compels each county to inefficiently and repetitively request and complete the same verification paperwork with each out of state provider for each placement, even when multiple counties have had placements at the facility over extended periods of time.

Communication and coordination by DHS with other states about which of their facilities are or are not in compliance with enhanced background studies requirements administratively makes sense.

#### Access and Accountability for the State Fingerprinting Vendor

Gemalto Thales is the state contracted fingerprint vendor. They have consistently been a challenge for counties and providers to work with in meeting the electronic fingerprinting requirement of enhanced background studies. They are the only vendor for this service and have not maintained adequate statewide geographic accessibility of sites, varied and reliable hours of operation for their sites, or accurate public information about when and which fingerprinting are open. DHS has failed to manage their contract with Gemalto Thales to meet customer, provider, and county expectations. When faced with issues and questions, DHS has delegated responsibility to the vendor without enforcing accountability.

Because of access issues, counties have stepped up and taken on staffing and made financial investments by becoming locations for fingerprints to be conducted. They have not been impressed by their customer service and responsiveness to their subcontractors.

An RFP has been released by DHS to contract for these services in June of 2021. Counties hope for a stronger contract and better management of the contract for whomever is awarded the job. Increased access to these sites needs to be a part of contract terms. In addition, many counties have made investments in buying proprietary equipment from Gemalto to increase accessibility of fingerprinting to their local providers. If a contractor is chosen, counties should be reimbursed for their investments or the cost of equipment for counties to continue to provide fingerprinting sites should be covered by the state.

#### Peacetime Emergency and Emergency Background Checks:

On April 15<sup>th</sup>, based on authority under federal emergency declarations and the Stafford Act, the Administration for Children and Families released guidance offering states flexibilities regarding fingerprint-based criminal record check requirements. It requires states to return to fingerprint-based studies “as soon as it can safely do so, in situations where only name-based checks were completed”.

On April 6, 2020, the Minnesota Department of Human Services (Department) commissioner implemented temporary modifications to certain state background study requirements for the duration of the Minnesota’s peacetime emergency

#### DHS Bulletin

Changes implemented to state background study requirements include:

- Waived requirements for fingerprint-based background studies for all categories
- Instituted a “Minnesota-only” background study using an individual’s name and date of birth for maltreatment and criminal history
- Limited required background checks to Minnesota registries and databases by waiving required checks from out-of-state registries and databases.

On May 9, 2020, the Department commissioner modified the background study requirements to include child abuse and neglect registry (CANR) checks be conducted for foster care, adoption, legal guardianship, and children’s residential facilities retroactively to April 6, 2020.

Background studies completed during the waived period (April 6, 2020-October 7, 2020) are called “Emergency COVID Studies.”

#### Outstanding Emergency COVID Studies issues:

Expiration of Emergency COVID Studies: Emergency COVID studies will remain valid until 60 days after Minnesota’s peacetime emergency ends. At the end of that 60 day period, all individuals that completed an Emergency COVID study must have a complete and cleared fully compliant background study, as described below, in order for a facility to be determined to be cleared for a child welfare agency to claim Title IV-E foster care maintenance.

DHS technical capacities do not allow for both Emergency COVID Studies and Net Study 2.0 Enhanced Background studies to be processed at the same time. Thus, the backlog of background studies that need to be completed is enormous; as of the beginning of December, 2020 there were over 200,000 studies that needed to be completed. The 60 day ramp down period is not sufficient to bring all the studies up to date and that problem is further exacerbated by the inadequacy of fingerprint vendor sites across the state.

In an attempt to mitigate the growing backlog, on October 21 of 2020 DHS stopped conducting Emergency COVID studies and resumed conducting fully compliant state and federal background checks. Unfortunately, a number of public sites for fingerprinting required for background study applications temporarily or permanently closed in response to COVID-19. Citing an increase in COVID-19 cases causing significant staffing challenges for numerous providers across Minnesota, November 18 of 2020 DHS once again returned to emergency background studies and temporarily modifying certain statutory requirements. DHS also referenced that many applicants were unable to complete studies due to limited access to fingerprinting

sites, which are at 65% capacity statewide with permanent closures at some locations.

The process, consultation, and communication around ending then returning to emergency background studies and temporarily modifying certain statutory requirements was indecisive and was frustrating and confusing for counties and providers. It is unclear how it will impact or complicate billing. Before permanently returning to enhanced background studies requirements, it is imperative that DHS acquire approval for an appropriate length ramp down period to meet the condensed workload. It is essential that implications for the safety of children, permanency, and financial billing are taken properly into account and that counties are properly consulted.

CANR: Enhanced background studies include a requirement for name-based out-of-state search of the child abuse and neglect registry for every state where that the individual resided during the past five years. Fulfillment of these requests by other states have been delayed and stopped during the COVID-19 pandemic. While new emergency background studies can be completed for new employees after the DHS implementing temporary modifications for background checks, there is a lack of clarity about billing for facilities that were not in compliance prior to the guidance from the Children's Bureau and DHS's temporary modifications for background checks.

