

Child Welfare Policy Manual

Questions & Answers

9.4 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Title IV-E Agreements

1. Question: Which agency (State or Tribal) has responsibility for providing title IV-E foster care payments and title IV-B child welfare services to Indian children?

Answer: It depends on whether the child is under the placement and care of the tribe or state. The title IV-E foster care program pays the costs of foster care for AFDC eligible children removed from their homes, for whom the State or the Tribe has responsibility for placement and care. It is an entitlement program for individual children and must be available to all eligible children.

The title IV-B child welfare services program provides Federal funds in the form of formula grants to States and Tribes consistent with the purposes in section 421 of the Act.

Some federally recognized Tribes providing child welfare services are eligible to receive title IV-B grants directly from the Federal government. Since these are grants to States and Tribes, and are not entitlements for individual children, the States and participating Tribes have the authority to allocate the use of these funds and to set priorities for their use.

Many States and Tribes have developed State-Tribal agreements which formalize the sharing of responsibility for providing foster care maintenance and child welfare services, using title IV-E and title IV-B funds, as well as Social Services Block Grant funds and State funds.

Where neither the State nor the Tribe has resources sufficient to cover all the needs of all Indian children, the Bureau of Indian Affairs (BIA), as payor of last resort, may pay for these services.

- **Source/Date:** ACYF-CB-PIQ-88-02 (1/27/88; 4/14/20)
- **Legal and Related References:** Social Security Act - sections 421, 422, 428, 472, and 479B; 25 CFR 20.3

2. Question: Must a State decline to enter into a title IV-E agreement with a Tribe that does not meet all of the title IV-B section 422 "protection" or assurances?

Answer: No. It would not be necessary to decline entering into such Tribal-State agreements because of the Tribe's inability to meet certain title IV-E requirements.

We assume that by Tribal-State intergovernmental title IV-E agreements you are referring to an agreement for the placement and care of children eligible under section 472 (a) of the Social Security Act (the Act).

The terms of a title IV-E agreement, in accordance with section 472 (a)(2)(B) of the Act, would be negotiated between the State and the Tribe. The agreement should specify the respective responsibilities of each in relation to carrying out the title IV-E requirements. The agreement should also include provisions for assuring that the section 422 protections are afforded to each child in foster care under the Tribes responsibility for placement and care for whom title IV-E foster care maintenance payments are being made by the State. The State and Tribe would determine the responsibilities of each in meeting the section 422 requirements.

However, the State has ultimate responsibility for assuring that the title IV-E requirements are met for title IV-E eligible children.

- **Source/Date:** ACYF-CB-PIQ-85-05 (4/12/85)
- **Legal and Related References:** Social Security Act - section 472 (a)

3. Question: In order for the State to meet the title IV-B section 422 requirements, must Tribal children assisted under intergovernmental agreements be included in the State's inventory, information system and case review system?

Answer: In order for a State to meet the section 422 requirements, children under the Tribe's responsibility, but for whom the State is making title IV-E payments, must be included in the State's inventory and information system. The State must also assure that a case review system and a preventive and reunification services program are in operation and applicable to these Native American children.

The title IV-E agreement may designate whether the State or the Tribe will implement the case review system and provide the services specified above, since the State (making the title IV-E foster care maintenance payments) and the Tribe (having the responsibility for placement and care) have a shared responsibility for assuring title IV-E children receive these protections.

- **Source/Date:** ACYF-CB-PIQ-85-05 (4/12/85)
- **Legal and Related References:** Social Security Act - section 472 (a)(2)

4. Question: May a State make payments under title IV-E with respect to children in Indian foster homes only if the children are under the responsibility of the State title IV-E/IV-B agency or a State-certified child placing agency?

Answer: No. Section 472(a) of the Social Security Act (the Act) outlines the eligibility requirements for a child to receive assistance and the conditions under which a State may make foster care maintenance payments under title IV-E and receive Federal financial participation (FFP).

In accordance with section 472(a)(2)(B), a State shall make foster care maintenance payments under title IV-E if, among other conditions, the child's placement and care are the responsibility of the State agency administering the title IV-E State plan or any other public agency (including an Indian Tribe) with whom the State agency has made an agreement which is in effect. There is no provision in the statute that authorizes title IV-E payments where custody or responsibility for placement and care of the child has been given to a private agency.

Therefore, if the State and the Indian Tribe negotiate and enter into an agreement which recognizes that the Tribe has been given custody or responsibility for placement and care of certain title IV-E eligible children and which confirms the Tribe's responsibility to comply with the requirements under title IV-E in relation to these children, the State may claim FFP under title IV-E for the costs of foster care maintenance payments for them.

- **Source/Date:** ACYF-CB-PIQ-87-01 (3/25/87) (revised 12/2/14)
- **Legal and Related References:** Social Security Act - section 472 (a)

5. Question: Can Indian tribes that enter into a title IV-E agreement with a title-IV-E agency identify, in tribal code, those aggravated circumstances in which reasonable efforts are not required in accordance with section 471 (a)(15)(D)(i) of the Social Security Act?

