

§ 1356.40

45 CFR Ch. XIII (10-1-08 Edition)

- (2) Spousal abuse;
  - (3) A crime against a child or children (including child pornography); or,
  - (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.
- (c) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:
- (1) Physical assault;
  - (2) Battery; or,
  - (3) A drug-related offense.
- (d)(1) The State may elect not to conduct or require criminal records checks on prospective foster or adoptive parents by:
- (i) Notifying the Secretary in a letter from the Governor; or
  - (ii) Enacting State legislation.
- (2) Such an election also removes the State's obligation to comport with paragraphs (b) and (c) of this section.
- (e) In all cases where the State opts out of the criminal records check requirement, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.
- (f) In order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

[65 FR 4090, Jan. 25, 2000]

**§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.**

- (a) To implement the adoption assistance program provisions of the title

IV-E State plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the State must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

- (1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and
- (2) Specify its duration; and
- (3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and
- (4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(f) The State agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988]