

**NUMBER**

#18-68-21

**DATE**

September 19, 2018

**OF INTEREST TO**

County and Tribal Directors  
County and Tribal Social  
Services Supervisors and Staff  
County and Tribal Fiscal  
Supervisors  
County Attorneys  
Tribal Attorneys

**ACTION/DUE DATE**

Please read information and  
prepare for implementation

**EXPIRATION DATE**

September 19, 2020

## Indian Child Welfare Act Compliance Case Review System Implementation

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### TOPIC

County foster care cases reviewed for substantial compliance with the federal Indian Child Welfare Act (ICWA) and Minnesota Indian Family Preservation Act (MIFPA).

### PURPOSE

Announce the implementation of case reviews on county agency compliance with ICWA and MIFPA for Indian children in foster care.

### CONTACT

For questions regarding the Indian Child Welfare Act Compliance Case Review System contact:

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Send an email to: [DHS.ICWA.MIFPA@state.mn.us](mailto: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. Indian Child Welfare Act Compliance Case Review System

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The 2017 Minnesota Legislature authorized additional county aid funding to local social service agencies (county agency) to offset the cost of foster care for Indian children. This legislation requires Minnesota Department of Human Services (department) staff, in consultation with tribal and county agency staff, to develop a system to review county agency compliance with the Indian Child Welfare Act (ICWA) and Minnesota Indian Family Preservation Act (MIFPA), and to issue a fiscal withhold when county agencies are not in substantial compliance with these laws. [Minnesota Statutes, section 477A.0126, subdivision 6]

## A. Consultation

In December 2017, a work group comprised of representatives from the ICWA Advisory Council, Minnesota Association of County Social Service Administrators, Children’s Justice Initiative and the department, was established to develop and guide implementation of a statewide ICWA Compliance Case Review System.

## B. Case Review System

The department will implement an ICWA Compliance Case Review System according to Minnesota Statutes, section 477A.0126, subdivision 6.

Department staff will conduct case reviews involving Indian children in foster care, and for whom a portion of the costs of out-of-home placement will be offset by the new county aid appropriation.

### 1. Components of the case review system

The case review system consists of the following components:

- Case sampling methodology
- Criteria for determining substantial compliance
- Rate of noncompliance and coordinating penalty
- Program improvement plans, and
- Training and technical assistance.

### 2. Case sampling methodology

For the first case review, department staff will identify all Indian children in foster care placement in calendar year 2017 who qualify under Minnesota Statute §477A.0126, subdivision 6, for reimbursement of foster care costs. Data will be collected from the Social Service Information System (SSIS) to identify foster care payments made by county agencies on behalf of Indian children in 2017. Definitions for “Indian child” in Minnesota Statutes, section 260C.007, subdivision 21, and “foster care” in Minnesota Statutes, section 260C.007, subdivision 18, will be applied to the sample. Criteria for case sample selection include:

- Child under age 18
- Indian child
- Foster care payments made in calendar year 2017

- Eligible foster care payments based on BRASS (Budgeting, Reporting and Accounting for Social Services) codes that meet the definition of foster care.

Five percent, or at least one child from each agency (whichever is greater), will be randomly selected for a case file review. If a county agency did not have an Indian child who entered placement during the period under review, but did have an Indian child who entered placement during a previous calendar year, 5 percent, or one of those children (whichever is greater), will be randomly selected.

### **3. Criteria for determining substantial compliance**

Data collected from the first case review will be used to establish a baseline of county performance. This baseline information will inform what criteria will be applied to subsequent case reviews to determine when a county agency has achieved substantial compliance with ICWA and MIFPA.

In January 2019, the ICWA Compliance Case Review Work Group members will discuss the data collected from the first case review and decide what criteria will be used to define substantial compliance. This criteria will be applied to the second case review conducted in February 2019.

The case reviews will be conducted by department staff who will collect information from SSIS using a standardized case review instrument. Documentation not available in SSIS will be requested from county agencies. The focus of the case review is on county agency performance in achieving compliance with ICWA and MIFPA. The federal and state requirements that will be reviewed are:

- Inquiry of a child's Indian lineage.
- Notice to child's tribe(s), parents and/or Indian custodian, which include:
  - MIFPA – immediate 24-hour and/or seven-day notice.
  - ICWA – notices of court hearings for foster care and termination of parental rights.
- Active efforts include:
  - Affirmative, active, thorough, and timely efforts intended to maintain or reunite an Indian child with their family.
- Placement preferences, which requires:
  - Due diligence in following preference order for foster care, pre-adoptive and adoptive placements.
- Qualified expert witness, which requires:
  - Due diligence in following the established order for qualified expert witness.

### **4. Rate of noncompliance and coordinating penalty**

The rate of noncompliance will not be applied to the first case file review but will be applied to subsequent reviews. The rate of noncompliance will be based on cases reviewed from the previous calendar year.

The commissioner of the Minnesota Department of Human Services will certify to the commissioner of the Minnesota Department of Revenue, and to legislative committees with jurisdiction over local government and out-of-home placement funding, compliance status of each county agency receiving aid, annually by July 1.

