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DATE

September 19, 2018

OF INTEREST TO

County and Tribal Directors

County and Tribal Social
Services Supervisors and Staff

County Attorneys

Tribal Attorneys

ACTION/DUE DATE

Please read information and
prepare for implementation

EXPIRATION DATE

September 19, 2020

County Agency Responsibilities for Children Under Tribal Court Jurisdiction

TOPIC

County agency responsibilities for Indian children under tribal court jurisdiction.

PURPOSE

Provide guidance regarding county agency responsibilities and obligations when tribal court has jurisdiction over child custody proceedings. This bulletin replaces bulletin #13-68-09.

CONTACT

Reanna Jacobs, ICWA Compliance Supervisor

Child Safety and Permanency Division

Phone: 651-431-4386, reanna.jacobs@state.mn.us

Send an email to: DHS.ICWA.MIFPA@state.mn.us

SIGNED

NIKKI FARAGO

Assistant Commissioner

Children and Family Services Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Introduction

When Congress passed the Indian Child Welfare Act in 1978, it recognized the right of tribes to exercise tribal court jurisdiction in child custody proceedings involving Indian children.¹ As tribal governments in Minnesota have increasingly exercised jurisdiction, there is uncertainty about local social services agency (county agency)² responsibility for payments and services for children under tribal court jurisdiction. This bulletin clarifies county agencies' responsibilities, right to notice, and opportunity to be heard in tribal court proceedings when placement is sought through a county agency.

In addition to being citizens and members of a sovereign nation, Indian children and their families are also citizens and residents of Minnesota. When children are in need of protection and services, they are entitled to and eligible to receive social services that are available to other children and families in their county. According to Minnesota Statutes, county agencies are responsible for the cost of these placements and services. The exercise of tribal court jurisdiction should not mean withdrawal, decrease, or denial of county social services. When a tribal court exercises jurisdiction over a custody proceeding involving an Indian child who resides on a reservation, county agencies have an obligation to remain involved, and may be responsible for placement and services costs for an Indian child. County agencies may submit claims for federal financial participation, however, these services/costs must meet federal and state eligibility criteria. County agencies remain responsible for placement and services costs associated with the protection of an Indian child, regardless of whether federal or state funds are available.

For Indian children to experience positive outcomes, it is imperative that county and tribal agencies work together to define and develop concurrent Indian child welfare practices and protocols, inter-agency coordination, collaboration and joint "courtesy" supervision. As agreed to in the 1998 Tribal/State Agreement on Indian Child Welfare, as amended in 2007, (Tribal/State Agreement), "where the tribal court orders placement through a local social services agency the court shall provide to the local agency notice and an opportunity to be heard regarding the placement."³ County agency staff should inform tribal court of county child welfare policies and services, program eligibility requirements and resource limitations.

II. Foster care maintenance payments

County agencies are required to make foster care maintenance payments "to the extent that any child subject to Minnesota Statutes, sections 260.755 to 260.835 [Minnesota Indian Family Preservation Act] is otherwise eligible for social services...."⁴

The Tribal/State Agreement also addresses placement costs for Indian children, stating:

¹ 25 U.S.C. § 1901 et seq.

² Minnesota Statutes, section 260.007, subdivision 13.

³ Tribal/State Agreement, page 30, part III.A.

⁴ Minnesota Statutes, section 260.771, subdivision 4.

“It is the position of the [Minnesota] Department [of Human Services] and the tribes that the local social services agency’s obligation is subject to the same eligibility standards and rates of support applicable to other children for whom the local social services agency pays foster care.”⁵

As a result of these provisions, county agencies must make foster care maintenance payments for Indian children who are under tribal court jurisdiction, and who also meet social service eligibility criteria when a tribal court orders placement.⁶ When placements ordered by tribal court also meet Title IV-E requirements, county agencies may submit a claim for federal financial participation.⁷

III. County agency *services* ordered in tribal court

In addition to placement costs, law and policy at both the federal and state levels require county agencies to provide services that are ordered by a tribal court in conjunction with placement of an Indian child. All children who are in need of protection and services are eligible for social services that will “...secure for each child [alleged or adjudicated in need of protection or services and] under the jurisdiction of the court, the care and guidance, preferably in the child’s own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child.”⁸ The law further requires that the best interests of an Indian child must be determined consistent with the Minnesota Indian Family Preservation Act and the Indian Child Welfare Act. The Indian Child Welfare Act states:

“Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”⁹

Under full faith and credit provisions of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, tribal court orders must be given the same deference as state court orders in matters of placement when a child is otherwise eligible for social services.¹⁰ The Indian Child Welfare Manual also states:

“The [Minnesota] department [of Human Services] recognizes its responsibility to give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that the United States and every state give full faith and credit to the public acts, records, and judicial proceedings of any other entity.”¹¹

⁵ Tribal/State Agreement, page 30, part III.A.

