

## DEPARTMENT OF SOCIAL SERVICES

CHILDREN'S DIVISION

PO BOX 88

JEFFERSON CITY, MISSOURI

May 19, 2010

MEMORANDUM**What's Inside:**Citizenship/immigration  
policy for children in  
FCOOHC.

TO: REGIONAL, EXECUTIVE STAFF, CIRCUIT MANAGERS,  
AND CHILDREN'S DIVISION STAFF

FROM: PAULA NEESE, DIRECTOR

SUBJECT: CITIZENSHIP/IMMIGRATION POLICY FOR CHILDREN IN FAMILY-  
CENTERED OUT-OF-HOME CARE (FCOOHC)

## DISCUSSION:

The purpose of this memorandum is to introduce *Child Welfare Manual* policy and procedure designed to assist field staff in addressing citizenship/immigration issues in Family-Centered Out-of-Home Care. This policy addresses consulate notification for child(ren) in FCOOHC who are foreign nationals; and permanency options for child(ren) FCOOHC who are illegal immigrants.

**Verification of Identity and Citizenship/Immigration Status**

Current policy dictates, in accordance with *Section 6036 of the Deficit Reduction Act of 2005 section 1903 of the Social Security Act*, that staff obtain documents establishing identity and citizenship/immigration status for new applicants and recipients for all categories of Medicaid, which is covered in *Section 4, Chapter 24.3.5.1 [Medicaid Eligibility Documentation of US Citizenship and Identity](#)*. Citizenship/Immigrant Status options include:

- U.S. Citizens (Either born a citizen or naturalized)
- Foreign Nationals
  - Immigrant Visas (such as *lawful permanent residents (LPR) – Green Card*)
  - Non-Immigrant Visa's (In the U.S. for a temporary stay)
  - Undocumented Immigrants (Illegal Alien)

**Consular Notification**

The *Vienna Convention on Consular Relations (VCCR)* established treaty obligations between the United States and other countries with respect to the treatment of foreign national minors and the performance of consular functions. *Foreign nationals* are persons who are not U.S. citizens, either by birth; or by naturalization. Resident aliens who have a resident alien

registration card, commonly known as a "green card," are considered foreign nationals, as well as undocumented (or "illegal") aliens.

If it is determined that the child(ren) is a foreign national, the worker will determine whether the consulate of the child's country of origin should be notified that the child is in division custody. The consulate/embassy will not be contacted for every child found to be a foreign national. This decision is based on the following:

- **Mandatory Consular Notification** - Under the *Vienna Convention on Consular Relations* (VCCR) treaty or for countries with similar agreements with the United States, the division is required to notify the consulate/embassy of the child's country of origin when a child is taken in to protective custody.
- **Non-mandatory Consular Notification** – When an adult is detained, who is a foreign national from a country without a consular relations agreement, the consulate/embassy is only notified if the he or she requests it and the foreign national must be informed of his right to have his/her consulate/embassy notified. The decision to notify the consulate/embassy of a minor in which the division is the legal guardian is a more complex question. (See Non-Mandatory Consulate Notification)

### **Mandatory Consulate Notification**

The United States Department of State maintains a list of countries where consular notification is mandatory. The list is located at:

[http://www.travel.state.gov/law/consular/consular\\_737.html#notification](http://www.travel.state.gov/law/consular/consular_737.html#notification)

If the country of origin is found on the mandatory list, the worker will complete and fax a *CD-146 Consulate Notification*, to the listed Consulate/Embassy location

([http://travel.state.gov/law/consular/consular\\_745.html#phone](http://travel.state.gov/law/consular/consular_745.html#phone)) nearest to the local division office. This listing provides the short-form name of the country, followed by telephone and fax numbers as currently available to the Department of State.

Once a consulate notification has been made the worker will cooperate with requests by the applicable Consulate to interview, visit and otherwise communicate with children in custody of the division who are nationals of their respective country.

Before the visit or interview is arranged, the worker will contact the child's court-appointed attorney or guardian ad litem regarding the requests. Visits and access by the applicable Consulate should be consistent with the best interests of the child, or as ordered by the Court.

The worker may request from the Consulate:

- Assistance with obtaining official copies of birth certificates that are certified for authenticity; and
- Names of appropriate agencies within the country that can assist in:
- Identifying relatives or other placement options, and
- Conducting necessary background checks and home studies.

## **Non-Mandatory Consulate Notification**

For adults who are foreign nationals from countries in which an agreement does not exist, the foreign national must be informed of his right to have his/her consulate/embassy notified, however the consulate/embassy is only notified if he or she requests it. The decision to notify the consulate/embassy of a minor in which the division is the legal guardian should be approved by the Circuit Manager. The Circuit Manager may consult with Division of Legal Services if necessary. This decision should be made with consideration of the following:

- The wishes of parents;
- Input from or other relatives of the child;
- The wishes of the child depending on the child's age and/or the child's capacity to understand the circumstances;
- Current circumstances in the country of origin; and
- Current relationship between the United States and the Country of Origin.