Case file reviews will be conducted prior to certification of the proportionate share of county aid. If a county agency is substantially out of compliance after two consecutive years, based on results of the case reviews, the Minnesota Department of Revenue shall withhold 50 percent of the proportionate share a county agency would have been eligible to receive in the next certification period. The withholding will continue until a county agency is in substantial compliance. The first case review conducted in 2018 will not be used to determine future withholds for county agencies.

## 5. Program improvement plan

Program improvement plans will be required for county agencies that do not achieve substantial compliance with ICWA and MIFPA. These plans will identify areas that are out of compliance, and identify corresponding recommendations to assist with improving performance during case file reviews.

## 6. Training

Training and technical assistance will be primary areas of program improvement plans.

# II. Case Review Implementation Plan

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Department staff will complete the initial case review in December 2018. The ICWA Compliance Case Review Work Group approved the case review instrument: [ICWA Compliance Case Review Instrument](#)

County agencies will receive advance notification of a case review. The second case review will be conducted starting in February 2019, and all subsequent case reviews will be conducted prior to July 1.

# III. County Aid Payments

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Counties will receive two payments of their proportionate share on July 20, 2018, and December 26, 2018, according to Minnesota Statutes, section 477A.015. Subsequent payments will be made on the same schedule annually.

The case sampling methodology along, with Title IV-E reimbursements for eligible out-of-home placement costs, were used to calculate a county's proportionate share: [2018 County Placement Aid Amounts](#).

## Americans with Disabilities Act (ADA) Advisory

This information is available in accessible formats for people with disabilities by calling (651) 431-4670 (voice) or toll free at (800) 627-3529 or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.

# ICWA/MIFPA case review tool

**Instructions: Complete the review tool for each section. Place an X in the appropriate box for each section and document any extenuating circumstances in the comments box, if applicable.**

**Refer to the following relevant state and federal laws, regulations and guidelines for additional guidance throughout the review process, as needed:**

- Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. §§ 260.751 – 260.835
- Indian Child Welfare Act (ICWA), 25 U.S. Code (U.S.C.) §§ 1901 – 1923
- The 2016 Bureau of Indian Affairs (BIA) Regulations for Indian Child Welfare Act Proceedings, 25 Code of Federal Regulations (C.F.R.) § 23
- The 2015 BIA Guidelines for State Courts and Agencies in Indian Child Custody Proceedings.

AGENCY	CHILD'S TRIBE(S)	
CHILD'S NAME	SSIS ID NUMBER	INTAKE DATE
FIRST CASE REVIEWER NAME	REVIEW DATE	OUTCOME
SECOND CASE REVIEWER NAME	REVIEW DATE	OUTCOME

Which service is being provided to the child?

**Child protection (Family Assessment/Family Investigation)**

**Child welfare (family/child is receiving services)**

## A. Inquiry

Case file includes dates family members were asked if there is any known Indian ancestry or affiliation to a tribe. Case file includes date and/or others who were asked if child/family may be affiliated with any tribe(s) or have tribal lineage.

		DATE OF INQUIRY/YES	NO	NA
1	Father			
2	Mother			
3	Indian custodian			
4	Child			
5	Extended family			
6	Others			

Documentation of extenuating circumstances that may have affected the agency's ability to successfully achieve the above requirements (i.e., death, disability and not age appropriate, etc.)

## B. Notice/notifications (MIFPA/ICWA)

### MIFPA notice

Case file includes immediate notice (24 hours and/or seven days) to each known tribe that the agency is working with an Indian family.

	Tribal affiliations	Type of notice (24 hours or seven days)	Phone call date	Email or fax date	Name of contact at tribe	Yes	No
1							
2							
3							
4							
5							

Documentation of extenuating circumstances that may have affected the agency's ability to successfully achieve the above requirements.

### ICWA notice (child custody proceedings)

Is this case being heard within a state court proceeding?  Yes  No

Case file includes a copy of the petitioner's ICWA notification for state court proceedings sent by registered/certified mail to tribe(s), with return receipt and any supporting documents that were provided.

		Date notice of out-of-home placement received	Date notice of TPR received	Date adoptive placement notice was received	Yes	No	NA
1.	Father						
2.	Mother						
3.	Indian custodian						
4.	Tribe name						
5.	Tribe name						
6.	Tribe name						
7.	Tribe name						
8.	BIA (copies)						

9. Case file includes all copies of notices sent by registered/certified mail to BIA regional director, with return receipt and any supporting documents that were provided, if parent and/or tribe is unknown.

Yes

No

NA

Documentation of extenuating circumstances that may have affected the agency's ability to successfully achieve the above requirements.

## C. Active efforts

### Prior to removal and ongoing case management

1. Does the case file identify the agency's efforts to engage and consult with the designated representative of the Indian child's tribe(s) at the earliest point possible and throughout the investigation/assessment, case planning, and provision of services until case completion? A description of efforts is included in how the agency involved and invited tribal representatives to family visits, case planning meetings and provision of services.