For example, counties and providers still lack clarity about the ability to bill Title IV-E for facilities with staff with outstanding CANR requests that predate DHS implementing temporary modifications for background checks.

Counties expect confusing and challenges in billing for placements due to lack of clarity about compliance of facilities.

Permanency Delays: Children's Bureau flexibilities and DHS's temporary modifications to certain state background study requirements do not apply to all situations that require background studies. For example, background study requirements for Kinship assistance and NorthStar Adoption Assistance have not been waived. This is impacting the permanency for children and it is impacting who is the payer of financial support for the foster parent or prospective adoptive parents.

Cost for Providers: Providers are required to pay twice for background checks for each of their employees who have an Emergency COVID Study, as a new study must be conducted. This creates financial hardship and a barrier for providers.

**Implementation Strategy:**

MACSSA has sought to work proactively and in good faith with DHS to address background study issues since being informed in October of 2019 about billing issues stemming from implementation of the Adam Walsh background study requirements starting in July of 2019. MACSSA recognizes that rigorous background study requirements are intended to prevent access to children by adults who have a history that indicates a risk to child safety and child safety is MACSSA's top priority. In addition, the ability to access available federal funds is crucial to financial stability and sustainability for county human service departments.

While licensing of these facilities is an authority and responsibility that lies with DHS and DOC, counties are willing to work with providers and the state to help expediate the process to make sure providers comply with the federal and state requirements for background checks. The current situation where counties face barriers to receiving Title IV-E reimbursement creates a tremendous hardship and it exists due to a lack of partnership, planning and impossible timelines and a failure to provide communication and guidance around the implementation of new laws to counties, tribes, and providers.

MACSSA seeks cooperation and collaboration with DHS and providers to bring providers into compliance with the background studies requirement as soon as possible, in order to avoid forgoing additional eligible Title IV-E reimbursements in 2019 and 2020.

MACSSA will also seek legislation to hold counties harmless for the lost reimbursements that resulted from a failure to synchronize compliance and reimbursement implementation dates. The negative impact of the passage of this federal compliance legislation brought forward by DHS on counties federal reimbursements was not communicated nor foreseen and financially impacts counties significantly. This is an unplanned for, unfair and ill-advised cost shift to counties.

MACSSA also seeks a bridging fund to cover the periods that a facility is not in compliance because of staff turnover or other licensing issues that are not within counties' control to document or monitor, or ensure is completed. The State's responsibility should be clearly outlined and a funding source should be set up to reimburse counties when or if a facility is not and/or cannot be in compliance with the background check requirements.

MACSSA also seeks to pursue how permanency issues created by transition to Emergency Covid Studies can be remedied, both for the permanency of the child and how it financially impacts counties.

MACSSA supports financial support from the state to mitigate providers and individuals who have to complete and pay for two background studies due to temporary modifications to certain state background study requirements.

MACSSA will seek to work with DHS and our federal delegation to address the serious financial impact for background studies that have not cleared due to out-of-state registry checks that have been delayed.

Before DHS reinstating enhanced background studies requirements, it is imperative that DHS acquire approval for an appropriate length ramp down period to meet the condensed and backlogged workload. Failure to do so will have serious implications for the safety of children, permanency, and financial billing.

Upon DHS awarding the RFP for public fingerprinting sites, MACSSA seeks a stronger contract and better management of the contract and increased access to sites statewide needs to be a part of contract terms. MACSSA will seek that counties have made financial investments in increasing accessibility of fingerprinting to their region be reimbursed or held harmless if a contractor is chosen and new proprietary equipment is required.

MACSSA will seek a change in policy from DHS so that DHS manages with other states which of their CRF facilities are or are not in compliance with enhanced background studies, rather than counties having to redundantly manage that reporting individually.

### **Systemic Priority Alignment (highlight all that apply and explain why)**

- **Equity**
- **Integrated Services**
- **Fiscal Framework**

From the GARE Toolkit (See [www.racialequityalliance.org](http://www.racialequityalliance.org)): What are the racial equity impacts of this particular decision? Who will benefit from or be burdened by it? Are there strategies to mitigate unintended consequences?

**Comments:**

### **Relevant Committee (highlight all that apply and explain why)**

- **Adult Services**
- **Behavioral Health**
- **Children's Services**
- **Modernization**
- **Policy**
- **Self-Sufficiency**

**Why:**

### **Rationale/Background:**

This issue demonstrates a failure in partnership within Minnesota's State Supervised, County administered system. Counties are left with the financial repercussions of failures to effectively manage the implementation of federal law by the licensing authorities. Counties are still required to find and pay for the proper placements for clients, without being able to access the financial resources that are designed to be available. For true partnership to be demonstrated, the state would own this problem and work collaboratively with counties and providers to remedy this funding issue as soon as possible and hold counties financially harmless. The State would also ensure that there was an ongoing process in place so counties, and Minnesota, are not constantly at risk of a federal payback in an audit because of periods of non-compliance that facilities may have for various reasons



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