

Pathways to Tribal Title IV-E

TRIBAL TITLE IV-E OPTIONS



NRC4Tribes

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This document is the result of a Technical Assistance request from the South Dakota Department of Social Services through the NRC4Tribes.

This document does not cover all Title IV-E and related requirements or policy answers and represents a simplified account of the actual requirements. Further, future regulations or policy may cause the information in this document to become outdated. It is important for American Indian and Alaska Native Nations to assure that it meets all of the required provisions as detailed in the Title IV-E statute, regulations and official Children's Bureau policy.

Current South Dakota State - Tribal Agreements

Sisseton Wahpeton Oyate – Since 1978, SWO has provided the full array of child protective service programs from intake to adoption and licensing of tribal foster homes. This includes the pass through of Title IV-E funds to Title IV-E eligible children for placement costs and Title IV-E administrative costs.

Standing Rock Sioux Tribe – Since 1993, SRST has had an agreement with SD to provide Title IV-E funding for children under the custody of Tribal Court and allows the tribe to license tribal foster homes. This includes the pass through of Title IV-E funds to Title IV-E eligible children for placement costs and Title IV-E administrative costs.

Flandreau Santee Sioux Tribe – Since 2000, FSST has had an agreement with SD to provide Title IV-E funding for children under the custody of Tribal Court and allows the tribe to license tribal foster homes. This includes the pass through of Title IV-E funds to Title IV-E eligible children for placement costs and Title IV-E administrative costs.

Oglala Sioux Tribe – Since 2008, Lakota Oyate Wakanyeja Owicakiyapi (LOWO), a chartered agency by the tribe entered into an agreement which allows LOWO to provide the full array of child protective service programs from intake to adoption and licensing of tribal foster homes. This includes the pass through of Title IV-E funds to Title IV-E eligible children for placement costs and Title IV-E administrative costs.

The Department of Social Services supports tribal efforts to operate child welfare programs, whether it be through Title IV-E direct funding from the federal government or through State-Tribal Title IV-E Agreements for the pass through of federal funding for the placement costs of eligible children, eligible administrative and training costs, and licensure of tribal foster homes using tribal licensing standards or a full agreement for the provision of all child welfare services from Intake to Adoption.

Pathways to Tribal Title IV-E is provided for informational purposes and to assist tribes in South Dakota in determining if applying for direct Title IV-E funding or pursuing a State-Tribal Agreement might be an option for their tribe. Of course, all Tribal Nations are unique and possess their own customs, traditions and the way they work on a day-to-day basis. It is important for South Dakota tribes to understand Title IV-E requirements when considering direct Title IV-E funding or a State-Tribal Agreement which are detailed in the federal Title IV-E statute, regulations and official Children's Bureau policy.

Authority for State/Tribal Agreements and Direct Funding

In 1978, Congress passed the Indian Child Welfare Act ([Public Law 95-608, November 8, 1978](#))

- to protect the best interests of Indian children,
- to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families, and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and
- to provide assistance to Indian tribes in the operation of children and family service programs (25 United States Code Section 1902).

The Indian Child Welfare Act authorizes States and Indian Tribes to enter into agreements with each other regarding care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

Title IV-E of the Social Security Act also authorizes States and Tribes to enter into Title IV-E Agreements for funding under Title IV-E for the following:

- Foster Care Assistance
- Kinship Guardianship Assistance
- Adoption Assistance
- John H. Chafee Foster Care Independence Program
- Administrative reimbursement associated with staffing and training of staff and foster and adoptive parents



Visit the NRC4Tribes Website for Information on the 2012 Pathways to Tribal Title IV-E Meetings

The National Child Welfare Resource Center for Tribes (NRC4Tribes), in collaboration with the federal Children's Bureau, held two Pathways to Tribal Title IV-E meetings designed specifically for tribes who are actively planning to develop Title IV-E foster care services through direct access. These working meetings offered practical, hands-on information about day-to-day operations of a Title IV-E funded child welfare program. Presenters and facilitators included federal Children's Bureau staff along with National Resource Centers staff and consultants, including tribal peer trainers who have experience with Title IV-E programs.