Answer: When entering into a title IV-E agreement with a title IV-E agency, the tribe must adhere to the list of aggravated circumstances defined in State law. The statute at section 471 (a)(15)(D)(i) specifically requires that the aggravated circumstances in which reasonable efforts are not required be defined in State law. Moreover, other public agencies and tribes that enter into agreements with the State agency are not operating or developing their own title IV-E program separate and apart from that operated under the State plan. Rather, the agency or tribe is agreeing to operate the title IV-E program established under the State plan for a specific population of children in foster care. Therefore, the other public agency or tribe is bound by any State statute related to the operation of the title IV-E program. We expect the State child welfare agency to engage the tribes, and any other agency with which it has title IV-E agreements, in developing its list of aggravated circumstances.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 12/2/14)
- **Legal and Related References:** Social Security Act - section 471 (a)(15)(D); 45 CFR 1356.21 (b)(3)

6. Question: May an Indian tribe elect not to conduct or require criminal records checks on foster or adoptive parents if it obtains an approved resolution from the governing body of the Indian tribe?

Answer: No. Tribes that receive title IV-E funds pursuant to a title IV-E agreement with a title IV-E agency must comport with section 471 (a)(20) of the Social Security Act and 45 CFR 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it licenses. The statute expressly gives the State the authority to opt out of section 471 (a)(20) through State legislation or a letter from the Governor to the Secretary. Agreements between the State child welfare agency and other public agencies or tribes permit those entities to have placement and care responsibility for a particular group of the foster care population under the approved State plan. Such agreements do not permit other public agencies or tribes to develop a distinct title IV-E program separate from that operated under the approved State plan.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 12/2/14)
- **Legal and Related References:** Social Security Act - section 471 (a)(20); 45 CFR 1356.30

7. Question: A placement is made by an Indian Tribe, can title IV-E payments be made (through a 472 agreement) only if the Tribe is certified by the State as a child placing agency?

Answer: No. Under title IV-E, Federal financial participation (FFP) is available for the costs of foster care maintenance for a child who meets the eligibility criteria in section 472 (a). For reimbursement under title IV-E, there is no further specification in the statute with regard to certification of a child placing agency which would preclude placement by an Indian Tribal organization or Indian Tribal court.

- **Source/Date:** ACYF-PIQ-87-01 (3/25/87)
- **Legal and Related References:** Social Security Act - section 472 (a)

8. Question: Must foster family homes approved through the tribal process meet the same standard as homes licensed by the State?

Answer: The definition of "foster family home" at 45 CFR 1355.20 gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with ICWA at section 1931(b) which states that for purposes of qualifying for funds under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.

- **Source/Date:** ACYF-CB-PIQ-87-01 (3/25/87); Preamble to the Final Rule (65 FR 4020) (1/25/00)

- **Legal and Related References:** The Indian Child Welfare Act of 1978; 45 CFR 1355.20

9. Question: By what authority are Tribes restricted to licensing homes that are on or near Indian reservations?

Answer: Section 1931 of the Indian Child Welfare Act (ICWA) authorizes Indian tribes and tribal organizations to establish and operate child and family services programs "on or near reservations," including a system for licensing or otherwise regulating Indian foster and adoptive homes. We use this language at section 1355.20 of the regulations to remain consistent with the ICWA.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** The Indian Child Welfare Act of 1978; 45 CFR 1355.20

10. Question: Section 471(a)(20)(A)(i) and (ii) of the Social Security Act (the Act) prohibit a State from claiming title IV-E foster care maintenance payments or adoption assistance payments when prospective foster or adoptive parents have been convicted of certain crimes. Are there any exemptions or exceptions permitted from this requirement, such as the State or Indian tribe under a title IV-E agreement with the State considers the prospective parent rehabilitated or the placement is in the best interests of the child?

Answer: No, there are no exceptions to the requirements at section 471(a)(20)(A)(i) and (ii) of the Act, once the provision is effective in the State. The State, or an Indian tribe under a title IV-E agreement (pursuant to section 472(a)(2)(B)(ii) of the Act) has the discretion to place the child in a home where prospective parents have been convicted of such crimes. However, the State or Tribe may not claim title IV-E foster care maintenance or adoption assistance payments in such cases.

- **Source/Date:** April 13, 2007
- **Legal and Related References:** Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)

11. Question: Is an Indian tribe that has a title IV-E agreement under section 472(a)(2)(B)(ii) of the Social Security Act (the Act) permitted an exemption or exception to the background check provisions of section 471(a)(20) of the Act?

Answer: No. An Indian tribe with a section 472(a)(2)(B)(ii) agreement must meet the requirements of section 471(a)(20) of the Act for any prospective foster or adoptive parent who will provide care for a child who will receive title IV-E foster care maintenance payments or title IV-E adoption assistance payments.

- **Source/Date:** April 13, 2007
- **Legal and Related References:** Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)