#13-68-09

Bulletin

October 17, 2013

Minnesota Department of Human Services – P.O. Box 64941 – St. Paul, MN 55164-0941

OF INTEREST TO

- County Directors
- County Social Service Supervisors and Staff
- Tribal Directors
- Tribal Social Service Supervisors and Staff
- County Attorneys
- Tribal Attorneys

ACTION/DUE DATE

Read and implement.

EXPIRATION DATE

October 17, 2015

County Responsibilities for Children Under Tribal Court Jurisdiction

TOPIC

County responsibilities for American Indian children under tribal court jurisdiction.

PURPOSE

To provide guidance regarding county responsibilities and obligations when tribal court has jurisdiction over child custody proceedings. This bulletin replaces bulletin #11-68-02, "County Responsibilities for Children Under Tribal Court Jurisdiction," March 4, 2011.

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Terminology Disclaimer

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. Although outmoded and offensive terms might be found within this document, DHS does not endorse these terms.

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.[1] 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 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. 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, county social service agencies have an obligation to remain involved and may be responsible for placement and service costs for a child. County agencies may submit claims for federal financial participation for these costs when tribal court ordered placement and services meet federal and state eligibility criteria. Counties, however, remain responsible for placement and service costs associated with the protection of a 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 as amended in 2007, ("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."[2] Counties should take this opportunity to inform the tribal court of a 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 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."[3]

As a result of these provisions, counties must make foster care maintenance payments for Indian

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1 25 U.S.C. 1901 et seq.

2 Tribal/State Agreement, page 30, Part III.A.

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

children who are under tribal court jurisdiction and who also meet social service eligibility criteria when a tribal court orders placement.[4] When placements ordered by tribal court also meet Title IV-E requirements, a county may submit a claim for federal financial participation.[5]

Local Social Service Agency Services in Tribal Court

In addition to placement costs, law and policy at both the federal and state levels 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."[6] 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."[7]

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.[8] The Indian Child Welfare 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."[9]

Full faith and credit does not give tribal courts jurisdiction over counties or the state.[10] Tribal court jurisdiction over a county must be assessed by the tribal court and the county on a case-by-case basis.[11] Regardless of whether a tribal court has jurisdiction over a county, however,

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4 *See also* Title IV-B of the Social Security Act, 25 U.S.C. § 1901 et seq.
5 *See* Administration for Children and Families, Child Welfare Policy Manual, chapter 9, revised October 16, 2003, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy.jsp?idFlag=9
6 Minn. Stat. § 260C.001, subd. 2.
7 25 U.S.C. § 1912(d).
8 Ibid.
9 Indian Child Welfare Manual, (Part XIII-3545) available at: http://www.dhs.state.mn.us/id_003707.
10 Jurisdiction must be determined on a case-by-case basis and, accordingly, is beyond the reasonable scope of this bulletin.
11 *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).

counties 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 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 obligation to provide services to Indian children, which states:

> "It is the position of the Department 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 agency notice and an opportunity to be heard regarding the placement."[12]

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 services through this Agreement."[13]

A county must provide a child with any services for which s/he 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, Minn. Stat. chapter 256G, continues to apply in determining the county of financial responsibility when tribal courts exercise jurisdiction.[14] The act requires that the first county having contact with a child provide and pay for services and bill a 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's involvement, the county of placement must pay for services and bill a child's county of residence.

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12 Tribal/State Agreement, page 30, Part III.A.
13 Ibid, page 22, Part II.C.
14 Ibid, page 30, Part III.A.

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 available tribal court appeals processes to correct errors in tribal court orders. A county identified as the county having financial responsibility for a 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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