Resource binders were created for each of the "Pathways" events. The material from these binders can be found and freely downloaded at the NRC4Tribes website located at: www.NRC4Tribes.org. The "Pathways" page is located at: <http://www.nrc4tribes.org/pathways-tribal-title-iv.cfm>

The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires states to negotiate in good faith with any Indian Tribe, tribal organization or tribal consortium in the State that requests development of an agreement with the State for the tribe to administer all or part of the Title IV-E program on behalf of Indian children who are under the authority of the Tribe.

In South Dakota, there are two types of State-Tribal Agreements—one that provides for the pass through of Title IV-E funding for foster care, administration and training, while the other provides Title IV-E and other funding for the provision of all child welfare services. The first type of agreement allows Tribes to access Title IV-E funding for children under the placement and responsibility of the Tribal Court for the following:

- Maintenance payments for Title IV-E children removed from their homes and placed in a licensed family foster home or a licensed child care institution;
- Kinship Guardianship Assistance payments for children who meet the eligibility requirements for the program;
- Adoption Assistance payment for children placed in an approved adoptive home;
- Administrative reimbursement for allowable activities associated with staffing and training of staff and foster and adoptive parents;
- Training of family foster homes and adoptive families.

The other type of agreement allows for everything listed above and additional funding for the Tribe to assume the full provision of child protection services from intake of reports, in-home services, placement services, services to achieve a child's permanent plan and licensing of placement resources. When a full State-Tribal Agreement is finalized, the Department of Social Services, Division of Child Protection Services no longer provides these services directly, but provides oversight of federal Title IV-E requirements and technical assistance.

Important information to keep in mind...

A State-Tribal Agreement can be a potential good choice for tribes

- Who have a child welfare program and take placement care responsibility of Tribal children
- Who have a Tribal Court in place that can/will handle child welfare issues
- Who are interested in developing a direct Title IV-E program but need time to develop Tribal infrastructure
- Who are interested in recruiting, training and licensing foster homes

Tribal Nations who are interested in entering into a State-Tribal Agreement may contact the ICWA Program Specialist with the Department of Social Services at 605-773-3227.



The Children's Bureau Website

The Children's Bureau (CB) partners with tribal, state, federal and local agencies to improve the overall health and well-being of our nation's children and families. The CB website located at <https://www.acf.hhs.gov/programs/cb> provides an enormous amount of information for tribes and states to utilize in accessing Title IV-E. Examples of information found on the CB website:

Child Welfare Policy Manual

Located at: http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy.jsp?idFlag=8

Title IV-E Legislation/Policy

Located at: <http://www.acf.hhs.gov/programs/cb/resource/title-iv-e-legislation-policy>

Implementation of the Fostering Connections to Success and Increasing Adoptions Act of 2008 Working Document

Located at: <https://www.acf.hhs.gov/programs/cb/resource/implementation-of-the-fostering-connections>

Title IV-E Plan Pre-Print

Located at: <https://www.acf.hhs.gov/programs/cb/resource/pi1011>

Tribal and State Grant Programs

Located at: <https://www.acf.hhs.gov/programs/cb/grants>

Direct Title IV-E Program

President Bush signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P. L. 110-351) into law on October 7, 2008. This Act provides federally-recognized Indian Tribes, Indian Tribal Organizations and Consortia (Indian Tribes) with the option to submit a plan to the Administration for Children and Families to apply for Title IV-E funding directly from the federal government rather than developing State-Tribal Agreements to operate Title IV-E foster care, kinship guardianship, and adoption assistance programs.

Important information to keep in mind...

- **Requires local matching funds**
- Requires the Tribe to be operating a Title IV-B (Subpart 1 or 2) Program
 - * Title IV-B Subparts 1 or 2 are Children's Bureau programs which allow Indian tribes access to direct funding toward services to:
 - ◇ prevent the neglect, abuse or exploitation of children;
 - ◇ support at-risk families through services which allow children, where appropriate, to remain with their families or return to their families in a timely manner
 - ◇ promote the safety, permanence and well-being of children in foster care and adoptive families; and
 - ◇ provide training, professional development and support to ensure a well-qualified workforce.
 - * Tribes that elect to operate a Title IV-E program must submit an approvable Title IV-E plan. The Title IV-E plan is developed by using the Title IV-E pre-print as a guide.
- Using the Title IV-E pre-print, assess:
 - * What is in place now at our Tribe/agency?
 - * What do we need to add or revise to ensure we meet the requirements found in the pre-print?
 - * Tribal programs, policies, procedures, code, judicial processes, and financial systems to see how they align with Title IV-E requirements.