⁶ See also Title IV-B of the Social Security Act; 25 U.S.C. § 1901 et seq.

⁷ See Administration for Children and Families, Child Welfare Policy Manual, chapter 8, July 2018, at: https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=31

⁸ Minnesota Statutes, section 260C.001, subdivisions 2 (a) and (b) (1).

⁹ 25 U.S.C. § 1912(d).

¹⁰ 25 U.S.C. § 1911(d)

¹¹ Indian Child Welfare Manual, Chapter 3 at:

http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_157701.pdf

Full faith and credit does not give tribal courts jurisdiction over county agencies or the state agency.¹² Tribal court jurisdiction over a county agency must be assessed by the two entities on a case by case basis.¹³ Regardless of whether a tribal court has jurisdiction over a county agency, the county agency must provide foster care payments and services for which a child is eligible. If questions arise as to a child's eligibility, the parties must utilize remedies outlined in law, including the administrative appeals process in Minnesota Statutes, section 256.045. The Minnesota Department of Human Services and tribes reached agreement on a county agency's obligation to provide services to Indian children in the Tribal/State Agreement, which states:

"It is the position of the [Minnesota] Department [of Human Services] and the tribes that, to the extent an Indian child is otherwise eligible for foster care maintenance payments under Minnesota law, the local social service agency shall pay for the cost of foster care of Indian children who are placed by a state or tribal court, or through a voluntary placement agreement, in licensed foster homes or homes licensed or approved by the tribes...In any case where the tribal court orders placement through a local social services agency, the court shall provide to the local [county] agency notice and an opportunity to be heard regarding the placement."¹⁴

The Tribal/State Agreement further states:

"In addition to services specifically established for Indian families in this Agreement or otherwise, the [Minnesota] Department [of Human Services] recognizes the responsibility of the state and local social services agencies to make available to Indian families all of the other services available to any other family in the circumstances covered by this Agreement. Existing services must not be reduced because of the availability of services through this Agreement."¹⁵

A county agency must provide a child with all services for which he or she is eligible. County agencies should take every opportunity to be heard in tribal court on issues of placement, services, and eligibility and should consider exhausting all tribal court appeals processes, or utilizing other legal remedies, if a tribal court orders services for which a county agency finds that a child does not meet eligibility criteria.

IV. County of financial responsibility

Under the Tribal/State Agreement, the Minnesota Unitary Residence and Financial Responsibility Act, codified at Minnesota Statutes, Chapter 256G, continues to apply in determining the county of financial responsibility when tribal courts exercise jurisdiction.¹⁶ The act requires that the first county agency having contact with a child provide and pay for services and bill the agency of child's county of residence, if different from the county

¹² Jurisdiction must be determined on a case by case basis and, accordingly, is beyond the reasonable scope of this bulletin.

¹³ *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510, 516 (8th Cir. 1989) (citing *National Farmers Union Insurance Company*, 471 U.S. at 855-56, 150 S. Ct. at 2453-54).

¹⁴ Tribal/State Agreement, page 30, part III.A.

¹⁵ Tribal/State Agreement, page 22, part II.C.

¹⁶ Tribal/State Agreement, page 30, part III.A.

agency having first contact. Similarly, where placement is the first county's involvement, the county of placement must pay for services and bill child's county of residence agency.

County agencies are encouraged to communicate county of financial responsibility determinations with tribal courts, whenever possible, to avoid tribal court orders that incorrectly identify the county of financial responsibility. County agencies should also consider exhausting all tribal court appeals processes to correct an error in a tribal court order. A county agency identified as the county having financial responsibility for a particular child in accordance with the Minnesota Unitary Residence and Financial Responsibility Act shall continue to have financial responsibility for a child, even if a tribal court order identifies a different county agency as the payor of services. County agency contact with tribal courts may also help ensure that tribal courts have the necessary information to notify a county that a tribal court order has identified the county as a payor of services in a case.

Americans with Disabilities Act (ADA) Advisory

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