Yes

No

2. Does the case file identify the agency's efforts to assist the parents or Indian custodian through the steps needed to complete a case plan? A description of those steps taken to assist the parents and/or Indian custodian with developing the resources necessary to satisfy the case plan are included.

Yes

No

3. The case file identifies the Indian child's extended family members being contacted, how the agency searched for those family members, and how they were consulted to provide family structure and support for the Indian child and parents.

Yes

No

4. Case file identifies the agencies' efforts to identify and consult with tribe(s) about available and culturally appropriate family preservation strategies, and facilitate the use of remedial and rehabilitative services provided by the child's tribe(s). A description of strategies and services offered and/or employed is provided.

Yes

No

5. Case file identifies community resources including housing, food, health care, in-home services, financial, transportation, mental health, substance use, peer support and specialized services. A description is provided of the actions taken to facilitate and support the Indian child's parents or extended family's use of those resources.

Yes

No

6. Does the case file document that the agency monitored progress and participation for the family receiving services.

Yes

No

7. Case file identifies the agency's efforts necessary to consider alternative ways to address the needs of the Indian child's parents, and where appropriate, the family.

**Yes**                       **No**

8. Case file identifies the agency's efforts to undertake other active efforts tailored to the facts and circumstances of the case, and includes details of specific efforts taken.

**Yes**                       **No**

9. Case file identifies agency efforts to engage representatives of the Indian child's tribe to participate in providing support and services to their family.

**Yes**                       **No**

Documentation of extenuating circumstances that may have affected the agency's ability to successfully achieve the above requirements.

### **Out-of-home placement**

1. Case file identifies efforts to engage representatives of the Indian child's tribe to participate in providing support and services to their family, including a description of agency efforts to involve tribal representatives in family team meetings, permanency planning, and resolution of placement issues.

**Yes**                       **No**

2. Case file identifies agency efforts to assess the circumstances of the Indian child's family, and a description of how the assessment took into account the goal of safe reunification.

**Yes**                       **No**

3. Case file identifies appropriate services to help the parents overcome barriers to reunification, and how the agency actively assisted them in obtaining these services.

**Yes**                       **No**

4. Case file identifies appropriate services and resources for relatives who are considered the primary placement option for an Indian child, consistent with the need to ensure the health, safety and welfare of the child. Case file includes a description of efforts in arranging services and resources identified and how those services were facilitated.

**Yes**                       **No**

5. Case file identifies steps taken to keep siblings together, if applicable.

**Yes**                       **No**                       **NA (no siblings)**

6. Does the case file identify how the agency facilitated the Indian child's regular visits or trial home visits with parents or Indian custodians in the most natural setting possible, consistent with the need to ensure the health, safety and welfare of the child. Case file includes a description of the frequency, and efforts made, in arranging visits and the setting.

**Yes**                       **No**

7. Does the case file identify efforts of the agency to provide post-reunification services and monitoring, and description of services and resources that were provided and arranged to support continued reunification.

- Yes                       No                       NA (reunification has not occurred)

Documentation of extenuating circumstances that may have affected the agency's ability to successfully achieve compliance with this section in providing active efforts and the return of child.

**D. Qualified expert witness**

1. Case file includes agency's active efforts to contact tribe(s) to locate and identify qualified expert witness (QEW) testimony to support out-of-home placement and/or termination of parental rights.

- Yes                       No                       N/A

QEW NAME	DATE TESTIMONY WAS GIVEN	DATE TESTIMONY WAS GIVEN
	OUT-OF-HOME PLACEMENT DATE	TERMINATION OF PARENTAL RIGHTS DATE

Documentation of extenuating circumstances that may have affected the agency's ability to successfully achieve the above requirements.

**E. Placement preferences**

The case file shows that the agency deferred to the tribe regarding placement preferences.

Case file includes agency efforts in consulting with the tribe regarding:

- 1. The need for placement                       Yes                       No
- 2. Tribes established preferences                       Yes                       No
- 3. Available placements                       Yes                       No
- 4. Case file includes agencies' due diligence in following placement preferences in descending order.    Yes                       No

**Foster care or pre-adoptive placement preference:**

- (1) A member of the Indian child's extended family
- (2) A foster home that is licensed, approved, or specified by the Indian child's tribe
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority, or
- (4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet child's needs.

**Adoptive placement preference:**

- (1) A member of an Indian child’s extended family
- (2) Other members of an Indian child’s tribe
- (3) Other Indian families.

5. Case file includes notifying and consulting with extended family members, the child, parents, and the tribe(s) regarding placement preference.

Yes

No

Documentation of extenuating circumstances that may have affected the agency’s ability to successfully achieve the above requirements

**Deviation of placement preferences**

Was there a deviation from placement preferences?

6.  Yes       NA (if “NA” do not complete section)

6a. Case file identifies “good cause” if deviation of placement preference occurs.

Yes

No

6b. Case file reflects if tribe supports deviation of placement preferences.

Yes

No

Documentation of extenuating circumstances that may have affected the agency’s ability to successfully achieve the above requirements.

TPR – Termination of parental rights

TLPC – Transfer of legal and permanent custody

BIA – Bureau of Indian Affairs