The Title IV-E pre-print is located on the Children's Bureau website. The Children's Bureau website is located at: <https://www.acf.hhs.gov/programs/cb>.

Tribal Nations interested in learning more about the Direct Title IV-E Program should contact Region VIII, Administration for Children and Families and ask for the Child Welfare Program Specialist assigned to the state. Inform him or her that you are interested in applying. The Regional Office can provide guidance and technical assistance. Region 8 email: region8@acf.hhs.gov. Phone: 303-844-3100.

Scope of the Title IV-E Program

The following excerpts were taken from the Tribal Title IV-E Program Considerations, Technical Assistant Document. This document can be found at: <http://www.acf.hhs.gov/programs/cb/resource/tribal-considerations>

The Title IV-E program has several different subcomponents, some of which are mandatory and others that are optional. A few of the subcomponents are:

Service Area and Population Designation. It is mandatory for the Indian Tribe to establish the service area(s) and population(s) to be served under the Title IV-E plan. The Indian Tribe must serve all eligible children within its identified service and population area(s), per section 479B(c)(1)(B) of the Social Security Act (the Act). There are no Federal requirements that limit the service area, (i.e. service areas are not limited to reservations or Indian lands) however Indian Tribes should take care to define a realistic service area and population and seek to resolve potential conflicts if its service areas and populations overlap with those of other Tribal governments.

Foster Care Maintenance Payments Program. The foster care maintenance payments program is a mandatory component of an approvable Title IV-E plan per sections 471(a)(1) of the Act. The Indian Tribe is obligated to provide foster care maintenance payments on behalf of all children in the Indian Tribe's service area who are eligible for the program up to the age of 18.

Overview of Title IV-E

The following guidelines are based on Federal law, regulation and policy that both Tribes and States must adhere to in order to access Title IV-E funding.

If eligible, funds are available under Title IV-E for the following:

- Foster Care Assistance
- Adoption Assistance
- Kinship Guardianship Assistance
- John H. Chafee Foster Care Independence Program

Requirements for Accessing Federal Title IV-E Funding

The main requirements related to tribes accessing Title IV-E funding are related to the:

1. eligibility of the children on whose behalf the foster care and adoption maintenance payments are made, and
2. eligibility of foster care providers - must meet standards for full licensure.

The case record of the child must contain the following documentation to verify the child's eligibility:

- evidence of removal as a result of judicial determinations of contrary to the welfare and reasonable efforts or via a voluntary placement agreement
- responsibility for placement and care vested with the Tribal agency
- eligibility for AFDC under the State plan as it was in effect on July 16, 1996
- placement in a licensed or approved foster family home or child care institution with verification that safety requirements have been met
- permanency hearings have been conducted as required in the Title IV-E regulations. The federal Title IV-E requirements are discussed in more detail below.

Contrary to the Welfare

A child's removal from the home must be the result of a judicial determination that continuation in, or returning to, the home would be contrary to the child's welfare, or that placement in foster care would be in the best interest of the child (unless removal is pursuant to a voluntary placement agreement). The contrary to the welfare finding must be made in the first court order that sanctions the child's removal from home. If not, the child is ineligible for foster care maintenance payments for the duration of that stay in foster care. Acceptable documentation is a court order

Scope of the Title IV-E Program (continued)

Adoption Assistance Program. The adoption assistance payments program is a mandatory component of an approvable Title IV-E plan, per sections 471(a)(1) of the Act. The Indian Tribe is obligated to provide adoption assistance on behalf of all children in the Indian Tribe's service area who are eligible for the program up to the age of 18.

