



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	19-OCFS-ADM-04
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Child Welfare and Community Services
<b>Date:</b>	July 25, 2019
<b>Subject:</b>	<b>Expansion of Background Checks for Congregate Care Staff</b>
<b>Suggested Distribution:</b>	Directors of Social Services Voluntary Agency Executive Directors Human Resource Directors
<b>Contact Person(s):</b>	See section VI.
<b>Attachments:</b>	None

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
13-OCFS-ADM-09 18-OCFS-INF-06			SSL § 378-a and § 424-a; The Protection of People with Special Needs Act of 2012 (Chapter 501 of the Laws of 2012); Chapter 56 of the Laws of 2019; Family First Prevention Services Act (P.L. 115-123).		

## I. Purpose

The purpose of this Administrative Directive (ADM) is to notify local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of changes in federal and New York State law relating to background clearances for all persons working in congregate residential care foster care programs licensed or certified by the New York State Office of Children and Family Services (OCFS). Such background checks include: a) criminal background checks (CBC) through the Justice Center for the Protection of People with Special Needs (Justice Center); b) New York State (NYS) OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR); and c) checks of the child abuse register in any state in which the person resided within the last five years.

The Family First Prevention Services Act (FFPSA),<sup>1</sup> mandates criminal background checks, and Statewide Central Register of Child Abuse and Maltreatment (SCR) clearances, for all current and prospective employees of congregate residential foster care programs that are licensed or certified by OCFS, regardless of whether the employee has the potential for regular and substantial contact with children. FFPSA also requires a clearance request from the child abuse register of any state in which the person resided within the last five years.

## II. Background

The Protection of People with Special Needs Act of 2012 (Chapter 501 of the Laws of 2012) centralized, within the Justice Center, the CBC check process for certain facilities and providers licensed or certified by OCFS. Further information on this process may be found in 13-OCFS-ADM-09.

In response to the FFPSA requirements, NYS amended Part I of Chapter 56 of the Laws of 2019 (Chapter 56) which authorized LDSSs and VAs to request such clearances. The chapter also amended SSL §422 (4)(A) to authorize OCFS to respond to other states' inquiries. Chapter 56 amended SSL §378-a and §424-a to require that *all* employees of residential foster care programs receive a CBC, and an in-state and out-of-state child abuse registry inquiry of any state in which the person resided within the last five years. This amendment enables NYS to comply with the FFPSA requirement and preserve federal funding. Previously, only such employees that have the potential for the regular and substantial unsupervised or unrestricted physical contact with children were required to have these clearances.

The original federal implementation date of this portion of FFPSA was October 1, 2018. However, due to the need for changes to state law, on August 8, 2018, NYS submitted a request to the federal Administration for Children and Families (ACF) for a delay to implement requirements of SSL §471(a)(20)(D) of the Social Security Act, which addressed CBC, SCR clearances, and out of state child abuse register inquiries for adults working in congregate residential programs caring for children in foster care. The extension request was authorized under FFPSA. On February 1, 2019, the request was approved by ACF and NYS was granted a delayed effective date for implementation for this FFPSA provision of April 1, 2020.

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<sup>1</sup> 18-OCFS-INF-06 Family First Prevention Services Act (FFPSA) (P.L. 115-123).

### III. Program Implications

Beginning July 1, 2019, all LDSSs and VAs that operate a congregate residential program for children in foster care that is licensed or certified by OCFS have the legal mandate to request an SCR clearance through OCFS and a CBC of all employees of such programs through the Justice Center. Consistent with OCFS regulations, FFPSA defines congregate care as institutions, group residences, group homes, agency operated boarding homes or supervised independent living programs (SILPs).<sup>2</sup> Therefore, expansion of the CBC and SCR clearance requirements applies to all foster care congregate care settings.

By April 1, 2020, LDSSs and VAs **must** comply with the requirement to request a CBC and an SCR clearance for any person who is employed in a congregate residential foster care program that has not previously had a CBC and/or an SCR clearance conducted pursuant to SSL §378-a and 424-a in connection to such employment. In addition, where applicable, an inquiry of the child abuse register of the state in which the person resided within the last five years must also be completed within this timeframe. All employees working in a child care institution must receive a fingerprint-based CBC, SCR clearance, and a check of the child abuse register in any state that the employee has resided in the past five years.

In addition to the expanded federal requirements, NYS continues to require providers of service for programs licensed or certified by OCFS, and any other provider or licensing agencies as defined in Article 11 of the Social Services Law(SSL) required to conduct a database check with the SCR, to request an inquiry of the Staff Exclusion List (SEL) from the Justice Center.

### IV. Required Action

Immediately, all LDSSs and VAs that operate a congregate residential program for children in foster care must comply with the requirement to request a CBC, an SCR clearance, and an out of state child abuse registry inquiry for all prospective operators, employees, and volunteers, in addition to the SEL check requirement.

In preparation for compliance with the new requirements, immediate action is needed by all LDSSs and VAs to conduct an internal review of the human resources files of their staff who work in congregate residential care programs for children in foster care to determine their projected workload associated with the need for the additional CBCs, SCR clearances and out of state child abuse register requests for existing staff who have not yet been cleared. Resulting from this internal review, LDSSs and VAs must submit a plan to their respective OCFS regional offices that describes the scope of the task, the plan of action, and the schedule that will be employed to ensure that all requests for CBC checks, SCR clearances and out of state child abuse register inquiries will have been submitted before April 1, 2020. With consideration given to their workload capacity as well as to that of the OCFS SCR, the OCFS regional offices will work with the LDSSs and VAs to agree upon a reasonable plan that is acceptable for all parties.

Prior to requesting a CBC, an SCR clearance or an out of state child abuse register inquiry for potential employees, congregate care programs for children in foster care operated by an LDSS or a VA must request a check of the SEL from the Justice Center when seriously considering an applicant for employment, in accordance with current NYS procedure.

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<sup>2</sup> 18 NYCRR 441.2(f)-(i).

In situations where an LDSS or VA operates a congregate residential program for children in foster care that is licensed or certified by OCFS that is physically co-located with a program licensed or certified by another New York State agency, the LDSS or VA is required to adhere to SSL § 378-a and § 424-a to request a CBC, an SCR clearance and an out of state child abuse registry inquiry for all operators, employees, and volunteers of the co-located programs.

Should an LDSS or VA operate congregate residential programs that are licensed or certified by both OCFS and another NYS agency but that are not physically located at the same place, the requirement to request a CBC, an SCR clearance and an out of state child abuse registry inquiry from all operators, employees, and volunteers only applies to the congregate care program for children in foster care that is licensed or certified by OCFS.

By April 1, 2020, all LDSSs and VAs must have completed CBC, SCR clearance and out of state child abuse register inquiry requests for all operators, employees, and volunteers of congregate residential programs for children in foster care who had not previously had such clearances.

## V. Effective Date

Beginning **July 1, 2019**, all LDSSs and VAs that operate a congregate residential program for children in foster care must comply with the requirement to request a CBC, an SCR clearance and, where applicable, an out of state child abuse register inquiry for all prospective operators, employees, and volunteers in addition to the SEL check requirement.

By **April 1, 2020**, all LDSS and VAs must have completed CBCs, SCR clearances, and where applicable, out of state child abuse register inquiry requests for all operators, employees, and volunteers of congregate residential programs for children in foster care who had not previously had such clearances.

## VI. Contacts

Any questions concerning this release should be directed to the appropriate regional office:

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***/S/ Lisa Ghartey Ogundimu***

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