

# Bulletin

November 24, 2004

Minnesota Department of Human Services □ 444 Lafayette Rd N □ Saint Paul, MN 55155

## OF INTEREST TO

- County directors
- County social service supervisors and staff
- Tribal social service directors and staff
- County attorneys
- Tribal attorneys

## ACTION

County social services' responsibility when tribal court has jurisdiction in child custody matters.

## DUE DATE

Immediately.

## County Responsibilities For Children Under Tribal Court Jurisdiction

### PURPOSE

To provide guidance regarding county responsibilities and obligations when tribal court has jurisdiction over child custody proceedings.

### CONTACT

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### SIGNED

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## **Introduction**

When Congress passed the Indian Child Welfare Act in 1978, it recognized the right of a tribe to exercise tribal court jurisdiction in child custody proceedings involving Indian children.<sup>1</sup> As tribal governments in Minnesota have increasingly exercised their jurisdiction, there has been some uncertainty about county responsibility for payment and services for children under the jurisdiction of a tribal court. This bulletin clarifies counties' responsibilities, right to notice, and opportunity to be heard in tribal court proceedings when placement is sought through a county.

In addition to being citizens and members of a sovereign nation, Indian children and their families are also citizens and residents of the State 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. Under Minnesota law, the county is responsible for the cost of these placements and services. The exercise of tribal court jurisdiction should not mean a 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, the county social services agency has an obligation to remain involved and may be responsible for placement and service costs for the child. The county may submit claims for federal financial participation for these costs when tribal court ordered placement and services also meet federal and state eligibility criteria. The county, however, remains responsible for placement and service costs associated with the protection of the child regardless of whether federal or state funds are available.

In the case of an Indian child, it is imperative that counties and tribes work together to define and develop concurrent Indian child welfare practices and protocols, inter-agency coordination, collaboration, and joint "courtesy" supervision. As agreed in the 1998 Tribal/State Agreement on Indian Child Welfare ("Tribal/State Agreement"), "where the tribal court orders placement through a [county], the court shall provide to the [county] notice and an opportunity to be heard regarding the placement."<sup>2</sup> Counties should take this opportunity to inform the tribal court of the county's child welfare policies and services, program eligibility requirements, and any resource limitations.

## **Foster Care Maintenance Payments**

Under the Minnesota Indian Family Preservation Act, a county is required to make foster care maintenance payments "to the extent that any child subject to [the Minnesota Indian Family Preservation Act] is otherwise eligible for social services." The 1998 Tribal/State Agreement on Indian Child Welfare ("Tribal/State Agreement") also addresses placement costs for Indian children stating:

It is the position of DHS and the tribes that the [county's] obligation is subject to the same eligibility standards and rates of support applicable to other children for whom the [county] pays foster care.<sup>3</sup>

As a result of these provisions, counties must make foster care maintenance payments for Indian children who are under tribal court jurisdiction and who also meet social services eligibility

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<sup>1</sup> 25 U.S.C. 1901 et seq. (2002).

<sup>2</sup> Tribal/State Agreement, page 25, Part IV.A.

<sup>3</sup> Tribal/State Agreement, page 25, Part IV.A.

criteria when the tribal court orders placement.<sup>4</sup> When placements ordered by tribal court also meet Title IV-E requirements, a county may submit a claim for federal financial participation.<sup>5</sup>

### **Local Social Services Agency Services in Tribal Court**

In addition to placement costs, law and policy at both the federal and state level require counties to provide services that are ordered by a tribal court in conjunction with the 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.”<sup>6</sup> 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.<sup>7</sup>

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 the child is otherwise eligible for social services.<sup>8</sup> The Minnesota Department of Human Services Social Service Manual (SSM) XIII-3545 also states: “DHS 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 such entities give full faith and credit to the public acts, records and judicial proceedings of any other entity.”<sup>9</sup>

Full faith and credit does not give tribal courts’ jurisdiction over counties or the state.<sup>10</sup> Tribal court jurisdiction over a county must be assessed by the tribal court and the county on a case by case basis.<sup>11</sup> Regardless of whether the tribal court has jurisdiction over a county, however, the county must provide foster care payments and services for which the child is eligible. If a question arises as to a child’s eligibility, the parties must utilize the remedies outlined in law including the administrative appeals process in Minn. Stat. § 256.045. Minnesota and the signatory tribes to the Tribal/State Agreement reached agreement regarding this

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<sup>4</sup> See also Title IV-B of the Social Security Act; 25 U.S.C. § 1901 et seq.

<sup>5</sup> See Administration for Children and Families, Child Welfare Policy Manual, chapter 9, revised October 16, 2003, located at [http://www.acf.dhhs.gov/programs/cb/laws/cwpm/policy\\_dsp\\_pf.jsp?id=9](http://www.acf.dhhs.gov/programs/cb/laws/cwpm/policy_dsp_pf.jsp?id=9).

<sup>6</sup> Minn. Stat. Section § 260C.001, subd. 2 (2002).

<sup>7</sup> 25 U.S.C. § 1912(d).

<sup>8</sup> 25 U.S.C. § 1911(d); Minn. Stat. § 260.771, subd. 4 (2002).

<sup>9</sup> Minnesota Department of Human Services Social Services Manual Part XIII-3545.

<sup>10</sup> Jurisdiction must be determined on a case-by-case basis and, accordingly, is beyond the reasonable scope of this bulletin.

<sup>11</sup> *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510, 516 (8th Cir. 1989) (citing *National Farmers Union Ins. Co.*, 471 U.S. at 855-56, 150 S. Ct. at 2453-54).

obligation to provide services to Indian children in the Tribal/State Agreement, which states:

DHS recognizes that, to the extent a child is otherwise eligible for social services under Minnesota law, a tribal court may order a placement through [a local social services agency], provided that notice and an opportunity to be heard in tribal court is provided to the [local social services agency] as required by Minn. Stat. § 257.354, subd. 4. *This may require the [local social services agency] to provide services in connection with the placement as provided in similar placements by state court.*<sup>12</sup>

The Tribal/State Agreement further states:

In addition to services specifically established for Indian families in this Agreement or otherwise, DHS recognizes the responsibility of the State and [the counties], 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 service through this Agreement.<sup>13</sup>

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

### **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.<sup>14</sup> The Act requires that the first county having contact with a child provide and pay for services and then bill the child's county of residence if the county of residence is different from the county having first contact. Similarly, where placement is the first county involvement, the county of placement must pay for services and then bill the child's county of residence.

Counties 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. Counties should also consider exhausting any available tribal court appeals process to correct such an error in a tribal court order. A county 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 as the payor of services. County 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 particular case.

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<sup>12</sup> Tribal/State Agreement, page 13, Part I.H (emphasis added).

<sup>13</sup> Tribal/State Agreement, page 15, Part II.C.

<sup>14</sup> Tribal/State Agreement, page 25, Part IV.A.

**Special Needs**

This information is available in other forms to people with disabilities by contacting us at 651-296-3800 (voice) or through the Minnesota Relay Service at 1-800-627-3529 (TDD), 771 or 1-877-627-3848 (speech to speech relay service).