Optional Guardianship Assistance Program. An Indian Tribal Title IV-E agency may choose to operate a guardianship assistance program as a component of the Title IV-E plan per section 471(a)(28) of the Act. This component of the Title IV-E program is optional. If the Indian Tribe chooses to implement this option, it must then provide kinship guardianship assistance payments on behalf of all children in the Indian Tribe's service area and population who are eligible for the program up to the age of 18.

Optional Title IV-E Extension for Youth Until Age 19, 20 or 21. Beginning October 1, 2010, a Tribal Title IV-E agency can opt to extend assistance to eligible Title IV-E recipients, in all three programs, under certain conditions, up to the age of 19, 20 or 21, as described in section 475(8)(B) of the Act.

containing a judicial determination regarding contrary to the welfare or a transcript of the court proceedings reflecting this determination.

Reasonable Efforts

The State or Tribal agency must obtain a judicial determination that it has made reasonable efforts to (1) maintain the family unit and prevent the unnecessary removal of a child from home, as long as the child's safety is ensured, and (2) make and finalize a permanency plan in a timely manner. Acceptable documentation is a court order containing a judicial determination documenting the reasonable efforts that were made by the State or Tribal agency or a transcript of the court proceedings reflecting this determination. When a child is removed from home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, must be made no later than 60 days from the date the child is removed from the home (45 CFR 1356.21(b)(1)(i)).

Voluntary Placements

A child who is removed from home under a voluntary placement agreement that is signed by the parent(s) and Tribal agency authorities. In order to remain eligible for foster care maintenance payments a judicial determination indicating that continued voluntary placement is in the best interests of the child must be made within 180 days from the date of the voluntary placement agreement. The voluntary placement agreement must be signed by the parent(s) and Tribal agency authorities.

Responsibility for Placement and Care Vested With the Tribal Agency

The Tribal agency must have responsibility for placement and care of the child as ordered by the court in the initial judicial determination related to the child's removal from the home.

AFDC Eligibility (as of July 16, 1996)

Depending on the option chosen by a Tribe, Title IV-E eligibility determinations are completed by the State via documentation from the Tribe or determination is made by the Tribe to show the child was financially needy and deprived of parental support at the time of the child's removal from home, using criteria in effect in the State on July 16, 1996, Title IV-A State plan. *Acceptable documentation supports the State's or Tribe's evaluation of financial need and deprivation due to a death of a parent, absence of a parent, mental or physical incapacity of a parent to the extent that the parent cannot support the needs of the child, or the unemployment of the principal wage earner. Acceptable documentation varies from state to state.*

Scope of the Title IV-E Program (continued)

Key Questions for Consideration:

- Is the Indian Tribe's potential service area/population of a scale that warrants operating the Title IV-E program directly?
- What resources are available or could be mobilized throughout the potential service area/population for children and families?
- What existing Federal or State financial resources currently available to a Tribe for child welfare purposes might be negatively or positively impacted by operating a Title IV-E program?
- Would joining a consortium of other Indian Tribes be beneficial?
- Is directly operating federally prescribed foster care, kinship guardianship and adoption programs consistent with Tribal objectives and values?
- How will any existing Title IV-E agreement with a State be affected by operating a direct Title IV-E program?
- Are there changes needed to the Indian Tribe's codes and regulations to ensure that Title IV-E is available throughout the service area for all eligible children?

Placement in a Licensed Family Foster Home or a Child Care Institution

The child must be placed in a facility that meets the standards for full licensure or approval that are established by the Tribe. An eligible facility may be a family foster home, group home, private child care institution, or public child care institution which accommodates 25 or fewer children. Children placed in detention facilities, forestry camps, training schools, or other facilities operated primarily for the detention of children determined to be delinquent are not eligible for Title IV-E foster care maintenance payments. The documentation of full licensure can be satisfied by the certificate of licensure/approval or a letter of approval. The license must show that the foster family home or child care institution is licensed for the duration of the child's placement.

Safety Requirements for Children Placed in Foster Care

The Tribe must provide documentation that criminal records checks have been conducted with respect to prospective foster, guardian, and adoptive parents. Acceptable documentation to satisfy this eligibility requirement is evidence that a criminal records check was completed satisfactorily such as copies of the results of the criminal records check, child abuse and neglect registry, and sexual offenders' registry.