If the decision is made to notify the consulate, the worker will follow the procedure in the section above titled: *Mandatory Consulate Notification*.

## **Undocumented Immigrants in Out-of-Home Care**

If the Children's Service Worker is unable to verify U.S. Citizenship/immigration status of a child who has entered Family-Centered Out-of-Home Care the worker will assume that the child is *an undocumented immigrant or an illegal alien*. The following complications can result for children in out-of-home care with undocumented immigrant status:

- Undocumented children of any age can be deported to their country of origin, even if they have been raised in the United States since infancy.
- Children who have entered and remained in this country legally may be deported simply because their parents have been ordered deported. In such cases, the child may not have been aware of the parent's status nor received notice that the parent has been ordered deported; nonetheless, the child will still be at serious risk of deportation.
- Undocumented children who are in Division custody cannot be deported while they are in custody of the state; however, once the child is released from custody, his or her former alien status is restored and he or she may again be subject to deportation.
- Even children who have been adopted by United States citizens are subject to deportation if their status has not been legalized prior to leaving the states custody.
- The process to apply for an alien registration card (green card) can be a lengthy and complex. Making the most appropriate permanency decisions for the child's as expediently as possible is critical.

If there is a question of the citizenship/immigration status of a child in out-of-home care, the Children's Service Worker shall go through regular supervisory channels to alert the *Division of Legal Services (DLS)* to assist in determining the appropriateness of and procedure for ensuring that the child obtains proper documentation.

## Family Support Team (FST) - Permanency Plans for Undocumented Child(ren)

It is critical for the Family Support Team to address citizenship/immigration issues during the treatment planning and permanency goal process for children who are undocumented immigrants. The Children's Service Worker, the family, and other members of the family support team must evaluate whether it is more appropriate to assist the individual in seeking permanent residency, United States citizenship, or repatriation to the child's country of origin. This decision must ultimately be made with the child's best interests in mind based on the following considerations:

- Date of entry into the U.S. (the length of time in country and date of entry impact eligibility for benefits);
- Immigration status (impacts eligibility for legal residency);
- Cultural factors (such as language barriers; length of time in, and familiarity with this country; and degree of acculturation);
- Availability and quality of care in the U.S. versus the country of origin;
- Resources available to the individual (such as relatives willing and capable of providing assistance; government benefits; or community resources); and
- The child's wishes.
- The wishes of the child's parent(s), legal guardian(s) and or other relevant family members.
- The position of the child's country of origin and the United States Government.

The Family Support Team will determine the most appropriate treatment plan and permanency goal for the child. If the goal requires an adjustment of citizenship or immigration status, the Division of Legal Services will assist the worker to assure that the proper paperwork is filed and that the proper action steps are completed. Action steps may include:

- Completion of immigration forms,
- Locating a civil surgeon to complete a physical exam,
- Collecting vital records from other states or countries, and/or
- Locating a fingerprinting site authorized by USCIS.

### Introduction of New Tools

Two new tools have been introduced to assist the worker in the documentation process.

- *CD-145 US Citizenship and Identity Documentation Checklist* – This form is consists of the list of documents found in *Section 4, Chapter 24.3.5.1 Medicaid Eligibility Documentation of US Citizenship and Identity* in checklist form, to be used as a reference during the documentation process.
- *CD-146 Citizenship/Immigration Assessment* – This form is used to document identifying information and the citizenship/immigration status of the children/parents or significant others in the case. This form may also be used as a referral sheet to be sent to the appropriate consulate/embassy for consular notification.

### NECESSARY ACTION:

1. Review this memorandum with all Children's Division staff.
2. Review revised Child Welfare Manual chapters as indicated below.
3. All questions should be cleared through normal supervisory channels and directed to:

<b>PDS CONTACT:</b> Randall McDermit 573-751-8932 <a href="mailto:Randall.D.Mcdermit@dss.mo.gov">Randall.D.Mcdermit@dss.mo.gov</a>	<b>PROGRAM MANAGER</b> Amy Martin 573-751-2981 <a href="mailto:Amy.L.Martin@dss.mo.gov">Amy.L.Martin@dss.mo.gov</a>
<b>CHILD WELFARE MANUAL REVISIONS:</b> Section 4, Chapter 19.5 <a href="#">U.S. Citizenship and Immigration Issues</a>	
<b>RELATED STATUTE:</b> <a href="#">RSMO-Chapter 210</a>	
<b>FORMS AND INSTRUCTIONS:</b> CD-145 US Citizenship and Identity Documentation Checklist CD-146 Consulate Notification	
<b>ADMINISTRATIVE RULE:</b> N/A	
<b>COUNCIL ON ACCREDITATION (COA) STANDARDS:</b> N/A	
<b>PROGRAM IMPROVEMENT PLAN (PIP):</b> N/A	
<b>FACES REQUIREMENTS:</b> N/A	