Permanency Hearings

A judicial determination regarding reasonable efforts to finalize the permanent plan (45CFR 1356.21 (b) (2) must be made within 12 months of the date on which the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. If a judicial determination is not made within this timeframe, the child is ineligible at the end of the 12th month and remains ineligible until the judicial determination is made. Permanency hearings are not required for voluntary placements.

Resources to Assist Tribes

The resources listed on the following pages are available to assist Tribes interested in pursuing Title IV-E Direct Funding or with the development of a State-Tribal Agreement.

National Resource Centers

The Children Bureau's (CB) 11 National Resource Centers (NRCs) provide Training and Technical Assistance (T/TA) in specific focus areas with the goal of helping agencies, managers, family and juvenile courts and other child welfare professionals better serve children and families. **Information about the NRCs can be found on the CB website at:** <http://www.acf.hhs.gov/programs/cb/assistance/national-resource-centers>.

National Resource Center for Tribes <http://www.nrc4tribes.org/>

Engages tribes to increase their access to and use of the T/TA Network, brokers T/TA, helps provide T/TA, facilitates peer-to-peer consultation among Tribes on child welfare issues and increases cultural competence and sensitivity to tribal voices in the T/TA Network and in state child welfare systems.

National Resource Center on Legal and Judicial Issues http://www.americanbar.org/groups/child_law/what_we_do/projects/rclji.html

- Provides expertise to courts, attorneys, Court Improvement Projects and state and tribal agencies on legal and judicial aspects of child welfare.

National Child Welfare Resource Center for Organizational Improvement <http://muskie.usm.maine.edu/helpkids/>

- Offers technical assistance, training, teleconferences and publications to assist states with CFSRs, including strategic planning, quality improvement, evaluating outcomes, facilitating stakeholder involvement and improving training and workforce development.

National Resource Center for Child Protective Services <http://www.nrccps.org/> - Focuses on building state, local and tribal capacity through T/TA in CPS, including meeting federal requirements, strengthening programs, eligibility for the CAPTA grant, support to State Liaison Officers and collaboration with other NRCs.

National Resource Center for In-Home Services <http://nrcinhome.socialwork.uiowa.edu/> - Serves as a national center of expertise in child welfare practice for ensuring the safety of children and youth in their homes and making reasonable efforts to preserve families in which maltreatment has occurred.

National Resource Center for Permanency and Family Connections <http://www.nrcpfc.org/>

- Provides T/TA and information services to help states through all stages of the CFSRs, emphasizing family-centered principles and practices and helping states build knowledge of foster care issues.

National Resource Center for Child Welfare Data and Technology <http://www.nrccwdt.org/>

- Addresses a broad range of program and technical issues (including tribal and court child welfare issues) in assisting with the CFSR process, including training on data use and management, AFCARS assistance, coordinating peer consultation and preparation and use of state Data Profiles.

National Resource Center for Adoption <http://www.nrcadoption.org/> - Partners with states, tribes and other NRCs to offer support in all phases of the CFSR process, including analyzing adoption and permanency options, exploring systemic factors, increasing cultural competence and promoting stakeholder involvement.

National Resource Center for Youth Development <http://www.nrcyd.ou.edu/>

- Provides states with CFSR assistance, including promoting stakeholder involvement, T/TA and information services. Also offers states, tribes and other youth-serving organizations assistance in effectively implementing the Chafee Foster Care Independence and Education and Training Voucher programs, and supporting youth engagement in child welfare policy, planning and program development.

National Resource Center for Diligent Recruitment at AdoptUSKids <http://www.adoptuskids.org/about-us/national-resource-center-for-diligent-recruitment>

— Provides T/TA to states and tribes on issues that pertain to the development and implementation of quality recruitment and retention services for foster, adoptive, concurrent and kinship families.

AdoptUSKids <http://www.adoptuskids.org/> - Raises public awareness about the need for foster and adoptive families and to assist States, Tribes, territories, and courts in their efforts to recruit and retain foster, adoptive and kinship families and connect them with waiting children throughout the United States.